

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Central Vermont Public Service Corporation     Docket Nos. ER04-510-000  
EL04-88-000

ORDER ACCEPTING INTERCONNECTION AGREEMENT FOR FILING AS  
MODIFIED, SUMMARILY MODIFYING OPEN ACCESS TRANSMISSION TARIFF  
AND ORDERING COMPLIANCE FILING

(Issued March 12, 2004)

1. In this order the Commission accepts as summarily modified an unexecuted interconnection agreement filed by Central Vermont Public Service Corporation (Central Vermont). In addition the Commission is summarily modifying provisions of Central Vermont's open access transmission tariff (OATT) relating to the use of certain interconnection facilities, pursuant to Section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e (2000). This order benefits customers by allowing an interconnection agreement between the parties to become effective, and by ensuring just and reasonable rates for interconnection facilities.

**Background**

2. North Hartland, LLC (North Hartland) is in the process of buying a hydroelectric facility which has been out of operation following the bankruptcy of a prior owner of the facility, Vermont Electric Generation & Transmission Cooperative, Inc., (VEGT). The project is interconnected with Central Vermont's electric system.

3. The project is a 4 MW hydroelectric generating plant and comprises an outlet conduit at the dam, a 470-foot-long penstock leading from the outlet to the project powerhouse, a 400-foot-long tailrace, and appurtenant facilities. As licensed, the project also included a proposed ¼-mile long, 12.5-kV radial transmission line extending south from the project's switchyard to Green Mountain Power Corporation's system. However, before constructing the line, VEGT revised the location and configuration of the line to interconnect with Central Vermont's system. VEGT buried the first 600 or so feet of the line from the powerhouse, then constructed a 4,000-foot above-ground line to pole 115 of Central Vermont's Distribution Line 66 (Line 66). Pursuant to a 1984 agreement with VEGT, Central Vermont reconstructed a six-mile segment of Line 66 to transmit the

project's power from pole 115 to Central Vermont's Quechee substation, and reconstructed the substation to accommodate the new three-phase circuit.<sup>1</sup> Under the agreement, VEGT reimbursed Central Vermont for this work, and Central Vermont retained title to, operated, and maintained the six-mile segment of Line 66.

4. In 1996, VEGT ceased project operations and filed for bankruptcy under Chapter 7 of the Bankruptcy Code. In 2000, pursuant to a stipulated settlement of claims approved by the Bankruptcy Court, the U.S. Department of Agriculture's Rural Utilities Service (RUS), VEGT's primary secured creditor, negotiated the sale of the project to North Hartland. The sale of the project and the transfer of the project's license were approved that same year.<sup>2</sup> Consummation of the project sale has been delayed for a variety of reasons, however.

5. On December 20, 2002, VEGT and North Hartland filed an application to amend the project license to clarify that the entire seven-mile length of line extending from the project powerhouse to the Quechee Substation (the 4,600-foot line from the power house to pole 115 of Central Vermont's Distribution Line 66, plus the six-mile segment of Line 66 from pole 115 to Central Vermont's Quechee Substation) is a primary line for licensing purposes and has, in fact, been approved as part of the license. On July 28, 2003, the Commission granted the VEGT/North Hartland application to amend the project license to include the seven-mile line in the license.<sup>3</sup>

### **Request for Declaratory Order**

6. On January 15, 2003, North Hartland filed a request for declaratory order. In its request, North Hartland stated that it sought a declaratory order "to resolve a controversy involving a Qualifying Facility (QF) interconnection line and a Central Vermont demand

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<sup>1</sup>This included the installation of new circuit breakers and meters for measuring the project's output.

<sup>2</sup>Vermont Electric Generation & Transmission Cooperative, Inc., and North Hartland, L.L.C., 91 FERC ¶ 62,227 (2000). Approval of the transfer was subject to North Hartland accepting the findings in the transfer order and filing copies of conveyance documents showing the transfer of title from VEGT to North Hartland of the properties under the license and delivery from VEGT to North Hartland of all license instruments. North Hartland has accepted the transfer order, but it has requested and received a series of extensions of the deadline to complete the transfer.

