

151 FERC ¶ 61,233
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Idaho Power Company
PacifiCorp

Docket No. EC15-54-000

ORDER AUTHORIZING ACQUISITION AND DISPOSITION
OF JURISIDCTIONAL FACILITIES

(Issued June 17, 2015)

1. On December 19, 2014, Idaho Power Company (Idaho Power) and PacifiCorp (together, Applicants) filed jointly, pursuant to sections 203(a)(1)(A) and (B) of the Federal Power Act (FPA)¹ and Part 33 of the Commission's regulations,² an application requesting Commission authorization for the disposition and acquisition of jurisdictional facilities (Proposed Transaction).³ As discussed below, we have reviewed the Proposed Transaction under the Commission's Merger Policy Statement⁴ and authorize the Proposed Transaction under FPA section 203 as consistent with the public interest.

¹ 16 U.S.C. § 824b (2012).

² 18 C.F.R.pt. 33 (2014).

³ Joint Application for Authorization for Disposition of Jurisdictional Facilities, Docket No. EC15-54-000 (Dec. 19, 2014) (Section 203 Application). Concurrently with the Section 203 Application, Applicants filed jointly several agreements and notices of cancellation of existing transmission service, ownership, and operation agreements pursuant to section 205 of the FPA, 16 U.S.C. § 824d (2012) (collectively, the Section 205 Filings). The Section 205 Filings were filed in Docket Nos. ER15-680-000, ER15-681-000, ER15-683-000, and ER15-686-000. This order addresses the Section 203 Application. The Section 205 Filings are addressed in an order issued concurrently with this order. *See Idaho Power Co.*, 151 FERC ¶ 61,234 (2015).

⁴ *See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy

(continued...)

I. Background

A. Applicants and Other Related Entities

1. Applicants

a. Idaho Power

2. Applicants state that Idaho Power is a public utility corporation incorporated in the State of Idaho with its principal place of business in Boise, Idaho, and that it is a wholly-owned subsidiary of IDACORP, Inc. (IDACORP), a holding company under the Public Utility Holding Company Act of 2005. Applicants explain that Idaho Power provides bundled retail electric service to approximately 515,000 customers in a franchised electric service territory of approximately 24,000 square miles, subject to the jurisdiction of the Idaho Public Utilities Commission (Idaho Commission) and the Public Utility Commission of Oregon (Oregon Commission). Applicants state that Idaho Power provides wholesale requirements service to the city of Weiser, Idaho and sells wholesale power to several other parties under bilateral agreements on file with the Commission. Applicants note that the Commission has authorized Idaho Power to sell energy, capacity, and ancillary services at market-based rates.⁵

3. Applicants explain that Idaho Power has approximately 3,600 MW of generation capacity primarily from hydroelectric facilities, but also from coal-fired and natural-gas-fired generation facilities, and purchased power from wind and geothermal facilities pursuant to long-term contracts. Applicants also state that Idaho Power's generation includes ownership of a share of remote coal-fired generators located in adjacent balancing authority areas. According to Applicants, Idaho Power owns approximately 4,800 miles of transmission lines ranging from 46 kilovolts to 500 kilovolts (kV). Applicants state that open access to Idaho Power's transmission system is provided

Statement). *See also FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008) (Supplemental Policy Statement). *See also Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). *See also Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005) (Order No. 669), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214 (Order No. 669-A), *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

⁵ Section 203 Application at 6.

pursuant to Idaho Power's open access transmission tariff (Idaho Power OATT), which is on file with the Commission. Applicants note that Idaho Power also operates its own balancing authority area.⁶

4. Applicants state that Idaho Power's wholly-owned subsidiary Idaho Energy Resources Company holds a 33 percent interest in a joint venture – the Bridger Coal Company (Bridger Coal) – which mines and supplies coal to the Jim Bridger Project, which is jointly-owned by Idaho Power and PacifiCorp.⁷ Applicants note that Bridger Coal produces coal from property it leases in Wyoming, and that all of the output of Bridger Coal is used at the Jim Bridger Project. Similarly, Idaho Power owns and leases rail cars to transport coal to the Jim Bridger Project. Applicants maintain that the total number of cars that Idaho Power could be considered to control – less than 200 – is insignificant relative to the total number of rail cars available to transport coal in the region. Further, Applicants assert that Idaho Power's coal mining operations represent a small fraction of the total coal operations in the western United States.⁸

5. According to Applicants, other than the facilities described above, Idaho Power does not own or control any other sites for generation capacity development, or any other essential inputs to electricity products or electric power production, as defined by the Commission's regulations.⁹

b. PacifiCorp

6. Applicants state that PacifiCorp is an Oregon corporation with its principal place of business in Portland, Oregon, and that it is an indirect, wholly-owned subsidiary of Berkshire Hathaway Energy Company (BH Energy), a subsidiary of Berkshire Hathaway, Inc., a publicly-traded company. Applicants explain that PacifiCorp is a vertically-

⁶ *Id.*

⁷ The Jim Bridger Project is a four-unit coal-fired electric power plant of which Idaho Power owns one-third, and PacifiCorp owns two-thirds. *See* Section 203 Application, Exhibit I: Contracts related to the proposed transaction, Joint Purchase and Sale Agreement Between Idaho Power Company, and PacifiCorp (Oct. 24, 2014) (Joint Purchase/Sale Agreement), Exhibit C: Joint Ownership and Operating Agreement Between Idaho Power Company and PacifiCorp at Section 1.1 (Oct. 24, 2014) (Joint Ownership/Operating Agreement).

⁸ Section 203 Application at 7.

⁹ *Id.*

integrated public utility primarily engaged in providing retail electric service to approximately 1.8 million customers in six western states: Utah, Oregon, Wyoming, Washington, Idaho, and California. Applicants state that PacifiCorp is regulated by the following state public utility commissions: the Utah Public Service Commission, the Oregon Commission, the Wyoming Public Service Commission, the Washington Utilities and Transportation Commission (Washington Commission), the Idaho Commission, and the California Public Utilities Commission.¹⁰

7. Applicants state that PacifiCorp owns, or has interests in, approximately 16,300 miles of transmission lines ranging from 46 kV to 500 kV, and has approximately 10,595 MW of generation capacity from coal, hydroelectric, wind power, solar, natural gas-fired combustion turbines, and geothermal facilities. Applicants state that the Commission has authorized PacifiCorp to sell energy, capacity, and ancillary services at market-based rates, and that PacifiCorp is also engaged in the purchase, sale and transportation of natural gas.

