

129 FERC ¶ 61,174
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

ALLETE, Inc.

Docket No. EC09-108-000

ORDER AUTHORIZING ACQUISITION OF TRANSMISSION FACILITIES

(Issued November 24, 2009)

1. On September 4, 2009, ALLETE, Inc. d/b/a Minnesota Power (ALLETE or Applicant) filed an application for authorization under section 203 of the Federal Power Act (FPA)¹ to acquire transmission facilities from Square Butte Electric Cooperative (Square Butte) (Proposed Transaction). Under the Proposed Transaction, ALLETE will acquire an existing 465 mile, 250 kV high-voltage direct current (HVDC) transmission line running from Square Butte's Substation in Center, North Dakota to ALLETE's Arrowhead Substation near Duluth, Minnesota, as well as all appurtenant HVDC facilities in the Square Butte Substation, certain alternating current facilities on the eastern side of the Square Butte Substation, Square Butte's assets in the Arrowhead Substation near Duluth, Minnesota, associated real property interests and easements, interconnection facilities, books and records, transmission tariffs, transmission agreements, interconnection agreements and transmission and interconnection requests associated therewith (HVDC Facilities).

2. The Commission has reviewed the application under the Commission's Merger Policy Statement.² Although the Applicant does not specify the 203 section under which

¹ 16 U.S.C. § 824b (2006).

² *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 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). *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

(continued)

it is seeking authorization, we will authorize the Proposed Transaction under section 203(a)(1).³ We remind the Applicant that when it submits an application under section 203, it must specify the subsection or subsections under which it is seeking authorization.

I. Background

A. Description of the Parties

1. ALLETE

3. ALLETE is the parent company of: (1) Superior Water, Light and Power Company, which provides electricity, natural gas, and water services to customers in northwest Wisconsin; (2) ALLETE Properties, a real estate company in Florida; and (3) BNI Coal, a lignite coal mine that sells coal to two North Dakota mine-mouth units, one of which is Square Butte's. ALLETE holds a non-voting interest, through its subsidiary, Rainy River Energy Corporation – Wisconsin, in American Transmission Company.

4. ALLETE generates, transmits, and distributes electricity in a 26,000 square mile region of northern Minnesota, serving 140,000 retail customers and providing wholesale electric service to requirements customers. Minnesota Power is an operating division of ALLETE. ALLETE owns several thousand miles of electric transmission and distribution lines: 500 kV (8 miles), 230 kV (605 miles), 161 kV (43 miles), 138 kV (126 miles), 115 kV (1,209 miles) and less than 115 kV (6,875 miles). ALLETE also owns and operates 169 substations. ALLETE is a transmission-owning member of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and has transferred operational control of its alternating current transmission facilities to the Midwest ISO.⁴

5. ALLETE owns and operates approximately 1,400 megawatt (MW) of thermal generation capacity which includes: (1) 1,335 MW of coal-fired generation; (2) 30 MW

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 on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

³ *See generally Brazos Elec. Power Coop.*, 118 FERC ¶ 61,199, at P 46 (2007); *Duke Power Co. v. Federal Power Comm'n*, 401 F.2d 930, at 941 (D.C. Cir. 1968).

⁴ *Minn. Power, Inc. and Superior Water, Light and Power Co.*, 96 FERC ¶ 61,153 (2001).

of biomass capacity at the Rapids Energy Center in Grand Rapids, Minnesota; and (3) 23 MW of biomass generation at the Cloquet Energy Center. ALLETE also owns 10 hydroelectric generating stations throughout northern and central Minnesota totaling approximately 115 MW of capacity. This generation capacity is currently supplemented by 227.5 MW of purchased power from Square Butte's Young 2 Generating Plant (Young 2).

6. ALLETE has executed power purchase agreements with the Oliver Wind I and II Energy Centers owned by NextEra Energy Resources, LLC that provide ALLETE with 100 MW of wind energy from North Dakota. ALLETE also owns and operates 25 MW of wind generation at the Taconite Ridge Wind Facility near Mountain Iron, Minnesota and purchases 2.5 MW of Community Based Energy Development wind capacity near Hewitt, Minnesota.