<sup>3</sup> Vermont Electric Generation & Transmission Cooperative, Inc., and North Hartland, LLC, 104 FERC ¶ 61,151 at P 8-14 (July 28 Order), order on reh'g, 105 FERC ¶ 61,038 (2003).

for a ‘use charge’ for the QF to use its dedicated interconnection line.” North Hartland asked the Commission to declare that the transmission service Central Vermont proposed to provide North Hartland over the seven-mile line pursuant to its open access transmission tariff (OATT) instead must be provided on terms and conditions required by the Vermont Commission.<sup>4</sup>

7. North Hartland also asked the Commission to conclude that the seven-mile line “is not part of Central Vermont’s transmission system,” that Central Vermont is thus not entitled to compensation under its OATT for use of the line, and that Central Vermont must file an interconnection agreement with the Commission governing its interconnection with North Hartland.

### **October 7 Order**

8. In an order issued on October 7, 2003,<sup>5</sup> the Commission dismissed North Hartland’s request for declaratory order, without prejudice to North Hartland later filing a complaint concerning transmission service over the seven-mile line. The Commission stated that, because the Commission had granted North Hartland’s request to amend the license to include the seven-mile line, it was not clear that the relief requested by North Hartland was still necessary. The Commission noted that North Hartland was required by the license amendment to acquire and retain title in fee to, or to acquire the right to use for the term of the license, the seven-mile line. It was up to the transferee/future licensee, *i.e.*, North Hartland, to obtain the requisite rights to the seven-mile line. The Commission concluded that if and when North Hartland exercises its rights to acquire the seven-mile line, Central Vermont’s transmission rates will not be an issue.

9. The Commission added that, if North Hartland, once it becomes the licensee,<sup>6</sup> decides to begin operations before it acquires title to the seven-mile line, it may elect to temporarily take transmission service from the current owner of the line, Central Vermont. The Commission stated that transmission service would be under Central Vermont’s OATT and that, if North Hartland is dissatisfied with the rates under the OATT, it may file a complaint pursuant to Section 206 of the FPA.

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<sup>4</sup> North Hartland Request for Declaratory Order at 1.

<sup>5</sup> North Hartland, LLC, 105 FERC ¶ 61,036 (2003) (October 7 Order).

<sup>6</sup> October 7 Order at P 20-21. The Commission emphasized that North Hartland, not yet the licensee of the project, may not operate the project until it is licensee, and until then cannot receive transmission service.

### **November 13 Order on Rehearing**

10. North Hartland sought rehearing of the October 7 Order, arguing that Central Vermont's OATT is not applicable to transmission services over the seven-mile line because the facilities are primary to the North Hartland project and are not part of Central Vermont's transmission and distribution system. North Hartland also argued that the rate for use of the seven-mile line is excessive. North Hartland further stressed that it must have an approved interconnection agreement before it can operate the project under state law.

11. In an order issued on November 13, 2003,<sup>7</sup> the Commission found that nothing raised on rehearing warranted reversing its decision to dismiss without prejudice North Hartland's petition for declaratory order. Addressing North Hartland's concern that it have an "approved" interconnection agreement in place, the Commission stated that the interconnection facilities are in place, and there was no need for a typical interconnection agreement. The Commission explained that North Hartland was already interconnected, and that North Hartland is entitled to receive service under Central Vermont's already approved OATT.<sup>8</sup>

12. The Commission stated that North Hartland's concern appeared to be how it would receive transmission service over the seven-mile line. The Commission pointed out that when North Hartland obtained rights to the line in fee, or acquires the right to use the line for the term of the license, there would be no need for North Hartland to take transmission service from Central Vermont, and if North Hartland's acquisition of the line occurred before North Hartland begins operations, North Hartland's concerns about Central Vermont's charges under the OATT would be irrelevant.<sup>9</sup>

13. The Commission acknowledged that North Hartland might want to take transmission service prior to its acquisition of the rights required by the license. Addressing North Hartland's concern about the rates for that service, the Commission pointed out that the appropriate procedure for challenging those rates was the filing of a complaint under Section 206 of the FPA.<sup>10</sup>

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<sup>7</sup> North Hartland, LLC, 105 FERC ¶ 61,192 (2003) (November 13 Order).

<sup>8</sup> Id. at P 15.

<sup>9</sup> Id. at P 17-18.

<sup>10</sup> Id. at P 17.

