

140 FERC ¶ 61,239  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

ISO New England, Inc.,  
Central Vermont Public Service Corporation and  
Green Mountain Power Corporation

Docket No. ER12-2304-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF PROVISIONS AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 24, 2012)

1. On July 26, 2012, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> Green Mountain Power Corporation (Green Mountain) and its soon-to-be acquired affiliate,<sup>2</sup> Central Vermont Public Service Corporation (Central Vermont) (collectively, Applicants), submitted revised Schedule 21-GMP and revised Schedule 20A-GMP,<sup>3</sup> each to the ISO New England, Inc. (ISO-NE) Transmission, Markets and Services Tariff (Tariff). Central Vermont also submitted notices of cancellation of its currently effective Schedules 21-CV and 20A-CV. In this order, the Commission accepts Applicants' revised Schedules 21-GMP and 20A-GMP and notices of cancellation, suspends them for a nominal period to become effective September 24, 2012, or on the closing date of the Green Mountain-Central Vermont merger, whichever occurs later, as requested, subject to refund, and establishes hearing and settlement judge procedures.

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> See *Central Vermont Public Service Corporation, et al.*, 138 FERC ¶ 61,161 (2012) (Merger Order).

<sup>3</sup> Schedule 21-GMP provides post-merger rates for Local Network Transmission Service and Local Point-to-Point Service. Schedule 20A-GMP contains terms and conditions relative to the use of Green Mountain's post-merger share of the Hydro-Quebec Phase II Transmission Line. See Transmittal Letter at 2.

## **Background**

2. As detailed in the Merger Order, and pursuant to section 203 of the FPA<sup>4</sup> and the Commission's Merger Policy Statement,<sup>5</sup> the Commission authorized Gaz Metro Limited Partnership to acquire Central Vermont and for Green Mountain to subsequently merge with Central Vermont. The Commission also authorized conveyance of a portion of the common equity ownership of Vermont Electric Power Company (VELCO) held by Central Vermont to the Vermont Low-Income Trust for Electricity, Inc.<sup>6</sup> The Commission determined, among other things, that the Transaction would have no adverse effect on rates, accepting Applicants' commitment to hold harmless wholesale requirements and transmission customers from costs associated with the Transaction for a period of five years, to the extent that such costs exceed savings related to the Transaction. The Commission further stated, however, that if Applicants seek to recover Transaction-related costs through their wholesale power or transmission rates, then they must submit a compliance filing that details how they are satisfying the hold harmless requirement.<sup>7</sup> The Commission further noted that any future filing of a single transmission rate schedule for the survivor of the Central Vermont-Green Mountain merger would be subject to a separate section 205 proceeding.<sup>8</sup>

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<sup>4</sup> 16 U.S.C. § 824b (2006).

<sup>5</sup> See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement). See also FPA Section 203 Supplemental Policy Statement, 72 Fed. Reg. 42,277 (Aug. 2, 2007), FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement). See also Revised Filing Requirements Under Part 33 of the Commission's Regulations, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). See also Transactions Subject to FPA Section 203, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

<sup>6</sup> All three referenced transactions will be referred to collectively as the Transaction.

<sup>7</sup> See Merger Order, 138 FERC ¶ 61,161 at P 45.

<sup>8</sup> *Id.* P 46.

## I. The Filing

3. Applicants state that the revised Schedules 21-GMP and 20A-GMP replace in their entirety the Schedules 21-GMP and 20A-GMP currently on file with the Commission. Central Vermont also submits notices of cancellation to terminate existing Central Vermont Schedules 21-CV and 20A-CV on the premise that those schedules will no longer serve a purpose after the merger of Central Vermont into Green Mountain. For all of these revisions, Applicants seek an effective date of either September 24, 2012 or the closing date of the merger, whichever occurs later.<sup>9</sup>

4. Applicants state that the formula rate in revised Schedule 21-GMP is modeled on the currently effective Schedule 21-CV, except that it has been updated to require FERC Form 1 data and a more formalized annual review and true-up process.<sup>10</sup> Applicants explain that the proposed Schedule 21 applies the same Formula Rate computations to Local Network Transmission Service (LNS)<sup>11</sup> and Local Point-to-Point Service (LPTPS). LNS charges during the calendar year in which service is provided are based on estimates that will be true-up using actual FERC Form 1 data, and Applicants commit to make a true-up filing on each June 1 following the year of service. For the initial rate period (October 1, 2012 through December 31, 2012), Applicants will bill for LNS service based on 2012 estimated costs, and will then true-up those billings estimates based on actual FERC Form 1 costs for the initial rate period. Applicants explain that the initial rate period for the LPTPS rate is October 2012 through May 2014.<sup>12</sup> Starting June 1, 2014, and each June 1 thereafter, LPTPS rates will be based on the prior year's actual Annual Transmission Revenue Requirement (ATRR) and the annual system peak. Applicants add that Green Mountain does not provide any LPTPS service and does not expect to provide appreciable, if any, LPTPS service in the future.

