154 FERC ¶ 62,038

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Emera Incorporated
TECO Energy, Inc.

Docket No. EC16-1-000

ORDER AUTHORIZING MERGER

(Issued January 20, 2016)

On October 5, 2015, Emera Incorporated (Emera) and TECO Energy, Inc. (TECO and, jointly with Emera, Applicants), on behalf of themselves and their public utility affiliates, filed an application pursuant to sections 203(a)(1) and 203(a)(2) of the Federal Power Act (FPA) requesting authorization for the disposition of jurisdictional facilities associated with the transaction pursuant to which Emera will acquire all the issued and outstanding common stock of TECO (Proposed Transaction). The jurisdictional facilities affected by the Proposed Transaction are: (i) Tampa Electric Company's (Tampa Electric) jurisdictional transmission facilities (including such limited interconnection facilities that interconnect Tampa Electric's generating facilities to the electric grid); (ii) Tampa Electric's open access transmission tariff (OATT), market-based rate tariff, all requirements tariff, and cost-based power sales tariff; (iii) jurisdictional agreements under such tariffs and/or otherwise on file with the Commission; and (iv) jurisdictional books and records of TECO and Tampa Electric.

Applicants state that Emera, a Nova Scotia corporation, is a publicly-traded utility holding company headquartered in Halifax, Nova Scotia, Canada. Emera holds interests in companies that, among other things, engage in the electric utility, electric generation, natural gas trading, and pipeline businesses in Canada, the United States and the Caribbean. Most notably for purposes of this Application, Emera owns, directly or indirectly:

- Emera Maine, a public utility that owns electric transmission and distribution assets, and a small amount of generation assets, in central and northern Maine;
- Bridgeport Energy LLC, Rumford Power Inc., and Tiverton Power LLC, which own three generating facilities in New England with a combined generating capacity of 1,087 megawatts (MW);
- Emera Energy Services Inc., a public utility involved in the trading of natural gas and electricity in the United States; and
- An approximately 20.8 percent interest in Algonquin Power & Utilities Corp. (Algonquin), an electrical power generation, transmission, and utility infrastructure company with assets throughout the United States and Canada.

Applicants state that TECO is a Florida corporation and holding company headquartered in Tampa, Florida. TECO holds interests in electric and natural gas utilities in the states of Florida and New Mexico. More particularly, TECO owns, directly or indirectly:

- Tampa Electric, a vertically-integrated, public utility that provides electric utility service to over 706,000 customers in Florida subject to regulation by the Florida Public Service Commission (Florida Commission);
- Peoples Gas System (Peoples Gas), a separate operating division of Tampa Electric and a local gas distribution company that provides gas utility services to approximately 354,000 customers in various areas within Florida subject to regulation by the Florida Commission; and
- New Mexico Gas Company, Inc. (New Mexico Gas), a natural gas local distribution company that provides natural gas utility service to approximately 513,000 retail customers in New Mexico subject to regulation by the New Mexico Public Regulation Commission (New Mexico Commission).

According to Applicants, the terms and conditions of the Proposed Transaction are set forth in the Agreement and Plan of Merger, dated as of September 4, 2015, by and among TECO, Emera, and Emera US Inc. (Emera US), an indirect, wholly owned subsidiary of Emera (Merger Agreement). Under the terms of the Merger Agreement, and subject to certain regulatory approvals and the satisfaction of certain obligations of the parties, Emera US will merge with and into TECO, with TECO as the surviving corporation. After consummation of the Proposed Transaction, all of the outstanding common shares of TECO will be cancelled, TECO will become an indirect, wholly owned subsidiary of Emera, and all then-existing subsidiaries of TECO (such as Tampa Electric and New Mexico Gas) will become indirect, wholly owned subsidiaries of Emera, consistent with TECO's ownership prior to consummation of the Proposed Transaction.

Applicants state that Emera will pay $27.55 in cash for each common share of TECO for a total consideration for the Proposed Transaction of approximately $10.4 billion, including approximately $3.9 billion in assumed debt. Applicants will not pledge or encumber utility assets, and no public utility will issue or incur debt in connection with the Proposed Transaction.

Applicants state that the Proposed Transaction is consistent with the public interest because it will not have an adverse effect on competition, rates, or regulation and will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company.

Applicants state that the Proposed Transaction will not have any adverse effect on horizontal competition because all electric generating assets owned or controlled by

TECO or its affiliates are located in the State of Florida, and neither Emera nor any of its affiliates, including Algonquin, own or control any electric generating assets in Florida, or in the southeastern United States more generally. Applicants add that there is no geographic overlap of jurisdictional electric activities by TECO and its affiliates on the one hand, and Emera and its affiliates on the other hand. More particularly, since at least January 1, 2014: (a) Tampa Electric (TECO's only affiliate that makes wholesale power sales) has sold wholesale power only within or at the border of the footprint of the Florida Reliability Coordinating Council, Inc. (Florida Council), and (b) Emera and its affiliates, including Algonquin, neither own nor control any generating resources in Florida and have not sold any wholesale power in the Florida Council footprint. Thus there is no competitive overlap in Florida where Emera has no assets and makes no power sales, and no competitive overlap outside of Florida where TECO has no generating assets and makes no power sales. Applicants thus submit that the Proposed Transaction will not have an adverse impact on horizontal market power.

According to Applicants, the Proposed Transaction will not have an adverse impact on vertical market power. Applicants state that there is no geographic overlap between the assets owned by Emera and its affiliates and TECO and its affiliates. More specifically: (1) all the electric and natural gas assets owned by TECO and its affiliates are located in Florida and New Mexico; and (2) all the electric and natural gas assets owned in whole or in part by Emera and its affiliates (including Algonquin) are located in California, Georgia, Illinois, Iowa, Missouri, Pennsylvania, and New England (collectively, according to Applicants, the relevant markets for the Proposed Transaction).

