

**162 FERC ¶ 62,030**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Hydro One Limited  
Avista Corporation

Docket No. EC17-179-000

**ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES**

(Issued January 16, 2018)

On September 14, 2017, as amended on October 3, 2017, Hydro One Limited and Avista Corporation (Avista) (together, Applicants) filed an application pursuant to sections 203(a)(1) and 203(a)(2) of the Federal Power Act (FPA)<sup>1</sup> requesting authorization for an indirect, wholly owned subsidiary of Hydro One Limited to merge with and into Avista, with Avista as the surviving corporation (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transaction consist of transmission facilities, hydroelectric generation facilities, and tariffs on file with the Commission.

Applicants state that Avista is an investor-owned utility that provides electric generation, transmission, and distribution service to 378,000 retail customers in Washington, Idaho and Montana, as well as the distribution of natural gas to 342,000 retail customers in Washington, Idaho and Oregon. Avista owns and operates certain hydroelectric generation facilities pursuant to licenses issued by the Commission. Avista is authorized by the Commission to engage in sales of energy and capacity at cost-based and market-based rates. Avista also offers transmission services pursuant to its Open Access Transmission Tariff (OATT).

According to Applicants, the holding companies in Avista's holding company system are Avista Corporation and Alaska Energy and Resources Company. Alaska Energy and Resources Company owns Alaska Electric Light and Power Company, an electric utility company in Alaska. Alaska Electric Light and Power Company also owns and operates certain hydroelectric generating facilities that are subject to the Commission's hydropower licensing requirements.

Applicants state that Hydro One Limited is an investor-owned electric transmission and distribution utility headquartered in Toronto, Ontario, Canada. Applicants represent that Hydro One Limited and its subsidiaries are not public utilities pursuant to the FPA and are not otherwise currently subject to Commission jurisdiction.

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<sup>1</sup> 16 U.S.C. § 824b (2012).

Hydro One Limited's transmission and distribution businesses are regulated by the Ontario Energy Board.

Applicants assert that the Proposed Transaction will not have an adverse effect on horizontal or vertical competition. Applicants submit that they do not conduct business in the same geographic markets, and the Proposed Transaction will not result in any combination of electric generating assets in any market. With respect to vertical market power, Applicants represent that the Proposed Transaction will not result in any combination of inputs to electric power production with generation assets in any market, because Hydro One Limited does not own or control any natural gas transportation, natural gas storage, natural gas distribution, electricity generation, sites for generation capacity development, or physical coal supply sources in the United States.

Applicants state that the Proposed Transaction will not have an adverse effect on rates. Applicants assert that the Proposed Transaction will not result in any acquisition premium or goodwill recorded on Avista's books, and no portion of the acquisition adjustment or goodwill will be recovered through Avista's cost-based rates without express Commission authorization in a separate FPA Section 205 proceeding. Furthermore, Applicants state that Avista's current OATT rates do not include a formula component that could raise concerns that merger costs could be passed through in an annual update or otherwise. With respect to wholesale sales of electricity, Applicants note that Avista has no cost-based wholesale requirements customers or any other cost-based wholesale power sales customers, and Avista makes all of its wholesale power sales pursuant to market-based rates. Nevertheless, Applicants commit for a period of five years to hold any transmission service customers with cost-based rates and any cost-based wholesale power sales customer it may have during that period harmless from the rate effects of the Proposed Transaction.

We accept Applicants' commitment to hold Avista's customers harmless from costs related to the Proposed Transaction. We interpret Applicants' hold harmless commitment to apply to all transaction-related costs, including costs related to consummating the Proposed Transaction, incurred prior to the consummation of the Proposed Transaction, or in the five years after the Proposed Transaction's consummation.<sup>2</sup>

The Commission has established that, where applicants make hold harmless commitments in the context of FPA section 203 transactions, in order to recover transaction-related costs, applicants must demonstrate offsetting benefits at the time they

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<sup>2</sup> *Policy Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189 (2016) (Hold Harmless Policy Statement).

apply to recover those costs. The Commission has clarified its procedures for recovery of such costs under sections 203 and 205<sup>3</sup> of the FPA.<sup>4</sup> Consistent with those clarifications, and given the commitment by Applicants to hold wholesale power and transmission customers harmless from transaction-related costs, if Applicants seek to recover transaction-related costs incurred prior to the consummation of the Proposed Transaction or in the five years after the consummation of the Proposed Transaction, then Applicants must make that filing in a new FPA section 205 docket<sup>5</sup> and submit that same filing as a concurrent information filing in this FPA section 203 docket.<sup>6</sup> The Commission will notice the new FPA section 205 filing for public comment.

