Emera Case Report

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

December 14, 2012

Honorable John J. Cleveland, Senate Chair
Honorable Barry J. Hobbins, House Chair
Energy, Utilities and Technology Committee
115 State House Station
Augusta, Maine 04333

Re: Emera Case Report

Dear Senator Cleveland and Representative Hobbins:

During the 2012 session, the Legislature enacted "Resolve, Regarding the Laws Governing Electric Industry Restructuring," Resolves 2011, Chapter 154. The Resolve directed the Public Utilities Commission to submit a report summarizing its findings and decision in the adjudicatory proceeding pertaining to the request by the Bangor Hydro Electric Company (BHE) for exemptions and reorganization approvals (Docket No. 2011-170). The Resolve states that the report is to be submitted to the joint standing committee of the Legislature having jurisdiction over energy, utilities and technology matters by December 15, 2012.

Emera Inc., which is the ultimate parent corporation of both BHE and Maine Public Service (MPS), filed petitions for approval to reorganize under 35-A M.R.S.A. § 708, which provides that no reorganization of a public utility may take place without approval of the Commission unless otherwise exempted by Commission rule or order. A reorganization includes the creation, organization, consolidation, extension, merger, transfer of ownership or control, liquidation, dissolution or termination, direct or indirect, in whole or in part, of an affiliated interest. An affiliated interest is defined in the statute to include any person who owns directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of a public utility.

The statute further provides that no reorganization may be approved unless it is established by the applicant that it is consistent with the interests of the utility's ratepayers and investors. Therefore, the Commission has found that a proposed reorganization should only be approved if the total benefits flowing from the merger are equal to or greater than the

detriments or risks resulting from the transaction for both ratepayers and shareholders (a no net harm standard). Because shareholders' interests are generally protected through their corporate governance process, the Commission in these types of cases has focused on the likely harm to ratepayers. Finally, the statute provides that in granting approval for any reorganization, the Commission shall impose conditions or requirements that, in its judgment, are necessary to protect the interests of ratepayers.

In this proceeding Emera Inc., an affiliated interest of BHE, sought to increase its ownership interest in Algonquin Power & Utilities Corp. (APUC) to 25% and create an affiliated entity named Northeast Wind Holdings. APUC affiliates supply electricity in Maine and also own generation assets in MPS's service territory. Northeast Wind Holdings would be owned by Emera Inc. and it would acquire a 49% interest in certain existing and future wind projects in Maine and the Northeast to be developed and jointly owned (51%) by First Wind.

While the Commission identified a number of potential effects or consequences of the proposed transactions that would be detrimental to Maine ratepayers that could be manifested in the form of higher transmission and distribution (T&D) rates and harm to the competitiveness of the market from preferential treatment by utility affiliates, the Commission found that the proposed transactions would provide significant benefits to Maine ratepayers by facilitating the development of wind generation in Maine and New England in that such development tends to lower wholesale electricity rates. On April 30, 2012, the Commission approved the reorganization with numerous conditions that will, in the Commission's view, sufficiently mitigate risks to allow the Commission to conclude that the proposed transactions will not, on balance, be harmful to ratepayers. The Commission's Order is attached. A summary of the Commission's decision is outlined in pages 52-54 and a discussion of the specific conditions imposed by the Commission appears on pages 39-51.

The transactions approved have closed pursuant to the Commission's approval. However, several intervenors in the proceeding appealed the Commission's decision to the Law Court. That appeal remains pending. At this point, the Commission does not know when the Law Court will make a decision.

If you have any questions regarding the report, please do not hesitate to contact us.

Sincerely,

Thomas L. Welch, Chairman
On behalf of the Chairman and

David P. Littell, Commissioner
Mark A. Vannoy, Commissioner
Maine Public Utilities Commission

Attachment
cc: Energy, Utilities and Technology Committee Members
Jean Guzzetti, Legislative Analyst

REDACTED

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2011-170

April 30, 2012

BANGOR HYDRO-ELECTRIC COMPANY
and MAINE PUBLIC SERVICE COMPANY
Request for Exemptions and for
Reorganization Approvals

ORDER

WELCH, Chairman; VAFIADES and LITTELL, Commissioners

I. SUMMARY

By way of this Order, we approve the Petition of Bangor Hydro-Electric Company (BHE) and Maine Public Service Company (MPS) (jointly referred to as Petitioners) to create an affiliate that would be jointly owned by the ultimate parent of BHE and MPS, Emera, Inc. (Emera) and First Wind Holdings, LLC (First Wind). We also approve the proposed reorganization which would authorize an additional purchase by Emera of Algonquin Power & Utilities Corp. (APUC) stock that would result in APUC becoming an affiliate of BHE and MPS. We approve the "Proposed Transactions" because we find that the risks of harm to ratepayers do not exceed the benefits if substantial conditions on the approval of the transaction are imposed. Accordingly, we conclude that the Petitioners have met their burden of demonstrating no net harm to ratepayers as set forth in 35-A M.R.S.A. §708.

II. PROCEDURAL BACKGROUND

See Appendix A.

III. DESCRIPTION OF TRANSACTIONS

A. Overview of Participants

Emera is an energy and services company with investments in electricity generation, transmission and distribution, gas transmission and utility energy services. Emera operates throughout northeastern North America, in three Caribbean countries and in California. More than 80% of Emera's earnings come from regulated utilities, primarily Nova Scotia Power. Emera currently holds a 7.15% ownership interest in APUC. In addition to BHE, MPS and Nova Scotia Power, Emera holds a 12.92% interest in the Maritimes & Northeast natural gas pipeline, and investments in utility

companies in the Caribbean. Through Emera Energy Services (EES), its non-regulated subsidiary focused primarily on natural gas and electricity marketing and trading, Emera also owns Bayside Power, a 260 MW gas-fired combined cycle plant located in New Brunswick, and through a joint venture, owns 50% of Bear Swamp, a pumped storage hydro-electric facility located in Massachusetts. As of year-end 2011, Emera had $6.9 billion in total assets and revenues in 2011 totaling $2.1 billion. Emera is publically traded and listed on the Toronto Stock Exchange.

APUC owns and operates a $1.2 billion diversified portfolio of renewable and thermal electric generation, water distribution and wastewater treatment systems and natural gas distribution systems throughout North America. APUC is headquartered in Oakville, Ontario and is publically traded on the Toronto Stock Exchange. Through its electric generation subsidiary, Algonquin Power Co., APUC owns facilities interconnected to the MPS transmission system, including the Tinker hydro and diesel facilities in New Brunswick (34.5 MW), oil-fired, hydro and diesel facilities in Caribou (31 MW), the Flo's Inn diesel facility in Presque Isle (4.2 MW) and the Squa-Pan hydro facility in Squa-Pan (1.4 MW). In addition, APUC owns Algonquin Energy Services, Inc. (AES), which is active in the NMISA and ISO-NE markets, including at the retail level in the territories of MPS and BHE.

First Wind is an independent wind energy developer with operating wind energy projects in the Northeast, the western US and Hawaii totaling 750 MW installed capacity. First Wind owns and operates or owns and is developing the following projects in Maine, Vermont and New York which are part of the proposed transactions:

- Mars Hill Wind, 42 MW, Maine
- Stetson Wind, 57 MW, Maine
- Rollins Wind, 60 MW, Maine
- Stetson Wind II, 26 MW, Maine
- Sheffield Wind, 40 MW, Vermont
- Cohocton Wind, 87.5 MW, New York
- Dutch Hill Project, 37.5 MW, New York
- Steel Winds, 20 MW, New York

Petitioners originally sought Commission approval for four separate transactions, each of which would have increased the ownership interest of Emera in APUC and/or create a new ownership interest in a joint venture with First Wind creating an entity referred to as JV Holdco.

B. The APUC Transactions[1]

In April 2011, Emera and APUC formalized a strategic investment agreement which established how Emera and APUC would work together to pursue specific strategic investments. The areas of pursuit specified for APUC include investment opportunities relating to unregulated renewable generation, small electric utilities and gas distribution utilities. Areas of pursuit for Emera include investment opportunities related to renewable projects within the service territories of its regulated utilities and additional investments in large electric utilities.

APUC previously announced an agreement to acquire Granite State, a New Hampshire electric utility, and EnergyNorth, a New Hampshire local gas distribution utility, from National Grid for $285 million. Together Granite State and EnergyNorth serve approximately 126,000 electric and gas customers in New Hampshire. Emera will participate indirectly in the investment in Granite State and EnergyNorth by investing C$60 million in APUC in exchange for an increased ownership of APUC from 7.15% to approximately 15%. The proposed transaction is currently pending before the New Hampshire Public Utilities Commission.[2] At the present time, Emera and APUC jointly own California Pacific Electric Company (CALPECO), an electric distribution company serving approximately 47,000 customers in Lake Tahoe, CA. Emera has determined that it would be more consistent with the areas of pursuit as defined in the strategic investment agreement for APUC to own 100% of CALPECO and proposes to exchange its ownership interest in CALPECO for an additional 8,211,000 APUC shares, which would increase its ownership interest in APUC to approximately 20%.

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[1] The increase in Emera's holdings of APUC common shares is described sequentially; the actual percentages will depend on the order in which the transactions close. Any one transaction would result in Emera owning more than 10% of APUC and together would have resulted in a 25% interest in APUC. As described elsewhere in this Order, APUC has notified the Commission that it is withdrawing from the First Wind transaction. As a result, the cumulative effect of the proposed transactions would be to increase Emera's holdings of APUC common shares to just under 20%.

[2] DG 11-040, NATIONAL GRID USA, et al, Joint Petition for Authority to Transfer Ownership of Granite State Electric and EnergyNorth Natural Gas, Inc. to Liberty Energy Utilities Corp A settlement agreement was filed in that case in early April and hearings on the matter occurred on April 16-19.

Emera and APUC originally proposed to form a joint venture, Northeast Wind Holdings, LLC, (Northeast Wind) which would be owned 75% by Emera and 25% by APUC, to serve as the vehicle for acquiring a 49% ownership interest in First Wind's projects in Maine, Vermont and New York that are operating or near-operating. After the issuance of the Examiners' Report, the Petitioners notified the Commission that APUC had withdrawn from the Northeast Wind/JV Holdco transactions and that Emera will own 100% of Northeast Wind.

C. The First Wind Transaction

Northeast Wind would acquire a 49% interest in a joint venture operating company known now as JV Holdco. First Wind would retain a 51% ownership interest and would provide project management services to the operating wind projects. JV Holdco will enter into an Energy Management Services Agreement with EES under which EES will provide operation, maintenance and administrative services to JV Holdco and to the project companies.

The initial transaction consists of the transfer into JV Holdco of individual operating project companies consisting of the 370 MW total projects in Maine, Vermont and New York as listed above. Emera/Northeast Wind will invest a total of $333 million to acquire the 49% interest in JV Holdco consisting of $183 million equity investment and a $150 million loan to the operating company that may be converted to equity in the future.

In addition, Petitioners are seeking approval of several proposed transaction documents, which include a Project Transfer Agreement under which an additional 1200 MW of wind projects could be transferred to the joint venture over the next 10 years and which would commit Emera, through Northeast Wind, to provide 49% of the necessary funding.[3] At an estimated $2 million per MW in development and construction costs, the additional 1,200 MW could represent an overall investment cost of $2.4 billion; Northeast Wind's 49% portion would be $1.176 billion.

The proposed First Wind transaction also includes a term sheet setting out the key business principles for the transfer of the Stetson Generator Lead[4] to Northeast Wind or another Emera affiliate.

[3] Appendix B contains a list of the transaction documents. Appendix C contains a corporate organization chart showing the effect of the Proposed Transactions.

[4] The Stetson generator lead is a 38-mile 115kV generator lead from the Stetson Mountain substation to BHE's Keene Road substation in Chester.

IV. OVERVIEW OF PARTIES POSITION

A. Petitioners

Petitioners state that the Proposed Transactions will provide substantial benefits for BHE and MPS ratepayers and will not harm either the ISO-NE or northern Maine electricity markets. Petitioners argue that the Proposed Transactions are consistent with the interests of the utilities' ratepayers and investors and the benefits of the transactions are equal to or greater than the risks. Therefore, Petitioners state that the Commission should approve the transactions pursuant to 35-A M.R.S.A. § 708.

1. Benefits

Petitioners note that the Proposed Transactions will result in a capital infusion in First Wind, thereby, Petitioners contend, making First Wind a more competitive business. While Emera is not the only source of capital available to First Wind, Petitioners argue that it is unlikely that alternative financing would be comparable to the financing offered through the Proposed Transactions. Petitioners argue that it is reasonable to conclude that under the Proposed Transactions, more wind projects in Maine will be built than if First Wind were forced to seek alternative financing. Petitioners maintain that more wind projects in Maine will enhance Maine's ability to reach its statutory wind energy goals (as laid out in 35-A M.R.S.A. § 3402). Petitioners also state that First Wind has an excellent track record of supporting the local communities where it develops wind projects and therefore believes that further wind development in Maine by First Wind will benefit local towns.

Petitioners state that increased wind development in Maine will result in lowering the locational marginal price of energy in the ISO-NE market. They argue that wind energy generally displaces higher cost fossil-fueled power and lowers the overall marginal cost of power. Additionally, Petitioners note that because wind facilities are capital intensive but have few operating expenses over time, wind energy provides a general price suppression effect on the market because the overall cost of energy is lower over the long-term than it would be with power supplied by a volatile-priced fossil fuel.

Finally, Petitioners argue that the increased investment in APUC will be beneficial to BHE and MPS ratepayers because it will diversify Emera's investment portfolio and thereby minimize any possible risk to BHE or MPS.

2. No Harm

Petitioners argue that there is no credible evidence that the Proposed Transactions will harm either of the petitioning utilities or their ratepayers. Petitioners state that the Proposed Transactions will financially strengthen Emera and its Maine utilities. Emera contends that the proposed increase in ownership of APUC from 7.15% to potentially as much as 25% will not harm Emera. They note that in the

event that any concerns were to arise about APUC's profitability, or Emera were to see a higher and better use for the capital invested in APUC, it would be fairly easy for Emera to liquidate its investment.

Petitioners argue that, even if the Proposed Transactions present some financial risk to Emera, that BHE and MPS would be protected. While the transactions involve millions of dollars of investment, Petitioners state the size of the transactions is modest in comparison to Emera's overall assets. Petitioners argue that there is no reason to conclude that the modest risks to Emera presented by the Proposed Transactions would ever be big enough to affect BHE or MPS.

3. Conditions

In addressing possible conditions that were suggested in the Advisory Staff's Bench Memorandum, Petitioners do not oppose Staff's recommendations that BHE and MPS should maintain credit facilities that are separate and independent from those of Emera or other Emera affiliates. However, Petitioners believe it is unnecessary to mandate this requirement because they say this is the current structure of the credit facilities today. Petitioners also have reservations about whether a 45% minimum common equity ratio, as suggested by the Advisory Staff, is the appropriate number. Petitioners argue that if a minimum equity ratio were to be established, utilities would need to leave some margin of error above the minimum to avoid a violation and that this would create a further risk that the utility will be prevented from taking full advantage of beneficial leveraging opportunities. Petitioners believe that the proposed ring fencing provision should simply require the utility to report to the Commission if its equity ratio falls below the percentage set by the Commission.

Petitioners have no objection to a proposed ring fencing provision requiring BHE to notify the Commission in writing within thirty days if its common dividend payout ratio exceeds 1.0 on a two-year rolling average basis. However, Petitioners object to Staff's request that Petitioners consider a ring fencing provision that would hold ratepayers harmless for any increase in the petitioning utilities' cost of capital related to Emera's financial status. Petitioners argue that the proposal is too broad because it is an attempt to capture any harm that is "related" to Emera's financial status, instead of focusing solely on the potential harm that is likely to be caused by the Proposed Transactions. Petitioners also find it unfair that the provision would mean ratepayers are sheltered from increases in the cost of capital related to Emera's financial status, but would receive the full benefit of any such decreases in the cost of such capital.

4. Harm to Markets

Petitioners state that the Proposed Transactions will have no material negative influence on the price of electricity in New England. Petitioners argue that as a result of the Proposed Transactions, JV Holdco, APUC and Emera will control only a very small percentage of the ISO-NE market and therefore would be unlikely to

materially impact ISO-NE energy prices. Petitioners note that the type of energy resource that is controlled by First Wind and APUC (wind energy and run-of-the river and capacity reserve hydroelectric energy) in the ISO-NE market is not the type of energy resource that could be used to manipulate the market.

Petitioners argue that like the assets in ISO-NE, the assets in northern Maine are also poor candidates for the exercise of market power and that the Proposed Transactions will not harm the northern Maine market. Petitioners state that while the northern Maine market is not especially competitive, it will not be made worse by the Proposed Transactions.

5. Existing Protections

Petitioners argue that substantial protections exist in both ISO-NE and northern Maine markets and that these are adequate to prevent any harm. Petitioners note that standards of conduct have been established by the Federal Energy Regulatory Commission (FERC), the Commission, and the Northern Maine Independent System Administrator (NMISA). Petitioners argue that the standards of conduct are well entrenched in utility culture and provide adequate protection.

6. Maine Restructuring Act

Petitioners argue that the Proposed Transactions do not result in utility ownership of generation in violation of the Maine Restructuring Act. Petitioners state that under the plain terms of section 3204, only Commission-regulated utilities are capable of violating the anti-generation statute and that neither BHE nor MPS will have any measure of control over JV Holdco or APUC as a result of the Proposed Transactions. In addition, Petitioners argue that Intervenors' interpretation of the anti-generation statute would overturn well-established Commission precedent. Petitioners note that affiliates of BHE and MPS have owned Canadian generating facilities since those utilities were acquired by Emera. Finally, Petitioners argue that BHE's involvement in the Proposed Transactions and the Northeast Energy Link (NEL) Transmission project has not created a prohibited financial interest.