14. The Commission concluded that what North Hartland has consistently sought is transmission service at rates other than those offered by Central Vermont and that a complaint under Section 206 of the FPA was the appropriate method to challenge those rates.<sup>11</sup>

### **December 30 Order and Technical Conference**

15. On November 14, 2003, North Hartland filed a request for rehearing of the November 13 Order. In its request for rehearing, North Hartland asked that the Commission clarify a number of issues in the November 13 Order. North Hartland stated that there has never been an interconnection agreement for the facility in question, and that the Commission's November 13 Order is insufficient for purposes of the state commission's requirement that an "approved" interconnection agreement be in place. North Hartland also argued that Central Vermont's OATT does not apply to the interconnection facilities primary to the project and has never been applied to North Hartland's facility; the OATT was approved after the project stopped operating, and the bankrupt estate was not notified or "paying attention."

16. On December 5, 2003, Central Vermont filed a request for clarification, or, alternatively, a request for rehearing. Central Vermont stated that it agreed with the November 13 Order to the extent that it stated that there is no need for an agreement to construct interconnection facilities. Central Vermont, however, acknowledged that while at present it has no contractual relationship with North Hartland, there will be a need for an agreement addressing the terms and conditions of interconnection, including: the operation of the project in parallel with Central Vermont's electric system, maintenance duties, the characteristics of the transformers, relaying and protective devices, the power factor of the generator, testing of facilities, metering, disconnection of facilities, interruption of interconnection, station service, insurance, and dispute resolution. Central Vermont stated in its rehearing that it will negotiate with North Hartland to try to achieve agreement on the relevant terms.

17. On November 17, 2003, North Hartland filed a request for a pre-filing meeting with Commission Staff to discuss a proposal to file a request for an interconnection. Because the issues North Hartland proposed to discuss appeared to be interrelated with pending rehearing requests in contested proceedings,<sup>12</sup> Staff determined that a non-public meeting with North Hartland would raise ex parte concerns. See 18 C.F.R. § 385.2201 (2003). Therefore, Staff arranged a public technical conference to which all parties to the

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<sup>11</sup> Id. at P 21.

<sup>12</sup> Docket Nos. P-2816, EL03-51 and Docket No. EL03-215-000.

contested proceedings were invited and in which they could participate. A notice of the technical conference was issued on December 4, 2003.

18. On December 2, 2003, North Hartland mailed to the Chairman of the Commission and the Commissioners a letter appealing for help to obtain an interconnection agreement. North Hartland stated that its bank requires that North Hartland have an interconnection agreement with Central Vermont before it will release funds necessary for North Hartland to acquire the project assets.

19. The technical conference was subsequently held on December 16, 2003. At the technical conference, Central Vermont indicated that it and North Hartland had previously held negotiations regarding an interconnection agreement. To expedite negotiations, Central Vermont committed to continue drafting an interconnection agreement with North Hartland, modeled on the proposed interconnection agreement included in the Small Generator Interconnection Rulemaking proceeding.<sup>13</sup> Central Vermont agreed to send the draft interconnection agreement by e-mail to North Hartland by the first business week in January. Central Vermont also indicated that it would draft a lease agreement that would comply with the requirements of North Hartland's license for North Hartland's use of Central Vermont's portion of the seven-mile line. This draft lease agreement would also be submitted to North Hartland sometime later in January.

20. In the December 30 Order<sup>14</sup> the Commission granted clarification that an "interconnection agreement" was needed -- to address operation and maintenance issues related to the existing physical interconnection.<sup>15</sup> In all other respects the Commission denied rehearing. The Commission in the December 30 Order also expressed its expectation that Central Vermont and North Hartland would be able to come to agreement on an interconnection agreement. The Commission further expressed its expectation that Central Vermont and North Hartland would negotiate a long-term lease agreement to fulfill the requirements of the license and that Central Vermont would be able to make any appropriate filing seeking authorization of the lease in time for North

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<sup>13</sup> See Standardization of Small Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,572 (2003) (Small Generator Interconnection NOPR). The interconnection agreement that North Hartland attached to its rehearing request of the October 7 Order was, North Hartland has stated, based on this same template.

<sup>14</sup> North Hartland, LLC, 105 FERC ¶ 61,393 (2003) (December 30 Order).

<sup>15</sup> In this regard, the Commission expressly noted that the physical interconnection facilities already existed, and so the interconnection agreement, in reality, would be more in the nature of an operating and maintenance agreement. *Id.* at P 21 n.12.

Hartland to begin service after it acquires the project's assets and makes any necessary repairs.<sup>16</sup>

21. North Hartland sought rehearing of the Commission's December 30 Order. Rehearing was denied by operation of law.<sup>17</sup>

### **Interconnection Agreement**

22. On January 30, 2004, in Docket No. ER04-510-000, Central Vermont filed an unexecuted interconnection agreement with North Hartland to comply with the Commission's December 30 Order and with its commitments at the technical conference.