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<sup>9</sup> *Id.*

<sup>10</sup> Transmittal Letter at 3.

<sup>11</sup> Green Mountain and Central Vermont own certain lower voltage transmission and sub-transmission lines that generally operate as radial lines to deliver power from the bulk power transmission system in Vermont to Green Mountain's and Central Vermont's retail customers. *See* Merger Order, 138 FERC ¶ 61,161 at 3-4. The proposed Schedule 21-GMP rate provides for LNS service over the combined facilities of Green Mountain and Central Vermont.

<sup>12</sup> Transmittal Letter at 3.

5. Applicants further propose that Schedule 21-GMP reflect the results of the currently pending proceeding involving the base return on equity (ROE) for New England transmission owners.<sup>13</sup> Applicants also propose that the depreciation rates relevant to transmission service use a composite of the existing Central Vermont and Green Mountain depreciation rates.<sup>14</sup>

6. Further, Applicants propose that Schedule 21-GMP reflect an initial Post Retirement Benefits Other Than Pensions baseline value of \$1,939,705 that is permitted to fluctuate within a narrow bandwidth without making any Commission filing, because, according to Applicants, the value is relatively stable over time and is expected to become more stable in the future.<sup>15</sup>

7. Additionally, Applicants state that as part of their proposed merger, they committed to show the impact of the “blending” of their respective facilities, operations and loads.<sup>16</sup> Accordingly, attached to their filing are four sets of revenue data, comparing revenues on an individual customer basis for each Central Vermont and Green Mountain customer with what those revenues would have been if Central Vermont and Green Mountain had each revised their individual Schedule 21s to be consistent with the new proposed combined company Schedule 21-GMP.<sup>17</sup> Applicants state that the ATTR for Green Mountain that would be necessary to bring the rate to a cost-justified level using actual 2011 data would be \$7,121,914 as compared to the currently effective

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<sup>13</sup> See Docket No. EL11-66-000.

<sup>14</sup> Transmittal Letter at 5 and Depreciation Studies in Exhibit Nos. GMP-202 and GMP-203.

<sup>15</sup> Transmittal Letter at 5-6. The formula rate’s Post-Retirement Benefits Other Than Pensions bandwidth would allow annual changes in the Post-Retirement Benefits Other Than Pensions without making a filing with the Commission if the annual changes in the Post-Retirement Benefits Other Than Pensions component of the ATRR rate impact is less than .05 per kW month.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* Applicants state that Exhibit GMP-208 compares data for calendar year 2011; Exhibit GMP-209 compares data for the October through December 2012 period; Exhibit No. GMP-210 shows projected 2013 revenues on an individual customer basis; and Exhibit No. GMP-211 compares data using 2011 billing determinants to show that an updating and blending of the Green Mountain and Central Vermont rate bases, operations and expenses result in a 2011 ATRR of \$22,137,593.

Schedule 21-GMP ATRR of \$4,995,901. For Central Vermont, the ATRR would increase from \$13,998,512 to \$14,972,707. Applicants state that updating and blending the Green Mountain and Central Vermont tariffs results in a 2011 ATRR of \$22,137,593.<sup>18</sup>

8. With regard to LNS, Applicants explain that as a result of the blending, most but not all of customers currently served separately by Central Vermont, referred to as the Central Vermont legacy customers, will experience a reduction in their LNS charges. In contrast, the customers currently served by Green Mountain, referred to as the Green Mountain legacy customers, will experience an increase in their LNS charges. Applicants state that, in order to balance and mitigate the impacts of updating and blending of Green Mountain and Central Vermont legacy rates, Applicants propose a five-year (20 percent per year) phase-in period for the Schedule 21-GMP LNS rate.<sup>19</sup> Applicants advise that during this phase-in, customers who would experience a decrease in LNS charges under the new formula rate will still realize a decrease from the new rate, but it will be phased in over the five-year period. The rate decrease that would otherwise be realized by the Vermont legacy customers will be used as a credit to partially offset the rate increase that would otherwise be experienced by the Green Mountain legacy customers.