Petitioners argue that neither BHE nor MPS will control, or even have the ability to exercise control over, APUC or JV Holdco. Neither BHE nor MPS will hold any type of equity interest or voting securities of JV Holdco or APUC. Only Emera will indirectly own a percentage of JV Holdco and APUC. Petitioners also state that because all the financing is being provided by EES, BHE does not have a "financial interest" in the assets that are the subject of the Proposed Transactions. Finally, Petitioners contend that BHE's involvement in the development of these transactions and the NEL transmission project does not create a prohibited financial interest.

7. Reopened Issues

Petitioners state that APUC's withdrawal from the First Wind

Transaction has a limited impact and does not create a financial risk for BHE or MPS ratepayers. Petitioners also argue that APUC's withdrawal does not increase any of the concerns raised with regard to vertical or horizontal market power. Petitioners contend that the withdrawal will actually reduce the potential for such speculative risks associated with market power. Additionally, Petitioners state that if the Commission were to approve the Proposed Transactions with the condition that APUC divest certain of its thermal units in northern Maine, such a condition would increase competition in the northern Maine market.

B. Joint Intervenors

HWC, Boralex and IECG, collectively the Joint Intevenors, oppose the approval of the Proposed Transactions and urge the Commission to reject the reorganization petition. The Joint Intervenors argue that the Proposed Transactions create immediate and substantial harm to northern Maine ratepayers and pose substantial risks of harm to Maine ratepayers. The Joint Intervenors do not believe that the harms and risks can be effectively mitigated through the imposition of conditions or that the transactions provide a benefit to ratepayers that might otherwise offset these harms. Finally, Joint Intervenors argue that the Proposed Transactions all result in a direct or indirect financial interest in and ability to control generation and related assets by BHE and MPS, and therefore violate 35-A M.R.S.A. § 3204(5).

1. No Benefit

The Joint Intevenors argue that even without the Proposed Transactions, First Wind would be able to fulfill its wind development plans. Joint Intervenors state there is no evidence that the Proposed Transactions will result in the benefits claimed by the Petitioners. Instead, the Joint Intervenors state that if there are such benefits, they would occur without this transaction being approved. The Joint Intervenors argue that Petitioners have not performed any study of the potential impact of the Proposed Transactions on northern Maine ratepayers or on the competitive generation landscape in Maine. The Joint Intervenors argue that there is no substantial evidence that these transactions will benefit ratepayers. Therefore, Joint Intervenors contend that under the statute, unless Petitioners have demonstrated that the transactions present absolutely no harm to ratepayers, applying the Commission's standards, the transactions must not be approved.

2. Harms

The Joint Intervenors argue that the Proposed Transactions would create significant opportunities for mischief and misconduct. They contend that the risk of self-dealing rises exponentially when Emera owns wind projects serviced by BHE's transmission. The Joint Intervenors argue that there are many ways in which the operating utilities that control transmission and that have an affiliate that owns generation might use their control over transmission or related facilities to benefit its affiliate, disadvantage generation rivals, or impede new entry. The Joint Intervenors

state the Commission will have few tools to assure itself that projects built to benefit JV Holdco are not being constructed at ratepayer expense or disadvantage, or to benefit affiliated generators.

The Joint Intervenors state the decision to advance one transmission project or defer another has the potential to substantially impact interconnection costs to competing developers and adversely impact ratepayers. With shared officers, directors, and employees, they state there is a substantial risk that BHE or MPS will have advanced information regarding where generation projects are planned and that such information could affect their transmission planning decisions. Conversely, they argue Emera could provide First Wind advance information regarding where BHE and MPS transmission projects are planned. The Joint Intervenors argue that a major concern is where a transmission upgrade does not involve a new line, and therefore does not require a Certificate of Public Convenience and Necessity (CPCN). In this situation, the Commission would not have authority to review the investment.

The Joint Intervenors argue that ratepayers may be harmed by the potential financial problems of JV Holdco. They state that First Wind is a company on shaky financial ground and that the risk brought to Emera by the Proposed Transactions could harm its subsidiaries, including BHE and MPS.

3. Standards of Conduct

The Joint Intervenors argue that the FERC standards of conduct, which require a public utility's transmission function personnel to function independently of its market function employees, are not adequate to prevent misconduct. The Joint Intervenors argue that the standards of conduct provide only limited protection against the principal abuses of vertical market power with which Maine's restructuring law is concerned. Joint Intervenors contend that, as structured, there is simply no way for the Commission to know or evaluate how JV Holdco board members may use the confidential information that they obtain to benefit their affiliated generators. They state that the Maine codes of conduct would not apply to EES because it is not now actively selling at retail in Maine, and would not apply to First Wind, because as the transactions have been structured, First Wind would not be as affiliate. Additionally, Joint Intervenors maintain that Emera has a record of deficiency in complying with codes of conduct, noting a report to the Nova Scotia Utilities and Review Board by Liberty Consulting in 2007.

4. Harm Will Be Most Substantial in Northern Maine

The Joint Intervenors argue that the Proposed Transactions will result in direct and substantial harms in northern Maine. They contend that the Proposed Transactions will reduce the level of competition in northern Maine and will create additional horizontal market concentration by affiliating First Wind's Mars Hill generating unit with those of Algonquin Power Co. In addition, Joint Intervenors argue that the Proposed Transactions will increase vertical market power by creating an

affiliate relationship between MPS and two of the four generation owners located in the northern Maine market and one of the only two marketers. Joint Intervenors argue that the problem of vertical market integration is exacerbated by MPS's performance of the function of the Northern Maine Area Operator (NMAO).

5. Generation-Related Assets

The Joint Intervenors argue that as a result of the Proposed Transactions, BHE would have a direct and indirect financial interest in generation-related assets. Joint Intervenors contend that the record in this proceeding includes evidence of the role BHE employees have played in negotiating the Proposed Transactions with First Wind. Joint Intervenors also argue that one of the goals of the transactions is to allow Emera to use tax benefits generated by JV Holdco to shelter United States income generated by BHE and MPS. They argue the impact of this transaction will effectively be to allow BHE and MPS to avoid the tax impact of which FERC and the Commission allow them recovery, thereby boosting their return by a third or more. They argue that by virtue of this interest, BHE and MPS will have monetary incentives with respect to the operation and planning of their systems in favor of First Wind and JV Holdco in the same manner as if they owned the First Wind generation directly.

The Joint Intervenors also argue that a key element of the JV Holdco transaction is the proposed ownership by BHE of certain generator leads now used by First Wind or to be developed for JV Holdco assets. Joint Intervenors submit that generator leads are *per se* generation-related assets, and therefore BHE's proposed ownership of these assets would constitute a violation of Section 3204(5).

The Joint Intervenors argue that JV Holdco is simply a shell through which BHE/Emera will carry out its joint strategy, as alter egos and/or an integrated enterprise in an attempt to evade the policies of the Restructuring Act. Joint Intervenors argue that the Commission must therefore impute the financial interest that Emera has in the JV Holdco transaction to BHE and find that the transaction would violate the Restructuring Act and would be inconsistent with the public interest.

6. Conditions

The Joint Intervenors state that no set of conditions would adequately address issues of harm. They state the set of conditions necessary to hold ratepayers harmless would be so complex, so difficult to implement and administer, and so potentially harmful to ratepayers themselves, that it is unreasonable for the Commission to undertake the exercise of developing such a set of conditions.

7. Reopened Matters

a. HWC and ReEnergy

HWC and ReEnergy (replacing Boralex) argue that withdrawal of APUC from the proposed transaction will increase the financial burden on Emera within JV Holdco, and will therefore exacerbate the financial risk to ratepayers. HWC and ReEnergy are also concerned with the unbounded nature of the transaction and are concerned that Emera's interest in JV Holdco may increase beyond 49%. Additionally, HWC and ReEnergy contend that APUC's withdrawal will not have a positive impact on the northern Maine market. They note that APUC and MPS will still be affiliated interests, even if APUC exits the First Wind transaction. Thus, they argue, the removal of APUC from the transaction has little, if any impact on the northern Maine market issues. Finally, HWC and ReEnergy argue that Petitioners' assertions that APUC will sell some of its thermal units does little to resolve these problems because these units are essentially nonoperational and there is no evidence that such a sale will actually take place.

b. IECG

IECG argues that APUC's withdrawal from the JV Holdco transaction has a negative impact on both of the proposed transactions. IECG contends that APUC's withdrawal would have little to no impact on the horizontal market power issues raised in the proceeding because APUC and JV Holdco would remain affiliated through their common ownership in Emera. With respect to vertical integration, both APUC and JV Holdco would still become corporate affiliates of Emera, BHE, and MPS.

The IECG does not oppose approval of the proposed APUC Transaction. The IECG states that the proposed sale of APUC's thermal units resolves certain key issues relating to Emera's proposed investment in APUC. However, IECG states the commitment to divest the units must be unconditional and approval must be subject to the further condition that APUC be prohibited from acquiring or engaging in the development of generation assets in BHE's or MPS's territories. Finally, IECG states that the conditions proposed by Petitioners would be ineffective.

C. Office of the Public Advocate

The OPA urges the Commission to deny the Proposed Transactions, stating that unacceptable ratepayer risks would result from the transactions. The OPA contends that Emera, through the joint venture, would be at the head of a virtual vertically integrated utility and could use information and market power to advance its corporate strategy with little regulatory oversight by the Commission. The OPA states that there are few benefits associated with the Proposed Transactions and that the asserted benefit of increased wind development would occur by First Wind even if the transactions were not approved. The OPA contends that the Petitioners have failed to carry the required burden of proof because the risks outweigh the limited benefits.

1. Northern Maine

The OPA argues that as a result of the Proposed Transactions, Emera will enjoy an advantageous position that will be particularly troublesome in northern Maine where the electricity market is already highly concentrated. The OPA notes that if the Proposed Transactions are approved, only generation units owned by Boralex and New Brunswick Power will be independent of Emera's influence. The OPA states that the Herfindahl-Hirschmann Index (HHI), a tool used in the examination of market concentration, will increase as a result of the Proposed Transactions, making market power even more highly concentrated in northern Maine than before.

2. FERC Standards

The OPA argues that the FERC standards of conduct are insufficient to protect ratepayers because they will not prevent the flow of valuable information from the transmission affiliate to the market side within the family of affiliates that would make up the joint venture. The OPA states that all Emera executives and its transmission affiliates will be able to obtain this information. The OPA also notes that nowhere do the FERC standards prohibit the flow of information from the marketing affiliate to the transmission side of the company. In addition, the OPA notes that the "no conduit" rule of the FERC standards does not prevent the JV Holdco board, none of the members of which are market function employees, from obtaining non-public transmission information from MPS or BHE.

The OPA notes that the FERC standards restrict the flow of non-public transmission function information to users of the provider's transmission system unless that information is provided to all other users. The OPA notes that under this situation, Mr. Huskilson or Wayne O'Connor may obtain such information. The OPA argues that a great concern would be the temptation of Mr. Huskilson or Mr. O'Connor to purposefully share the information with Emera's joint venture partners to advance the interests of the joint venture. The OPA argues that the Commission should be very concerned about the opportunities for mischief presented by this situation and about the ease with which the misuse of non-public information could occur, with little chance of being discovered.

The OPA states that there would then be a possibility that BHE or MPS could undertake to upgrade components of its transmission system to reduce costs associated with a JV Holdco project interconnection. The OPA notes that BHE could install a new high voltage transformer or even a substation and no CPCN would be required for such a project, unless the facility is connected to a new transmission line. Without a requirement for Commission review, the OPA argues that such a situation could arise.

3. Emera's Conduct

The OPA states that findings by the Nova Scotia Utility and Review Board show how Emera and its affiliates have repeatedly violated codes and standards governing affiliated transactions. The OPA also argues that Emera regularly uses key Maine company employees to pursue generation interests for the benefit of Emera regardless of whether those activities serve any core interest of the Maine utility. The OPA believes this conduct highlights that there is no independent BHE Board to make decisions in the best interests of BHE, and that BHE's needs are subordinate to Emera.

4. Northeast Energy Link

The OPA contends that the development of NEL and the uncertainty over which entity was or should have been working on it serves to highlight the ratepayer risks that accompany the proposed transactions. The OPA argues that if the Proposed Transactions are approved, it is unclear how the Commission will be able to maintain the necessary oversight required to mitigate the risks to ratepayers.

5. Prior Approval and Increased Ownership

The OPA argues that prior approval of future projects, as requested by Petitioners, should not be granted. The OPA states that there is a risk imposed by the Project Transfer Agreement and Petitioners' demand that there be no condition requiring separate Commission review of future projects before they go into the joint venture. The OPA argues that there may be situations where the addition of a project to the joint venture without review and without the ability of the Commission to fashion conditions to protect the public interest would lead to undesirable outcomes. The OPA opposes provisions in the transaction documents that would allow Northeast Wind's ownership share in the joint venture to increase. The OPA states that the Commission should not pre-approve an increase in the ownership share because of the uncertainty of the future.

6. Financial Interest

The OPA argues that these transactions cannot be approved since to do so would mean that Maine utilities would have a "financial interest in or otherwise control generation" in violation of 35-A M.R.S.A. § 3204(5). The OPA states that BHE has a financial interest in generation because of an Emera-wide bonus structure that ties the compensation of utility employees to the performance of affiliates, including the generation affiliates that would be formed in the joint venture. Therefore, the OPA argues that because of this structure, the activities of a BHE executive would include looking out for the financial well-being of the JV Holdco projects because if they do well, the BHE executive would receive a bonus.

7. Reopened Matters

The OPA argues that APUC's withdrawal from the First Wind transaction will not reduce the risk of likely harm to ratepayers. The OPA notes that Emera would now be the sole investor in Northeast Wind and First Wind's sole partner in the joint venture. The OPA states that this increased investment in the joint venture will only increase ratepayer exposure to Emera's risk.

The OPA also states that the withdrawal of APUC from the joint venture increases Emera's influence and control in the northern Maine market and thus increases risk of harm. Additionally, the OPA contends that APUC's proposed sale of thermal units offers no benefits because the units have little value. The OPA states that regardless of the sale of these assets, the northern Maine market will remain highly concentrated with little competition.

D. Northern Maine Independent System Administrator

As the independent administrator of the Northern Maine Transmission System and wholesale markets, the NMISA takes no position on whether the relief requested in this proceeding should be granted. Nevertheless, the NMISA has concerns regarding the implications of the Proposed Transactions on the effectiveness of NMISA oversight of the northern Maine wholesale market, the operation of the Northern Maine Area Operator (NMAO), and the overall competitiveness of the market.

1. Competition

The NMISA is concerned about the competitive implications of the Proposed Transactions because it believes that the transactions would further concentrate the ownership of generation in northern Maine in the hands of Emera. NMISA argues that the transactions would put BHE and MPS in the position of being able to leverage their knowledge of the northern Maine market and transmission system to favor affiliated generation and generation development projects, to the detriment of northern Maine ratepayers.

NMISA argues that the northern Maine market is competitive, but due to the size of the northern Maine market, it is vulnerable to changes in ownership and control of transmission and generation. NMISA is concerned that BHE, as an affiliate of MPS, may actively solicit the development of wind generation in northern Maine while having access to non-public information about the Northern Maine Transmission System and market conditions. In addition, NMISA is concerned with Emera subsequently acquiring an ownership interest in the developers of that wind generation. The resulting problem is discriminatory treatment of competing development projects and the ultimate concentration of control of such generation in Emera subsidiaries affiliated with BHE and MPS.

NMISA is also concerned with the fact that Emera has chosen to pursue a transmission project that bypasses the Oakfield-MPS system connection. NMISA argues that the Oakfield-MPS interconnection would be less expensive than an

alternative Oakfield-BHE interconnection and NMISA sees this as evidence of an ultimate goal by Emera to affect the roll-in of northern Maine into ISO-NE and the subsidization of the transmission investment not by its affiliated generators, but by northern Maine and New England transmission ratepayers.

2. NMAO

NMISA also urges the Commission to consider the unique role that MPS plays as the NMAO. NMISA relies on MPS and Eastern Maine Electric Cooperative, acting collectively as the NMAO, to perform NMISA functions at certain times. NMISA states that the NMAO is responsible for overseeing the scheduling, dispatching and facilitating of all energy, capacity and ancillary services transactions in the northern Maine market. The NMISA Tariff prohibits the NMAO employees from giving preferential access to information to any third party. With the Proposed Transactions, MPS would be affiliated with a large share of the generation in northern Maine. NMISA argues that, at a minimum, the Commission should make clear that MPS is prohibited from disclosing to any other party non-public transmission, reliability or market information regarding northern Maine.

3. FERC Standards of Conduct

The NMISA states that while the FERC standards of conduct prohibit certain anticompetitive conduct as the Petitioners assert, NMISA argues that Petitioners' statements appear to understate the risks that the transactions would pose even with such standards in place. NMISA argues that aside from bare assertions, neither MPS nor BHE has provided any evidence that it actually applies the standards more broadly than required. NMISA states that there is evidence that Petitioners might not have a complete understanding of the minimum standards of conduct.

4. Reopened Matters

NMISA confined its supplemental brief to the second question posed – the issues regarding the northern Maine market. NMISA states that APUC's withdrawal does not change NMISA's concerns regarding the northern Maine market. NMISA argues that the withdrawal of APUC from the First Wind transaction will have no impact on the affiliated relationships between MPS and northern Maine generation that would be created by the proposed transactions. NMISA is concerned with the potential for discriminatory actions regarding information access, project development, and operational decisions.

NMISA also states that APUC's offer to divest certain thermal units does not change the Proposed Transactions because there is not a firm commitment to divest those units, Petitioners overstate the benefits of divestiture with regards to market concentration, and even if Petitioners' assertions regarding market concentration were accepted, the proposed transactions would still create affiliate relationships between MPS and a significant portion of the generation in northern Maine.