8. Applicants explain that open access to PacifiCorp's transmission system is provided pursuant to PacifiCorp's open access transmission tariff (PacifiCorp OATT), which is on file with the Commission. In addition, Applicants state that PacifiCorp operates two balancing authority areas, PacifiCorp East and PacifiCorp West. Applicants state that, as a general matter, PacifiCorp East includes PacifiCorp's loads and resources in the States of Idaho, Utah, and Wyoming, and PacifiCorp West includes PacifiCorp's loads and resources in the States of Washington, Oregon, and California.¹¹ Applicants add that the entire PacifiCorp system, including both of the PacifiCorp balancing authority areas, are controlled from PacifiCorp's System Power Control Center in Portland, Oregon, and are operated as a single integrated system.

9. Applicants state that PacifiCorp does not own or control infrastructure for the transportation of coal supplies such as barges and rail cars, other than those spur lines and rail cars necessary to move coal to PacifiCorp's own mine mouth generating facilities. PacifiCorp has interests in coal mines in Wyoming, Utah, and Colorado through ownership or lease that support PacifiCorp's coal-fueled generating facilities. PacifiCorp's ownership or control over coal facilities includes an ownership share in Bridger Coal, which, as noted above, supplies coal solely to the Jim Bridger Project, which PacifiCorp owns jointly with Idaho Power. Applicants state that, other than the facilities described above, PacifiCorp does not own or control any other sites for

¹⁰ *Id.* at 8.

¹¹ *Id.*

generation capacity development, or any other essential inputs to electricity products or electric power production, as defined by the Commission's regulations.¹²

2. Other Related Entities

a. IDACORP and Affiliates

10. According to Applicants, IDACORP is a holding company incorporated in the State of Idaho, and its primary subsidiary is Idaho Power. Applicants explain that IDACORP is a publicly-traded entity that is traded on the New York Stock Exchange, and that it is aware of only one common shareholder that owns 10 percent or more of IDACORP's common stock, BlackRock, Inc. Applicants state that, to IDACORP's knowledge, no other person or entity owns a 10 percent or greater equity interest in or controls IDACORP.¹³

11. Applicants explain that Ida-West Energy Company (Ida-West) is also a wholly-owned subsidiary of IDACORP. According to Applicants, Ida-West owns and operates approximately 45 MW of small generation projects in the Idaho Power Balancing Authority Area and the California Independent System Operator Corporation market, all of which are qualifying facilities (QF) under the Public Utility Regulatory Policies Act of 1978, as amended. Applicants explain that all of the output of these QFs is fully committed to Idaho Power or Pacific Gas and Electric Company under long-term contracts, and that, except for the facilities listed above, IDACORP is not affiliated with any other generation located in Applicants' relevant markets.¹⁴

b. Berkshire Hathaway Energy Company and Affiliates

12. Applicants state that BH Energy is a holding company that owns subsidiaries principally engaged in energy businesses, and is itself a consolidated subsidiary of Berkshire Hathaway Inc. Applicants explain that BH Energy indirectly owns electric generation facilities throughout the United States, as well as four traditional franchised public utilities: MidAmerican Energy Company (MidAmerican Energy), PacifiCorp, Nevada Power Company (Nevada Power), and Sierra Pacific Power Company (Sierra

¹² *Id.* at 9.

¹³ *Id.* at 10.

¹⁴ *Id.*

Pacific). BH Energy also owns MidAmerican Transmission, LLC (MidAmerican Transmission) and MidAmerican Renewables, LLC (MidAmerican Renewables).¹⁵

13. Applicants state that MidAmerican Energy, an Iowa corporation, is an electric and natural gas utility serving regulated retail customers in the States of Iowa, Illinois, South Dakota, and Nebraska, and competitive retail customers in the central and eastern United States. Applicants explain that MidAmerican Energy is subject to regulation by several states and municipalities. Applicants add that MidAmerican Energy is a transmission-owning member of the Midcontinent Independent System Operator, Inc. (MISO), owns an extensive transmission system within the MISO footprint, and actively markets wholesale electric power in various regions in the eastern interconnection.¹⁶

14. Applicants state Nevada Power and Sierra Power are both Nevada corporations and public utilities that serve retail and wholesale electric customers in Nevada. Applicants also state that both utilities are regulated by the Public Utilities Commission of Nevada, and that both serve various wholesale customers pursuant to agreements on file with the Commission or in accordance with their market-based rate authority.¹⁷

15. According to Applicants, MidAmerican Transmission, a Delaware limited liability company and wholly-owned subsidiary of BH Energy, is engaged in various joint ventures to develop, own, and operate transmission assets in several regions in the United States.¹⁸ Similarly, MidAmerican Renewables, also incorporated in Delaware and a wholly-owned subsidiary of BH Energy, was formed to acquire, own, operate, and invest in renewable energy facilities through its project company subsidiaries.¹⁹

B. The Proposed Transaction

16. Applicants state that the Section 205 Filings and the Section 203 Application together reflect “an integrated business agreement” between Applicants that accomplishes “several significant business objectives,” including:

¹⁵ *Id.* at 11.

¹⁶ *Id.*

¹⁷ *Id.* at 12.

¹⁸ *Id.* at 13.