9. Proposed Schedule 21-GMP also provides for the recovery of costs associated with certain distribution facilities that are used with the provision of transmission service to certain customers.<sup>20</sup> Applicants state that because detailed, specific facility costs are not available for all customers, proposed Schedule 21-GMP applies customer load allocations to average facility costs to develop distribution substation and distribution line charges pursuant to revised Schedule 21-GMP Attachments D-2 and D-3, respectively. The proposed Schedule 21-GMP uses the 2011 plant and meter revenue requirement for Central Vermont to determine the meter charges for all customers pursuant to Attachment D-4.

10. Proposed Schedule 20A-GMP addresses charges for Green Mountain's ownership share of the Hydro-Quebec Phase II Line. Applicants explain that, while Central Vermont and Green Mountain each had an ownership share of that line, their merger will result in Green Mountain's acquisition of Central Vermont's ownership

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<sup>18</sup> Applicants reference generally Exh. GMP-200 at 9-11.

<sup>19</sup> Transmittal Letter at 7, (citing *New England Power Co.*, 88 FERC ¶ 61,292, at 61,889-90 (1999)).

<sup>20</sup> *Id.*

share. Applicants state that this necessitates the filing of the proposed Schedule 20A-GMP, which, according to Applicants, reflects the terms and conditions of the current Central Vermont Schedule 20A, except for the deletion of certain provisions Applicants consider to be obsolete, and the addition of Attachment L Creditworthiness Procedures that are identical to those in current Schedule 21-CV.

## **II. Notice of Filing and Responsive Pleadings**

11. Notice of the filing was published in the *Federal Register*, 77 Fed. Reg. 46,430 (2012), with interventions and protests due on or before August 16, 2012. Timely motions to intervene and protests or comments were filed by the City of Burlington, Vermont (Burlington); Northeast Utilities Service Corporation on behalf of Public Service of New Hampshire (NUSCO/PSNH); Vermont Electric Cooperative (VEC) and the Washington Electric Cooperative, Inc. (WEC). The Vermont Department of Public Service filed a notice of intervention. New Hampshire Electric Cooperative, Inc. (NHEC) filed a motion to intervene one day out of time.

12. On August 31, 2012, Applicants and WEC filed answers to the protests. On September 7, 2012 and September 11, 2012, Applicants and VEC filed additional answers, and on September 13, 2012, Green Mountain submitted an answer to VEC's answer

13. NUSCO/PSNH assert that Applicants failed to comply with the Merger Order's hold harmless requirement. They argue that the proposal to phase-in the merger related rate increase does not constitute adequate protection against adverse rate impacts resulting from the merger and is not just and reasonable. NUSCO/PSNH assert that if the proposed five-year phase-in plan is accepted, PSNH will not receive its full projected level of transmission rate savings until 2017.

14. WEC assails the use of a "postage stamp rate," arguing that a "license plate" rate is the more appropriate rate design in this case.<sup>21</sup> WEC maintains that the Central Vermont's and Green Mountain's sub-transmission systems are not integrated and therefore Commission precedent requires "license plate" rates to avoid significant increases to customers of the lower cost transmission provider that would occur using the "postage stamp rate."<sup>22</sup> WEC asserts that under the "license plate" rate, both

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<sup>21</sup> WEC's Protest at 3-4, and 13-14.

<sup>22</sup> WEC's Protest at 3-4 (citing *Sierra Pacific Power Company, et al.*, 93 FERC ¶ 61,217, at 61,274-75 (2000); and *Atlantic City Electric Company*, 86 FERC ¶ 61,318, at 62,143 (1999)).

Central Vermont and Green Mountain would be required to calculate LNS rates on a stand-alone basis for the first five years following their merger, after Green Mountain takes over control of Central Vermont's plant facilities, operations and load.<sup>23</sup> WEC also complains that Applicants proposed phase-in period is only 51 months (October 1, 2012 through December 31, 2016) rather than the full five-year obligation they agreed upon.

15. WEC also asserts that Schedule 21-GMP provides neither adequate transparency of data concerning formula rate inputs, nor any review process prior to its true-up process. WEC requests that the Commission require Applicants to adopt protocols that comply with the Commission's discussion of requirements for a just and reasonable formula rate proposal in *Midwest Independent Transmission System Operator, Inc.*<sup>24</sup>