V. GOVERNING LEGAL STANDARDS

Under the provisions of 35-A M.R.S.A. §708, no reorganization of a public utility may take place without approval of the Commission unless otherwise exempted by rule or order of the Commission. Reorganization as used in section 708 includes the creation, organization, extension, consolidation, merger, transfer of ownership or control, liquidation, dissolution or termination, direct or indirect, in whole or in part, of an affiliated interest. Affiliated interest is further defined by 35-A M.R.S.A §707 to include:

1. Any person who owns directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of a public utility; and

2. Any person, 10% or more whose voting securities are owned, directly or indirectly, by an affiliated interest as defined above.

Emera, the ultimate parent of BHE is an affiliated interest of BHE under the first provision above. Because Emera would have a greater than 10% ownership interest in APUC, NE Wind and JV Holdco, the Proposed Transactions discussed in Section III above, require Commission approval under section 708.[5]

Section 708 further provides that no reorganization may be approved unless it is established by the applicant that the reorganization is consistent with the interests of the utility's ratepayers and investors. Thus, the proposed reorganization should only be approved if the total benefits flowing from the merger are equal to or greater than the detriments or risks resulting from the transaction for both ratepayers and shareholders. *New England Telephone & Telegraph Company and NYNEX Corporation, Proposed Joint Petition for Reorganization Intended to Effect the Merger with Bell Atlantic Corporation*, Docket No. 96-388, Order (Part II) at 7-8 (Feb. 6, 1997). Because shareholders' interests are generally protected through the corporate governance process, the Commission has focused on the likely harm to ratepayers. *CMP Group, Inc., et al., Request for Approval of Reorganization and of Affiliated Interest Transactions*, Docket No. 99-411, Order at 4 (Jan. 4, 2000).

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[5] On January 5, 2007 the Commission issued an Order Approving Stipulation in *Bangor Hydro-Electric Company, Request for Exemption (Limited Exemption) from the Reorganization Approval Requirements*, Docket No. 2006-543, Order Approving Stipulation (Jan, 5, 2007) which exempted certain reorganizations of BHE from the approval requirements of section 708. The creation of affiliated interests that will act as a competitive electricity provider was one of the reorganizations which were not exempted by our order. The Petitioners, rather than file a request for reorganization approval of the APUC Transaction, requested that the previously granted exemption to cover this transaction. Because we will apply the standards required by section 708 and determine whether the Proposed Transactions are consistent with the interests of the Petitioners' ratepayers and shareholders, the classification of the Petitioners request as a request for exemption rather than as a request for reorganization approval is irrelevant for decision making purposes.

Section 708 states that, in granting approval for any reorganization, the Commission shall impose such terms, conditions or requirements as in its judgment are necessary to protect the interests of ratepayers. These conditions shall include provisions which assure:

> (1) That the Commission has reasonable access to books, records, documents and other information relating to the utility or any of its affiliates;
>
> (2) That the Commission has all reasonable powers to detect, identify, review and approve or disapprove all transactions between affiliated interests;
>
> (3) That the utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is not impaired;
>
> (4) That the ability of the utility to provide safe, reasonable and adequate service is not impaired;
>
> (5) That the utility continues to subject to applicable laws, principles and rules governing the regulation of public utilities;
>
> (6) That the utility's credit is not impaired or adversely affected;
>
> (7) That reasonable limitations be imposed upon the total level of investment in nonutility business, except that the Commission may not approve or disapprove of the nature of the nonutility business;
>
> (8) That the Commission has reasonable remedial power including, but not limited to, the power, after notice to the utility and all affiliated entities of the issues to be determined and the opportunity for an adjudicatory proceeding, to order divestiture of or by the utility in the event that divestiture is necessary to protect the interest of the utility, ratepayers or investors; and
>
> (9) That neither ratepayers nor investors are adversely affected by the reorganization.

The Commission has thus held that in weighing the benefits and the risks of a proposed reorganization, it is appropriate for the Commission to consider the mitigating effect that any conditions developed pursuant to the above-referenced provisions would have on the likely risks to ratepayers. *Docket No. 99-411* at 4. Finally, the Commission has recognized that the burden of proving no net harm is on the utility applicant seeking approval of the proposed reorganization. *Id.*

We note that in our early orders interpreting the section 708 approval requirements, the Commission found that the approval requirements of section 708 are

met if the rates or service of the applicant utility would not be adversely affected by the transaction. *Bangor Hydro-Electric Company and Stonington and Dear Isle Power Company*, Joint Application to *Merge Property, Franchise, and Permits and for Authority to Discontinue Service*, Docket No. 87-109, Order Approving Stipulation and Merger (Nov. 10, 1987). Maine has, since such time, restructured the electric utility industry and deregulated generation service from T&D delivery service. 35-A M.R.S.A. §3201 *et.seq.* Therefore, in determining the benefits and harm to ratepayers of a proposed reorganization, we must also consider the impact that the Proposed Transactions would have on the competitive supply and generation markets.

The Proposed Transactions before us would result in the creation of affiliates of BHE and MPS which own and operate generation assets. Section 3204(5) states that:

> Except as otherwise permitted under this chapter, on or after March 1, 2000, an investor-owned transmission and distribution utility may not own, have a financial interest in or otherwise control generation or generation-related assets.

In our Order Denying Motion To Dismiss, issued in this proceeding on September 22, 2011, the Commission found that, although section 3204(5) clearly prohibits an investor-owned T&D utility from owning generation assets, the provision does not prohibit all ownership of generation assets in Maine (or other locations) by an affiliate of an T&D utility. The Commission did not, however, address whether the Proposed Transactions in this proceeding would result in utilities having a "financial interest" in or "otherwise control" generation assets within the meaning of section 3204(5). We address this threshold issue below.

VI. FINDING OF FACTS REGARDING PROPOSED TRANSACTIONS

A. Financial Interest In or Control of Generation

The Public Advocate and Joint Intervenors state that there are several factors that lead to the conclusion that BHE will have a financial interest and control of generation assets if the Proposed Transactions are approved. These include the lack of separate corporate identities between Emera and BHE, the critical role that BHE employees played in the negotiation of the Proposed Transactions and the NEL, the amount of effort and money expended by BHE on the Proposed Transactions, and the Emera-wide bonus structure that ties the compensation of utility employees to the overall performance of a consolidated Emera—including generation affiliates. Moreover, the Joint Intervenors argue that ownership of generator leads and NEL and related transmission opportunities creates a financial interest and control in generation assets. The Joint Intervenors assert that generation leads are per se generation-related assets and BHE will benefit financially through the construction of electric infrastructure associated with wind farm development.

The Petitioners argue that the Proposed Transactions do not implicate section 3204(5) in that neither BHE nor MPS will have any measure or form of control or have a financial interest in generation affiliates, and will not benefit or suffer as a result of the Proposed Transactions. According to the Petitioners, the statute requires a financial interest that results in some form of control over the assets and BHE's involvement in the negotiations of the Proposed Transactions does not demonstrate a financial interest or control regarding generation assets.

The public utility statutes do not define the terms financial interest or control and the Commission has never addressed the question of when a utility would have a financial interest or control of generation assets in a form that would be prohibited by the section 3204(5). As we stated in the Order Denying Motion To Dismiss, section 3204(5) does not prohibit a utility affiliate from owning and operating generation assets. *See e.g.,Request for Approval for Reorganization (Bellows Falls and Bear Swamp Power)*, Docket No. 2005-38 (Mar. 29, 2005) (approving Emera's acquisition of 50% of a pumped storage facility in Massachusetts). Therefore, a "financial interest" within the meaning of the statute must be something more then the interest that any corporate entity would have in the financial success of its affiliates. We agree with the Petitioners that the specific language of the statute which states that a utility "may not own, have a financial interest in or *otherwise* control" generation assets means that the financial interest requires the utility to have some type of control over the affiliates' generation assets. This would occur, for example, if a utility owned a subsidiary that owns and operates generation assets.

Under the facts of this case, we conclude that BHE and MPS will have only the type of financial interest that any entity has in the success of its affiliates and that the Proposed Transactions are not prohibited by the provisions of section 3204(5). The utilities will not have any equity interest or voting securities that will allow them to exercise any direct or indirect management control over the development or operation of generation assets within the meaning of the statute. Although we share some of the concerns cited by the OPA and the Joint Intervenors over the involvement that BHE employees have had in development activities that are not related to the core functions of a T&D utility (see section VI(C)(4)(e) below), these activities do not amount to a corporate control that would be prohibited by section 3204(5) and much of the concerning activities would be eliminated pursuant to the certain conditions specified in this Order (see section VI(D)(2) below).

Finally, we also find that generator leads and participant funded transmission projects are not generation-related assets within the meaning of section 3204(5) as argued by the Joint Intervenors. Generation assets are defined in the Electric Restructuring Act as all real estate, fixtures and personal property owned, controlled, operated or managed in connection with, or which facilitate the generation of electric power service. 35-A M.R.S.A. §3201(10). In addition, the term "generator interconnection facility" which is excluded from the facilities which are required to receive a CPCN is defined as a "transmission line, together with all associated equipment and facilities, that is constructed, owned and operated by a generator of

electricity solely for the purpose of electrically and physically interconnecting such generator to the transmission system of a transmission and distribution utility." 35-A M.R.S.A. §3132 (1-B). Therefore, while the transfer of generator interconnection facility to another entity such as BHE would change the status of the facility since it would be no longer owned and operated by the generator, the character of the facility itself would not change and would continue to be a transmission line as defined in the statute.

Facilities such as generator leads and the NEL are clearly electric transmission assets and are related to generation in same way as all transmission facilities—the transmission of electricity which has been generated by generation facilities. Therefore, we conclude that neither the transfer of the Stetson Generator Lead or generator leads that subsequently may be transferred to BHE or MPS would in themselves result in the Petitioners owning generation assets.

B Benefits of the Proposed Transactions

1. The First Wind Transaction

The Petitioners state that the First Wind Transaction will provide substantial benefits for BHE and MPS ratepayers. Specifically, First Wind's development and construction of wind power facilities in Maine and throughout the northeast will be enhanced as a result of the transaction. First Wind's enhanced ability to develop wind power will improve Maine's ability to reach its statutory wind energy targets of 2,000 MW by 2015, 3,000 MW by 2020 and 8,000 MW by 2030, 35-A M.R.S.A. § 3404. The increased economic activity resulting from the development, according to the Petitioners, will produce new jobs in the State, provide community benefits to Maine, and reduce wholesale energy prices as a result of wind power displacing higher cost resources.

The OPA and Joint Intervenors do not appear to dispute the benefits of wind power development in Maine and New England, but argue that these benefits would not be a result of the Proposed Transactions because First Wind would continue to develop its projects in the northeast even without Emera's financing involvement. The OPA and Joint Intervenors argue that, if the projects are sound economically, First Wind should be able to obtain financing from alternative sources. Accordingly, the position of the OPA and Joint Intervenors is that the Proposed Transactions provide no benefits to ratepayers to offset any harm or risks of the Transactions.

The Legislature has found that wind energy makes a "significant contribution to the general welfare of the citizens of the State" because 1) it is an economically feasible, large scale energy resource that does not rely on fossil fuel; 2) wind energy may be used to displace electricity generated from fossil fuels, thereby promoting energy security and improving environmental quality; and 3) wind energy has the potential to provide energy for renewable energy-based heating systems and fuel for electric powered motor vehicles of which has the potential to increase the State's

energy independence, to help stabilize total residential and commercial energy bills and to reduce greenhouse gas emissions. 35-A M.R.S.A. § 3402. In addition to aiding in the achievement of the objectives of the Legislature, the development of additional wind power in the region provides a direct benefit to ratepayers through lower electricity rates that occur when wind power generation displaces higher cost resources. This occurs because wind is a "price taking" resource which typically bids into the market at zero, having the effect of displacing higher priced resources and reducing clearing prices in the wholesale energy market. While no party has quantified the energy price-reduction benefit to be provided by the additional wind development related to the Proposed Transactions, we find the benefit to be real and potentially significant, although not specifically quantified.[6]

The Petitioners have also argued that the Proposed Transactions will provide additional jobs and other economic benefits to the State. Because we find that the Proposed Transactions will result in real and potentially significant direct benefits to ratepayers, we do not need to address whether it is appropriate for us to consider the substantial evidence in the record regarding more general economic benefits, such as job creation, benefits to Maine companies and property tax reductions. We do note, however, that increased economic activity tends to moderate utility rates by increasing the use of the system and spreading fixed costs among a larger customer base. As noted above, the OPA and Joint Intervenors take the position that any benefits of additional wind power development in the State and the region would occur absent the Proposed Transactions and, therefore, there are no real benefits of the transactions themselves. The evidence, as well as the parties' arguments on this point, appears to be somewhat inconsistent and contradictory. On the one hand, the Petitioners argue that the Emera's investment aids in First Wind's development activities, while also arguing that First Wind is financially strong, and that any projects held by JV HoldCo would be subject to the Annex II standards, both of which indicate that the development activities would occur absent the transaction. Conversely, the opponents to the transactions argue that the investment is risky while also arguing that the development would occur absent the transaction.

As discussed at a technical conference, First Wind sought to access additional capital through an Initial Public Offering (IPO) in 2010; however, the IPO was withdrawn prior to issuance. Mr. Alvarez explained that First Wind could have gone forward with the IPO, but that the terms which the market would have produced at that time were not favorable because the market was undervaluing First Wind's development side of the business. Under the terms of the Proposed Transactions, Northeast Wind will provide a $183 million equity contribution stake in the current JV

[6] We note that the Energy Analysis Inc. study submitted by intervenors in this case states that delivery of more Northern Maine and Canadian wind energy into the ISO-NE would decrease the price of electricity in Maine by $3.50 per megawatt-hour in 2016 and further decrease the price of electricity by $6.50 in 2035. Dec.8, 2011 Hearing Tr. at 21, IECG -20-20-A at 5.

Holdco assets, will refinance $150 million of debt at more favorable terms, and provide an expedited path to finance new "shovel ready" projects that qualify under Annex II of the Project Transfer Agreement. As Mr. Alvarez explained, this financing mechanism essentially divorces the development side of the business from the operations side of the business. In response to discovery and also questions at the hearing, Mr. Alvarez acknowledged that First Wind would continue its development activities if the Proposed Transactions do not go forward. Mr. Alvarez explained, however, that the initial equity infusion and the expedited source of financing will facilitate First Wind's development activities. Thus, while it is probable that projects which qualify for Annex II and are "shovel ready" would receive some type of financing in the market, the Project Transfer Agreement provides both an expedited and sure path for financing such projects. At the technical conference, Mr. Huskilson explained:

> I think our point of view would be that Emera brings a lot of value to the relationship, as does Algonquin because of the fact that Algonquin has done a lot of this development before, and that Emera has ready access to capital and creates certainty for First Wind as to how they can finance the next project and the next project, which I think up to this point, there's been some uncertainty as to how that happens. So I think that makes a big difference as to what the future looks like. That doesn't mean that they couldn't continue to go on as a company separately, but it certainly is a different future for them working with Emera than it was prior to that. That would be my opinion.

We find, based on the totality of the evidence before us, that there are benefits to ratepayers that would result from the First Wind Transaction and that those benefits are potentially significant if the financing mechanism approved herein is utilized to develop some or all of the new projects envisioned. The Proposed Transactions would provide First Wind with immediate access to $183 million dollars to fund development activities in the near term and a level of certainty for future financing on reasonable terms over a long-term. We conclude that this will result in more wind projects being developed sooner than if alternative financing needed to be secured. Thus, by accelerating the availability of wind power in the market, the Proposed Transactions will benefit ratepayers by creating more certainty that the benefits described above will be realized by Maine ratepayers than would otherwise be the case.

2. The APUC Transaction

In their brief, the Petitioners argue that Emera's proposal to increase its investment in APUC to as much as 25% will benefit Emera, because Emera has carefully considered the risks and benefits of the investment. The Petitioners note that APUC has a proven track record and that since it is publicly traded, Emera will be able to liquidate its investment if it was able to achieve superior returns in alternative investments. The Petitioners are correct in their assertion that there is no credible

evidence that increasing Emera's investment in APUC will financially hurt Emera. However, there also is no credible evidence that increasing Emera's investment in APUC will provide any benefit to BHE or MPS's ratepayers. Specifically, Petitioners have not provided any evidence that Emera's investment in APUC is superior to other investment alternatives which might be available or that any benefits that do occur will incur to BHE or MPS's ratepayers. Therefore, we find that there are no ratepayer benefits or ratepayer harm associated with the APUC Transactions.

C. Risks of the Transaction

1. Unbounded Nature of the First Wind Agreement

As part of their request in this case, Petitioners are not only asking for approval to establish a new affiliate, JV Holdco, but are also asking for approval of the agreements which comprise the overall Emera/First Wind transaction.[7] While the initial investment level and share in JV Holdco are clear from the agreements, the ultimate investment level and investment share are not bounded by the agreements and are a cause for concern since such indefiniteness makes assessing the risks associated with the Proposed Transactions a much more difficult exercise.

Under the terms of the Project Transfer Agreement, Northeast Wind will invest $183 Million into JV Holdco and 370 MWs of assets will be transferred from the First Wind corporate family to JV Holdco. Under the terms of the Project Transfer Agreement, JV Holdco is obligated to accept additional generation assets totaling up to 1200 MW through 2022 if such assets meet the Annex II criteria.

While the amount of this potential future investment is capped in terms of generation capacity, the additional dollar investment for the projects to be transferred into JV Holdco is not. In addition to the amount of money that Emera will invest in JV Holdco under the Project Transfer Agreement, the magnitude of Emera's investment is further clouded by the provisions of the transaction agreements which would allow Northeast Wind's ownership interest in JV Holdco to exceed 49%. Specifically, Northeast Wind could trigger the "shotgun provision" of the Limited Liability Agreement, which would result in NE Wind buying 100% of First Wind's interest in JV Holdco or NE Wind's interest in JV Holdco. In addition, in the event that First Wind receives an offer from a third party to purchase First Wind's interest in JV Holdco, NE Wind may exercise its right of first refusal under the Limited Liability Company Agreement.