2. Square Butte

7. Square Butte is a non-jurisdictional, non-profit generation and transmission cooperative association that currently has 11 cooperative members.⁵ Membership in Square Butte is limited to organizations engaged in the business of generating, transmitting, or distributing electric power within North Dakota and Minnesota.

8. Square Butte's primary assets include: (1) Young 2, a 439 MW steam electric generating unit near Center, North Dakota; (2) the HVDC Facilities that are the subject of this Application; and (3) the alternating current facilities on the western side of the Square Butte Substation that Square Butte will continue to own following the Proposed Transaction. Square Butte provides point-to-point HVDC transmission service over the HVDC Facilities pursuant to a tariff based on Order No. 888's *pro forma* open access tariff.⁶

⁵ Square Butte's eleven members are: Beltrami Electric Cooperative, Cass County Electric Cooperative, Cavalier Rural Electric Cooperative, Clearwater-Polk Electric Cooperative, Nodak Electric Cooperative, North Star Electric Cooperative, PKM Electric Cooperative, Red Lake Electric Cooperative, Red River Valley Cooperative, Roseau Electric Cooperative, and Wild Rice Electric Cooperative.

⁶ *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 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248, *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

B. Description of the Transaction

9. ALLETE seeks section 203 authorization for its acquisition of the HVDC Facilities from Square Butte for \$71.5 million.⁷ ALLETE is proposing to purchase the HVDC Facilities and restructure its purchases from Young 2 as part of its plan to comply with Minnesota's Renewable Energy Standard (RES) requirement. Under this requirement, ALLETE must generate or procure at least 20 percent renewable energy sources by 2020 and 25 percent by 2025.⁸

10. Currently, ALLETE and Minnkota Electric Cooperative (Minnkota)⁹ are the only two customers that take transmission service from Square Butte, and each has reserved 227.5 MW of transmission capacity. Minnkota and ALLETE, acting separately as agents for Square Butte, operate and maintain Young 2 and the HVDC Facilities, as well as appurtenant substations and other related facilities. Although Minnkota is not a party to the Proposed Transaction, ALLETE's acquisition of the HVDC Facilities is part of a restructuring of the overall relationship among ALLETE, Square Butte, and Minnkota. ALLETE and Minnkota each purchase 50 percent of the output from Square Butte's Young 2. Minnkota and ALLETE each use its 227.5 MW of reserved capacity on the existing HVDC transmission line to serve its native load with its share of Young 2 energy. Under ALLETE's restructuring arrangement, it will gradually phase out its power purchases from Young 2 and replace that power with wind energy produced in North Dakota. Minnkota will gradually increase its purchases from Young 2, and by 2026, Minnkota will receive all the output from that generator.

(2002).

⁷ The rates and terms and conditions pursuant to which transmission and interconnection services will be provided over the HVDC Facilities are detailed in the section 205 filing filed by ALLETE and Midwest ISO, in Docket No. ER09-1726-000, *et al.*

⁸ Application at 4, 7.

⁹ Minnkota is a non-jurisdictional generation and transmission cooperative. Minnkota is a member of the Mid-Continent Area Power Pool, but is not a Midwest ISO member. Under long-term power sales agreements, Minnkota supplies the total wholesale electric requirements of 11 rural electric distribution cooperatives in North Dakota and northwestern Minnesota, which in turn serve approximately 110,000 retail member-owners.

11. At the closing of the HVDC Facilities purchase, ALLETE will obtain Minnkota's transmission rights over the HVDC Facilities. ALLETE, however, will assign those rights back to Minnkota until Minnkota completes a planned 345 kV alternating current transmission asset necessary to transport the Young 2 generation to Minnkota's load in the Red River Valley in North Dakota and Minnesota. Once Minnkota's new transmission facilities are in place (projected to be in service by 2013), Minnkota's transmission assignment to the HVDC Facilities will expire and ALLETE will use the HVDC Facilities to transmit additional wind energy to its customers. ALLETE states that the use of HVDC Facilities will allow it to serve ALLETE customers with energy and capacity from wind generation and help it to reduce its energy supply carbon intensity.¹⁰

II. Notice of Filing and Responsive Pleadings

12. Notice of the Applicant's filing was published in the *Federal Register*, 74 Fed. Reg. 48,251 (2009), with interventions and protests due on or before September 25, 2009. Midwest ISO Transmission Owners filed a motion to intervene, raising no issues. Midwest ISO and Square Butte filed out-of-time motions to intervene, raising no issues.

