

143 FERC ¶ 61,286  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

Northern Maine Independent System Administrator, Inc. Docket Nos. ER13-1385-000  
ER13-1388-000

ORDER REJECTING FILINGS

(Issued June 27, 2013)

1. On May 1, 2013, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> Northern Maine Independent System Administrator, Inc. (Northern Maine ISA) proposed changes to its tariff and market rules to authorize Northern Maine ISA to: (1) disapprove proposed transmission connections due to adverse economic impacts; and (2) disapprove proposed transfers of control of transmission facilities due to adverse reliability or economic impacts.<sup>2</sup> For the reasons discussed below, we reject the filings.

**I. Background**

**A. Northern Maine ISA and NMTS**

2. Northern Maine ISA is a Commission-approved independent system administrator and Regional Transmission Group (RTG), which encompasses the transmission systems of Maine Public Service Company (MPS) and Eastern Maine Electric Cooperative (EMEC) in Northern Maine (collectively, the Northern Maine Transmission System or NMTS).<sup>3</sup> Northern Maine ISA states that it operates as an independent and non-

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> The proposed changes to Northern Maine ISA's tariff are included in Docket No. ER13-1385-000. The related, proposed changes to Northern Maine ISA's market rules are included in Docket No. ER13-1388-000.

<sup>3</sup> *Northern Maine Independent System Administrator, Inc.*, 89 FERC ¶ 61,179 (1999). Northern Maine ISA's members include: investor-owned, cooperatively-owned, and municipally-owned utilities; generators; suppliers of energy; and large retail customers.

discriminatory administrator of transmission access for the NMTS.<sup>4</sup> The NMTS is only connected to the rest of New England through the transmission facilities of Canada's New Brunswick Power; it is not directly interconnected with ISO New England, Inc. (ISO-NE) or any other domestic electric system. Northern Maine ISA also operates the wholesale markets in Northern Maine for energy, ancillary services, and other services.

## **B. Proposed Changes**

3. Northern Maine ISA states that it currently has authority to disapprove transmission connections to the NMTS for reliability, but not economic, reasons. It has no authority concerning the transfer of control of transmission facilities in the NMTS.

4. Northern Maine ISA's proposed changes to its tariff and market rules would authorize Northern Maine ISA to: (1) disapprove proposed transmission connections<sup>5</sup> due to adverse economic impacts; and (2) disapprove proposed transfers of control of transmission facilities due to adverse reliability or economic impacts. Northern Maine ISA proposes to define a transfer of "control" of transmission facilities to mean the "transfer of one or more of the following: (i) the rights, by contract or otherwise, to use such facility, except as a customer pursuant to a service agreement, and (ii) the right to operate, or direct the operation, of such facility."<sup>6</sup> Northern Maine ISA proposes that a transfer of control will not include a transfer of the ownership of transmission facilities (i.e., a sale of transmission facilities),<sup>7</sup> which instead would be subject to the Commission's jurisdiction under section 203 of the FPA.<sup>8</sup>

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<sup>4</sup> Northern Maine ISA does not own or operate transmission facilities in the NMTS. MPS, the only Commission-jurisdictional transmission owner in Northern Maine ISA, operates its transmission facilities under MPS's Open Access Transmission Tariff.

<sup>5</sup> Northern Maine ISA's proposal defines transmission connections to include: (1) any proposed addition or removal of a 69 kV or above transmission facility, whether or not the transmission facility is or will be part of the NMTS; and (2) any proposed establishment of a connection with a transmission system outside of the NMTS. Proposed Tariff §§ 4.21(iii) and (iv).

<sup>6</sup> Proposed Market Rule 8.10.2.

<sup>7</sup> Northern Maine ISA May 1, 2013 Tariff Filing, Docket No. ER13-1385-000, Transmittal Letter at 7. In order to exclude sales of transmission facilities from the definition of a transfer of control of transmission facilities, proposed Market Rule 8.10.2 states that "[a] transfer of ownership shall not be deemed a transfer of control for purposes of this Market Rule 8.10.2."

<sup>8</sup> 16 U.S.C. § 824b (2006).