Northeast Wind could also wind up with an increased ownership interest in JV Holdco if a call for capital contribution is issued by the JV Holdco Board of Managers or managing member and First Wind does not contribute the capital required of it. Although the Northeast Wind ownership split was proposed as 75% Emera and 25% APUC, with APUC's withdrawal from the transactions, Emera will have a 100%

[7] These agreements are described in Appendix B.

ownership interest in Northeast Wind and thus ultimately in JV Holdco by exercising its rights under the shotgun provision of the Northeast Wind limited liability company agreement. Finally, given the nature of the approval of the transaction documents requested by the Petitioners, post-approval amendments to the transaction documents would not be prohibited and the parties to the joint venture could chose to expand the universe of wind projects that could be placed into JV Holdco. It is worth noting, however, that stages of wind power development with the highest degree of risk (site selection, acquisition of property rights, site testing, permitting and arrangements for power purchase agreements) remains with First Wind. This reduces the risks of negative financial consequences on Emera (and its affiliates) and increases the likelihood that the Proposed Transactions will enhance the financial position of Emera, benefiting its Maine utility affiliates indirectly.

2. Financial Risk to Ratepayers of Investments

The initial investment by Emera directly in the Northeast Wind/JV Holdco transactions is estimated by Emera at approximately $350 million. Petitioners' Exhibit 28. Combined with the increased investment by Emera in APUC of C$ 60 million as a result of the CALPECO and Granite State/Energy North transactions, this represents a cumulative incremental outlay associated with the Proposed Transactions of approximately $410 million. Assuming an estimated development cost of $1.5 million to $3.0 million per MW for the additional 1200 MW of First Wind projects subject to the Project Transfer Agreement, the additional Emera equity funded investment in JV Holdco projects over the next 10 years to range between $353 million and $710 million.[8] Petitioners' Exhibit 29. At the high end of the anticipated investment, the Proposed Transactions represent a commitment of resources by Emera of $1.1 billion.[9] The withdrawal of APUC from the Northeast Wind/JV Holdco transaction also has the impact of reducing Emera's ownership percentage in APUC to approximately 20%. The approvals sought by Petitioners include allowing Emera's ownership of APUC to increase to 25% in accordance with the Strategic Investment Agreement. The additional potential investment in APUC that would be permitted is estimated at **Begin Confidential** [10] **End Confidential**, bringing the total Emera potential exposure to **Begin Confidential** **End Confidential** over the next ten years.

[8] This Emera equity investment represents a total project cost of $1.8 to $3.6 billion dollars for projects transferred into JV Holdco, 60% of which would be JV Holdco debt financed and 40% would be equity investment.

[9] This analysis does not take into account the additional Emera investment that could occur as a result of the exercise of any of the shotgun provisions in the JV Holdco LLC agreement. As Mr. Alvarez testified, the exercise price relative to the shotgun provisions is not necessarily equal to invested capital, but may reflect a party's view of greater asset value in the joint venture. Dec. 6, 2011 Hearing Tr. 114-115. We make no attempt here to quantify the additional Emera investment in the joint venture as a result of the shotgun provisions.

[10] Examiners' Data Request 4-2.

Although we believe the simultaneous failure of all JV Holdco projects and complete loss of a significant portion of Emera's holdings in APUC is a remote outcome,[11] in assessing the possible effect on BHE and MPS of financial problems at the Emera level and the potential risk to ratepayers, it is appropriate to consider the greatest extent of the potential loss associated with the Proposed Transactions. At the high end, the combined First Wind and APUC transactions and the additional investment in APUC as contemplated in the Strategic Investment Agreement represent a potential commitment of Emera resources of **Begin Confidential End Confidential** over the next ten years. Based on Emera's projection that its asset base will increase over the same time frame to $18 billion[12], the overall financial commitment would represent approximately 7% of Emera's projected total assets.

We recognize that a loss representing an amount that could ultimately exceed $1 billion would not be insignificant even for a company as large as and with the anticipated growth as Emera. However, appropriately structured ring-fencing provisions can, in our view, sufficiently insulate the regulated utilities from the risks associated with financial difficulties, even of this relative magnitude and no matter how remote, elsewhere in the corporate family.

3. Horizontal Market Power

a. Overview

Horizontal market power exists when a seller can unduly influence market prices due to market concentration and its position in the market to a price above levels that would ordinarily be produced by a competitive market. Market concentration is most typically measured by the Herfindahl-Hirshman Index (HHI). An HHI is calculated by taking the sum of the squares of market share percentages of the market participants. The Horizontal Merger Guidelines established by the U.S. Department of Justice and Federal Trade Commission (hereinafter the DOJ/FTC Merger Guidelines) use the following market classifications in assessing the competitive effects of a proposed merger;

- Unconcentrated market-HHI below 1500;
- Moderately concentrated market-HHI between 1500 and 2500; and

[11] This is especially the case in that projects that meet the Annex II criteria are likely to be sound business investments.

[12] Petitioners Exhibit 29.

- Highly concentrated market-HHI above 2500.

In addition, the DOJ/FTC Merger Guidelines establish the following general standards in assessing competitive concerns:[13]

- Small Change in Concentration- Mergers involving an increase in the HHI of less than 100 points are unlikely to have adverse competitive effects and ordinarily require no further analysis.

- Unconcentrated Markets- Mergers resulting in unconcentrated markets are unlikely to have adverse competitive effects and ordinarily require no further analysis.

- Moderately Concentrated Markets- Mergers resulting in moderately concentrated markets that involve an increase in the HHI of more than 100 points potentially raise significant competitive concerns and often warrant scrutiny.

- Highly Concentrated Markets- Mergers resulting in highly concentrated markets that involve an increase in the HHI of between 100 points and 200 points potentially raise significant competitive concerns and often warrant scrutiny. Mergers resulting in highly concentrated markets that involve an increase in the HHI of more than 200 points will be presumed to be likely to enhance market power.

As noted by the Guidelines, the purpose of the thresholds is not to provide a rigid screen, but rather to provide one way to identify whether some mergers are unlikely to raise competitive concerns and others for which it is particularly important to examine whether other competitive factors confirm, reinforce or counteract the potentially harmful effects of increased concentration.[14]

The OPA, through the testimony of its witness Mr. Vondle, and the Joint Intervenors through their brief have raised concerns that the proposed mergers will result in the parties to the transactions being able to exercise horizontal market power. Because the assets which are the subject of the Proposed Transactions are located in two distinct markets, ISO-NE and northern Maine, the competitive impacts in each of the markets will be addressed separately.

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[13] DOJ/FTC Guidelines at 19.

[14] Id.

b. The ISO – NE Market

Under the Proposed Transactions, various assets in the ISO-NE market would undergo an ownership interest change and become part of the Emera family. Table 1 provides a list of Emera family assets that would exist in ISO-NE post-transaction.

Table 1

Generator	Capacity	Location	Current Owner
Stetson Wind	57 MW	ME	First Wind
Stetson Wind II	26 MW	ME	First Wind
Rollins Wind	60 MW	ME	First Wind
Sheffield Wind	40 MW	VT	First Wind
Bear Swamp	300 MW	MA	Emera
APUC	74.6 MW	Various	APUC

The ISO-NE market includes approximately 33,000 MW of generation. The average monthly HHI in the ISO-NE market in 2010 was approximately 600. We agree with Mr. Stoddard's assessment of the ISO-NE market as "intensively competitive." Under the DOJ/FTC guidelines, the ISO-NE market is considered unconcentrated. The Emera/APUC/First Wind ownership combination in the ISO-NE market would be approximately 560 MW, or approximately 1.7% of the total and would do little to change the overall HHI.

Mr. Vondle testified that Emera, through its joint ownership interests, will be able to charge higher prices in the ISO-NE market. Given the competitive nature of the market, the relatively small size of the joint ownership interests, and the intermittent and price-taking nature of wind generation, we do not agree that this could occur. We therefore find that the Proposed Transactions will not pose any horizontal market power issues in the ISO-NE market.

c. The Northern Maine Market

Unlike the rest of the Maine which is part of the ISO-NE market and control area, northern Maine is electrically part of the Canadian Maritime region which also includes the electric loads and generation of New Brunswick, as well as Nova Scotia and Prince Edward Island. The northern Maine market is administered by the NMISA and includes the service territories of MPS, HWC, EMEC and Van Buren Light and Power. Unlike ISO-NE, the NMISA does not administer a spot market for power or other energy products. Rather, resources are dispatched by the NMISA pursuant to bilateral contracts. Table 2 below presents the generation assets which are currently owned by either First Wind or APUC in the northern Maine market.

Table 2

Facility Name	Current Owner	Fuel Type	Rated Capacity
Caribou	APUC	Oil Diesel Hydro	21.7 MW 7.0 MW 0.9 MW
Flo's Inn	APUC	Diesel	4.2 MW
Squa-Pan	APUC	Hydro	1.4 MW
Tinker	APUC	Diesel Hydro	1.0 MW 33.5 MW
Mars Hill	First Wind	Wind	13.0 MW

Other than the assets listed above, the only other in-region generation is the 33 MW plant at Fort Fairfield and the 37 MW at Ashland (currently deactivated).[15] In addition, 90 MW of northern Maine load can be served via a tie with the New Brunswick system.

The northern Maine market then can be seen as being both very small, approximately 130 MW of peak load, and very concentrated. As presented in Table 3 below, the existing HHI for northern Maine, including the capacity from the New Brunswick tie, is 3,056. The DOJ/FTC Guidelines would classify the northern Maine Market as "highly concentrated." Under the terms of the Modified Proposed Transaction, APUC will not have any ownership interest in JV Holdco or any asset currently owned by First Wind. However, for HHI calculation purposes since Emera will have ownership interests in both the First Wind asset and in APUC it is appropriate to treat such units as commonly owned. Viewing the APUC facilities and the Mars Hill facility as one market participant, the HHI increases by 290 points to 3,346.

Table 3
Northern Maine Pre-Reorganization HHI

Entity	MW	Share	HHI Contribution
First Wind	13	5%	27
APUC	69.7	28%	777
Boralex	77.3	31%	956
Imports	90	36%	1,296
Total	250		3,056

[15] As indicated in Joint Intervenors Brief, Boralex recently sold the Ashland and Fort Fairfield facilities to ReEnergy Holdings, LLC. Boralex continues to own the Sherman Station Plant which has been inactive for a number of years.

Table 4
Northern Maine Post-Reorganization HHI

Entity	MW	Share	HHI Contribution
APUC & FW	82.7	33%	1,094
Boralex	77.3	31%	956
Imports	90	36%	1,296
Total	250		3,346

For the reasons set forth below, we find that the Modified Proposed Transactions will not have a significant impact on the concentration of the market in northern Maine.

The Merger Guidelines themselves indicate that the market concentration thresholds are in fact guidelines and should not be rigidly applied.[16] The guidelines note that in accessing the competitive impacts of a merger, the DOJ/FTC will give weight to the merging parties' market shares in a relevant market, the level of concentration, and the change in concentration caused by the merger.[17] Assuming that the APUC assets and the First Wind assets are viewed as being under common control after the transactions, the northern Maine market, which is currently highly concentrated, would remain highly concentrated. As Tables 3 and 4 above demonstrate, the concentration in northern Maine is a result of the high market shares of three market participants: APUC, Boralex and New Brunswick Power's share through the inter-tie.

In response to the Examiner's Report, APUC has offered to sell its thermal U-S generation based assets in Northern Maine[18] as a condition of approval to mitigate any market power issues. At the March 15, 2012 Technical Conference, Mr. Stoddard presented testimony that if APUC did in fact divest its fossil-fired U.S. generation assets in Northern Maine, the HHI would actually decrease by 234 points. See Table 5 below. While there is some dispute between NMISA and the Petitioners over the status and capacity of some of the units in Mr. Stoddard's HHI calculation, we find that the divestiture of APUC's fossil-fired assets would provide some, although not a significant, level of benefit to northern Maine ratepayers due to the age and economic feasibility of operating such units. Given this incremental benefit, we will require the divestiture of APUC's thermal units in northern Maine, as a condition of our approval of the APUC transaction.

[16] DOJ/FTC Guidelines at 19.

[17] Id. at 3.

[18] Flo's Inn Diesel (4.2 MW), Caribou Steam (21.7 MW), Caribou Diesel (7MW) comprise APUC's fossil-fired U-S based generation fleet in Northern Maine.

Table 5.
Northern Maine HHI with APUC Divestiture

Entity	MW	Share2	HHI Contribution
APUC + FW	49.8	20%	397
DivestCo	32.9	13%	173
RE Energy (Boralex)	77.3	31%	956
Imports	90	36%	1,296
TOTAL	250	100%	2,822

We note that even with divestiture, the northern Maine market will remain concentrated. However, we do not believe that Emera's ownership interest in 13 MWs of wind resources in Mars Hill along with its minority ownership in APUC and APUC's remaining ownership interest in northern Maine generation (Tinker Hydro and Tinker Diesel) would significantly alter the equation. Because the NMISA does not administer a day ahead market for the northern Maine region, market power over the price of energy could not be exercised by withholding the Mars Hill or the Tinker Hydro resource from the day ahead market since no such market exists. While it may be possible to influence contract prices in the market by withholding a resource, it would seem that such manipulation would require coordination of contractual terms and/or other form of collusion which would likely be readily detectable. This possibility would be reduced further by the fact that APUC will no longer have an ownership interest in the Mars Hill facility under the Modified Proposed Transaction.

4. Affiliate Preferential Treatment

a. Overview

As part of the Commission's Report on Electric Utility Restructuring provided to the Legislature in December, 1996, the Commission concluded that effective competition among generation providers is critical for consumers to benefit from a right to choose suppliers and that effective competition in large part depends upon the T&D utility being a neutral link between power providers and customers. The Commission also took the view at that time that, for several reasons, structural separation between a utility and a generation affiliate would be inadequate. First, structural separation would require regulatory oversight which would be cumbersome, litigious and expensive. Second, the Commission found that the incentives of affiliated companies were essentially identical to the incentives present in a vertically integrated utility structure.

The Commission cited a number of "schemes" that could favor an affiliated generation company at the expense of T&D customers. Such schemes include: creative accounting for shared costs; preferential access to T&D customer information and records; insufficient reimbursement to the regulated T&D utility for personnel transferred to the unregulated entity; subsidizing expansion or refusal to expand the transmission and distribution system to the benefit of affiliated

generation companies over other competitors; and preferential bundling of ancillary services.[19]

As discussed in section III above, the Proposed Transactions would result in BHE and MPS becoming corporate affiliates of entities that develop, own and operate generation assets in Maine and entities that provide wholesale and retail electricity service. These affiliations raise significant concerns regarding the possible exercise of preferential treatment by a utility to its competitive affiliates. This preferential treatment could include allowing an affiliated generator or CEP to gain access to non-public, strategically important information or through favorable treatment in terms of construction of or access to transmission facilities or services. The consequences could appear in two somewhat different respects: (1) harm to ratepayers of BHE and MPS in the form of higher T&D rates; and (2) harm to the competiveness of the market (and competitors in the market) from preferential treatment of affiliates which lead ultimately to higher electricity supply prices for consumers. While we have concluded that the proposed affiliate relationships do not per se violate the statute, they raise, for the first time, the issues of undue affiliate preference discussed in the Commission's Restructuring Report.

The Petitioners argue, both in their briefs and through the testimony of their witness Robert Stoddard, that conditions have changed since the time of the Commissions' Restructuring Report. Specifically, they note that FERC and the various states have become experienced in dealing with generator affiliates of T&D companies in competitive markets and have established codes of conduct to govern such relationships. The Petitioners also note that system operators now perform a number of the functions formerly performed by integrated utilities and essentially have taken the T&D utility out of the middle of most transactions with generators. We generally agree with the Petitioners on this point. However, significant concerns remain with respect to utility affiliations with generator developers. These concerns are addressed below, as well as particular issues of possible affiliate preferences which have been raised during the course of the proceeding.

b. Codes of Conduct

In recognition of the possible harms which might result from preferential treatment, the FERC, the Commission and the NMISA have enacted "codes of conduct" governing certain types of activities and relationships between utilities and their affiliates. The FERC codes of conduct require utility "transmission function employees"[20] to function independently of utility or affiliate "market function

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[19] *Electric Utility Industry Restructuring,* Docket No. 95-462, Report and Recommended Plan at 35-37.

[20] "Transmission function employees" means an employee, contractor, consultant or agent of a transmission provider who actively and personally engages on a day-to-day basis in transmission functions, 18 CFR §358.3(i). "Transmission functions" are

employees,"[21] and prohibit these groups of employees from sharing confidential information gained in performing their responsibilities, 18 CFR Part 358. The FERC codes also have a no-conduit provision that prohibits employees that are neither transmission function or market function employees from transferring non-public transmission information to market function employees, 18 CFR §358.6. Additionally, the FERC codes contain a general non-discriminatory provision which requires a transmission provider to "apply all tariff provisions relating to the sale or purchase of open access transmission service in a fair and impartial manner" and further prohibits a transmission provider from giving "undue preference to any person in matters relating to the sale or purchase of transmission service," 18 CFR §358.4.

The FERC codes directly prohibit only the transfer of non-public transmission operations information to marketing functioning employees of the utility or utility affiliates. The information restriction provisions of the FERC codes do not explicitly apply to information transferred from generation or market affiliates to a transmission utility nor do these codes explicitly apply to generation planning and development information. Moreover, on the facts of this case, the codes' information restriction provisions would not apply to employees of First Wind, because the Proposed Transactions would not result in First Wind itself (as opposed to JV Holdco) becoming affiliated with BHE and MPS. However, the FERC codes' general undue preference provisions would likely apply to the transfer of most, if not all, non-public information among a transmission utility and it generation affiliates for any use that provides an affiliate preference.

The Commission's codes of conduct, Chapter 304, apply to utilities and affiliated retail competitive electricity providers (CEPs). These codes prohibit the transfer of non-public information from the utility to an affiliated CEP, prohibit any type of joint marketing and limit employee sharing. Because these codes govern only a utility's relationship and interactions with an affiliated CEP, they would only apply to AES. They would not be at all applicable to the utilities' relationship and interactions with First Wind or First Wind affiliates, Emera or EES, and do not apply to transmission or generation information.