¹⁹ *Id.*

- Converting a large number of legacy agreements between Applicants (Legacy Agreements) to OATT service;
- Re-allocating ownership interests in certain jointly-owned transmission facilities to better reflect Applicants' present-day operational needs; and
- Conveying and exchanging ownership interests in certain transmission, substation, and related facilities to allow Applicants to more efficiently and reliably meet their load service obligations.²⁰

17. As Applicants explain in further detail in the Section 205 Filings, the ownership and operation of the jointly-owned transmission facilities is governed by the Legacy Agreements, the original ownership and operation agreements related to the Jim Bridger Project,²¹ and various superseded and outdated agreements and amendments. According to Applicants, some of these agreements are over forty years old. Applicants state that, in the intervening years, regulatory changes, load growth, and system upgrades to Applicants' transmission systems have rendered the allocation of ownership and operational responsibility provided for under the agreements inefficient given each Applicants' modern day load service and regulatory obligations.²² According to Applicants, the primary motivation behind the Proposed Transaction and the Section 205 Filings is to improve load service to their respective customers. Applicants note further that all transmission service over the facilities described in the Section 203 Application will be converted to OATT service, thereby removing "significant use restrictions

²⁰ *Id.* at 3. Although Applicants refer to (1) the exchange of transmission assets and ownership interests in the transmission facilities, (2) the replacement of 1,600 MW of transmission service provided under the Legacy Agreements with transmission service and ownership interest, and (3) the consolidation and modernization of the ownership and operational provisions of the Legacy Agreements into one single agreement collectively as "the Transaction," only the exchange of transmission assets and ownership interests in the transmission facilities requires approval from the Commission under FPA section 203. Accordingly, that exchange, which we refer to as the Proposed Transaction, is the subject of the Section 203 Application and is addressed in this order. The other aspects of the business agreement referred to by Applicants as the Transaction are addressed in the order regarding the Section 205 Filings.

²¹ Specifically, the original Agreement for the Ownership of the Jim Bridger Project, dated September 22, 1969, and the original Agreement for the Operation of the Jim Bridger Project, dated September 22, 1969 (together, the Original Bridger Agreements).

²² Section 205 Filings, Transmittal Letter at 4.

formerly imposed on the facilities” by several of the Legacy Agreements, which will provide added operational and scheduling flexibility over the facilities.²³ Applicants state that closing of the Proposed Transaction is expressly conditioned upon obtaining Commission approval of both the Section 203 Application and acceptance of the Section 205 Filings.²⁴ Applicants state that the details of the Proposed Transaction are set forth in the Joint Purchase/Sale Agreement.

18. In the Section 203 Application, Applicants propose to exchange transmission assets or ownership interests in jointly owned assets, and a nominal amount of cash to balance asset values. Specifically, as part of the Proposed Transaction, Idaho Power will convey to PacifiCorp all or part of its ownership interests in the following facilities:

- Bridger-Goshen 345 kV Transmission Line;
- Kinport-Midpoint 345 kV Transmission Line;
- Borah-Adelaide-Midpoint #1 345 kV Transmission Line;
- Borah-Adelaide-Midpoint #2 345 kV Transmission Line;
- Goshen-Jefferson-Big Grassy 161 kV Transmission Line;
- Jim Bridger Terminal – Series Capacitor at the Three Mile Knoll Substation;
- Goshen Terminal, Populus Terminal, and Midpoint Terminal, at the Kinport Substation;
- Populus #1 Terminal, Populus #2 Terminal, Midpoint #1 Terminal, and Midpoint #2 Terminal, at the Borah Substation;
- Borah #2 Terminal and Midpoint #2 Terminal at the Adelaide Substation;
- Kinport Terminal, Borah #1 Terminal, Borah #2 Terminal, and 500 kV Tie Terminal at the Midpoint 345 kV Substation; and
- Hemingway 500 kV Terminal and Transformer Terminal (500/345 kV) at the Midpoint 500 kV Substation.²⁵

19. In addition, as part of the Proposed Transaction, PacifiCorp will convey to Idaho Power all or part of its ownership interest in the following facilities:

- Bridger-Populus #1, 345 kV Transmission Line;
- Bridger-Populus #2, 345 kV Transmission Line;

²³ Section 203 Application at 3.

²⁴ *Id.* at 4.

²⁵ *Id.* at 14.

- Populus-Kinport 345 kV Transmission Line;
- Populus-Borah #1, 345 kV Transmission Line;
- Goshen-Kinport 345 kV Transmission Line;
- Walla Walla-Hurricane 230 kV Transmission Line;
- Hemingway-Summer Lake 500 kV Transmission Line;
- Midpoint-Hemingway 500 kV Transmission Line;
- A segment of the Antelope-Goshen 161 kV Transmission Line;
- A segment of the American Falls-Malad 138 kV Transmission Line;
- Antelope-Scoville 138 kV (two circuits) Transmission Line;
- Jim Bridger Terminal and Goshen Terminal at the Three Mile Knoll Substation;
- Three Mile Knoll Terminal, Kinport Terminal, Transformer Terminal #1 (345/161 kV), and Transformer Terminal #2 (345/161 kV) at the Goshen 345 kV Substation;
- Transformer Terminal #1 (345/161 kV), Transformer Terminal #2 (345/161 kV), Antelope Terminal, Jefferson Terminal, and Blackfoot Terminal at the Goshen 161 kV Substation;
- Hemingway Terminal and Summer Lake Terminal at the Burns Substation;
- Hemingway Terminal at the Summer Lake Substation;
- Goshen Terminal and Big Grassy Terminal at the Jefferson Substation;
- Jefferson Terminal and Dillon Terminal at the Big Grassy Substation;
- Hurricane Terminal at the Walla Walla Substation;
- Walla Walla Terminal and Hells Canyon Terminal at the Hurricane Substation;
- Brady Terminal and Transformer Terminal #1 (230/161 kV) at the Antelope 230 kV Substation;
- Transformer Terminal #1 (230/161 kV), Transformer Terminal #2 (161/138 kV), and Transformer Terminal #3 (161/138 kV) at the Antelope 161 kV Substation; and
- Scoville Terminal #1, Scoville Terminal #2, Transformer Terminal #1 (161/138 kV), and Transformer Terminal #2 (161/138 kV) at the Antelope 138 kV Substation.²⁶

20. As part of the Proposed Transaction, Applicants have also agreed to re-allocate their respective ownership interests in certain jointly-owned transmission facilities, which will result in either: (1) a re-allocation of Applicants' respective ownership interests, with the facilities remaining jointly-owned; or (2) reallocation of all of the ownership

