

144 FERC ¶ 61,031
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.

Bangor Hydro Electric Company

Docket No. ER13-1125-000

ORDER GRANTING WAIVER

(Issued July 18, 2013)

1. On March 19, 2013, Bangor Hydro Electric Company (Bangor Hydro) filed a request for waiver of the Commission's regulation, in 18 C.F.R. §35.28(c)(3)(2012),¹ to permit it to maintain two Open Access Transmission Tariffs (OATTs) following its merger with Maine Public Service Company (Maine Public), which it anticipates occurring January 1, 2014. Bangor Hydro requests that its waiver request be granted by July 1, 2013. As discussed below, the Commission grants Bangor Hydro's request for waiver.

I. Background

2. Bangor Hydro and Maine Public are indirect subsidiaries of Emera Incorporated (Emera), a Canada-based utility holding company with interests in Canada, the United States, and the Caribbean. In a transaction consummated December 21, 2010, BHE Holdings, Inc., the immediate parent of Bangor Hydro, acquired all the outstanding securities of Maine & Maritimes Corporation, the parent of Maine Public, making Bangor Hydro and Maine Public affiliated companies.

3. Bangor Hydro is an electricity utility primarily engaged in transmission and distribution of electric energy and related services to retail customers in eastern and coastal Maine. It also makes certain wholesale power sales in these areas. It directly owns approximately 869 miles of transmission lines and approximately 4,850 miles of

¹ The Commission's regulation, in 18 C.F.R. §35.28(c)(3), requires "[e]very public utility that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce, and that is a member of a power pool, public utility holding company, or other multi-lateral trading arrangement or agreement that contains transmission rates, terms or conditions, [to] have on file a joint pool-wide or system-wide open access transmission tariff...."

distribution lines. It also holds a 14.2 percent voting interest in Maine Electric Power Company (MEPCO), a transmission-only public utility.

4. Bangor Hydro provides open access to its transmission lines pursuant to the ISO New England Inc. (ISO-NE) Transmission, Markets and Services Tariff (ISO-NE Tariff) and the rates, terms, and conditions for use of its local transmission lines are set forth in Schedule 21-BHE of the ISO-NE Tariff.² Bangor Hydro states that it no longer has a franchised service area for the sale of electricity.

5. Bangor Hydro also states that, pursuant to the Maine Restructuring Act of 1997, Bangor Hydro has divested the vast majority of its generation assets, including capacity and energy from power purchase contracts.³ Bangor Hydro states that it is generally prohibited from owning generation and generation-related assets⁴ and it is also prohibited from selling electricity or capacity to any retail consumer of electricity.

6. Maine Public, a wholly-owned subsidiary of Emera, is an electric utility that provides transmission and distribution services to retail customers and transmission service to three wholesale customers located in Aroostock and Penobscot Counties in Maine. The total load in Maine Public's service territory is approximately 125 MW, with a peak load of approximately 141 MW. It owns approximately 380 miles of transmission lines and approximately 1,806 miles of distribution lines. It also holds a 7.5 percent voting interest in MEPCO.

7. Maine Public provides transmission service pursuant to the Maine Public Open Access Transmission Tariff (Maine Public OATT).⁵ Maine Public's transmission facilities are not directly interconnected with Bangor Hydro or any other portion of the United States transmission grid. Rather, Maine Public's only access to the U.S.

² Bangor Hydro Filing at 2.

³ See *Bangor Hydro-Elec. Co.*, 86 FERC ¶ 61,281, *clarified*, 87 FERC ¶ 61,057 (1999).

⁴ Bangor Hydro Filing at 2-3. Bangor Hydro explains that the exceptions to its generation ownership prohibition are three 14 MW diesel-fired, internal combustion generators that are committed in long-term contracts to New Brunswick Power Generation (NBP Generation). In addition, Bangor Hydro states that it has long-term energy purchase contracts with five qualifying facilities that are also under long-term contract to NBP Generation.

⁵ Maine Public Service Company, FERC Electric Tariff, 1st Revised Volume No. 4.

transmission grid is over transmission facilities in Canada owned by New Brunswick Power Transmission (NBP Transmission) and Algonquin Tinker Generating Company.