The opponents to the Proposed Transactions reject the notion that the codes of conduct are sufficient to protect ratepayers or the competitive market from harm. First, the OPA and the Joint Intervenors point to the fact that the

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defined as the planning, directing, organizing or carrying out of day-to-day transmission operations, including the granting and denying of transmission service requests, 18 CFR §358.3(h).

[21] "Marketing function employees" are defined as an employee, contractor or agent of a transmission provider or an affiliate of a transmission provider who actively and personally engages on a day-to-day basis in marketing functions, 18 CFR §358.3(d). "Marketing function" is defined as the sale for resale of electric energy in interstate commerce, 18 CFR §358.3(c).

codes do not restrict executives such as Mr. Huskilson, President and CEO of Emera, from receiving both T&D non-public information and generation market information. Second, the codes do not prevent communications between players who do not fall into the "transmission function or market function" categories. Third, the OPA and Joint Intervenors express concern that it will be difficult if not impossible to detect violations of the codes. And finally, the OPA and the Joint Intervenors argue that Emera does not have a good track record, as evidenced by its relationship with its Nova Scotia utility, of honoring codes of conduct.

We share a number of the concerns raised by the Intervenors and we conclude that, standing alone without further clarification concerning their scope and application, the codes of conduct are insufficient to protect against potential inappropriate affiliate preferences that may result if the Proposed Transactions are consummated.

Finally, the FERC codes, although useful in several respects, may not sufficiently protect against preferential treatment that could occur in the context of this transaction. The FERC codes would not prevent senior employees and key decision-makers within the Emera organization from having knowledge of (and making decisions about) utility investment in transmission system upgrades as well as knowledge of affiliate generation development and investment plans. As a consequence of such knowledge a utility may, for example, choose to upgrade a certain portion of its transmission system that would benefit a generator affiliate (e.g. lower the costs of interconnection or relieve congestion and/or losses thus increasing marginal prices paid to the generator) or defer projects that may be beneficial to unaffiliated competitors.

Such preferential treatment, although unlawful, could be difficult to detect. It would be difficult for the Commission to determine what was in the mind of senior employees when particular decisions were made. Because practically all transmission-related investments would have some reliability benefit, preferential treatment could be masked, or it could be subtle such as a change in the order or priority of transmission system upgrades in a way that would benefit an affiliate generator. The question, as discussed below, is whether conditions can be crafted to provide sufficient transparency to discourage and detect unlawful conduct.

The Petitioners argue that deficiencies that otherwise might exist in the codes of conduct are filled in by the "no conduit" and the "non-discrimination" provisions of the FERC codes. The "no conduit" provision in the FERC codes does operate to prevent senior employees of the utilities or Emera from transferring non-public transmission operation information to marketing functioning employees. However, senior employees within the Emera organization would still have knowledge of both transmission and generation activities of the affiliated

corporations.[22] We are not suggesting that anyone within the Emera organization would intentionally act in violation of the codes of conduct. However, as noted above, it would be difficult for senior employees to segregate such information when making corporate decisions.

We conclude that, while the use of conditions to prevent discriminatory behavior may not provide the same degree of protection for customers and competitors as full ownership separation between T&D utilities and generation, we can craft conditions that will assure that the risk of harm to ratepayers is sufficiently balanced by the benefits available from the transaction. As described in more detail below, we have developed conditions for the approval of these transactions that provide both sufficient transparency and sufficient deterrence to behavior that could harm ratepayers.

c. The Role of the System Operator

At the hearing, Mr. Stoddard testified that because of the role of the ISO-NE in the market, T&D utilities are now in the middle of very few transactions. Specifically, the T&D utilities no longer have any role in buying power, buying capacity, or conducting resource planning (both generation and transmission). In addition, decisions concerning market operations are made by ISO-NE. We agree with the testimony of Mr. Stoddard that the number of interactions between T&D utilities and generators has been greatly reduced due to the role that independent system operators have taken on with regards to planning, dispatch and market administration. There are however, certain notable and significant exceptions involving transmission planning, and, in northern Maine, system operation and dispatch.

First, as Mr. Stoddard recognized during the hearing, utilities are generally responsible for conducting system impact studies regarding generation interconnections within their service territories. Because a significant amount of discretion or judgment is usually involved in such studies, preferential treatment could occur with respect to both affiliates and unaffiliated competitor interconnection requests. The result of such potential preferential treatment could be unnecessarily higher utility rates for customers and harm to the competitive generation retail and wholesale electricity markets. As noted by the Joint Intervenors, studies have not been free of controversy in the past when conducted by vertically integrated utilities.

Second, while ISO-NE sets the planning standards and directs the planning for the bulk power transmission system, the local T&D utilities have a prominent role in designing transmission solutions, including the specific

[22] The BHE training manual recognizes this concern. It states "[w]hile it is certainly difficult to embargo information in one's head, such supervisory and executive personnel should strive to do so." HWC-02-135-L at 1-6.

elements and locations for transmission system upgrades, which could be important factors affecting existing and planned generators. In addition, T&D utilities have retained the authority for the planning of the local transmission system.

The Petitioners argue, based on the testimony of Mr. Stoddard, that since transmission engineers are concerned about the security of the system, the Commission should not concerned about those planning areas still within the T&D utility's control. Mr. Stoddard referred to this phenomenon as the "geek factor". The Petitioners also argue that planning decisions related to transmission construction would be subject to Commission review as part of a CPCN proceeding.

The Petitioners' arguments here do not entirely allay our concerns. First, as can be seen from recent CPCN proceedings before the Commission, there is a significant amount of discretion by the utility planners in determining the modeling assumptions used to identify and design solutions for reliability violations. With regards to the requirements for CPCN approval, we note that only transmission lines of 69kV and above require CPCN approval under 35-A M.R.S.A.§ 3132. New substation construction which is not part of a transmission line construction project, and lower voltage transmission lines would not be subject to review, nor generally would transmission line or substation upgrades and rebuilds.

With respect to system operation, Mr. Stoddard's testimony focused on the situation in ISO-NE. The situation in northern Maine, however, is significantly different. Although NMISA performs certain similar functions to ISO-NE in northern Maine, MPS serves as the Northern Maine Area Operator, providing the critical function of dispatching generation within the system. This role provides MPS employees with additional opportunities to act in a discriminatory manner. However, in our view, this risk is substantially mitigated by the NMISA rules that require MPS to notify the NMISA if it has denied a transmission reservation request or ordered curtailment of a generator.

In addition, in contrast to ISO-NE, the NMISA is governed by a stakeholder board. The NMISA rules contain certain protections to prevent a utility that has affiliates in the northern Maine market from "stacking" the board. Because MPS, as a transmission operator, will always have a representative on NMISA Board, the NMISA rules would prevent employees or agents of MPS's affiliated generators or CEPs from serving on the Board. While this rule appears to prevent board stacking, it would be extremely difficult to determine whether, when voting on a particular matter, MPS was voting in the best interest of its ratepayers or whether it was voting in a way which served the interests of its generation or CEP affiliates.

d. Northeast Energy Link

The Northeast Energy Link (NEL) is a high voltage DC transmission project that would be developed by BHE and National Grid. The NEL would have a capacity of 1100 MW and run from BHE's Orrington substation to a

National Grid substation in Tewksbury, Massachusetts. The NEL would provide a transmission path for electricity generated by renewable resources in Maine and Canada to load centers in Massachusetts and Connecticut. BHE negotiated a Memorandum of Understanding (MOU) for First Wind to be the "anchor tenant" and purchase 1000 MW of the NEL's transmission capacity for 20 years. Because the MOU supports the financial investment of Emera in JV Holdco, it raises questions as to whether First Wind was given preferential treatment with respect to the NEL.

BHE representatives testified that it and National Grid conducted an informal "open season" for access to the NEL and that First Wind was the only developer that expressed interest. However, when asked to document the lack of interest in the MOU from other developers BHE was unable to do so.[23] Although it may well be the case that First Wind was not given any kind of preference, the blurring of roles among the Emera companies personnel creates the kind of concern that would be avoided by the absence of any corporate affiliations between Emera and First Wind.

The BHE Board approved a development budget for the NEL and, as of October 2011, BHE had spent most of that approved budget on this project. Given the merging of interests between Emera, BHE and First Wind with regards to the NEL, it is difficult, at this point, to determine on whose behalf the NEL development is being pursued. During the hearings, Mr. Huskilson agreed that a participant-funded merchant line such as the NEL would provide no direct benefit to BHE's customers in terms of system reliability or cost savings (other than those that would occur generally throughout the region).[24] We note, however, that the question of the NEL ownership and structure, if the project proceeds, will be addressed during its own set of regulatory reviews.

e. Lack of Corporate Separation

Some of the concerns discussed above are highlighted by an apparent lack of corporate separation displayed between Emera, EES and BHE. This lack of separation is suggested by the activities and negotiation of the Proposed Transactions, as well as the NEL MOU with First Wind. The record in this proceeding shows that BHE, MPS, EES, and Emera are managed in a closely coordinated manner, share employees, officers, and directors, develop strategy jointly, and provide a variety services to each other. As a result, there is a free exchange of information among the corporate entities.

The activities of Gregory Blunden, BHE's Vice President of Business Development, with respect to the Proposed Transactions and the NEL

[23] ODR 4-12.

[24] Dec. 6, 2012 Hearing Tr. 195-196.

illustrate the kind of activity that may give rise to concerns over an insufficient degree of corporate separation within the Emera organization. Mr. Blunden, a long-time high level employee at Emera, was transferred to BHE in 2009 to work on "business development" activities. These development activities initially focused on generation development opportunities for BHE[25] and included discussions with First Wind. At a point in time, it was determined that any business contractual agreement with First Wind would involve Emera Energy, rather than BHE. Nevertheless, Mr. Blunden, who continued to be a BHE employee, played a significant role in the negotiations of the business agreements on behalf of Emera. At approximately the same time, Mr. Blunden was involved with the negotiations that resulted in the First Wind NEL MOU. With respect to the Proposed Transactions and NEL, BHE and Emera appear to have played interchangeable roles in pursuit and engagement of First Wind.

In addition, the devotion of a significant amount of BHE resources to non-regulated business ventures, as well as large merchant, participant-funded transmission development, raises concerns that senior management may be distracted from BHE's core T&D utility responsibilities. As resources and attention are diverted to non-core utility operations, there is an increasing likelihood that T&D operations may suffer.

f. Emera's Affiliate Transactions with Its Nova Scotia Utility

The OPA and the Joint Intevenors cite a number of decisions of the Nova Scotia Utility and Review Board (NSUARB) to demonstrate how Emera and its affiliates have repeatedly violated codes and standards of conduct governing affiliate transactions. The Petitioners respond that the NSUARB actually only found one violation in it its decisions concerning the affiliate transactions between Nova Scotia Power, Inc. (NSPI) a subsidiary of Emera, and NSPI's affiliates. In addition, the Petitioners note that unlike Maine, Nova Scotia does not require pre-approval of affiliate transactions, and thus, the problems noted by the NSUARB simply would not occur in Maine due to the requirements of 35-A M.R.S.A. §707.

As noted in the NSUARB's most recent decision concerning NSPI's affiliate transactions, the issue of transactions between NSPI and its affiliated companies under the umbrella of Emera, has been "for some time, a major area of concern to the Board." *In the Matter of the Public Utilities Act and In the Matter of An Application by Nova Scotia Power Incorporated*, 2011 NSUARB 37 at 13 (March 9, 2011). The March 2011 decision goes on to provide a brief history of the NSPI code of conduct which was initially developed following NSPI's change of ownership to Emera that resulted in certain transactions between NSPI and its affiliates which raised concerns in 1996 that the affiliates may have been deriving undue financial benefits to

[25] Although utility development of generation resources is unlawful under current law, BHE has participated in discussions in recent years regarding a change in that law. There is nothing at all inappropriate for BHE to exercise it constitutional right to seek a change in the State law.

the detriment of ratepayers. *Id.* A formal version of the code of conduct came into effect on September 16, 2001.[26] Subsequently, compliance with the code was monitored through annual reports. The NSUARB noted that:

> Over the years there have been a number of transactions between NSPI and its affiliates which, in the Board's view, were questionable. Several examples are:
>
> - Request for approval within seven days for an immediate purchase of a $34.5 million gas turbine owned and stored by Emera Inc., with NSPI's justification that without it, a significant risk of loss of service to customers, and a detriment to the economic development of the Province, would be created;
>
> - Salaries paid to senior officials conducting business for both Emera and NSPI without adequate records of time spent, resulting in the Board significantly reducing the amount of costs which could be used by NSPI for the purpose of calculating customer rates;
>
> - Outsourcing of fuel procurement to Emera Energy Services which the Board deemed inappropriate;
>
> - A proposed assignment of NSPI's interest in a gas contract with Shell Canada Ltd. to Emera Energy, Inc. at "no cost" which, following IRs issued by the Board, was abandoned by NSPI, an action first disclosed to the Board in testimony by NSPI officials at a 2002 public hearing on a general application;
>
> - A three year contract between NSPI and EUS without an adequate process to satisfy the Board that an appropriate evaluation of costs and ability by other potential suppliers was carried out before awarding the contract to EUS." *Id. at 14.*

The Board went on to note in its March, 2011 decision that on February 24, 2009, the Board sent NSPI a letter which stated that given past events (some of which are discussed above), the NSPI no longer would be given "the benefit of the doubt" on the issue and that a strong code was required. *Id. at 15.*

While there are certainly differences between Maine and Nova Scotia's approval requirements for affiliate transactions, the most recent decision of the NSUARB indicates that Emera's affiliate in Nova Scotia, NSPI, has had some difficulties complying with the NSUARB's codes of conduct. We recognize that

[26] As discussed in the NSUARB's Order, the primary purpose of the code of conduct is to ensure that all transactions NSPI enters into with affiliates are designed to provide benefits to NSPI's customers.

NSPI's performance is not necessarily predictive of how the entities to the Proposed Transactions would perform and do not suggest that Emera and its affiliates have a culture of disregard for codes of conduct or other regulations. However, the NSUARB's decision is illustrative of the concerns discussed above. Specifically, those concerns being that codes of conduct are often subject to differing interpretations and that they can be both difficult and costly to administer. We emphasize that this difficulty is not a reason to conclude that codes of conduct cannot be structured to be sufficiently effective.

g. Generator Lead Transfers

As part of the First Wind Transaction, the parties have agreed to transfer the Stetson Generator Lead to NE Wind.[27] While the agreement does not indicate who within NE Wind would own the Stetson Generator Lead, as the case has unfolded the parties have clearly indicated that BHE will be the ultimate owner. At one of the technical conferences in the case, Mr. Alvarez testified that as part of future projects which are transferred to JV Holdco under the Project Transfer Agreement, the parties have also committed to explore the transfer of any associated generator leads. Mr. Alvarez explained that First Wind was not in the transmission business and it preferred not to own and maintain generator leads if possible.

Under the provisions of the Generator Lead Term Sheet, the Stetson Generator Lead will be purchased for a price which exceeds book value. Ordinarily, a transfer between an affiliate and a utility for above net book value would raise issues concerning cross-subsidization. At the hearings, however, BHE witness Blunden clearly committed that the costs for the Stetson Generator Lead as well as any future generator leads which might be transferred under the terms of the Project Transfer Agreement, would not be included in BHE's revenue requirements and that BHE ratepayers would not be responsible for the costs associated with the transferred generator leads including O&M costs.[28] To ensure compliance with this commitment, it would be reasonable for the Commission to have the discretion to require, on a case-by-case basis, whether generator leads should be transferred to BHE or into a separate subsidiary. Also, to ensure that competitors are treated equally, it would be reasonable to require that BHE offer to acquire competitor's generator leads on terms which are equal to those provided to First Wind and/or JV Holdco.

VII. CONDITIONS

As discussed in sections VI(C) above, the Proposed Transaction creates potentially substantial risks for ratepayers. These risks may be manifest in two somewhat different respects: (1) harm to ratepayers of BHE and MPS in the form of higher T&D rates; and (2) harm to the competiveness of the market (and competitors in the market) from preferential treatment of affiliates which lead ultimately to higher

[27] Petitioner Exh. 14.

[28] Dec. 8, 2011 Hearing Tr. 246-252.

electricity supply prices for consumers. To mitigate these risks and associated potential harm, we make our approval subject to a variety of substantial and comprehensive conditions. These conditions are described below.[29]

A. Interconnection Conditions

These conditions are designed to increase the degree of transparency concerning T&D activities where opportunities for discrimination in favor of generation affiliates or against non-affiliated generation might exist.

1. Bangor Hydro and Maine Public will expand their annual Chapter 330 Reports to include the following information:

a) identification of all planned transmission substation work at the 34.5 kV level and above;

b) identification of all planned construction or rebuilding (including reconductoring) of transmission lines at the 34.5 kV level and above;

c) identification of the most likely potential alternative to each item in (a) and (b) above;

d) identification of all existing generators or proposed generators that have submitted an interconnection request that would be substantially affected by any projects referenced in the Report;

e) explanation and analysis of how the generators and proposed generators identified in (d) may be affected by any projects that are referenced in the Report, including with respect to (1) interconnection timing and cost, and (2) access to and prices in the wholesale markets;

f) include a signed affidavit from the President and Chief Operating Officer of each utility that he/she has reviewed the Chapter 330 Report with the person(s) responsible for its development and affirms that the utility has not planned or made any improvements to the transmission system with the intent of giving any existing or proposed generator preferential treatment nor with the intent of providing any ratepayer subsidy in terms of allocating the costs of any such improvements between generators and ratepayers.