²⁶ *Id.* at 14-15.

interests in the jointly-owned facilities to a single Applicant (collectively, Re-Allocation). The Re-Allocation includes the following jointly-owned facilities:

- Bridger-Point of Rocks 230 kV Transmission Line;
- Bridger-Rock Springs 230 kV Transmission Line;
- Bridger #1 Terminal, Bridger #2 Terminal, Kinport Terminal, Borah #1 Terminal, and Borah #2 Terminal at the Populus Substation;
- Three Mile Knoll Terminal, Populus #1 Terminal, Populus #2 Terminal,
- Transformer Terminal #1 (345/230 kV), Transformer Terminal #2 (345/230 kV), and Transformer Terminal #3 (345/230 kV) at the Bridger 345 kV Substation;
- Bridger 230 kV Substation Assets; and
- Midpoint Terminal and Summer Lake Terminal at the Hemingway 500 kV Substation.²⁷

21. Applicants explain that they have not determined the final consideration of the Proposed Transaction at this time, but that they intend to exchange the transmission facilities described above at their respective net book values as of December 31, 2014, as adjusted pursuant to the Joint Purchase/Sale Agreement. Applicants state that as a result of the netting process that will occur at closing and the final reconciliation that will occur after closing, the Applicant receiving more in total asset value will pay the other Applicant cash consideration representing the difference between the aggregate of the net book values of the exchanged assets.

II. Notice of Filing and Responsive Pleadings

22. Notice of the Section 203 Application was published in the *Federal Register*, 79 Fed. Reg. 78,082 (2014), with interventions and protests due on or before January 9, 2015.

23. Bonneville Power Administration (Bonneville) and Powerex Corp. (Powerex) submitted motions to intervene and comments.²⁸ Northwest & Intermountain Power

²⁷ *Id.* at 15-16.

²⁸ Bonneville Power Administration Motion to Intervene and Comments, Docket Nos. EC15-54-000, ER15-680-000, ER15-681-000, ER15-682-000, ER15-683-000, and ER15-686-000 (not consolidated) (Jan. 9, 2015) (Bonneville Comments); Motion of Powerex Corp. to Intervene and Comments, EC15-54-000, ER15-681-000 and ER15-683-000 (not consolidated) (Jan. 9, 2015) (Powerex Comments), respectively.

Producers Coalition (Power Producers Coalition) filed a motion to intervene, protest, alternative request for hearing, and motion to consolidate.²⁹ Pacific Northwest Generating Cooperative and the Utah Division of Public Utilities filed motions to intervene. Utah Associated Municipal Power Systems filed an out-of-time motion to intervene. The City of Seattle filed a motion to intervene out-of-time and comments.³⁰

24. Applicants filed an answer to Bonneville, Powerex, and Power Producers Coalition.³¹ Power Producers Coalition and Powerex filed answers to Applicants First Answer.³² Applicants filed a response to Power Producers Coalition's and Powerex's answers.³³ Applicants also filed a response to the City of Seattle.³⁴

²⁹ Motion to Intervene, Protest, Alternative Request for Hearing and Motion to Consolidate of Northwest & Intermountain Power Producers Coalition, Docket Nos. EC15-54-000, ER15-680, ER15-681-000, ER15-682-000, ER15-683-000 (not consolidated) (Jan. 9, 2015) (Power Producers Coalition Protest).

³⁰ Motion to Intervene Out of Time and Comments of the City of Seattle, Docket Nos. EC15-54-000, ER15-680-000, ER15-681-000, ER15-682-000, ER15-683-000, ER15-686-000 (not consolidated) (Feb. 24, 2015) (City of Seattle Comments).

³¹ Joint Motion for Leave to Answer and Answer of Applicants, Docket Nos. EC15-54-00, ER15-680-000, ER15-681-000, ER15-682-000, ER15-683-000, and ER15-686-000 (Jan. 26, 2015) (Applicants First Answer).

³² Motion for Leave to Answer and Answer of Northwest & Intermountain Power Producers Coalition, Docket Nos. EC15-54-000, ER15-680-000, ER15-681-000, ER15-682-000, and ER15-683-000 (not consolidated) (Feb. 10, 2015) (Power Producers Coalition Answer); Motion for Leave to Answer and Answer of Powerex Corp., Docket Nos. EC15-54-000, ER15-681-000, and ER15-683-000 (not consolidated) (Powerex Answer) (Feb. 12, 2015), respectively.

³³ Joint Motion for Leave to Answer and Answer of Applicants, Docket Nos. EC15-54-000, ER15-680-000, ER15-681-000, ER15-682-000, and ER15-683-000 (not consolidated) (Feb. 18, 2015) (Applicants Second Answer).

³⁴ Joint Response of Applicants to the City of Seattle, Docket Nos. EC15-54-000, ER15-680-000, ER15-681-000, ER15-682-000, ER15-683-000, and ER15-686-000 (not consolidated) (Feb. 26, 2015) (Applicants Third Answer).

III. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³⁵ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant Utah Associated Municipal Power Systems and the City of Seattle's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure³⁶ prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

27. We decline to grant Power Producers Coalition's request for hearing as there are no issues of material fact that necessitate a formal trial-type evidentiary hearing.³⁷ We also decline to grant Power Producers Coalition's motion to consolidate this proceeding with the proceedings concerning the Section 205 Filings. In general, the Commission consolidates proceedings only if a trial-type evidentiary hearing is required to resolve common issues of law and fact, and consolidation would ultimately result in greater administrative efficiency.³⁸ In this case, we conclude that consolidating this proceeding with the proceedings concerning the Section 205 Filings is not appropriate because we are not setting the Application or the Section 205 Filings for hearing and settlement judge procedures.

³⁵ 18 C.F.R. § 385.214 (2014).

³⁶ 18 C.F.R. § 385.213(a)(2) (2014).