8. Maine Public, along with Eastern Maine Electric Cooperative, Inc. (EMEC), is a transmission-owning member of the Northern Maine Independent System Administrator, Inc. (Northern Maine ISA), an entity which is not considered a tight power pool. The Northern Maine ISA provides for the impartial administration of the reservation, scheduling, and dispatch of the Northern Maine transmission systems, as well as the administration of certain Northern Maine markets, including markets for energy, ancillary, and related services. The Commission accepted the Northern Maine ISA as the independent system administrator and a Regional Transmission Group for the Northern Maine region.⁶

9. Bangor Hydro also states that, pursuant to the Maine Restructuring Act of 1997, Maine Public divested all of its generation assets.⁷ It also does not engage in the wholesale marketing of generation.⁸

10. Bangor Hydro explains that, concurrent with the filing of this request for waiver, Bangor Hydro and Maine Public (collectively Applicants) also filed with the Commission an application under sections 203(a)(1) and 203(a)(2) of the Federal Power Act⁹ seeking authorization for Maine Public to be merged into Bangor Hydro with Bangor Hydro as the surviving entity.¹⁰ Bangor Hydro also explains that, as a result of this merger, all then current subsidiaries of Bangor Hydro and Maine Public will remain or become, as appropriate, subsidiaries of the surviving entity.¹¹

⁶ *N. Me. Indep. Sys. Admin., Inc.*, 89 FERC ¶ 61,179 (1999).

⁷ *See Me. Pub. Serv. Co.*, 87 FERC ¶ 62,053 (1999). Bangor Hydro explains that, pursuant to arrangements with the Northern Maine ISA and the New Brunswick System Operator, Maine Public, in its capacity as Northern Maine Area Operator, has the right, under certain circumstances, to require generating units in its service area to start up and to either increase or decrease the output of the unit. Bangor Hydro Filing at 5 n.11.

⁸ Bangor Hydro Filing at 5.

⁹ 16 U.S.C. § 824b(a)(1) & (a)(2) (2006).

¹⁰ The Commission addresses the section 203 application, in Docket No. EC13-81-000, in a separate order issued today.

¹¹ Bangor Hydro Filing at 5. *See also* Applicants' March 19, 2013 Application, Docket No. EC13-81-000, at 6.

II. Request For Waiver

11. Bangor Hydro states that good cause exists to grant its request for waiver¹² so that it can maintain two OATTs following its merger with Maine Public, including one OATT for the Northern Division (former Maine Public transmission facilities) and one OATT for the Southern Division (legacy Bangor Hydro transmission facilities).¹³ Following consummation of the merger, Bangor Hydro states that it will operate two separate transmission systems that are not directly interconnected (and not interconnected at all but through transmission facilities owned by NBP Transmission). Bangor Hydro asserts that insofar as the Commission's regulation calls for a "system-wide" OATT,¹⁴ a single OATT may not actually be required here, because Bangor Hydro will have not one, but two, transmission systems. Regardless, Bangor Hydro argues that the fact that it will maintain *two transmission systems that are not directly interconnected* justifies granting the requested waiver.

12. Bangor Hydro also asserts that the establishment of a single OATT would likely be functionally, operationally, and logistically impossible. Bangor Hydro explains that its current facilities are under the functional control of ISO-NE and service over them is provided pursuant to the ISO-NE Tariff. Bangor Hydro explains that the Maine Public facilities it will acquire pursuant to the merger will not come under the functional control of ISO-NE as part of the merger.¹⁵ Instead, the Maine Public facilities will remain in the New Brunswick System Operator Balancing Authority Area and subject to the oversight of the Northern Maine ISA, both of which are wholly separate from ISO-NE and its Balancing Authority Area.

13. Bangor Hydro states that, in these circumstances, the establishment of a single OATT to comply with the Commission's regulation, in 18 C.F.R. §35.28(c)(3), would

¹² The Commission's regulation, in 18 C.F.R. §35.28(d), provides that a public utility subject to the requirements of §35.28 may file a request for waiver of all or part of the requirements of this section for good cause shown.

¹³ Bangor Hydro Filing at 5-6. Bangor Hydro states that it has not decided how it will refer to its two sets of transmission assets following consummation of the merger and that its filing uses the terms "Northern Division" and "Southern Division" as placeholders for ease of discussion therein. Bangor Hydro Filing at 6 n.13.

¹⁴ *Supra* note 1.