2. The Commission may commence a formal investigation into any project planned improvement referenced in the Report if it determines that the project(s) could result in preferential treatment of an affiliated generator or a subsidy to one or

[29] For the most part, the conditions contained in this Order are the same or similar to those contained in the January 13, 2012 Examiners' Report. We have modified the conditions to some degree based on the comments of the parties.

more affiliated generators by BHE or MPS. In the investigation, the Commission will determine whether the project(s) must receive prior approval or must be developed/owned by an affiliate and thus excluded from retail transmission rates. To the extent the Commission orders either BHE or MPS not to proceed with a project based on a finding of preferential treatment whether by subsidy or otherwise, the utilities will not seek recovery of development costs associated with the project. To the extent the Commission orders modification of the project based on a finding of preferential treatment, the utilities will not seek recovery of any incremental costs associated with the required modifications.

3. The Commission shall provide that those portions of the Chapter 330 Report that are non-public, confidential, or proprietary may be submitted under an appropriate Protective Order.

B. Structural Separation

These conditions serve two purposes, both relating principally to the issues raised regarding "vertical" integration. First, these conditions make clear that the exchange of information that would facilitate discrimination is prohibited. Second, by limiting the movement of employees between generation affiliates and the T&D utilities, the conditions reduce the chances that a particular employee would have the opportunity to use information gained in one capacity in a discriminatory manner in the other capacity.

1. No BHE and MPS employee may provide services to any affiliate, including services relating to the commercial development of generation or sale of energy and services related to the engineering, construction and maintenance of generator leads and interconnection facilities, unless Bangor Hydro or Maine Public first secures Section 707 approval of an written agreement to provide those services. For purposes of this provision, First Wind and all its subsidiaries other than any third party investor in any of First Wind's family of companies shall be considered "affiliates" of BHE and MPS if the Proposed Transactions are approved and closed. This prohibition does not apply to any activity relating to the development of public policy governing BHE's and MPS's future involvement in the commercial development and/or ownership of generation.

2. The utility employee sharing limitations in the Maine codes of conduct (Ch. 304 § 3(K)) shall be extended to all non-regulated affiliates and to First Wind Holdings and all of its affiliates that have any generation-related or transmission-related operations in New England and New York.

3. BHE and MPS employees may not disclose (or use a conduit for the disclosure of) non-public transmission and distribution information to any employee of any New England Affiliate, nor use any such information to the undue advantage of any New England Affiliate, regardless of whether those employees are considered market function employees under FERC standards of conduct. For

purposes of this provision, the First Wind Subsidiaries shall be considered to be New England Affiliates if the Proposed Transactions are approved and closed.

4. Sections B(3) does not apply in the event the New England Affiliate makes an interconnection request to BHE and MPS and the disclosure of confidential information is reasonably necessary to process the interconnection request. Any such information disclosed in connection with an interconnection request shall be used solely for the purpose of the interconnection request.

C. Conditions Related to Financial Risk

These conditions help insulate BHE and MPS from the effects of financial difficulties of their corporate parent and the parent's non-regulated affiliates. In effect, these conditions combine to ensure that BHE and MPS will be no worse off as a result of the reorganizations than they would be as stand-alone companies.

1. BHE and MPS will maintain separate and independent credit facilities from Emera or any affiliate.

2. BHE will not file a voluntary bankruptcy petition unless its Board of Directors determines: (i) the Company is insolvent; (ii) the Company is unable to pay its debts as they come due; or (iii) bankruptcy is otherwise appropriate for the Company.

3. BHE will maintain its common equity ratio at a level of not less than forty percent (40%) of the total capital at all times provided that the Commission may establish, for good cause shown, a lower ratio in connection with its authorization of a future debt issuance proposed by BHE. Total capital is defined as the sum of the following components: common equity, preferred equity, long-term debt, current maturities long-term debt (CML TD), long term capital leases, current maturities long-term capital leases, and short-term debt.

4. The Board of Directors of BHE will continue to set dividend policy for BHE. Commencing on January 1, 2012, if at any time BHE's common dividend payout ratio exceeds 1.0 (i.e. 100%) on a two-year rolling average basis, BHE shall notify the Commission in writing within thirty (30) days of the end of the calendar quarter. The required notification shall explain the circumstances and the financial condition of BHE.

5. Neither BHE nor MPS will seek to recover from ratepayers any transaction costs associated with the Proposed Transactions.

D. Conditions Related to Codes of Conduct

These conditions address various opportunities for discriminatory conduct. They address: participation in and transparency of NMISA activities; extend codes of

conduct to the newly affiliated companies; treatment of generator leads; retail marketing; and insulate BHE and MPS customers from the financial impacts of cancelled plant relating to the NEL. In addition, these conditions make clear that, in the event the Commission concludes, after hearing, that ratepayer harm is resulting from the affiliation notwithstanding the imposed conditions, the Commission retains the authority to require BHE and MPS to terminate the affiliation through divestiture.

1. As long as Emera holds 10% or greater voting securities in APUC, the Maine codes of conduct are extended to any APUC affiliate operating as a competitive electricity provider within Maine, regardless of whether the corporate entity is affiliated under applicable laws or rules. Moreover, any such entity must comply with the marketing share limitations and reporting requirements in Chapter 304 of the Commission's rules.

2. Any employee or representative of Emera and its affiliates (except for BHE and MPS), APUC or its affiliates or First Wind and its affiliates is prohibited from sitting on the NMISA Board, provided that the restriction on the participation of any APUC employee or representative shall cease in the event Emera no longer holds 10% or greater of APUC's outstanding voting securities.

3. To the extent that MPS, in its capacity as operator of the northern Maine transmission system, denies a transmission reservation request, orders a curtailment of a generator, or otherwise deviates from the NMISA balanced schedule, such activity must be reported (subject to appropriate protective order) to the Commission at the same time as reporting to NMISA. At the option of the Commission, after notice and opportunity for hearing, MPS shall cease to serve as the operator of the Northern Maine transmission system.

4. The acquisition or construction of all generator leads and other transmission-related facilities directly associated with one or more affiliated or potentially affiliated generators by BHE and MPS shall require the issuance of a CPCN, which may be issued with such conditions the Commission determines necessary to protect the interest of ratepayers, including requirements that ownership and operation of any such transmission assets be through a separate corporate entity or subsidiary of BHE and MPS and that the costs of development (including cancelled plant), construction, operations and maintenance not be paid for by BHE and MPS ratepayers, either through State or federal jurisdictional rates unless BHE or MPS establish to the Commission's satisfaction that there is no net increase in their retail rates as a result of the transaction.

5. EES will not carry out retail marketing in Maine and EES (nor other Emera affiliates involved in the operation, marketing, and scheduling of power plants) will not provide any service to APUC or its affiliates relating to any services offered in New England.

6. In the event the NEL project is abandoned, canceled or otherwise not constructed and operated, BHE will not seek recovery of, through FERC jurisdictional rates or otherwise, of any cancelled plant costs it has booked to the project. BHE shall separately track and identify all costs associated with the NEL.

7. BHE and MPS shall seek Commission approval for the transfer of the Stetson generator lead or other transmission or generator lead assets associated with JV Holdco projects to BHE or MPS or their subsidiaries.

8. The FERC codes of conduct will apply to BHE and MPS employees with respect to (1) non-public transmission planning and development information and (2) non-public generation operation, planning and development. The FERC codes of conduct will also apply to the transfer of information to/from any affiliate employee and to/from any utility employee.

9. No component of a BHE or MPS employee compensation package (including bonuses) may be directly related to the financial performance of Northeast Wind and its affiliates or JV Holdco. Compensation packages for BHE or MPS employees may involve a direct or indirect relationship to the financial performance of Emera.

10. An independent external audit of compliance with codes of conduct and affiliate relations (including First Wind and affiliates) shall be completed prior to the two year anniversary of the closing of the Proposed Transactions. The Commission shall develop the scope of the audit and select the auditor. The costs of the audit, including the Commission's external costs of developing the scope of the audit shall not be recovered from ratepayers. In its discretion, the Commission may require additional audits.

E. Conditions Related to Jurisdiction/Approval/Reporting

These conditions provide for some specific reporting that will enable the Commission to monitor the transactions between the T&D utilities and their affiliates, and also ensure that the Commission will have access to the materials it needs should disputes arise concerning these matters.

1. BHE and MPS will provide annual reports, on April 1 of each year, of employee transfers between the utilities and their non-regulated corporate affiliates and to First Wind and all of its affiliates that have any generation-related or transmission-related operations in Maine.

2. BHE and MPS will provide written notification to the Commission of any changes in the composition of their Board of Directors or those of Northeast Wind, JV Holdco, Emera, Inc. or EES within 30 days of the date of such change.

3. All affiliate transactions which affect BHE's and MPS's books of account shall be recorded in U.S. dollar terms.

4. Emera and any of its affiliates shall be subject to Commission jurisdiction with respect to discovery and participation in Commission proceedings to the extent their activities relate to BHE and MPS operations in Maine as determined by the Commission and for purposes of Commission enforcement of any order issued in this proceeding (Docket No. 2011-170), including the monitoring of compliance with any conditions of approval.

F. APUC Specific Condition

1. APUC commits to not allow Emera and its affiliates to participate in decision-making with respect to APUC's Maine generation, its Tinker generation resources in New Brunswick, and the Maine based competitive energy provider/marketing business of Algonquin, Algonquin Energy Service (AES), including having any member of APUC's Board of Directors who is also an employee of Emera or its subsidiaries recused and prohibited from participating in any manner in board agenda items that consider these businesses.

2. APUC agrees to submit to Commission jurisdiction for all affiliate preference issues between Emera and its affiliates and APUC and its affiliates concerning APUC's generation resources in Maine and Tinker Hydro and the development or operation of transmission serving such generation resources.

3. APUC and its affiliates agree to provide the Commission access to their books and records, respond to discovery and participate in Commission proceedings to the extent their activities relate to BHE and MPS operations in Maine as determined by the Commission, and APUC's Maine generation resources without asserting lack of jurisdiction as a defense or reason not to comply.

4. APUC and any of its affiliates agree to submit to Commission jurisdiction for purposes of Commission enforcement of any order issued in this proceeding including compliance with the conditions of approval.

5. APUC shall provide within 120 days a plan for the disposition of the thermal generation units located within the territory of MPS and/or BHE. The Commission shall have the authority to require APUC to divest any or all of those units in the event that the Commission concludes that it would be in the public interest to do so.

G. First Wind Specific Conditions

1. All project transfers under the proposed transaction shall be reported to the Commission no later that than 30 days subsequent to any such transfer. The report shall include a summary of the financial investment of Emera in the specific project and cumulative investment of all projects transferred; and information related to the current Emera credit ratings, any changes since the last project transfer and an explanation of the reasons for any credit rating change. The Commission may open an investigation at any time regarding the cumulative investment in all projects and any related matter.

2. The exercise of any provision in the Transaction Document that would result in Emera's or Northeast Wind's ownership interest in JV Holdco exceeding 50% shall be reported to the Commission in writing no less than 30 days prior to the scheduled transaction. The Commission may open an investigation within 30 days of receipt of the report, in which case the scheduled transaction shall be suspended pending Commission investigation.

3. First Wind, JV Holdco and their subsidiaries owning or developing assets or projects in New England agree to submit to Commission jurisdiction for all inquires and investigations of affiliate preference issues between them and Emera and its affiliates concerning First Wind's generation resources in Maine or the development or operation of transmission serving such generation resources.

4. First Wind, JV Holdco and their subsidiaries owning or developing assets or projects in New England agree to provide the Commission access to their books and records, respond to discovery and participate in Commission proceedings to the extent their activities relate to BHE and MPS operations in Maine as determined by the Commission, without asserting lack of jurisdiction as a defense or reason not to comply.

5. First Wind, JV Holdco and their subsidiaries owning or developing assets or projects in New England agree not to serve as a competitive electricity provider in Maine.

6. First Wind and each of its subsidiaries agree to submit to Commission jurisdiction for purposes of Commission enforcement of any order issued in this proceeding including conditions of approval.

7. First Wind and Emera will not decrease the Annex II IRR in the Project Transfer Agreement by more than 20% without filing a request to make such decrease and in the event the Commission does not open an investigation or otherwise act within 30 days such request shall be deemed granted.

8. First Wind and Emera will not make any material modification to any of the Transaction Documents without filing a request to make such modification and in the event the Commission does not open an investigation or otherwise act within 30 days such request shall be deemed granted.

9. BHE and MPS (Utilities) may not give the JV Holdco Companies or First Wind and its affiliates or APUC and its affiliates owning or developing generation assets or projects in Maine or New England (Generators) preference over nonaffiliated generation in any matters relating to any regulated product or service including the generator interconnection process.

10. All regulated products and services offered by the Utilities to the Generators, including the generator interconnection process and including any discount, rebate or fee waiver, must be available to all unaffiliated generators on comparable terms and conditions.

11. The Utilities may not condition or tie the provision of any regulated product, service or rate agreement by the Utilities to the provision of any product or service in which a Generator is involved.

12. The Utilities shall process all similar requests for information from generators in the same manner and within the same period of time. The Utilities may not provide information to a Generator without a request when information is made available to nonaffiliated generators only upon request. The Utilities may not allow a Generator preferential access to any nonpublic information regarding the distribution system, customers taking service from the Utilities, or any other nonpublic information that the Utilities have obtained as a result of their status as providers of core utility services that is not made available to nonaffiliated generators upon request. The Utilities shall instruct all of their employees not to provide any Generator preferential access to nonpublic information. This provision does not apply to requests for information made within the formal interconnection process.

13. Neither the Utilities nor the Generators may give any appearance of speaking on behalf of the other. The Utilities and the Generators may not engage in joint advertising or marketing.

14. The Utilities shall establish and file with the Commission an expedited dispute resolution procedure to address complaints that the Utilities have engaged in discriminatory or preferential treatment in favor of the Generators or against non-affiliated generation. The dispute resolution procedure must, at a minimum, designate a person to conduct an investigation of the complaint and communicate the results of the investigation to the claimant in writing within 30 days after the complaint was received, including a description of any action taken and the complainant's right to file a complaint with the Commission if not satisfied with the results of the investigation. The Utilities shall maintain a log of all resolved and pending complaints alleging violations of these standards.

15. The Utilities shall maintain its books of account and records of its transmission and distribution operations separately from those of the Generators.

16. Within 90 days after the closing of the First Wind Transaction, the Utilities shall maintain in a public place and file with the Commission current written procedures implementing the standards of conduct established herein. The implementation plan must include procedures to train employees of the Utilities and relevant employees of the Generators involved in wind power projects in Maine in procedures necessary to ensure compliance with these standards.

17. The Utilities may not subsidize the business of the Generators at ratepayer expense in any manner not specifically authorized.

18. The JV Holdco Companies and First Wind and its affiliates owning or developing generation assets or projects in New England will not provide Bangor Hydro or Maine Public with any non-public information concerning their development of generation in Maine prior to the submission of an interconnection request; and Bangor Hydro and Maine Public will not provide the JV Holdco Companies or First Wind and its affiliates owning or developing generation assets or projects in New England Maine Companies with any non-public information regarding the development, planning or operation of transmission or of generation in Maine by third parties except as required in the generator interconnection process or otherwise required by law.

H. Existing Conditions

These conditions simply ensure that the existing ring fencing provisions relating to BHE and MPS remain in force, per the Commission's earlier orders on the subject.

1. With respect to Emera, please refer to section 3 of the Stipulation in Docket 2000-663.

The relevant provisions of the Stipulation are set forth here. Their recitation here does not imply that other conditions in the Stipulation are altered in any way.

A. Section III, B, 4 of the Stipulation in Docket 2000-663

Access to Books and Records. Upon request, by the Commission, Emera will make available to the Commission, at a location in the State of Maine convenient to the Commission, such books and records of Emera and its affiliates as the Commission may require Emera to produce. Emera shall be provided written notice and opportunity to be heard on such production requests, and such requests shall be implemented with appropriate protection for confidential information and trade secrets.

B. Section III, B, 3 of the Stipulation in Docket 2000-663

Jurisdiction. The Parties agree to as follows:

- Applicants agree to comply with Maine statutes and Commission regulations regarding organizations and affiliated transactions of BHE, and agree that BHE will obtain Commission approval, to the extent required by Maine law or regulation, prior to the implementation of any reorganization or affiliated transaction. Applicants also agree that Emera and any of its affiliates, to the extent their activities relate to or in any way impact the operations, costs or revenues of BHE in Maine, shall be subject to the Commission's jurisdiction for discovery purposes and participate as a party in any proceeding when deemed necessary by the Commission.

- Applicants agree that all contracts or transactions between BHE and its affiliated interests that constitute affiliated transactions which require approval of the Maine PUC under Maine law must explicitly provide that charges made or incurred, and that no costs incurred or revenues earned under the contracts, will be reflected in BHE's rates except as permitted by the Commission in accordance with Maine law, except where compliance with both state and federal requirements is impossible or where compliance with state law would cause BHE or an affiliate to violate federal law.

C. Section III, B, 7 of the Stipulation in Docket 2000-663:

Divestiture:

- The Commission may order divestiture of BHE and/or MPS by Emera upon a determination by the Commission after notice and opportunity to be heard that no other remedy is adequate to reasonably address the harm.

2. Maine Public will maintain all existing ring fencing provisions contained in Maine Public Service Company Request for Approval of Reorganization of the Company Into a Holding Company Structure, Maine Public Utilities Commission, Docket No. 2002-676, Stipulation dated Mar. 12, 2003

The relevant provisions of the Stipulation are set forth here. Their recitation here does not imply that other conditions in the Stipulation are altered in any way.

- Loans and Liabilities: MPS will not make any loan to, or guarantee or assume any obligation of, HoldCo or any of its affiliates without prior Commission approval.

- Dividend Policy: The Commission will not place additional restrictions, in advance, on the dividend policy of MPS. The Board of Directors of the Company will continue to set dividend policy for the Company with due regard for the financial performance, needs and health of the Company and the maintenance of safe, efficient and reasonable capital structure. Commencing on July 1, 2003, if at any time MPS's common dividend payout ratio (dividend per share divided by earnings per share) exceeds 1.0 (i.e. 100%) on a two year rolling average basis, MPS shall notify the Commission in writing within thirty days of the end of the calendar year (assuming a dividend is paid on July 1, 2003, the initial two year period shall be April 1, 2001 through March 31, 2003). The required notification should explain the circumstances (extraordinary or not) of this event and the financial condition of MPS. Moreover, the Commission reserves the right in the future, should financial circumstances warrant, to impose limitations on the dividend policy of MPS, the regulated transmission and distribution company.