5. Northern Maine ISA's proposed evaluation of the adverse economic impacts from transmission connections and transfers of control of transmission facilities would include the economic impact on the NMTS and Northern Maine market, including the impact on the cost of transmission service and electric capacity, energy and ancillary services in Northern Maine.<sup>9</sup> Northern Maine ISA proposes to disapprove the proposed transmission connection or transfer of control of transmission facilities if it concludes that it will have an adverse economic impact on the NMTS or the Northern Maine market, unless it concludes that the benefits to Northern Maine customers outweigh the adverse economic impact or the applicant has proposed mitigation measures that will adequately mitigate the adverse economic impact.<sup>10</sup> For transfers of control of transmission facilities, in addition to evaluating the economic impact, Northern Maine ISA proposes to evaluate the reliability impact of the transfer of control on the NMTS. Northern Maine ISA proposes that it will disapprove the proposed transfer of control if it concludes that it will have an adverse effect on reliability.<sup>11</sup>

6. Northern Maine ISA asserts that, because of the size, electrical isolation, and limited population and electrical demand of the Northern Maine region, Northern Maine ISA needs this authority to protect the viability of the Northern Maine market and the interests of Northern Maine customers. In particular, Northern Maine ISA states that it is concerned about the consequences of MPS's possible direct interconnection with ISO-NE, and the integration of the Northern Maine market and NMTS with ISO-NE.<sup>12</sup> Northern Maine ISA is concerned that the potential integration of the Northern Maine market and NMTS with ISO-NE will result in a significant cost shift towards Northern Maine customers through: (1) the replacement of the MPS OATT transmission rates with the ISO-NE Regional Network Service rate; (2) the costs assumed from ISO-NE's transmission expansion plans; and (3) an increase in wholesale power supply costs.

7. Northern Maine ISA states that the proposed tariff and market rule changes will ensure that the economic impacts on the Northern Maine market and NMTS from any proposed transmission connection or transfer of control of transmission facilities will be

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<sup>9</sup> Proposed Tariff §§ 4.21(d) and 4.25(c).

<sup>10</sup> For transmission connections, see proposed Tariff § 4.21(d) and proposed Market Rule 8.2.4(c). For transfers of control of transmission facilities, see proposed Tariff § 4.25(c) and proposed Market Rule 8.10.5.

<sup>11</sup> Proposed Tariff § 4.25(c) and proposed Market Rule 8.10.4.

<sup>12</sup> On March 19, 2013, in Docket No. EC13-81-000, MPS and Bangor Hydro Electric Company (Bangor Hydro) submitted a section 203 application seeking authorization for Bangor Hydro to acquire all jurisdictional assets of its affiliate MPS. Bangor Hydro is located in the ISO-NE service area and is a member of ISO-NE.

fully evaluated; and that Northern Maine ISA will issue a written report with its decision discussing the economic impacts of any such proposal. Northern Maine ISA further posits that the proposed tariff and market rule changes will aid the Commission because Northern Maine ISA commits to file its written reports with the Commission within 21 days of issuing them. Northern Maine ISA states that the Commission will remain the final arbiter of whether the impact of any proposed transmission connection or transfer of control of transmission facilities is just and reasonable.<sup>13</sup>

8. Northern Maine ISA requests that the Commission accept the proposed changes, with an effective date of June 30, 2013.

## **II. Notices of Filings and Responsive Pleadings**

9. Notices of the filings were published in the *Federal Register*, 78 Fed. Reg. 28,212 (2013), with interventions and protests due on or before May 22, 2013. EMEC, separately, and Houlton Water Company, Van Buren Light and Power District, the Maine Office of Public Advocate, Louisiana-Pacific Corporation, and Energy Options Consulting Group, jointly (collectively Northern Maine Customers), submitted timely motions to intervene and supportive comments. The Maine Public Utilities Commission (Maine Commission) submitted a notice of intervention and protest. In addition, MPS and First Wind Energy, LLC (First Wind) separately submitted motions to intervene and protests.

10. On June 5, 2012, Northern Maine ISA filed an answer to the protests. On June 10, 2013, First Wind filed an answer to the answer.

### **A. Comments and Protests**

11. EMEC and Northern Maine Customers support Northern Maine ISA's proposal because, they claim, it ensures that the economic impacts of any transfer of control, addition, or removal of transmission facilities within the NMTS are considered.<sup>14</sup> They assert that Northern Maine ISA is uniquely situated to undertake such an economic evaluation because it oversees the planning and operations of the NMTS and Northern Maine market. They also assert that the proposed changes concerning the mitigation of adverse customer impacts are consistent with conditions that the Commission has previously imposed on transfers of control of jurisdictional facilities to a regional

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<sup>13</sup> Northern Maine ISA May 1, 2013 Tariff Filing, Docket No. ER13-1385-000, Transmittal Letter at 2 and 6-8.