³⁷ See, e.g., *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,253, at P 94 (2011) (Commission sets matters for evidentiary hearing to resolve material issues of fact); *The Empire District Elec. Co.*, 150 FERC ¶ 61,200, at P 36 (2015) (dismissing request for full evidentiary hearing because no issues of material fact existed).

³⁸ See, e.g., *PacifiCorp*, 147 FERC ¶ 61,227, at P 81 (2014); *Duke Energy Corp.*, 136 FERC ¶ 61,245, at P 33 (2011); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 25 (2008); *Terra-Gen Dixie Valley, LLC*, 132 FERC ¶ 61,215, at P 44, n.74 (2010).

B. Substantive Matters**1. Standard of Review Under FPA Section 203**

28. FPA section 203(a)(4) requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest.³⁹ The Commission's analysis of whether a transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.⁴⁰ FPA section 203(a)(4) also requires the Commission to find that the transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."⁴¹ The Commission's regulations establish verification and informational requirements for entities that seek a determination that a transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.⁴²

2. Analysis of the Proposed Transaction**a. Effect on Horizontal Competition****i. Applicants' Analysis**

29. Applicants assert that the Proposed Transaction raises no concerns with respect to horizontal competition because it does not involve any change in ownership or control of generating facilities. Applicants state that the Proposed Transaction only involves changes in ownership of certain jurisdictional transmission lines, substations, and related facilities, and therefore, it does not raise any horizontal market power concerns.⁴³

³⁹ 16 U.S.C. § 824b(a)(4) (2012). Approval of the Proposed Transaction is also required by other regulatory agencies pursuant to their respective statutory authority before the Proposed Transaction may be consummated. *See* Section 203 Application, Exhibit L: Other Regulatory Approvals. Our findings under FPA section 203 do not affect those agencies' evaluation pursuant to their respective statutory authority.

⁴⁰ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

⁴¹ 16 U.S.C. § 824b(a)(4) (2012).

⁴² 18 C.F.R. § 33.2(j) (2014).

⁴³ Section 203 Application at 17-18.

ii. Commission Determination

30. We find that the Proposed Transaction will have no adverse effect on horizontal competition. As Applicants note, the Commission has stated that “anticompetitive effects are unlikely to arise with regard to ... transactions that involve only the disposition of transmission facilities.”⁴⁴ As Applicants explain, the Proposed Transaction involves only changes in ownership of certain jurisdictional transmission lines, substations, and related facilities, and does not involve any change in ownership or control of generating facilities. Accordingly, the Proposed Transaction will not have adverse effect on horizontal competition.

b. Effect on Vertical Competition

i. Applicants’ Analysis

31. Applicants maintain that the Proposed Transaction will not have an adverse effect on vertical competition. Applicants state that although the Proposed Transaction involves various transmission lines, substations, and related facilities, the Proposed Transaction, in conjunction with the Section 205 Filings, will bring those facilities under Applicants’ respective OATTs, which mitigates any vertical market power concerns.⁴⁵

⁴⁴ Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 194; Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 at P 190. *See also Tucson Elec. Power Co.*, 151 FERC ¶ 61,089, at P 29 (2015); *ITC Midwest LLC*, 133 FERC ¶ 61,169, at P 13 (2010).

⁴⁵ Section 203 Application at 18 (citing *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 21 (“With regard to vertical market power and, in particular, transmission market power, the Commission continues the current policy under which an OATT is deemed to mitigate a seller’s transmission market power.”)), *clarified*, 121 FERC ¶ 61,260 (2007) (Order No. 697), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh’g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh’g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff’d sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012)).

32. Applicants state that the Proposed Transaction does not involve any inputs to electricity products or electric power production, as defined in the Commission's regulations.

ii. Commission Determination

33. We find that the Proposed Transaction will have no adverse effect on vertical competition. In analyzing whether a transaction presents vertical market power concerns, the Commission considers the vertical combination of upstream inputs, such as transmission or natural gas, with downstream generating capacity. Because there is no transfer of generation facilities or inputs to electric power generation, we find that the Proposed Transaction will not have an adverse effect on vertical competition.⁴⁶ Additionally, we find that the Proposed Transaction will not give Applicants the ability to exercise vertical market power because the Proposed Transaction, together with the Section 205 Filings, will bring the various transmission lines, substations and related facilities under Applicants' respective OATTs.⁴⁷ We note also that the Proposed Transaction involves no inputs to electricity products or electric power production.

c. Effect on Rates

i. Applicants' Analysis

34. Applicants assert that the Proposed Transaction will not have an adverse effect on rates. Applicants claim that, as a transmission asset transaction, the Proposed Transaction will not affect any wholesale power rates.

35. Applicants note that they both have formula transmission rates on file with the Commission. Applicants state that those formula rates are updated on an annual basis, and that the next such update following closing of the Proposed Transaction would reflect Applicants' new ownership interests in the transmission facilities. According to Applicants, when they update their formula rates in that manner, the Proposed Transaction "may have an impact on the Applicants' rates insofar as plant balances will reflect the new ownership interests described herein."⁴⁸ Applicants state, however, that in the case of "an asset transaction such as this, the Commission has consistently held that

⁴⁶ See, e.g., *Tucson Elec. Power Co.*, 151 FERC ¶ 61,089 at P 30; *ITC Midwest LLC*, 140 FERC ¶ 61,125, at P 13 (2012); *ITC Midwest LLC*, 133 FERC ¶ 61,169 at P 14.

⁴⁷ Section 203 Application at 18.