23. The interconnection agreement is based on the Small Generator Interconnection NOPR, at the request of North Hartland. Since the project is already interconnected with Central Vermont, the terms and conditions of the agreement are largely operational in nature; there is no need for the construction of new distribution or network facilities or for interconnection studies. The agreement has been tailored to reflect these circumstances. Among other things, the agreement provides in Article 5 that no new facilities are required under the agreement, that "[Central Vermont] will provide transmission service under its [OATT] for transmission over a portion of the Interconnection Facilities until North Hartland enters into a lease or obtains ownership of those facilities," and that "any costs associated with North Hartland's acquiring rights over those facilities through ownership or lease will be the subject of a separate agreement and not part of the Interconnection Agreement."<sup>18</sup> Central Vermont requested that the Commission determine the effective date for the agreement.

24. Notice of the filing was published in the Federal Register, 69 Fed. Reg. 6963 (2004), with comments, protests and interventions due or before February 18, 2004.

25. On February 4, 2004 North Hartland filed a motion to intervene and protest, requesting the appointment of a settlement judge. Specifically, North Hartland states that it would like to settle issues related to what North Hartland refers to as "Directly Assigned Facilities." Among the issues North Hartland states need to be resolved are issues relating to property rights to the interconnection facilities, and rates for use of the facilities. North Hartland further asks the Commission to consolidate "all matters in

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<sup>16</sup> Id. at P 22-24.

<sup>17</sup> North Hartland, LLC, 106 FERC ¶ 61,102 (2004).

<sup>18</sup> Transmittal Letter at 4.

Dockets P-2816 and EL03-51 into this docket for purposes of settlement negotiation and, if necessary judicial review.”<sup>19</sup>

26. North Hartland requests the interconnection agreement be modified by adding as exhibits statements of capital cost and annual costs of the interconnection facilities. North Hartland requests certain diagrams of the project be added to depict physical aspects of the facilities, from the generator to the point of interconnection with Central Vermont’s system which North Hartland asserts is at the low voltage 3-phase terminals on the 46 kV transformer at the Quechee Substation. According to North Hartland, this is. North Hartland further asserts that the service it is requesting is interconnection service, and objects to paying a rate for transmission under this agreement and Central Vermont’s OATT.

27. North Hartland disagrees with certain definitions in the interconnection agreement and asks that others be added. North Hartland also objects to the indemnification language Central Vermont added, and states that, if the generator is to be fined under this provision, it is the ISO New England that should have the authority to do so, not Central Vermont. North Hartland objects to various other provisions of the agreement as well.

28. On February 18, 2004 the Vermont Department of Public Service (Vermont Department) filed a motion to intervene raising no issues.

29. On February 20, 2004, Central Vermont filed an answer to North Hartland’s protest. Central Vermont objects to North Hartland’s attempt to expand the scope of this proceeding to deal with issues which are not directly related to the interconnection agreement. Central Vermont argues that North Hartland’s pleading primarily concerns issues related to the cost of its acquisition or lease of the interconnection facilities, and the pricing for transmission under Central Vermont’s OATT. Central Vermont adds that there is no need for a settlement judge to resolve issues relating to the interconnection agreement, and states that, if the Commission does grant North Hartland’s request for a settlement judge, the Commission should state that the negotiations before the judge should not include issues relating to or concerning facility acquisition/lease costs or Central Vermont’s OATT rates.

### **Discussion**

30. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the motions to intervene of the Vermont Department and North Hartland serve to make them parties to this proceeding.

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<sup>19</sup> Protest at 1.

31. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Central Vermont's answer to North Hartland's protest and will, therefore, reject it.

32. We will accept the proposed interconnection agreement for filing, with two modifications. First, we agree with North Hartland as to the indemnification provision, and Central Vermont is directed to modify section 2.4 to read as follows:  
"Interconnection Customer shall indemnify CVPS against any fines or penalties imposed by any governmental authority of competent jurisdiction, NEPOOL or ISO-NE for violation of their respective laws, rules, regulations or codes found by the governmental authority of competent jurisdiction, NEPOOL or ISO-NE to be violations caused by conduct of Interconnection Customer."