<sup>14</sup> EMEC May 22, 2013 Comments at 5; Northern Maine Customers May 22, 2013 Comments at 6.

transmission organization (RTO).<sup>15</sup> Northern Maine Customers argue that the proposed changes will facilitate Commission review and that, regardless of the Commission's disposition of Northern Maine ISA's decision, the Commission will benefit from the record and analysis from Northern Maine ISA.<sup>16</sup>

12. The Maine Commission, MPS and First Wind oppose the proposed changes. MPS argues that the proposed changes insert Northern Maine ISA into the exclusive regulatory space of the Commission under FPA sections 203 and 205.<sup>17</sup> The Maine Commission adds that Northern Maine ISA's promise to file its decision with the Commission does not cure the unlawfulness of the proposed changes.<sup>18</sup>

13. MPS and First Wind argue that, concerning a possible interconnection with ISO-NE, the proposed changes are premature because both the Commission and the Maine Commission would review aspects, including an economic analysis, of a proposed interconnection and there would be ample opportunity to intervene and comment in those proceedings.<sup>19</sup> The Maine Commission points out that Northern Maine ISA fails to explain how the results of the different proceedings would be reconciled.<sup>20</sup>

14. MPS and First Wind argue that the proposed changes expand Northern Maine ISA's authority beyond the fundamental operation and reliability responsibilities included in its tariff.<sup>21</sup> Further, they argue that the proposal would extend Northern Maine ISA's authority beyond that of any independent system operator (ISO) or RTO. The Maine Commission notes that Northern Maine ISA, an RTG, cites no authority to support its proposal to impose more restrictive provisions to exit an RTG than those that apply to

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<sup>15</sup> Northern Maine Customers May 22, 2013 Comments at 7-8 (citing *Alliance Cos.*, 100 FERC ¶ 61,137 (2002), *reh'g denied*, 103 FERC ¶ 61,274 (2003) (*Alliance Companies*)).

<sup>16</sup> Northern Maine Customers May 22, 2013 Comments at 6-7.

<sup>17</sup> MPS May 22, 2013 Protest at 9. MPS adds that Northern Maine ISA's proposal does not define "adverse economic impact" and provides no guidance on how economic impact will be determined. *Id.* at 7.

<sup>18</sup> Maine Commission May 22, 2013 Protest at 10.

<sup>19</sup> MPS May 22, 2013 Protest at 12-13.

<sup>20</sup> Maine Commission May 22, 2013 Protest at 11.

<sup>21</sup> MPS May 22, 2013 Protest at 7; First Wind May 22, 2013 Protest at 5.

exit from an RTO.<sup>22</sup> The Maine Commission also argues that these provisions interfere with MPS's FPA section 205 filing rights because they would allow Northern Maine ISA to prohibit MPS's voluntary decision to transfer control of MPS's transmission assets to an RTO.<sup>23</sup>

15. The Maine Commission and First Wind assert that Northern Maine ISA's proposed tariff and market rule changes also should be rejected as inconsistent with the Order No. 2003 process for review and approval of interconnections.<sup>24</sup> They argue that, rather than facilitating market entry, the proposed provisions would impose restrictions and costs on interconnections that would encumber entry into the market and discourage investment in generation and transmission infrastructure.<sup>25</sup>

### **III. Discussion**

#### **A. Procedural Matters**

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest and an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept

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<sup>22</sup> Maine Commission May 22, 2013 Protest at 8 (citing *Duquesne Light Co.*, 122 FERC ¶ 61,039, at P 133 (2008), for the Commission's standards to exit an RTO). First Wind also argues that, contrary to Northern Maine ISA's assertion, the *Alliance Companies* order does not stand for the proposition that any transfer of control of transmission facilities is conditioned on mitigating economic impacts to other market participants. First Wind May 22, 2013 Protest at 5.

<sup>23</sup> Maine Commission May 22, 2013 Protest at 7 (citing *Atlantic City Electric Company v. FERC*, 329 F.3d 1 (D.C. Cir. 2002)).