⁴⁸ *Id.* at 19.

rate increases resulting from the acquisition of transmission facilities alone are not enough to amount to *adverse* impacts on rates.”⁴⁹

36. Applicants also state that the assets at issue will change ownership at their respective net book values, and that no acquisition premium would be paid or included in rates. Applicants maintain that any effect on their transmission rates will be substantially less than if both Idaho Power and PacifiCorp invested the amount that would be required to construct new facilities, particularly considering the substantial facilities that would be required to accomplish the business objectives achieved by the Proposed Transaction and the Section 205 Filings.⁵⁰

ii. Protests

37. Power Producers Coalition argues that Applicants have failed to meet their burden and establish that their proposal will not adversely impact rates. According to Power Producers Coalition, Applicants claim that because they are trading assets with equal book value, the exchange will not result in adverse rate impacts. Power Producers Coalition argues, however, that this conclusion would be true if Applicants were only requesting approval of an exchange of assets. Power Producers Coalition notes, however, that Applicants are also simultaneously proposing “wide-ranging capacity reallocations, creations of pseudo-ties, and undertaking other actions that will change the revenue stream available from their respective facilities.”⁵¹ To support its argument, Power Producers Coalition points to state regulatory filings where, it asserts, Idaho Power anticipates an increase in the Idaho Power OATT rate.⁵²

38. The City of Seattle expresses similar concerns, arguing that if currently recognized service demands are decreased or removed from Idaho Power’s formula rate, the result will be a “significant and unwarranted” increase in Idaho Power’s rate for OATT service,

⁴⁹ *Id.* (emphasis in original, citing *Startrans IO, L.L.C.*, 122 FERC ¶ 61,307 (2008); *ITC Midwest LLC*, 133 FERC ¶ 61,169; *ALLETE, Inc.*, 129 FERC ¶ 61,174 (2009)).

⁵⁰ *Id.*

⁵¹ Power Producers Coalition Protest at 10.

⁵² *Id.* (citing testimony filed by Idaho Power before the Oregon Commission).

and the resulting charges to Idaho Power's OATT customers will be unjust and unreasonable.⁵³

iii. Applicants' Answer

39. Applicants assert the Section 203 Application supports their conclusion that the Proposed Transaction will not have an adverse impact on transmission rates. According to Applicants, any time a Transmission Provider "purchases or sells transmission facilities, its transmission rates will necessarily need to be adjusted to reflect the addition or removal of the affected transmission facilities."⁵⁴ Applicants state that their transmission rates will be adjusted pursuant to each Applicant's transmission formula rate and Commission policy. Applicants also assert that termination of the Legacy Agreements is consistent with Commission policy, which "encourages movement to OATT terms and conditions of service and OATT rates."⁵⁵ Applicants add that any concerns about what may happen in a future Idaho Power rate proceeding are outside the scope of these proceedings and are properly addressed in a future rate proceeding, and that the possibility of a rate increase resulting from a future rate proceeding is not the same as an adverse effect on rates that is considered under FPA section 203.⁵⁶

iv. Commission Determination

40. As the Commission has explained on prior occasions, our analysis of the effects of a proposed transaction on rates under FPA section 203 differs from the analysis of whether rates are just and reasonable under FPA section 205,⁵⁷ which we are considering separately in our order on the Section 205 Filings. Our focus here, in this order, is on the effect that the Proposed Transaction will have on rates, whether that effect is adverse, and whether any adverse effect will be offset or mitigated by benefits that are likely to result from the Proposed Transaction. We find that even if the Proposed Transaction will have an effect on rates, such effect is not adverse because the transmission facilities will be

⁵³ City of Seattle Comments at 4-5.

⁵⁴ Applicants Second Answer at 9.

⁵⁵ *Id.*

⁵⁶ Applicants Third Answer at 2.

⁵⁷ *See, e.g., ITC Holdings Corp.*, 143 FERC ¶ 61,256, at P 118 (2013); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,307 at P 25; *ALLETE*, 129 FERC ¶ 61,174 at P 19.

transferred at net book value and the Proposed Transaction will result in offsetting benefits.⁵⁸

41. As noted above, Applicants state that the transmission facilities will be transferred at net book value, with nominal cash payments to settle any differences in the value of the assets, and that no acquisition premium will be paid or included in rates.

42. In addition, as Applicants explain, the Proposed Transaction is part of a larger proposal to transition from legacy transmission service to OATT transmission service, which will result in several types of benefits and also supports the Commission's open access policies.⁵⁹

43. Applicants state that, as a result of the Proposed Transaction and the Section 205 Filings, transmission service over the facilities described in the Section 203 Application will be converted to OATT service, thereby removing significant use restrictions formerly imposed on the facilities by several of the Legacy Agreements and adding operational and scheduling flexibility. After Applicants terminate the Legacy Agreements and move transmission service over the facilities described in the Section 203 Application to OATT service, all transmission service rights must be

⁵⁸ See, e.g., *ALLETE*, 129 FERC ¶ 61,174 at P 20 (finding that although proposed transaction would result in rate increase for customers, no acquisition adjustment was added to rates, the rate increase was due to change in ownership of transmission facilities from a cooperative to a public utility, and benefits were associated with the proposed transaction).

⁵⁹ See, e.g., *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 682 (D.C. Cir. 2000) (recognizing that Commission sought to prevent undue discrimination and preferential rules, regulations, practices, or contracts by requiring all public utilities owning or controlling transmission facilities to offer non-discriminatory open access transmission service). See generally *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002) (establishing, among other requirements, the requirement for all public utilities that own, control, or operate facilities used for transmitting electric energy in interstate commerce to file open access non-discriminatory transmission tariffs).

purchased under Applicants' OATTs and be made available in a not unduly preferential manner. Applicants explain that this outcome is "in stark contrast to the status quo under the legacy agreements, which generally preclude the resale of transmission on the secondary market and limit the energy that can be moved over the assets."⁶⁰ The modernization of the Legacy Agreements will benefit third parties because converting the Legacy Agreements to OATT service removes "the resale restrictions and limitations on the energy that can be moved over the assets"⁶¹ – i.e. unlike the current transmission arrangements, OATT service may be resold to any eligible customer and energy from any source may be transmitted over these facilities. Thus, additional benefits from the Proposed Transaction include increased transparency and flexibility as to transmission service scheduling and rights.

44. In addition to the benefits resulting from the transition to OATT transmission service, the Proposed Transaction will also result in other benefits. Noting the vintage of some of the Legacy Agreements, Applicants explain that, in the intervening years, "regulatory changes and the Applicants' respective load growth and investments in system upgrades have rendered the allocation of ownership and operational responsibility provided for under these agreements inefficient with regard to each Applicant's modern day load service and regulatory obligations."⁶² In addition, Applicants state that, due to the vintage of most of the Legacy Agreements, some of which date from 1969, they were not drafted in the context of today's regulatory requirements or reliability standards, and have led to disputes between Applicants. Accordingly, the benefits of the Proposed Transaction also include increased administrative and operational efficiency.