III. Discussion

A. Procedural Issues

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹¹ the timely, unopposed motion to intervene serves to make the entity that files it a party to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,¹² the Commission will grant Midwest ISO's and Square Butte's late-filed motions to intervene, given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Analysis of the Proposed Transaction

1. Standard of Review Under Section 203

14. Section 203(a)(4) of the FPA requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest. The Commission's analysis of whether a transaction will be consistent with the public interest

¹⁰ Application at 4-5.

¹¹ 18 C.F.R. § 385.214 (2009).

¹² *Id.* § 385.214(d).

generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.¹³ Section 203 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.”¹⁴ The Commission’s regulations establish verification and informational requirements for applicants that seek determinations that a transaction will not result in inappropriate cross-subsidization or an inappropriate pledge or encumbrance of utility assets.¹⁵

2. Effect on Competition

a. Applicant’s Analysis

15. The Applicant states that the Proposed Transaction will have no adverse effect on competition because the Proposed Transaction only involves ALLETE’s purchase of transmission-related assets.¹⁶ There will be no combination or transfer of generation assets, or inputs to electric power generation and, therefore, the Applicant asserts that the Proposed Transaction raises neither horizontal nor vertical market power concerns. Additionally, the HVDC Facilities will be subject to the open access requirement of Order No. 890¹⁷ under the Midwest ISO tariff. Consequently, ALLETE states that the Proposed Transaction does not require a horizontal or vertical analysis.

b. Commission Determination

16. In analyzing whether a transaction will adversely affect competition, the Commission first examines its effects on concentration in generation markets or whether

¹³ See Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

¹⁴ 16 U.S.C. § 824b(a)(4) (2006).

¹⁵ 18 C.F.R. § 33.2 (2009).

¹⁶ Applicant notes that the Commission has previously recognized that transmission-only transactions should not raise competitive concerns. Application at 12 (citing Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 190).

¹⁷ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

the transaction otherwise creates an incentive to engage in behavior harmful to competition, such as the withholding of generation (horizontal concerns). Second, the Commission considers the vertical combination of upstream inputs, such as transmission or natural gas, with downstream generating capacity. The Applicant has shown that the Proposed Transaction will not have an adverse effect on competition in either respect. The Proposed Transaction involves the purchase by ALLETE of the HVDC Facilities, with no transfer of any generation assets. Also, the Proposed Transaction creates no new vertical combinations of assets and, therefore, the Proposed Transaction does not raise any vertical market power concerns. We find that the Proposed Transaction will have no adverse effect on competition.

3. Effect on Rates

a. Applicant's Analysis

17. ALLETE states that the two entities (ALLETE and Minnkota) currently taking service over the HVDC Facilities will experience a rate increase as a result of the HVDC Facilities becoming jurisdictional facilities. However, ALLETE states that the HVDC Facilities are being transferred at net book value and no acquisition adjustment is being added.¹⁸ ALLETE asserts that the primary cause of the rate increase for Minnkota's and ALLETE's wholesale customers results from the HVDC Facilities' change in ownership from a cooperative to a public utility. Once ALLETE owns the HVDC Facilities, it must recover, among other things, taxes and a return on equity related to those facilities. ALLETE claims that such rate increases should not be considered an adverse impact on rates.¹⁹

18. Additionally, ALLETE contends that there are several countervailing benefits resulting from the Proposed Transaction. First, the Proposed Transaction increases the scope of the facilities over which the Midwest ISO will be able to provide transmission service.²⁰ Additionally, ALLETE states that the Proposed Transaction will produce significant cost benefits associated with renewable resources. ALLETE estimates that the expected value of benefits is approximately \$146 million over 21 years. ALLETE further asserts that purchasing the HVDC Facilities and using them to transmit wind power is not only the most economical way for ALLETE to meet Minnesota's RES requirements, it also offers a number of environmental advantages.²¹ ALLETE asserts that the Proposed

¹⁸ Application at 14-15.