In the FPA section 205 proceeding, the Commission will determine first, whether Applicants have demonstrated offsetting savings, supported by sufficient evidence, to customers served under Commission jurisdictional rate schedules such that recovery of transaction-related costs is consistent with the hold harmless commitment and, second, whether the resulting new rate is just and reasonable in light of all the other factors underlying the proposed new rate. In the FPA section 205 filing, Applicants must: (1) specifically identify the transaction-related costs they are seeking to recover, and (2) demonstrate that those costs are exceeded by the savings produced by the Proposed Transaction. Applicants must show that the proposed rate is just and reasonable in addition to providing appropriate evidentiary support, such as reasonable documentation and estimates of the costs avoided, demonstrating that transaction-related costs have been offset by transaction-related savings in order to recover those transaction-related costs and comply with its hold harmless commitment. Those savings must be realized prior to, or concurrent with, any authorized recovery of transaction-related costs, and cannot be based on estimates or projections of future savings, but must be based on a demonstration of actual transaction-related savings realized by jurisdictional customers.<sup>7</sup> The Commission will consider rates not to be “just and reasonable” if they include recovery of costs subject to a hold harmless commitment made in connection with an FPA section

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<sup>3</sup> 16 U.S.C. § 824d (2012).

<sup>4</sup> *Exelon Corp.*, 149 FERC ¶ 61,148, at PP 106-09 (2014).

<sup>5</sup> The Commission will not authorize the recovery of transaction-related costs in an annual informational filing under existing formula rates.

<sup>6</sup> Upon receipt, the Commission will not act on or notice the concurrent informational filing.

<sup>7</sup> See *Exelon Corp.*, 149 FERC ¶ 61,148 at P 107 (citing *Audit Report of National Grid, USA*, Docket No. FA09-10-000, at 55 (Feb. 11, 2011)); see also *Ameren Corp.*, 140 FERC ¶ 61,034, at PP 36-37 (2012).

203 application and if applicants fail to show offsetting savings due to the transaction.<sup>8</sup>

Applicants state that the Proposed Transaction will not adversely affect federal or state regulation. Applicants submit that the Proposed Transaction will not result in a regulatory gap nor will it diminish federal or state regulatory authority over Avista or its utility affiliate, Alaska Electric Light and Power Company. Specifically, following the Proposed Transaction, Avista and Alaska Electric Light and Power Company will remain subject to the Commission's jurisdiction and regulations under the FPA, as well as remain subject to state jurisdiction under applicable laws and regulations, to the same extent that they are currently subject to the Commission's jurisdiction and state regulation, respectively.

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, any cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including: (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 206 of the FPA.

Applicants represent that fair value adjustments and goodwill will not be recorded on the books of Avista. Applicants also state that the Proposed Transaction is expected to result in certain limited accounting entries, none of which would affect Commission-jurisdictional cost-based rates; therefore there are no pro forma accounting entries to provide. However, to the extent the Proposed Transaction results in any adjustment to the books of a jurisdictional entity that is required to keep its books in accordance with the Commission's Uniform System of Accounts, Applicants shall promptly inform the Commission and provide all accounting entries made to the books and records of the applicable jurisdictional entity to record the Proposed Transaction within six months after consummation, along with the appropriate narrative explanations describing the basis for

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<sup>8</sup> *Exelon Corp.*, 149 FERC ¶ 61,148 at P 107.

the entries.

The filings were noticed on September 18, 2017 and October 4, 2017, with comments, protests, or interventions due on or before October 5, 2017 and October 24, 2017, respectively. None were filed.

Information and/or systems connected to the bulk system involved in these transactions may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. 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 cybersecurity standards. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company's books and records. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the Proposed Transaction is based on such examination ability.

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.<sup>9</sup> To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of Order No. 652.

After consideration, it is concluded that the Proposed Transaction is consistent with the public interest and is authorized, subject to the following conditions:

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<sup>9</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

- (1) The Proposed Transaction is authorized upon the terms and conditions and for the purposes set forth in the application;
- (2) Applicants must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances;
- (3) 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;
- (4) 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;
- (5) If the Proposed Transaction results in changes in the status or upstream ownership of Applicants' affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2017) shall be made;
- (6) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (7) Applicants shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction;
- (8) Applicants shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities has been consummated; and
- (9) Applicants shall comply with the accounting requirements as discussed in the body of this order.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307 (2017). This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2017).



Steve P. Rodgers, Director  
Division of Electric Power

Regulation - West

