UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Vermont Transco LLC	Docket No. ER07-459-001
Vermont Electric Power Company	Docket No. ER07-513-001
Lamoille County Systems	
v.	Docket No. EL07-11-001
Vermont Transco LLC Vermont Electric Power Company	

ORDER ON CLARIFICATION AND REHEARING

(Issued July 5, 2007)

1. This order addresses the April 25, 2007 request of Central Vermont Public Service Corporation (CV) for clarification, or if the Commission does not grant clarification, rehearing of the Commission's March 26, 2007 Order.[1] This order grants CV's request for clarification to the extent set forth below and, to the extent not granted, denies rehearing.

Background

2. The March 26, 2007 Order addressed three separate filings, one of which was the complaint filed in Docket No. EL07-11-000 by Lamoille County Systems (LCS)[2] against

[1] *Vermont Transco LLC, et al.*, 118 FERC ¶ 61,244 (2007) (March 26, 2007 Order).

[2] Lamoille County Systems consist of five municipal electric systems located in Lamoille County, Vermont: the Town of Stowe Electric Department (Stowe), the Town of Hardwick Electric Department, the Village of Hyde Park Electric Department, the Village of Johnson Water & Light Department, and the Village of Morrisville Water & Light Department. LCS represents five of the nine utilities that serve the county.

Vermont Transco LLC (VT Transco) and Vermont Electric Power Company (VELCO) (collectively VT Transco).[3] The complaint sought an order permitting LCS to withdraw from their 1991 Transmission Agreement (VTA) in order to take network integration transmission service under Schedule 21-VTransco, Local Service Schedule, of the ISO New England, Inc.'s (ISO-NE) FERC Electric Tariff No. 3.

3. As is related in more detail in the March 26, 2007 Order, the VTA is a Commission-approved agreement between VT Transco and all 23 Vermont distribution utilities, including LCS, which replaced a system of rolled-in transmission rates for all high-voltage facilities in Vermont with a rate structure that attempted to allocate transmission costs more specifically.[4] The VTA includes a formula rate consisting of two main components; the first is the transmission customer's share of the cost of "Common Facilities," and the other is the transmission customer's share of the cost of "Specific Facilities," which are defined in the VTA as "those high-voltage transmission lines … constituting a direct physical interconnection to the VT Transco system and not constituting part of VT Transco's looped transmission facilities, that are requested, used, and installed to benefit a requesting Purchaser of transmission service."[5] The costs of Specific Facilities for the first ten years are "allocated entirely to the requesting Purchaser of transmission service, until the Purchaser provides VT Transco with a written agreement under which additional Purchasers of transmission service agree to support a different allocation."[6] The VTA does not include a provision establishing a primary term or termination provision.

4. The impetus for the complaint is the Lamoille County Project (the Project), a transmission upgrade by VT Transco. Stowe, one of the five municipal electric systems that comprise LCS, was the requesting party in 2003 for the planning and construction of

---

[3] In Docket No. ER07-459-000, VT Transco proposed to modify its Specific Facility definition and to update Exhibit A, which contains information on its current allocation of Specific Facilities costs to each customer. In Docket No. ER07-513-000, VT Transco proposed to revise how it calculates the formula rate to assess the transmission capacity charge to "reflect current practice."

[4] *Vermont Electric Power Co.*, 60 FERC ¶ 61,296 (1992).

[5] Complaint Exhibit LCS-3 at 3.

[6] Complaint at 14 (*citing* the VTA). After ten years the Specific Facilities become Common Facilities, and their remaining costs are then rolled-in and charged to all customers on a load ratio share basis.

the Project, and committed to pay the costs of the Project as a Special Facilities pursuant to the terms of the VTA. LCS asserted that, in August 2006, VT Transco submitted to LCS a cost estimate for the Project of between $38.5 and $40 million, a substantial increase from the estimate in 2003, and the vast majority of these costs, approximately $35 million, would be identified as Specific Facilities and allocated to LCS.

5. LCS stated that the VTA contains neither an expiration date nor any provision for withdrawal, transition, or termination and that the absence of such a provision denies transmission customers access to non-discriminatory, open-access transmission service under Schedule 21-VTransco of the ISO-NE Tariff. In their complaint, LCS requested that the Commission authorize them to withdraw from the VTA upon sixty days' prior notice and then to take network integration transmission service under Schedule 21-VTransco of the ISO-NE Tariff. LCS asserted that they are not seeking to change any rate,[7] and thus the "public interest" standard of review under the *Mobile-Sierra* doctrine[8] does not apply here.