¹⁹ *Id.* at 15.

²⁰ *Id.*

²¹ *Id.* at 16.

Transaction will allow ALLETE to acquire transmission for the delivery of environmentally-friendly, low-cost wind power to its customers.

b. Commission Determination

19. Our analysis of rate effects under section 203 of the FPA differs from the analysis of whether rates are just and reasonable, which we are considering separately in our order on ALLETE's and Midwest ISO's section 205 filing, in Docket No. ER09-1726. Our focus here is on the effect that the Proposed Transaction itself 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.²²

20. Even though the Proposed Transaction will result in rate increases for ALLETE's and Minnkota's customers, no acquisition adjustment is being added to the rates. The Applicant explains that the rate increase is due to the HVDC Facilities' change in ownership from a cooperative to a public utility and, as such, ALLETE must recover, among other things, taxes and a return on equity related to those facilities. We note that no wholesale customer has argued that the Proposed Transaction will adversely affect rates. Moreover, there are benefits associated with the Proposed Transaction. Midwest ISO will be able to expand its scope over the HVDC Facilities by providing transmission service and ensure reliability. For these reasons, we find that the Proposed Transaction will not have an adverse impact on rates.

4. Effect on Regulation

a. Applicant's Analysis

21. ALLETE claims that the Proposed Transaction will have no adverse effect on regulation by the Commission, the Public Service Commission of North Dakota, or the Minnesota Utilities Commission. Currently the HVDC Facilities are non-jurisdictional transmission facilities owned by Square Butte; however, upon completion of the Proposed Transaction, the rates, terms and conditions of service for wholesale customers by the HVDC Facilities will be subject to the regulation by the Commission.²³ Additionally, ALLETE states that the Proposed Transaction will not result in the merger

²² See, e.g., Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,123 (noting that an increase in rates "can still be consistent with the public interest if there are countervailing benefits that derive from the transaction"); see also *Startrans IO, LLC*, 122 FERC ¶ 61,037, at P 25-28 (2008); *ITC Holdings Corp.*, 121 FERC ¶ 61,229, at P 120-28 (2007).

²³ Application at 16.

of any vertically integrated public utility that has captive customers. Therefore, the Proposed Transaction will not affect how retail rates are regulated by state regulators.²⁴

b. Commission Determination

22. The Commission's review of a transaction's effect on regulation is focused on ensuring that the transaction does not result in a regulatory gap at the federal level or the state level. The Proposed Transaction will not create a regulatory gap at the federal level because the Commission will obtain jurisdiction over the HVDC Facilities following the acquisition. Additionally, there will be no change to current state regulation. Thus, we find that the Proposed Transaction will have no adverse effect on federal or state regulation.

5. Cross-Subsidization

a. Applicant's Analysis

23. Applicant states that the Proposed Transaction will not result in, at the time of the transaction or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.

24. Applicant verifies that the Proposed Transaction will not result in: (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 issuances 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 contracts 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 services agreements subject to review under sections 205 and 206 of the FPA.

²⁴ *Id.* at 17.

b. Commission Determination

25. Applicant addresses the four-part test for evaluating cross-subsidization concerns. As demonstrated by the verifications made, we find that the Proposed Transaction does not raise any concern with respect to cross-subsidization.

The Commission orders:

(A) We hereby grant authorization under section 203(a)(1) for the acquisition of the HVDC Facilities by ALLETE, as discussed in this order.

(B) 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 cost, or any other matter whatsoever now pending or which may come before the Commission.

(C) 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.

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

(E) If the Proposed Transaction results in changes in the status or the upstream ownership of Applicant's affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2009) shall be made.

(F) Applicant shall make the appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(G) Applicant must inform the Commission within 30 days of any change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the transaction.

(H) Applicant shall notify the Commission within 10 days of the date that the acquisition of the HVDC Facilities has been consummated.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.