<sup>24</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003); *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

<sup>25</sup> Maine Commission May 22, 2013 Protest at 6; First Wind May 22, 2013 Protest at 4.

Northern Maine ISA's answer and First Wind's answer to the answer and will, therefore, reject them.

**B. Commission Determination**

18. We will reject the proposed changes to Northern Maine ISA's tariff and market rules. The proposed changes inappropriately give Northern Maine ISA authority to disapprove proposed transmission connections for economic reasons and to disapprove proposed transfers of control of transmission facilities for economic and reliability reasons. As such, the proposed changes intrude upon the Commission's jurisdiction concerning transmission connections<sup>26</sup> and transfers of control of transmission facilities.<sup>27</sup> While Northern Maine ISA suggests that the revisions allow for Commission review of Northern Maine ISA's decisions, and therefore the Commission will remain the "final" arbiter of these matters,<sup>28</sup> we decline Northern Maine ISA's invitation to cede such initial determinations on these matters.<sup>29</sup>

19. The proposed changes concerning transfers of control of transmission facilities (as defined by Northern Maine ISA) also would intrude inappropriately upon the Commission's jurisdiction under FPA section 203. Northern Maine ISA recognizes that a sale of transmission facilities would be subject to the Commission's jurisdiction under FPA section 203 and therefore states that for purposes of its proposal, a transfer of control of transmission facilities will not include such a sale.<sup>30</sup> However, our FPA

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<sup>26</sup> 16 U.S.C. § 824d (2006).

<sup>27</sup> *Id.* Northern Maine ISA acknowledges that, if a transmission owner were to seek to transfer control of its transmission facilities to a RTO, one or more FPA section 205 filings would be necessary to implement the transfer. Northern Maine ISA May 1, 2013 Tariff Filing, Docket No. ER13-1385-000, Transmittal Letter at 7-8.

<sup>28</sup> Northern Maine ISA May 1, 2013 Tariff Filing, Docket No. ER13-1385-000, Transmittal Letter at 2 and 6-8.

<sup>29</sup> Also, we note that, with respect to Northern Maine ISA's proposal here to have the authority to disapprove for economic reasons a transmission connection, including any proposed addition or removal of a 69 kV or above transmission facility that will not be a part of the NMTS, the Commission has previously rejected, as unreasonable, a Northern Maine ISA proposal to require an interconnection applicant to submit information for reliability review by Northern Maine ISA when the interconnection applicant is not actually connecting a facility to the NMTS. *ISO New England Inc. and Bangor Hydro Electric Company*, 142 FERC ¶ 61,183, at PP 26-27 (2013).

<sup>30</sup> *See supra* P 4.

section 203 jurisdiction is not limited to sales of transmission facilities. For example, FPA section 203(a)(1)(A) applies to the sale, lease, or other disposition of jurisdictional facilities.<sup>31</sup>

20. Moreover, we note that Northern Maine ISA's proposal would adopt different standards for the evaluation of transmission connections and transfers of control of transmission facilities than the Commission applies under the above-noted statutory provisions,<sup>32</sup> as well as under our open access<sup>33</sup> and generator interconnection policies.<sup>34</sup>

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<sup>31</sup> Under FPA section 203, “[n]o public utility shall, without first having secured an order of the Commission authorizing it to do so - (A) sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of \$10,000,000....” 16 U.S.C. § 824d(a)(1)(A) (2006).

<sup>32</sup> Under FPA section 205, a proposal must be just and reasonable and not be unduly preferential or discriminatory. Under FPA section 203, 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. 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. *See, e.g., 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).

<sup>33</sup> *See, e.g., 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).

<sup>34</sup> *See, e.g., Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003); *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

21. In response to Northern Maine ISA's concerns about the potential economic impacts on Northern Maine consumers resulting from transmission connections and transfers of control of transmission facilities, we also note that when filings concerning transmission connections and transfers of control of transmission facilities are made with the Commission, interested entities have the opportunity to intervene and comment in such a proceeding. We encourage Northern Maine ISA to provide its views in proceedings concerning such matters, if and when such matters are placed before the Commission.

22. For the foregoing reasons, we will reject the filings.

The Commission orders:

Northern Maine ISA's proposed revisions are hereby rejected, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.