¹⁵ Bangor Hydro Filing at 7. Furthermore, Bangor Hydro states that these facilities likely would not be able to come under ISO-NE functional control unless and until they are directly interconnected with transmission facilities currently subject to ISO-NE's functional control. *Id.* at 7 n.16.

require it to: (i) withdraw from ISO-NE; (ii) remove the rates, terms, and conditions for service over its facilities from the ISO-NE Tariff; or (iii) include the rates, terms, and conditions for service over the former Maine Public facilities in the ISO-NE Tariff notwithstanding that these facilities would not be subject to the functional control of ISO-NE. Bangor Hydro contends that none of these options would be favorable, if even logistically possible. Bangor Hydro argues that Commission has previously permitted public utilities that own and operate separate transmission systems to maintain separate rates for these systems.¹⁶ Bangor Hydro maintains that such precedent is applicable here, because, according to Bangor Hydro, it would be impractical for Bangor Hydro to establish either consolidated rates for the Bangor Hydro and Maine Public facilities, or a single OATT following its merger with Maine Public.

III. Notice of Filing and Responsive Comments

14. Notice of the filing was published in the *Federal Register*, 78 Fed. Reg. 18,580 (2013), with interventions and protests due on or before April 9, 2013. Houlton Water Company filed a timely motion to intervene. Northern Maine ISA filed a timely motion to intervene and comments supporting Bangor Hydro's request for waiver.

IV. Discussion

15. We find good cause to grant Bangor Hydro's request for waiver of the Commission's regulation, in 18 C.F.R. §35.28(c)(3), to permit it to maintain two OATTs following consummation of its merger with Maine Public – one OATT for the Northern Division, composed of former Maine Public transmission facilities, and one OATT for the Southern Division, composed of legacy Bangor Hydro transmission facilities.

16. Following consummation of the merger, Bangor Hydro will operate two separate transmission systems that are not directly interconnected and will not be interconnected at all but through transmission facilities owned by NBP Transmission. After the merger, Bangor Hydro's current transmission facilities will continue to be under the functional control of ISO-NE and service over them will continue to be provided pursuant to the ISO-NE Tariff. After the merger, Maine Public transmission facilities will continue to remain in the New Brunswick System Operator Balancing Authority Area and subject to the oversight of the Northern Maine ISA, both of which are wholly separate from ISO-NE and its Balancing Authority Area.

¹⁶ Bangor Hydro Filing at 7 n.17 (citing *CP&L Holdings, Inc.*, 92 FERC ¶ 61,023 (2000), *reh'g denied*, 94 FERC ¶ 61,096 (2001); *Northern States Power Co.*, 90 FERC ¶ 61,020 (2000); *Sierra Pacific Power Co.*, 87 FERC ¶ 61,077, *reh'g denied*, 88 FERC ¶ 61,058 (1999); *WPS Resources Corp.*, 83 FERC ¶ 61,196 (1998); *Cheyenne Light, Fuel & Power Co.*, 78 FERC ¶ 61,268 (1997)).

17. Based upon the factual circumstances represented here, we agree with Bangor Hydro that it would not be practical for Bangor Hydro to establish, after the merger, one system-wide OATT, including the former Maine Public transmission facilities and the legacy Bangor Hydro transmission facilities.¹⁷ Accordingly, we grant waiver of the requirement to comply with the Commission's regulation in 18 C.F.R. §35.28(c)(3), to permit Bangor Hydro to maintain two OATTs after this merger, for as long as these same circumstances continue to exist. If these factual circumstances change, Bangor Hydro must comply with the Commission's regulation in 18 C.F.R. §35.28(c)(3) or file a new request for waiver in accordance with 18 C.F.R. §35.28(d).

The Commission orders:

Bangor Hydro's request for a waiver is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁷ See *CP&L Holdings, Inc.*, 92 FERC ¶ 61,023 (2000), *reh'g denied*, 94 FERC ¶ 61,096 (2001); *Northern States Power Co.*, 90 FERC ¶ 61,020 (2000); *Sierra Pacific Power Co.*, 87 FERC ¶ 61,077, *reh'g denied*, 88 FERC ¶ 61,058 (1999); *WPS Resources Corp.*, 83 FERC ¶ 61,196 (1998); *Cheyenne Light, Fuel & Power Co.*, 78 FERC ¶ 61,268 (1997).