Applicants also state that all jurisdictional electric transmission assets owned or controlled by Emera, TECO, or their affiliates (other than limited transmission assets necessary to interconnect electric generating facilities to the electric grid) are subject to OATTs on file with the Commission. Applicants state that, since there is no geographic overlap of assets owned by Emera and its affiliates, on the one hand, and TECO and its affiliates on the other hand, and since all jurisdictional transmission assets owned or controlled by Applicants and their affiliates are subject to OATTS on file with the Commission, the Proposed Transaction will not have an adverse impact on vertical market power.

Applicants state that the Proposed Transaction will not have an adverse effect on rates. Applicants and their public utility affiliates pledge generally to hold harmless all wholesale power and transmission customers from any costs associated with the Proposed Transaction (e.g., transaction costs) for a period of five years to the extent that such costs exceed savings related to the Proposed Transaction. For purposes of this pledge, consistent with prior Commission orders, "transaction costs" in this context includes "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."[1]

Applicants' commitment is interpreted to include all transaction-related costs, not only costs related to consummating the transaction.[2] The Commission will be able to monitor the Applicants' hold harmless provision under its authority under section 301(c) of the FPA and the books and records provision of PUHCA 2005, and the commitment is fully enforceable based on the Commission's authority under section 203 of the FPA.[3]

If Applicants seek to recover transaction-related costs through their wholesale power or transmission rates they must submit a compliance filing that details how they are satisfying the hold harmless requirement. If Applicants seek to recover transaction-related costs in an existing formula rate that allows for such recovery, then that compliance filing must be filed in the section 205 docket in which the formula rate was approved by the Commission, as well as in the instant 203 docket. In this case the filing would be a compliance filing in both the section 203 and section 205 dockets. If Applicants seek to recover transaction- related costs in a filing whereby they are proposing a *new* rate (either a new formula rate or a new stated rate), then that filing must be made in a *new* section 205 docket as well as in the instant section 203 docket. In this case the filing would be a compliance filing in the section 203 docket, but a rate application in the section 205 docket. The Commission will notice such filings for public comment. In such filings, 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 Transaction, in addition to any requirements associated with filings made under section 205.[4] Such a hold harmless commitment will protect customers' wholesale power and transmission rates from being adversely affected by the Transaction.

Applicants state that the Proposed Transaction will not result in a regulatory gap nor will it diminish federal or state regulatory authority over any jurisdictional affiliates of Emera or TECO, including Tampa Electric. Rather, following the Proposed

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[1] Application at 10, citing *Tucson Electric Power Co.*, 151 FERC ¶ 61,089 at P 39 (2015).

[2] *PPL Corporation and E.ON U.S. LLC*, 133 FERC ¶ 61,083 (2010).

[3] *PPL Corporation and E.ON U.S. LLC*, 133 FERC ¶ 61,083 (2010), *ITC Midwest LLC and Northern States Power Company*, 133 FERC ¶ 61,169 (2010), and *BHE Holdings Inc. and Main & Maritimes Corporation*, 133 FERC ¶ 61,231 (2010).

[4] *Id.*

Transaction, Applicants assert that they and their jurisdictional affiliates and assets will remain subject to the Commission's jurisdiction under the FPA to the same extent that they are currently subject to the Commission's jurisdiction. Similarly, Applicants assert that they and their jurisdictional affiliates will remain subject to state jurisdiction under applicable laws and regulations to the same extent they are today in the various states within which they operate.

According to Applicants, New Mexico Gas is regulated by the New Mexico Commission. According to Applicants, prior review and approval by the New Mexico Commission will be required before consummation of the Proposed Transaction and the New Mexico Commission's regulatory oversight of New Mexico Gas will not be diminished as a result of the Proposed Transaction. Applicants state that, although the Proposed Transaction does not require prior approval of the Florida Commission, that state commission's regulation of Tampa Electric and its subsidiaries will not be diminished or otherwise adversely affected by the Proposed Transaction. Accordingly, Applicants state that the Proposed Transaction will have no adverse effect on regulation at either the federal or state level.

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, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, specifically: (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 the transaction will not impact the Commission jurisdictional accounts of any of their affiliates. The Applicants further represent that if the Proposed Transaction does, however, impact the accounts of any of their public utility affiliates, Applicants will submit the required final accounting entries within six months of the date of the Proposed Transaction

Since the Applicants state that the merger is occurring at the holding company level, and the Applicants do not propose any changes to the books and records of the jurisdictional subsidiaries, the Applicants' request for waiver of the rules under 33.5 is granted. However, if the merger affects the books and records of a jurisdictional subsidiary required to follow the Commission's Uniform System of Accounts, the Applicant shall promptly inform the Commission and provide the related accounting journal entries for review.

The filing was noticed on October 5, 2015 with comments, protests, or interventions due on or before October 26, 2015. None were received.

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 America 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.[5] To the extent that a transaction authorized under FPA section 203 results in a change in

[5] *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).

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:

(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 (2015) 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 Proposed Transaction has been consummated;

(9) Based on the Applicant's representations that the proposed transaction will not impact the accounts of any of their public utility affiliates, the request for waiver of section 33.5 is granted; and

(10) If the merger affects the books and records of a jurisdictional subsidiary required to follow the Commission's Uniform System of Accounts, then the Applicant shall submit its 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 transaction along with narrative explanations describing the basis for the entries.

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 (2015). 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 (2015).

Steve P. Rodgers, Director
Division of Electric Power
Regulation - West

Document Content(s)