45. We find also that the specific concerns raised by Power Producers Coalition and the City of Seattle are beyond the scope of this proceeding. Power Producers Coalition and the City of Seattle will have the opportunity to raise their concerns regarding Applicants' transmission formula rates when Applicants submit their transmission formula rate updates reflecting the new ownership interests in the transmission facilities following closing of the Proposed Transaction.⁶³

⁶⁰ Applicants First Answer at 17-18.

⁶¹ *Id.*

⁶² Section 203 Application at 4.

⁶³ *See* Idaho Power Company Open Access Transmission Tariff, Attachment H: Total Transmission Revenue Requirement, section 1.1.5; PacifiCorp Open Access Transmission Tariff, Attachment H-2: Formula Rate Implementation Protocols, Articles II and III.

d. Effect on Regulation

i. Applicants' Analysis

46. Applicants assert that the Proposed Transaction will not affect the manner or extent to which the Commission, any state, or any other federal agency may regulate Applicants and their affiliates. Applicants confirm that the assets subject to the Proposed Transaction will continue to be subject to the Commission's jurisdiction under the FPA, and that the extent to which Applicants and their affiliates are subject to the jurisdiction of the Commission (or any other regulatory agency or office) will not change as a result of the Proposed Transaction. For these reasons, Applicants submit that the Proposed Transaction will not have an adverse impact on regulation.

ii. Commission Determination

47. We find no evidence that either state or federal regulation will be impaired by the Proposed Transaction. The Commission's review of a transaction's effect on regulation focuses on ensuring that it does not result in a regulatory gap at the federal or state level.⁶⁴ We find that the Proposed Transaction will not create a regulatory gap at the federal level because the Commission will retain its regulatory authority over Applicants after the Proposed Transaction is consummated. Moreover, no state has alleged that it lacks the authority to review the Proposed Transaction or raised concerns about the effect of the transaction on state regulation, nor do we find that the Proposed Transaction raises any such concerns.

e. Cross-Subsidization

i. Applicants' Analysis

48. According to Applicants, the Commission has established a safe harbor from cross-subsidization review where: (1) a franchised public utility transacts only with non-affiliated entities; and (2) for those transactions that are subject to review by a state commission.⁶⁵ Applicants assert that the Proposed Transaction falls within both of these safe harbors because Idaho Power and PacifiCorp are non-affiliated entities and because the Proposed Transaction is subject to state utility review in all of the states where each Applicant operates.

⁶⁴ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

⁶⁵ Section 203 Application at 20-21.

49. Applicants state that, even if the safe harbors do not apply to the Proposed Transaction, the Proposed Transaction satisfies the cross-subsidization requirements set forth in the Commission's regulations. Specifically, Applicants verify that, based on facts and circumstances known to them or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and service agreements subject to review under sections 205 and 206⁶⁶ of the FPA.⁶⁷

ii. Protests

50. In its answer, Power Producers Coalition argues that the Proposed Transaction raises cross-subsidization concerns. Specifically, Power Producers Coalition asserts that Applicants' testimony before the Washington, Oregon, and Idaho Commissions "clarifies that the Proposed Transaction will shift substantial costs from retail power customers to FERC-jurisdictional transmission customers."⁶⁸ Power Producers Coalition states that Applicants' testimony shows that Applicants anticipate that, as a result of the Proposed Transaction, "Idaho Power's Commission-jurisdictional transmission rate for OATT service will increase by 47.6 percent on October 1, 2015 from the current yearly rate of \$22,710 per MW to a new yearly rate of \$33,530 per MW, a 47.6 percent increase, allowing for a decrease in costs to PacifiCorp's native load customers of over \$4 million per year and a decrease in costs to Idaho Power's native load customers of over \$9 million per year."⁶⁹ Power Producers Coalition argues that the records in these retail

⁶⁶ 16 U.S.C. § 824e (2012).

⁶⁷ Section 203 Application at 20-22. *See also* Section 203 Application, Exhibit M: Verifications on Cross-Subsidization.

⁶⁸ Power Producers Coalition Answer at 4.

⁶⁹ *Id.* at 4-5 (citing Direct Testimony of Lisa Grow filed with the Idaho

(continued...)

proceedings contradict Applicants' statements that the Proposed Transaction will not result in any cross-subsidization concerns.

51. The City of Seattle echoes the concerns raised by Power Producers Coalition as to whether the Proposed Transaction will result in cross-subsidization between retail power rates and transmission.⁷⁰

iii. Applicants' Answer

52. Applicants argue that Power Producers Coalition raises its argument regarding cross-subsidization for the first time in its answer and that Power Producers Coalition misunderstands the Proposed Transaction and the Commission's cross-subsidization policies. Applicants state that the Commission's rules regarding cross-subsidization are focused on whether the Proposed Transaction may provide benefits to affiliated entities, which is not the case with respect to the Proposed Transaction. Applicants reiterate that the Proposed Transaction both qualifies for the Commission's cross-subsidization safe harbors, and satisfies the cross-subsidization requirements. Applicants cite to their cross-subsidization verifications for support that that the Proposed Transaction does not raise any cross-subsidization concerns.⁷¹ Applicants raise the same counter arguments in response to the City of Seattle's concerns.⁷²

iv. Commission Determination

53. We find, based on Applicants' representations, that the Proposed Transaction will not result in the inappropriate cross-subsidization of a non-utility associate company by a utility company, or the pledge or encumbrance of utility assets for the benefit of an associate company. Although Power Producers Coalition and the City of Seattle characterize their arguments issues as cross-subsidization issues, they actually concern the transmission formula rates that, as noted above, will be the subject of future transmission formula rate update filings by Applicants following closing of the Proposed Transaction.

Commission, Case No. IPC-E-14-41 (Dec. 19, 2014), and Direct Testimony of Greg Duvall filed with the Washington Commission, Case No. UE-144136 (Dec. 19, 2014)).