- Utility securities (debt or equity) issuances: Securities issuances by the Company will be done independently of HoldCo and subject to such Commission approval as required. The proceeds of any securities issued by the Company will be used exclusively by the Company for its business.

- Investment Level: HoldCo's total non-utility investment, excluding accumulated unregulated retained earnings, shall not exceed fifty million dollars (US $50,000,000) and such amount shall exclude retained earnings from Energy Atlantic, LLC., provided that MPS may at any time seek an enlargement of this limitation for good cause shown.

- Pledge or Transfer of Common Stock: Without prior Commission approval, Holdco will not sell, pledge or otherwise transfer any common stock of the Company.

- Common Equity Ratio: To protect and maintain the financial integrity of the regulated T&D utility, MPS and HoldCo agree to maintain the common equity ratio of MPS at a level of not less than forty eight percent (48%) of the total capital at all times, provided that the Commission may establish, for good cause shown, a lower ratio in connection with its authorization of a future debt issuance proposed by MPS. Total capital is defined as the sum of the following components: common equity, preferred

equity, long-term debt, current maturities long-term debt (CMLTD), long-term capital leases, current maturities long-term capital leases, and short-term debt.

3. Bangor Hydro and Maine Public will maintain all existing provisions contained in Bangor Hydro Electric Company, Maine Public Service Company, Maine Electric Power Company, Inc., and Chester Service Partnership Request for Approval of Reorganization, Maine Public Utilities Commission, Docket No. 2010-89, Stipulation dated Sept. 14, 2010 (Augusta Stipulation);

The relevant provisions of the Stipulation are set forth here. Their recitation here does not imply that other conditions in the Stipulation are altered in any way.

- Neither utility's (Bangor Hydro or Maine Public) accounts receivable or payable balance for any affiliate transactions may be greater than 45 days old.
- Maine Public will not seek any changes to the existing MAM ring fencing provisions established in Docket No. 2002-676 (including conditions 5, 6, 7, 8, 12, 13, 14 and 17 of the Stipulation) for three years following the Commission's approval of this Stipulation unless the two Utilities are consolidated. This includes Maine Public's requirement to maintain an equity ratio of 48%.
- For three years following the Commission's approval of this Stipulation, the Utilities agree to file their annual capital budgets and to explain any significant variances from the prior year's budget and spending levels.
- The Utilities will maintain separate and independent accounting records and financial statements from those of Emera and all affiliates.
- Maine Public will not file a voluntary bankruptcy petition unless its Board of Directors determines: (i) the Company is insolvent; (ii) the company is unable to pay its debts as they come due; or (iii) bankruptcy is otherwise appropriate for the Company.
- Bangor Hydro and Maine Public will not seek any changes to the Ring Fencing Provisions listed above prior to the filing of the consolidation report as required in Section 3. D. of the Augusta Stipulation.
- As part of the consolidation report required by Section 3. D. of the Augusta Stipulation, Bangor Hydro and Maine Public will provide a comprehensive assessment of the Ring-Fencing Provisions in place at that time and the need to amend existing provisions or implement additional protections.

VIII. SUMMARY AND CONCLUSION

A. Overview

We have identified a number of potential effects or consequences of the Proposed Transactions that could be detrimental to Maine ratepayers. Many of these may not materialize if the transactions go forward. Nonetheless, they represent risks which we must consider. In addition, we have found that the Proposed Transactions would provide significant benefits to Maine ratepayers by facilitating the development of wind generation, thereby accelerating the benefits described in section VI(B)(1) above. We have also imposed a number of conditions in section VI (D) that will, in our view, sufficiently mitigate those risks to allow us to conclude that the Proposed Transactions will not, on net, be harmful to ratepayers. We describe below in greater detail the analysis that has led us to this conclusion.

While there is a great deal of overlap of issues between the First Wind Transaction and the APUC Transactions, there is not a complete identity of issues. Therefore, we assess the section 708 standards separately below.

B. The First Wind Transaction

We have found that Emera's investment in First Wind would facilitate First Wind's wind development activities in Maine and New England both through the initial capital infusion which would be provided at closing and through a structured predictable mechanism to finance projects to be developed through the provisions of the Project Transfer Agreement. Although the total investment by Emera in First Wind that could occur under the Proposed Transactions is clearly significant, we conclude that the financial risk to BHE and MPS ratepayers can be sufficiently managed through the ring-fencing and reporting requirements noted above, coupled with the Commission's authority to investigate those matters. With such conditions in place, we are satisfied that the BHE and MPS ratepayers are adequately shielded from financial risks of the transactions. We also found that there were no real horizontal market power problems which would result from the transaction.

We next come to the issues of vertical market power/preferential treatment. We find the risks identified in section VI (C)(4) to be both real and significant. We have set forth a number of conditions that would mitigate, but not eliminate, such risks to both ratepayers and the competitive market. We conclude that these conditions sufficiently (if not perfectly) mitigate the risks of affiliate preference, and that those risks have been reduced to a point where they are outweighed by the substantial benefits of the transactions to the State's ratepayers.that would clearly result from the infusion of potentially hundreds of millions of capital into Maine in projects that would likely reduce the clearing price of electricity. Thus these conditions, coupled with the Commission's broad investigatory authority and ability to impose substantial penalties for non-compliance, sufficiently mitigate the risks of the Proposed Transactions and allow us to

find that the "no net harm" standard has been met with respect to the First Wind transactions.

We recognize that the existence of in-state generator affiliates may create the perception of market preference on behalf of other, non-affiliated market participants. However, we note that there appears to be substantial independent investment in generation facilities in other areas of the country where generators and transmission companies are affiliated, and our proposed conditions will create a level of transparency that should mitigate the perception concern. We do not find it to be sound regulatory action to block the investment of scores and potentially hundreds of millions of dollars in Maine through the First Wind transaction based on the mere possibility that other investment of unknown amount and probability might look elsewhere.

Finally, we respond to concerns raised by intervenors that some of the conditions discussed in this proceeding cannot be enforced due to federal preemption. FERC clearly has jurisdiction over the relationship between transmission providers and generation affiliates. However, the states, including Maine, have jurisdiction over the corporate organization of utilities providing retail service. In the event FERC preemption were asserted to justify non-compliance with conditions contained in this Order that reasonably address a Maine's T&D utility relationship with its generator affiliates, we could, by virtue of Maine law, direct that the affiliation be severed. Thus, when the Commission imposes conditions on the approval of a reorganization and those conditions are reasonably related to our governing statutes, we have the authority to require Emera to divest BHE and MPS if warranted. In addition, we require that prior to closing on the transaction, BHE, MPS and Emera signify their consent to the conditions of approval in this Order, including the Commission's authority to enforce all such conditions. Prior to the time of closing, First Wind must also submit a letter accepting the Commission's authority to enforce the provisions of this Order including the conditions of approval against First Wind as if it were a party to this proceeding. Therefore, we find that we have the tools to address preemption claims and expect that, if BHE, MPS, Emera and First Wind agree to be bound by the stated conditions, they will take those commitments seriously.

C. The APUC Transactions

In contrast to the First Wind transaction, we find that there are no benefits to Maine ratepayers from the APUC transactions. We also find that, with the conditions stated above, there are no financial risks associated with the APUC transactions, nor would it present horizontal market power concerns, even with the First Wind transaction approved. We find that unlike First Wind, APUC does not currently appear to have plans to develop new generation in Maine. Therefore, issues surrounding preferential treatment, in terms of transmission planning and development, are of lesser importance here.

Thus, we conclude that the APUC transactions satisfy the no net harm standard that we apply in reorganization proceedings and should be approved. In approving the Modified Proposed Transaction, we approve of Emera's investment in

APUC up to a 20% interest level which would allow both APUC's Calpeco and Granite State Gas transactions to go forward. To the extent that Emera seeks to make further investments in APUC pursuant to the Strategic Investment Agreement or though some other vehicle, such investments will be subject to additional approval under 35-A M.R.S.A §708. Similar to the requirement we have placed on First Wind above, prior to closing on the APUC transactions, APUC shall submit a letter accepting the Commission's authority to enforce the provisions of this Order, including the conditions of approval, against APUC as if it were a party to this proceeding.

Accordingly, it is

ORDERED

1. That the Petition for Reorganization filed by Northeast Wind Holdings on May 5, 2011 as modified by the withdrawal of Algonquin Power & Utilities Corporation from the Proposed Transaction as set forth in the Petitioners' Statement of Clarification of February 2, 2012, is approved. That the transaction agreements associated with carrying forth this Reorganization and set forth in Petitioner's Exhibits 10 through 21 are approved as part of this Reorganization approval.

2. That the Commission grants Reorganization Approval pursuant to the provision of 35-A M.R.S.A §708 to allow Emera, Inc to invest in Algonquin Power & Utilities in an amount not to exceed a 20% ownership interest.

3. That the Reorganization Approvals granted herein are subject to the conditions of approval set forth in Section VII of the Order.

4. That prior to closing on any of the Modified Proposed Transactions, Bangor Hydro-Electric Company, Maine Public Service Company and Emera will submit a letter to the Commission in this Docket, indicating that all three companies and their related affiliates accept the conditions as set forth in this Order including the Commission's authority to enforce all such conditions.

5. Prior to closing on any of the transactions approved in the Order, First Wind, Inc. and Algonquin Power & Utitlities Corporation shall submit a letter accepting the Commission's authority to enforce this Order against them, including the Commission's authority to enforce all conditions in this Order, as if they were parties to this proceeding.

6.

Dated at Hallowell, Maine, this 30th day of April, 2012.

BY ORDER OF THE COMMISSION

Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Vafiades
Littell

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within 20 days from the date of filing is denied.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

Appendix A

PROCEDURAL BACKGROUND

1. Petitions

On April 20, 2011, BHE and MPS along with Chester SVC Partnership (Chester) filed a Petition for a Supplemental Order (Algonquin Reorganization Petition) in the following proceedings: *Maine Public Service Company,* Request for Approval of Reorganization of the Company into a Holding Company Structure, Docket No. 2002-676; and *Bangor Hydro-Electric Company*, Request for Exemption (Limited Exemption) from the Reorganization Approval Requirements, Docket No. 2006-543. The Algonquin Reorganization Petition requested that the Commission modify its orders issued in those proceedings to exempt from the approval requirements of 35-A M.R.S.A. § 708 future reorganizations of the Petitioners in the event Emera, the ultimate parent of both BHE and MPS, increases its ownership interest in APUC from the existing 8.2% interest up to a maximum ownership interest of 25%. APUC's generation subsidiary, Algonquin Power Company (APC) owns generation facilities in MPS's service territory and its subsidiary Algonquin Energy Services, Inc. (AES) is a Competitive Electric Provider (CEP) operating in the territories of BHE, MPS, Central Maine Power Company (CMP) and Houlton Water Company (HWC).

On May 5, 2011, the Commission received a Petition from Northeast Wind Holdings, LLC (NE Wind) (First Wind Reorganization Petition) for a proposed reorganization of BHE, MPS, Maine Electric Power Company (MEPCO) and Chester. NE Wind is an indirect subsidiary of Emera. Under the Proposed Transactions, NE Wind would acquire a 49% ownership interest in an operating company, JV Holdco, LLC. The remainder of JV Holdco will be owned by subsidiaries of First Wind. JV Holdco would be the exclusive vehicle for owning and operating wind facilities by the parties in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut and New York. Emera will own 75% and APUC will own 25% of NE Wind. The Petitioners request approval of all transactions to complete the reorganization described above. On May 17, 2011, the Hearing Examiner issued an order which consolidated the Algonquin Reorganization Petition with the First Wind Reorganization Petition (hereinafter, Reorganization Petition).

2. Intervention

Petitions to intervene were filed by the Office of the Public Advocate (OPA), Eastern Maine Electric Cooperative (EMEC), Houlton Water Company (HWC), the Northern Maine Independent Administrator (NMISA), NextEra Energy Resources, LLC (NextEra), Boralex, Inc. (Boralex), and the New England Power Generators Association, Inc. (NEPGA). By way of a Procedural Order on May 17, 2011, these petitions were granted. On May 11, 2011, the Commission received late-filed petitions to intervene from New Brunswick Power Generation Corporation (NB Power Genco) and Van Buren Light & Power District (Van Buren). No objections to these petitions were filed and the petitions were granted without further order on May 20, 2011.

Additionally, on May 23, 2011, the Maine Renewable Energy Association and Milton Rennebu, an interested person, petitioned for intervention.

3. Testimony

On May 26, 2011, Petitioners submitted prefiled testimony of Karen Hutt of Emera Energy Inc. (Emera Energy), Michael Alvarez of First Wind, Dwayne Conley of AES, Timothy Brown of MPS and Kimberly Wadleigh of BHE. On July 28, 2011, the OPA filed testimony of David Vondle, a consultant for the OPA. On August 1, 2011, the Commission's Advisory Staff submitted a Bench Memorandum which set forth a set of concerns that Staff had with regards to the proposed reorganizations based on the information provided at that point. In addition, the Bench Memorandum provided a set of options to possibly address some of the concerns. The Bench Memorandum was not styled as a Bench Analysis since it did not contain any independent analysis or alternative studies.

Petitioners filed rebuttal testimony of Karen Hutt, Michael Alvarez, Dwayne Conley, Timothy Brown and Kimberly Wadleigh. Rebuttal testimony of Greg Blunden of BHE and Robert Stoddard of Charles River Associates was also included in this filing on September 13, 2011. On October 25, 2011, the OPA filed surrebuttal testimony of David Vondle. On November 4, 2011, Petitioners filed testimony and exhibits of Brent Boyles of MPS which adopted the previously filed testimony of Timothy Brown since Mr. Brown was no longer an employee of MPS.

4. Motions

On August 8, 2011, the OPA, EMEC, Houlton, and Boralex (Movants) filed a Motion to Dismiss on the basis that the Reorganization Petition failed to state a claim for which relief could be granted under Maine law. Specifically, the Motion stated that Commission approval of the Reorganization Petition under 35-A M.R.S.A. § 708 would violate the electric industry restructuring statutes (35-A M.R.S.A. Ch.32) that prohibit affiliates of BHE and MPS from owning generation assets in Maine. On August 19, 2011, the Petitioners filed their Response to the Motion to Dismiss, arguing that the Motion should be denied because there is no legal prohibition on the ownership of generation assets by an affiliate of a utility.

The Commission denied the Movants' Motion to Dismiss filed on September 22, 2011. The Commission concluded that the ownership of generation assets in Maine by an affiliate of a transmission and distribution (T&D) utility is not prohibited by the electric industry restructuring statutes. In denying the August 8, 2011 Motion to Dismiss, the Commission noted that it was not determining that the affiliations at issue in the proceeding are consistent with the interests of BHE's and MPS's ratepayers. The Commission only decided that the creation of a utility affiliate that has ownership interests in generation located in Maine is not prohibited by law.

On August 29, 2011, the IECG filed a Motion to Dismiss or, In the Alternative, For Suspension of Schedule and Imposition of Sanctions. This motion stated that the Petition should be dismissed because the Petitioners' direct case does not satisfy their burden of proof with respect to fundamental issues regarding the impacts of the contemplated reorganizations and related transactions. The IECG argued that the Petitioners had failed to include in their direct case material information that is intricately interrelated to the proposed transactions, failed to provide any analysis of the potential impact on ratepayers, and had stymied discovery that would have exposed some of this information. On September 8, 2011, the Petitioners filed their Response to the IECG's Motion. The Petitioners disputed the IECG's claim that the proposed reorganizations will result in "a virtual vertical re-integration" in that neither BHE nor MPS will own or operate generation assets and the Petitioners have far exceeded the minimum burden of proof required by 35-A M.R.S.A. § 708 through the presentation of the testimony of its witnesses.

The Examiners denied the IECG's Motion to Dismiss, or, In the Alternative, For Suspension of Schedule and Imposition of Sanctions in an Order dated October 5, 2011. The Examiners found that the absence of specific direct testimony on how the proposed reorganizations are consistent with legislative policies embodied in the original electric industry restructuring legislation is not grounds for dismissal and direct testimony offered by the Petitioners was sufficient to withstand a motion to dismiss. The Examiners also found that the IECG Motion did not support a delay in schedule and that the actions of the parties did not warrant sanctions.[30] On October 12, 2011, the IECG petitioned the Commission to vacate and modify the Order Denying Motion to Dismiss of the presiding officers dated October 5, 2011 denying IECG's Motion to Dismiss or, In the Alternative, for Suspension of Schedule and Imposition of Sanctions dated August 29, 2011. The Commission did not act on the IECG's request for reconsideration and, therefore, the IECG's request for reconsideration of the Examiner's October 5, 2011 Order was denied by operation of rule. Ch 110 § 1004 of the Commissioner's Rules of Practice and Procedure.

On October 5, 2011, the Intervenors filed a Motion to Strike the pre-filed testimony of Robert Stoddard on the basis that the testimony was not rebuttal testimony and that the Petitioners have withheld this testimony that should have been provided in their case-in-chief in support of their burden of proof. On October 12, 2011, the Petitioners filed a Response to the Motion to Strike, requesting that the Motion be denied and that sanctions be imposed upon the Intervenors.

On October 21, 2011, the Examiners denied the Motion to Strike. The Examiners found that the Stoddard testimony constituted proper rebuttal since it was clearly being offered to rebut the testimony of the OPA witness David Vondle. The Examiners found that any prejudice resulting from the rebuttal testimony of Mr.

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[30] IECG had requested that sanctions be imposed on Petitioners for having allegedly failed to retain electronically stored documents. Petitioners requested that sanctions be imposed on IECG for filing a frivolous motion.