33. Second, the interconnection agreement provides that costs of transmission over Line 66, from Pole 115 to the Quechee Substation, will be governed by Central Vermont's OATT on file with the Commission. Central Vermont has previously indicated that Attachment H-2 to its OATT governs the use of these facilities.<sup>20</sup> Central Vermont indicates that the annual charge for the transmission service over Line 66, from Pole 115 to the Quechee Substation, is \$103,609. A review of Attachment H-2, as well as Central Vermont's description of the rate in its March 13, 2003 Answer filed in Docket No. EL03-51-000, indicates that Central Vermont has allocated system-wide costs such as investment and costs related to general, intangible and common plant for service over Line 66, from Pole 115 to the Quechee Substation.

34. We agree with North Hartland that the facilities at issue in this proceeding<sup>21</sup> are correctly considered interconnection facilities. These interconnection facilities are for the sole use of North Hartland and are not network facilities. As such we find that the costs of these facilities should be directly assigned to North Hartland. Therefore, we find Central Vermont's proposal instead to charge North Hartland, in effect, for interconnection service via the rates contained in Attachment H-2 in its OATT to be

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<sup>20</sup> See Central Vermont's March 13, 2003 Answer in Docket No. EL03-51-000 at 20-28.

<sup>21</sup> The facilities consist of Line 66, from Pole 115 to the Quechee Substation, and the reconstruction of the Quechee Substation to accommodate the new three-phase circuit. See supra note 1 and accompanying text.

unjust and unreasonable, as this OATT rate includes an allocation of additional system-wide costs such as the cost of general, intangible and common plant.<sup>22</sup> Accordingly, we will order Central Vermont to revise its interconnection agreement filed in this docket to include a rate for these dedicated interconnection facilities and to modify Definition 46 of the interconnection agreement to reflect the Quechee Substation as the point of interconnection.

35. Except for the modifications discussed above we see no reason at this time for further alterations to the interconnection agreement. The terms and conditions contained in the filed interconnection agreement appear to be consistent with the Small Generator Interconnection NOPR. We are not persuaded that the other revisions urged by North Hartland, pertaining to such matters as certain definitions or the addition of diagrams, statements of capital costs and annual operating costs, and the 1984 construction contract, are necessary.

36. Because we find that the rates under Central Vermont's OATT that Central Vermont proposes to charge North Hartland for these dedicated interconnection facilities are unjust and unreasonable, we will, pursuant to Section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e (2000), order Central Vermont to revise its OATT to remove the costs of these dedicated interconnection facilities.<sup>23</sup>

37. Our order today gives North Hartland the "approved" interconnection agreement that it has sought. The order does not, however, relieve North Hartland of its obligation to acquire and retain, as required by the license amendment we granted pursuant to North Hartland's request, title in fee to, or to acquire the right to use for the term of the license,

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<sup>22</sup> However, we note that such costs may be appropriately recovered in the formula rate Central Vermont would charge North Hartland for Transmission Service to deliver power and energy generated by North Hartland beyond the point of interconnection with Central Vermont at the Quechee Substation. While North Hartland appears to intend to sell the output of its generator into NEPOOL, North Hartland has yet to request the requisite Transmission Service from Central Vermont under its OATT. See also supra note 23.

<sup>23</sup> Our decision today does not affect Central Vermont's OATT or charges under the OATT for use of its facilities beyond the Quechee Substation. To the extent that North Hartland needs to use Central Vermont's facilities to deliver power from its project beyond the Quechee Substation, it must do so pursuant to Central Vermont's OATT and pay for that service pursuant to the OATT. See also supra note 22.

the entire seven-mile line.<sup>24</sup> We encourage the parties to negotiate a lease agreement to give North Hartland these rights; they may avail themselves of the Commission's Dispute Resolution Service if they believe doing so would be useful.

The Commission orders:

(A) The interconnection agreement, as modified pursuant to this order, is hereby accepted for filing to become effective on the date of this order.

(B) Central Vermont is hereby directed to file modifications to the interconnection agreement to provide a rate for the costs of directly assigned interconnection facilities, within 30 days of the date of this order.

(C) Central Vermont is hereby directed to file revisions to its OATT, by deleting the costs of the directly assigned interconnection facilities, within 30 days of the date of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

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<sup>24</sup> North Hartland, in its answer in Docket No. ER04-510-000, indicates that it believes that the Commission has erroneously decided issues involving property rights in Docket No. EL03-51-000. The Commission has not decided issues involving any property rights for the North Hartland project, nor does it have the authority to do so under Part II of the Federal Power Act, 16 U.S.C. §§ 824-824m (2000).