

111 FERC ¶ 61,263
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. ER98-2329-003
ER98-2329-004
ER98-2329-005

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS

(Issued May 26, 2005)

1. In this order, the Commission accepts an updated market power analysis filed by Central Vermont Public Service Corporation (Central Vermont). As discussed below, we conclude that Central Vermont satisfies the Commission's standards for market-based rate authority. This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable. Central Vermont's next updated market power analysis is due three years from the date of this order.

Background

2. On October 25, 2004, as amended on November 9, 2004 and January 13, 2005, Central Vermont filed an updated market power analysis pursuant to the requirements of the Commission's order granting Central Vermont authority to sell electric energy and capacity at market-based rates.¹ Central Vermont submitted for filing, on November 9, 2004, the Commission's market behavior rules.² Central Vermont's submittal is accepted for filing, effective December 17, 2003, as requested.³

¹ The Commission granted Central Vermont market-based rate authority in *Central Vermont Public Service Corporation*, 83 FERC ¶ 61,166 (1998).

² *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004).

³ FERC Electric Tariff, Third Revised Vol. No. 8, Original Sheet Nos. 1-23. The market behavior rules tariff sheets, Original Sheet Nos. 24 and 25, are effective December 17, 2003.

3. Central Vermont is an investor-owned utility owning generation, transmission and distribution facilities. Central Vermont's facilities are located in the New England Independent System Operator (ISO-NE) market. Central Vermont provides service to approximately 138,000 customers in Vermont. Central Vermont states that its nameplate capacity is 119 MWs and, including long-term firm purchases and remote firm purchases, the total number of MWs that Central Vermont owns and/or controls is approximately 487 MW, varying slightly by season. Central Vermont also owns a non-regulated energy related business, Catamount Energy Corporation (Catamount). Central Vermont states that Catamount focuses on investing in electric generation projects of 10 to 100 megawatts (MWs) in the United States, Canada and Western Europe. Central Vermont states that Catamount owns 20 MWs of generation in control areas operated by ISO-NE, in which Central Vermont has a 33 percent interest. Central Vermont asserts that through its affiliate Catamount, it owns only a minority interest in a 20MW generating facility in ISO-NE and, therefore, lacks control over the facility. Central Vermont states that it is also a 56 percent owner of Vermont Electric Power Company (VELCO), which owns the bulk transmission system in Vermont, but Central Vermont states that it does not exercise majority control in voting on VELCO matters.⁴ VELCO's bulk transmission system is subject to the control of ISO-NE.

4. Central Vermont informs the Commission of several changes that have occurred since its last updated market power analysis. Central Vermont states that it sold its ownership interest in the Vermont Yankee Nuclear Corporation to a subsidiary of Entergy Corporation, Entergy Nuclear Vermont Yankee, LLC.⁵ Central Vermont states it continues to have a contract for the output of the plant and continues to buy power from the plant. Central Vermont further describes that it also sold its electric properties in New Hampshire, owned through Connecticut Valley Electric Company Inc.⁶

Notice of Filing and Responsive Pleadings

5. Notice of Central Vermont's October 25, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 64,746 (2004), with protests and interventions due on or before November 15, 2004. Notice of Central Vermont's, November 9, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 68,893 (2004), with protests and

⁴ According to Central Vermont, this is due to historical grandfathered agreements.

⁵ *Vermont Electric Power Company Inc.*, 100 FERC ¶ 62,203 (2002).

⁶ *Connecticut Valley Electric Company Inc.*, 108 FERC ¶ 62,225 (2003) and 108 FERC ¶ 62,056 (2004).

interventions due on or before November 30, 2004. Notice of Central Vermont's January 13, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 4,834 (2005), with protests and interventions due on or before February 3, 2005. No protests or interventions were filed in these proceedings.

Discussion

Market-Based Rate Authorization

6. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.⁷ As discussed below, the Commission concludes that Central Vermont satisfies the Commission's standards for market-based rate authority.

Generation Market Power

7. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen.⁸ Central Vermont has prepared both the pivotal supplier and the wholesale market share screen analyses for the ISO-NE market. The Commission has reviewed Central Vermont's generation market power screens for the ISO-NE market and has determined that Central Vermont passes both the pivotal supplier and wholesale market share screens in that market. Accordingly, the Commission finds that Central Vermont satisfies the Commission's generation market power standard for the grant of market-based rate authority.

Transmission Market Power

8. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an open access transmission tariff (OATT) on file before granting such authorization. Central Vermont states that through its 56 percent ownership share in its affiliate, VELCO, it owns transmission facilities in

⁷ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899 (1996); accord *Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

⁸ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,108, order on reh'g, 108 FERC ¶ 61,026 (2004).

Vermont. However, Central Vermont asserts that any transmission market power which Central Vermont might have as a consequence of that ownership is mitigated by Central Vermont's and VELCO's membership in ISO-NE, which controls access to and use of the VELCO transmission facilities. Furthermore, both Central Vermont and VELCO have an OATT on file with the Commission.⁹ Further, no intervenors have raised transmission market power concerns. Based on Central Vermont's representations, the Commission finds that Central Vermont satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

9. Central Vermont states that it does not own either directly or indirectly through affiliates any natural gas pipelines or other fuel supplies in the region. Central Vermont further states that it cannot impede entry into the generation market through control over such supplies, nor does it itself or through affiliates exercise any control over generating sites. In addition, no intervenors have raised barrier to entry concerns. Based on these representations, the Commission is satisfied that Central Vermont cannot erect barriers to entry.

Affiliate Abuse

10. Central Vermont states that it cannot engage in affiliate abuse. Central Vermont's tariff prohibits sales to an affiliate that has a franchised service territory. Furthermore, Central Vermont has a code of conduct on file with the Commission. In addition, no intervenors have raised affiliate abuse concerns. Based on these representations, we find that Central Vermont satisfies the Commission's concerns with regard to affiliate abuse.

Reporting Requirements

11. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or

⁹ *Central Vermont Public Service Corporation*, 77 FERC ¶ 61,266 (1996); *Vermont Electric Power Company*, Docket Nos. OA97-7-000 and OA97-7-001 (January 19, 2001) (unpublished letter order).

greater) market-based power sales during the most recent calendar quarter.¹⁰ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹¹

12. Central Vermont must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.¹² Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, Central Vermont is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the following provision:

[insert market-based rate seller name] must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

¹⁰ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

¹¹ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

¹² *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175 (2005).

13. Central Vermont is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Central Vermont's updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) Central Vermont's next updated market power analysis is due within three years of the date of this order.

(C) Central Vermont is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to include the change in status reporting requirement adopted in Order No. 652.

(D) Central Vermont's revised tariff sheets incorporating the market behavior rules are hereby accepted for filing effective December 17, 2003.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.