⁷⁰ City of Seattle Comments at 4, 6.

⁷¹ Applicants Second Answer at 8.

⁷² Applicants Third Answer at 2.

3. Other Issues

a. Bonneville Comments

54. Bonneville states that while it takes no position on the proposed asset exchange, the asset exchange directly affects an outstanding issue between it and PacifiCorp. Specifically, Bonneville states that it is currently developing operating procedures to implement section 5(f) of an existing agreement it has with PacifiCorp (the Midpoint-Meridian Agreement). Bonneville explains that section 5(f) requires PacifiCorp to not transmit electric power and energy west to east over the Midpoint-Meridian Line, or any segment of that line, in a manner which would adversely impact the operation of the Federal Transmission System or the Northwest AC Intertie.⁷³ Bonneville explains further that a segment of the Midpoint-Meridian Line is the Hemingway-Summer Lake line. Bonneville requests clarification that the proposed asset exchange “will recognize PacifiCorp’s obligation to [Bonneville] regarding eastbound use of the Hemingway-Summer Lake Line and that Idaho Power’s use of its acquired eastbound capacity on the line will also be subject to that obligation.”⁷⁴

55. Bonneville also notes that, in 2014, it and PacifiCorp signed a Memorandum of Understanding, and that section 2(b) of that agreement obligates Bonneville and PacifiCorp to develop operating procedures to manage eastbound flows on the Hemingway-Summer Lake line consistent with applicable agreements relating to operation of the Midpoint-Meridian Line and the Northwest AC Intertie. According to Bonneville, those agreements include section 5(f) of the Midpoint-Meridian Agreement. Bonneville seeks clarification that any obligations in section 5(f) of the Midpoint-Meridian Agreement and in section 2(b) of the Memorandum of Understanding will “be recognized as an integral part of the asset exchange, will apply to the operation of the Hemingway-Summer Lake Line, and will apply to Idaho Power’s proposed 450 MW capacity allocation on the line.”⁷⁵ Bonneville asserts that section 2.3(a) of the Joint Purchase/Sale Agreement, which requires Idaho Power to assume certain liabilities related to the assets being acquired, compels this result.

56. According to Bonneville, in the event that the Commission does not clarify that the Joint Purchase/Sale Agreement requires Idaho Power and PacifiCorp to use their capacity in a manner consistent with section 5(f) of the Midpoint-Meridian Agreement

⁷³ Bonneville Comments at 4.

⁷⁴ *Id.* at 4-5.

⁷⁵ *Id.* at 6.

and any operating procedures agreed upon by Bonneville and PacifiCorp pursuant to section 2(b) of the Memorandum of understanding, then the Proposed Transaction is not just and reasonable.⁷⁶

b. Applicants' Answer

57. Applicants assert that Bonneville's concerns relate to contractual rights that are outside the scope of this proceeding, and that the Commission has held that it will deny relief requested in interventions in FPA section 203 proceedings where such interventions are based solely on contract disputes.⁷⁷ Applicants nevertheless clarify that the Joint Ownership/Operation Agreement provides that PacifiCorp will remain the operator of the Midpoint-Hemingway 500 kV transmission line, which is a segment of the Midpoint-Meridian transmission line and that, as the operator, PacifiCorp will continue to operate the line consistent with its obligation under section 5(f) of the Midpoint-Meridian Agreement.

58. With respect to section 2(b) of the Memorandum of Understanding, Applicants note that PacifiCorp and Bonneville have not yet reached agreement on the operating parameters referred to in that section of that agreement. Applicants state, however, that as the segment operator, PacifiCorp would continue to work with Bonneville to reach such assurance before April 1, 2015. Similarly, Applicants state that, as a joint owner with PacifiCorp of the Hemingway-Summer Lake line, Idaho Power is "willing to participate in the development of the operating procedures referred to in Section 2(b) of the Midpoint-Meridian MOU, and will require that its allocation of capacity on the Hemingway-Summer Lake line be operated with such operating procedures."⁷⁸

c. Commission Determination

59. We find that Bonneville's concerns have been addressed by Applicants' representations. First, PacifiCorp has committed, as the operator of the Midpoint-Meridian transmission line, to continue to operate the line consistent with its obligations under section 5(f) of the Midpoint-Meridian Agreement. Second, as the operator of the Hemingway-Summer Lake segment, PacifiCorp has stated that it will continue to work with Bonneville to reach agreement on operating parameters consistent with section 2(b)

⁷⁶ *Id.* at 7.

⁷⁷ Applicants First Answer at 7 (citing *LenderCo*, 110 FERC ¶ 61,044, at P 21 (2005)).

⁷⁸ *Id.* at 8.

of the Memorandum of Understanding. Third, as a joint owner with PacifiCorp of the Hemingway-Summer Lake line, Idaho Power has stated its willingness to participate in the development of the operating procedures referred to in section 2(b) of the Memorandum of Understanding, and will require that its allocation of capacity on that line be operated consistent with such operating procedures.

4. Other Considerations

60. Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.⁷⁹ To the extent that the foregoing authorization results in a change in status, Applicants are advised that they must comply with the requirements of Order No. 652.

61. Information and/or systems connected to the bulk power system involved in this transaction may be subject to reliability and cyber security standards approved by the Commission pursuant to FPA section 215.⁸⁰ Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cyber security standards. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cyber security standards.

The Commission orders:

(A) The Proposed Transaction is hereby authorized, as discussed in the body of this order.

(B) Applicants must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied

⁷⁹ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005). See 18 C.F.R. § 35.42 (2014).

⁸⁰ 16 U.S.C. § 824o (2012).

upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Applicants, to the extent that they have not already done so, shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(G) Applicants shall account for the transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. Applicants shall submit their final accounting entries within six months of the date that the transaction is consummated, and the accounting submissions shall provide all the accounting entries and amounts related to the transfer along with narrative explanations describing the basis for the entries.

(H) Applicants shall notify the Commission within 10 days of the date on which the Proposed Transaction is consummated.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.