6. In its Answer, VT Transco urged the Commission to dismiss the complaint. It asserted that LCS failed to demonstrate that the VTA is unjust, unreasonable, and unduly discriminatory, or that being required to honor their contractual obligations under the VTA is contrary to the public interest.

7. The March 26, 2007 Order found, among other things, that the Commission views proposed changes to non-rate terms and conditions of an existing contract as governed by the same rules that are applicable to proposed changes to rates in that contract.[9] Since the VTA contained no provision allowing either party to unilaterally seek changes in the contract, the *Mobile-Sierra* public interest standard of review applied to LCS' proposed change to the VTA to add a termination clause.[10] The March 26, 2007 Order also instituted hearing and settlement judge procedures.

---

[7] LCS also stated that they do not seek "to be relieved from any obligation that they may have incurred to date to pay costs incurred by [VT Transco]." Complaint at 20-21.

[8] *United Gas Pipeline Co. v. Mobile Gas Service Corp*., 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co*., 350 U.S. 348 (1956) (*Mobile-Sierra*).

[9] March 26, 2007 Order at P 50.

[10] *Id.* at P 52

CV's Request for Clarification or Rehearing

8. CV states that its request is limited to Docket No. EL07-11-000, which addressed LCS' complaint, and asserts that the Commission erred in the phrasing of the issues set for hearing in P 53 of the March 26, 2007 Order. In particular, CV objects to the phrasing of the issue as "whether the lack of a termination provision applicable to any party to the VTA is in the public interest…"[11]

9. CV argues that the way the Commission phrased the issue in P 53 is substantively different from the standard that the Commission has adopted in other proceedings. CV asserts that the language is susceptible to the interpretation that the hearing should determine whether the public interest is advanced by the absence of a termination provision, or that parties who oppose the proposed modification of the VTA bear the burden of proving that the VTA is in the public interest despite the absence of such a provision, or even that the issue presented is whether a termination provision would be consistent with the public interest.[12] CV argues that these possible interpretations impose a too-low burden of proof on the complainants in this proceeding.[13]

10. CV concludes that, in order to avoid any confusion on this matter during the ongoing proceedings, it is necessary that the Commission correct the phrasing of the issue in P 53 as CV has proposed, namely, "whether the public interest is harmed by the fact that the VTA does not contain a termination provision, and therefore the public interest requires modification of the VTA."[14] If the Commission declines to clarify the issue as it has requested, then CV requests rehearing.

Discussion

11. We agree with CV that, as stated in P 51 of the March 26, 2007 Order, the VTA may be modified "only upon [a] finding that the modification is required by the 'public

---

[11] *Id.* at P 53.

[12] Request at 3.

[13] Request at 3.

[14] Request at 5.

interest.'"[15] In other orders on complaints, the Commission has also explained that the burden of proof is on the complaining party proposing a unilateral change in a contract. For example, in *Dominion Cove Point LNG, LP*,[16] the Commission stated: "where the complainant seeks a Commission-imposed change in an existing tariff provision, the burden is on the party seeking the change to first show that the existing provision is no longer just and reasonable, and then it must show what replacement provision would be just and reasonable…." Thus, we clarify that the burden of proof here is upon LCS, the complaining party, to show that the proposed addition to the VTA, *i.e.*, the proposed termination provision, is required by the public interest.

12. However, we find no merit in CV's argument that the issue as set forth in P 53 of the March 26, 2007 Order is open to a variety of interpretations which could lead to results inconsistent with the Mobile *Sierra* public interest standard of review for contract modification, or to a change in who has the burden of proof. Accordingly, we deny CV's request for clarification or rehearing, except to the limited extent provided above.

The Commission orders:

Central Vermont's request for clarification or rehearing is hereby granted to the extent discussed in the body of this order, and, to the extent the requested clarification is not granted, is hereby denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

---

[15] That paragraph cites the same case CV references in its request, *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 283 (D.C. Cir. 2006).

[16] 119 FERC ¶ 61,110 at P 8 (2007).