Stoddard had been removed by the ability of the Intervenors to conduct discovery on Mr. Stoddard's testimony and the granting of the OPA's request to file surrebuttal testimony.

On October 19, 2011, HWC, along with the IECG, the OPA, EMEC and Boralex filed a Motion to Continue and for Schedule Change. On October 25, 2011, the Examiners concluded that HWC's Motion for Continuance of the current hearing schedule should be granted. The Examiners found that more time was needed in order for Commission Staff and parties to adequately review new transaction documents and newly available emails. The Order set hearings for the week of December 5, 2011.

On October 21, 2011, the Petitioners filed a Motion to Vacate Subpoenas and a Motion for Protective Order regarding two subpoenas issued on behalf of the IECG requiring a BHE representative and Chris Huskilson, President and CEO of Emera, to appear for depositions at the law offices of Preti Flaherty in Portland, Maine. Also on October 21, 2011, First Wind filed a Motion to Vacate Subpoenas, asking that the Commission vacate three subpoenas: 1) a subpoena to produce evidence to compel First Wind to produce responses to certain IECG data requests; 2) a witness subpoena for the deposition of Kurt Adams, First Wind's Executive Vice President and Chief Development Officer; and 3) a witness subpoena requiring First Wind to designate and produce a representative for a deposition. On October 27, 2011, the IECG filed its Response to the Motions of the Petitioners and First Wind to Vacate Subpoenas. An oral argument on the motions to vacate was held on October 27, 2011.

On October 31, 2011, the Examiners issued an Order Denying in Part and Granting in Part Motions to Vacate. The Examiners concluded that the testimony sought from Mr. Huskilson related with reasonable directness to the proceeding and that the subpoena was not unreasonable or oppressive. Therefore, the Examiners denied the motion to vacate the subpoena as it related to the deposition of Mr. Huskilson. The Examiners also noted that the Petitioners offered to have Mr. Huskilson to appear and testify at the hearing if requested by the Commission. The Staff proposed that the questioning of Mr. Huskilson be conducted as part of the technical conference at the Commission. During a November 1, 2011 case conference, the parties agreed to this suggestion. The technical conference was held on November 21, 2011.

The Examiners agreed with BHE that it had functionally already designated a representative to respond to questions in this proceeding when it presented Mr. Blunden to respond to questions at technical conferences. Accordingly, the Motion to Vacate the subpoena that would require BHE to designate a representative to appear at a deposition was granted. The Examiners granted First Wind's motion to vacate the Kurt Adams subpoena. The Examiners found there was no apparent reason to subject Mr. Adams to a deposition since Mr. Adams' superior, Michael Alvarez, had prefiled testimony and responded to questioning at several technical conferences.

Finally, the Examiners found that First Wind had functionally already designated a representative to respond to questions in this proceeding when it submitted the prefiled testimony of Mr. Alvarez and presented Mr. Alvarez to respond to questions at technical conferences. Accordingly, the Motion to Vacate the subpoena that would require First Wind to designate a representative to appear at a deposition was granted.[31]

On November 8, 2011, IECG filed an Appeal of the Order Denying in Part and Granting in Part Motions to Vacate. Specifically, the IECG appealed the Examiners' vacating of the subpoena of Kurt Adams of First Wind. On November 4, 2011, the Petitioners filed an appeal to the Commission of the Examiners' ruling denying the motion to vacate the subpoena regarding a deposition of Mr. Huskilson. The Petitioners argued that depositions are rare in Commission practice and that there is no reason to order a deposition in this case.

The IECG filed a response to the Petitioners' appeal, stating that Mr. Huskilson is the person that best understands Emera's business strategy in regard to both the Northeast Energy Link (NEL) and First Wind, its finances and the operation of the Emera corporate structure. On November 23, 2011, the Commission denied the appeals filed by Petitioners and the IECG of the Order Denying in Part and Granting in Part Motions to Vacate.

On November 21, 2011, a technical conference was held to allow for the questioning of Chris Huskilson, President and CEO of Emera. At the conclusion of the conference, Petitioners suggested that Mr. Huskilson be allowed to present testimony as a witness during the hearings in this proceeding. The Petitioners also suggested that they could submit prefiled testimony of Mr. Huskilson.

On November 29, 2011, the Examiners denied Petitioners' request to have Mr. Huskilson testify at the hearing. The Examiners found that the request to have a new witness testify at the hearings would be prejudicial. The Examiners noted that the November 9, 2011 Pre-Hearing Order proposed to admit the transcript of technical conferences held to date and was not intended to include the transcript of the Huskilson technical conference. In the event a party proposed to admit portions of the Huskilson technical conference transcript into the record, the matter would be addressed at a prehearing conference.

Following this ruling, a number of intervenors requested that parts of the Huskilson technical conference transcript go into the record. Given this development and clarification from counsel for Petitioners that he only intended to ask redirect questions of Mr. Huskilson at the hearing, the Examiner decided to admit all of the

[31] The October 31st Order stated that the motion to vacate the subpoena that would require First Wind to designate a representative to appear at a deposition is "denied." The Order should have stated that the motion is granted. This was made clear in a November 2, 2011, Supplemental Order Regarding Motions to Vacate.

Huskilson technical conference transcripts into the record and to allow Mr. Huskilson to appear as a witness at the hearing with questioning by the parities limited to redirect and recross examination.[32]

5. Hearings and Post Hearing Process

Hearings were held before the Commission on December 6, 7, 8 and 9, 2011. The Commission heard testimony from Karen Hutt, Michael Alvarez, Wayne Conley, Brent Boyles, Greg Blunden, Robert Stoddard, Kim Wadleigh and Chris Huskilson. In addition, the Commission heard testimony from the OPA's witness , David Vondle.

On December 16, 2011, the Examiner issued a summary of the data requests which had been admitted into the evidentiary record based on the discussions at both the pre-hearing and post-hearing conferences.

The OPA, Petitioners, NMISA and the IECG, HWC, and Boralex jointly, filed initial briefs on December 22, 2011. Reply briefs were submitted on January 6, 2011 by all of the above parties and on January 13, 2012, the Examiners issued the Examiners' Report in this matter.

The Petitioners, the OPA, NMISA, IECG, HWC, and Boralex filed exceptions to the Examiners' Report on January 23, 2012. Also on January 23, 2012, First Wind filed a Motion for Leave to File Exceptions and included exceptions to the Examiners' Report in this filing. Petitioners' filing also included a copy of First Wind's exceptions. APUC filed a letter on January 23, 2012 in response to Examiners' Report. Both the APUC letter and First Wind exceptions stated that APUC had withdrawn for the JV Holdco transaction and would be willing to sell its fossil units in northern Maine.

On January 24, 2012, the Hearing Examiners issued a Notification of Contacts. The notification stated that the Commission had received several email contacts urging the rejection of the proposed transactions. The Hearing Examiners found that because the record had closed and an examiners' report had been issued, these communications were not permitted pursuant to Commission rules, Chapter 110 § 760-A, and would not be a part of the record.

On January 24, 2012, the OPA, with support from the other Intervenors, requested that the Commission exclude First Wind and APUC's filings as inappropriate filings of non-parties, and to exclude Petitioners' exceptions because they included and referenced First Wind's exceptions.

On January 24, 2012, the Hearing Examiner issued a Procedural Order denying First Wind's Motion for Leave to File Exceptions and finding that the First Wind and APUC submissions were inappropriate non-party exceptions to the Examiners'

[32] Dec. 06, 2011, Hearing Tr. at 156-160.

Report. The Hearing Examiner found that both APUC and First Wind had ample opportunity to intervene in the matter and participate as parties but chose not to. Under the provisions of 760-A of the Commission's Rules of Practice and Procedure, both fillings were prohibited and excluded from the record.

On January 27, 2012, the Hearing Examiners issued a Procedural Order that noted that a conference of counsel had been held on January 25, 2012, during which time oral motions to dismiss were raised. The Order stated that the Commission would not consider oral motions to dismiss but that written motions to dismiss would be accepted. The Order also denied Intervenors' motion to exclude the Petitioners' Exceptions in their entirety from the record because the Examiners found that Petitioners' Exceptions contained relevant arguments that should be considered by the Commission. However, the Order directed Petitioners to file revised exceptions that remove all references to statements and information excluded from the record by the Examiner's January 24, 2012 Procedural Order. The Petitioners were directed to file a Statement of Clarification regarding the Proposed Transactions that would specify all changes in the transactions, including changes in governance, financing and in the transaction documents themselves.

On January 30, 2012, First Wind appealed from the Hearing Examiner's Order of January 24, 2012 denying First Wind's Motion for Leave to File Exceptions. On February 6, 2012, the Intervenors filed their opposition to First Wind's January 30, 2012 Appeal of the Hearing Examiner's Order.

On February 2, 2012, the Intervenors moved to dismiss the proceedings or to enter judgment against Petitioners based upon the recommended findings of the Examiners' Report. In addition, Intervenors requested that sanctions be imposed on the Petitioners. Intervenors argued that sanctions were warranted because Petitioners had violated Examiners' January 19, 2012 Scheduling Order by referencing non-record evidence through inclusion of First Wind's Exceptions, references to APUC's Exceptions, and new conditions that had not previously been presented to the Commission in prefiled testimony.

On February 2, 2012, the Petitioners filed their Statement of Clarification and Revised Exceptions. The Revised Exceptions included a redlined version of First Wind's Exceptions. On February 6, 2012, the Intervenors objected to and moved to strike Petitioner's Revised Exceptions on the basis that they violate the provisions and directives of the Procedural Orders issued by the Examiner on January 19 and 27, 2012, because they did not remove all statements and references to information excluded from the record by the Examiner's January 24, 2012 Procedural Order (First Wind's Exceptions were still attached, but redlined). On February 10, 2012, Petitioners filed their Objection to Motion to Dismiss and Objection to Motion to Strike. On February 10, 2012, Intervenors filed their Responses to Petitioners' Statement of Clarification.

On February 7, 2012, the Hearing Examiners issued a Procedural Order stating that the redlined version of First Wind's exceptions would not be reviewed by the Commissioners pending a ruling on First Wind's Appeal of the Examiner's Order of January 24, 2012.

On February 27, 2012, the Commission issued an Order denying First Wind's appeal of the Examiner's January 24, 2012 Order. The Commission also denied in part and granted in part the Intervenors' motion to strike the Petitioners' revised exceptions. Petitioners' revised exceptions would not be excluded in their entirety as requested by Intervenors' motion, but the redlined version of First Wind's exceptions that had previously been excluded would be disregarded.

During a deliberative session held on March 8, 2012, the Commission reopened the record in this proceeding for the sole and limited purpose of allowing the parties and staff to develop the record on the following issues related to APUC's withdrawal from the Northeast Wind and JV Holdco transactions:

- The financial impact on Emera and its Maine utility affiliates resulting from APUC's withdrawal from the transaction; and

- The impact on the northern Maine market issues resulting from APUC's withdrawal from the transaction.

On March 9, 2012, the Hearing Examiner issued a Procedural Order, implementing the directive by the Commission to reopen the record.

On March 13, 2012, a late-filed Petition to Intervene by ReEnergy Biomass V LLC was filed. ReEnergy is the successor in interest to the majority of Maine-based assets of Boralex.

On March 14, 2012, the Commission issued its Order Denying Motion to Dismiss and Reopening the Record.

On March 15, 2012 a supplemental technical conference was held pursuant to the Commission's Order Denying Motion to Dismiss. On March 19, 2012, a Procedural and Scheduling Order was issued by the Hearing Examiners granting ReEnergy's Petition to Intervene, admitting certain items into the evidentiary record and establishing a schedule for the remainder of the proceedings.

On March 29, 2012, the Petitioners, IECG, the OPA, NMISA, and HWC (jointly with ReEnergy) filed their briefs on reopened matters. On April 3, 2012 the Petitioners, IECG, the OPA, NMISA and HWC (jointly with ReEnergy) filed reply briefs. On April 5, 2012, the IECG offered supplemental reply comments.

On April 10, 2012, the Commission held deliberations on the Proposed Transactions.

Appendix B

The key Transaction Documents are included in Petitioner's Hearing Exhibits Nos. 1-22 and are listed below.

1. Strategic Investment Agreement between Algonquin Power & Utilities Corp and Emera, Inc.
   - Dated April 29, 2011
   - Formalized strategic investment agreement which established how Emera and APUC would work together to pursue specific strategic investments
   - ODR-01-01-A
   - PO#1

2. Granite State Subscription Agreement between APUC and Emera, Inc.
   - Dated March 25, 2011
   - Includes APUC offering of subscription receipts
   - ODR-01-01-B and ODR-01-01-C
   - PO#1

3. Subscription Agreement among Algonquin Power Fund, Emera US Holdings Inc. and California Pacific Utility Ventures, LLC
   - Dated April 22, 2009
   - OPA-01-02-D
   - PO#1

4. Subscription and Unitholder Agreement between Algonquin Power Fund and Emera
   - Dated April 22, 2009
   - Related to initial CALPECO investment
   - ODR-01-01-D
   - PO#1

5. Subscription Agreement between APUC and Emera, Inc.
   - Dated September 12, 2011
   - Related to CALPECO transaction
   - OPA-01-01-M
   - PO#1

6. Unit Purchase Agreement between Emera and Liberty Energy Utilities Co
   - Dated September 12, 2011
   - Related to CALPECO transaction

- OPA-01-01-M
- PO#1

7. Subscription Agreement (First Wind) between APUC and Emera
   - Dated July 5, 2011
   - Governs the investment by Emera in APUC to facilitate the APUC participation in the First Wind transaction
   - ODR-01-01-G
   - PO#1

8. Amending and Joinder Agreement between APUC and Emera
   - Dated January 1, 2011
   - Amends the April 2009 Subscription Agreement
   - ODR-01-01-E
   - PO#1

9. Emera and Algonquin Investment in First Wind Portfolio Term Sheet
   - Dated April 29, 2011
   - Sets forth the terms and conditions under which Emera/APUC, through Northeast Wind, have agreed to acquire a 49% interest in the First Wind generation assets
   - OPA-01-01-F
   - PO#1

10. Purchase Agreement
   - Dated April 29, 2011
   - Agreement for Purchase of Membership Interests in JV Holdco among the following "Sellers" (First Wind and its operating companies) and "Purchaser" (Northeast Wind Holdings.)
   - JV Holdco will be formed and Sellers will own 100% of the membership interests in JV Holdco prior to closing. These membership interests include current operating wind farms and projects under construction.
   - NE Wind will purchase from First Wind 49% of interest in JV Holdco
   - Includes Annex I-Definitions and Disclosure Letter
   - OPA-02-02-A, OPA-02-02-K
   - PO#1 and PO#2

11. Project Transfer Agreement among First Wind, Northeast Wind and JV Holdco
   - Undated
   - Governs projects to be transferred into JV Holdco

- Includes Annex II which contains certain conditions precedent to the transfer of projects into JV Holdco. This includes conditions on turbine supply, real estate property, delivery of a third party Engineering Consultant report, delivery of environmental impact assessment, requirements for a power sales agreement, and delivery of base case financial forecast and the assumptions for such a forecast, all governmental and regulatory approvals, delivery of interconnection agreement, PPA finalized, REC sales agreement
- Includes Annex III which provides the advance criteria for FW to present a project to JV Holdco for consideration, including: finalizing the majority of land leases, collection of met data, confirmation of interconnection and transmission facilities, refined economic analysis, confirmation of turbine availability and PPA negotiations underway.
- Contains required IRR for projects to be accepted by JV Holdco
- If a project does not meet required IRR and is rejected by JV Holdco, First Wind is free to develop the project though any ownership structure, including a joint venture with a person other JV Holdco
- OPA-02-02-B
- PO#1 and PO#2

12. Limited Liability Company Agreement of JV Holdco
- Undated
- Corporate governance document for JV Holdco
- Contains voting rights, shotgun, drag along and tag along provisions
- OPA02-01-C
- PO#1 and PO#2

13. Credit Agreement
- Undated
- Form of Emera Secured Loan Agreement
- OPA-02-02-D
- PO#1 and PO#2

14. Gen Lead Acquisition Term Sheet
- Undated
- Term sheet referred to in section 4.5 of Purchase Agreement
- Contains the terms and conditions governing the transfer of the Stetson generator lead to an Emera affiliated entity
- OPA-02-02-E
- PO#1 and PO#2

15. Energy Management Services Agreement between Emera Energy Services, Inc and JV Holdco

- Undated
- Contract with EES for energy management services with respect to the JV Holdco projects
- HWC-02-57
- PO#2

16. Assumption Agreement

- Undated
- Provides for the assumption by JV Holdco of existing project debt
- OPA-02-02-G
- PO#1 and PO#2

17. JV Management Services Agreement

- Undated
- Contract between JV Holdco and First Wind whereby First Wind will provide day-to-day management of the administrative function of JV Holdco
- OPA-02-02-H
- PO#1 and PO#2

18. Project Administrative Services Agreement

- Undated
- Contract between First Wind and the project operating companies whereby First Wind will provide the day-to-day management of the operating company
- OPA-02-02-I
- PO#1 and PO#2

19. Undertaking Agreement

- Dated April 29, 2011
- Agreement among First Wind, Emera and APUC with respect to the overall transaction and commitments of the parties
- OPA-02-02-J
- PO#1 and PO#2

20. O&M Agreement

- Undated
- Contract between First Wind and the project operating companies whereby First Wind will provide the operations and maintenance of the projects
- OPA-02-02-L

- PO#1 and PO#2

21. Limited Liability Company Agreement of Northeast Wind
    - Undated
    - Corporate governance document for Northeast Wind Holdings LLC
    - Contains shotgun provisions
    - HWC-02-14-A
    - PO#1

22. Term Sheet-Northeast Wind
    - Dated April 29, 2011
    - Contains the terms and conditions whereby Emera and APUC will enter into the Northeast Wind/JV Holdco/First Wind transactions
    - ODR-01-01-F
    - PO#1