16. Additionally, WEC protests certain non-formulary elements of the proposed rate in Schedule 21-GMP. With respect to the proposed depreciation rates, WEC complains that the depreciation studies are not adequately supported and questions whether the weighted average approach satisfies the requirement that the asset values are allocated over the expected remaining life of the properties. With respect to allowing a bandwidth applicable to the Post-Retirement Benefits Other Than Pensions, WEC asserts that using a bandwidth is not consistent with Commission precedent. With respect to the return on equity proceeding in Docket No. EL11-66-000, WEC seeks clarification that any changes relative to the return on equity directed by the Commission in this case apply back to the refund effective date of October 1, 2011 ordered by the Commission in that proceeding.<sup>25</sup>

17. VEC's primary objection to proposed Schedule 21-GMP is the inclusion in the ATRR of directly-assigned "Specific Facilities," as defined in the Commission-accepted 1991 Vermont Transmission Agreement (1991 VTA). VEC explains that the 1991 VTA is treated as an "Excepted Transaction" under the ISO-NE Tariff and the costs of "Specific Facilities" are assigned to a specific party or parties because they are "requested, used, and installed to benefit a requesting Purchaser of transmission service."<sup>26</sup> VEC argues that Applicants' proposed formula rate seeks to incorporate Green Mountain's Specific Facilities charges recorded in FERC Account No. 565, Transmission of electricity by others, into ATRR immediately. VEC asserts that the way

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<sup>23</sup> WEC's Protest at 14.

<sup>24</sup> WEC's Protest at 6 (citing 139 FERC ¶ 61,127, at PP 8-10 (2012)).

<sup>25</sup> WEC's Protest at 16-18.

<sup>26</sup> VEC's Protest at 2 (citing 1991 VTA on file with the Commission under the designation Vermont Transco LLC, FERC Rate Schedule No. 1).

that Applicants have worded the formula rate adds \$6 million in payments (27 percent of the \$22.1 million blended ATRRs) for “Specific Facilities” that previously had been collected by Green Mountain solely from its retail customers. VEC complains that the formula rate violates cost allocation principles that have been strictly adhered to in Vermont for decades. VEC requests that the Commission reject the filing for violating the 1991 VTA.<sup>27</sup> In the alternative, VEC requests for maximum suspension, hearing and settlement judge procedures.

18. Burlington protests the initial rate period of October 2012 through May 2014 for LPTPS. Contrary to Applicant’s assertion that no customers take LPTPS, Burlington advises that it is considering taking LPTPS in the near future.<sup>28</sup> Burlington is concerned that cost savings from the merger in the near term will not benefit point-to-point customers until mid 2014. Finally, Burlington seeks confirmation that cancelling Schedule 21-CV and replacing it with Schedule 21-GMP will not affect Applicants’ continuity in processing applications for new transmission service.

### **III. Discussion**

#### **A. Procedural Matters**

19. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,<sup>29</sup> the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant NHEC’s request for late intervention, given the early stage of the proceeding, NHEC’s interest in the proceeding, and the absence of any undue prejudice or delay.

20. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure<sup>30</sup> prohibits an answer to a protest and an answer to answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers and will, therefore, reject them.

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<sup>27</sup> VEC’s Protest at 28 (citing *Papago Tribal Utility Authority v. FERC*, 610 F.2d 914, 929 (D.C. Cir. 1979)).

<sup>28</sup> Burlington Protest at 12.

<sup>29</sup> 18 C.F.R. § 385.214 (2012).

<sup>30</sup> 18 C.F.R. § 385.213(a)(2) (2012).

## B. Commission Determination

21. Our preliminary analysis indicates that Applicants' proposed Schedules 21-GMP and 20A-GMP and notices of cancellation have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept them for filing, suspend them for a nominal period to become effective September 24, 2012, or on the closing date of the Green Mountain-Central Vermont merger, whichever occurs later, as requested, subject to refund, and establish hearing and settlement judge procedures. We will direct Applicants to inform the Commission, within 30 days of the closing date of the Green Mountain-Central Vermont merger, of the effective date of the Schedules and notices of cancellation.

22. Applicants' proposed Schedules and notices of cancellation raise issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures we order below. While protestors have raised concerns about these filings, we find that the appropriateness of the Schedules and notices of cancellation are best addressed in the ordered hearing.

23. In *West Texas Utilities Co.*,<sup>31</sup> the Commission explained that when its preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission will generally impose a five-month suspension. In the instant proceeding, our preliminary analysis indicates that the rates may not be substantially excessive, as defined in *West Texas*, and therefore we will accept the Schedules and notices of cancellation for filing, suspend them for a nominal period, to be effective September 24, 2012, or on the closing date, which ever occurs later, as requested, subject to refund, and set them for hearing and settlement judge procedures.

24. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>32</sup> If the parties desire, they may,

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<sup>31</sup> In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982) (*West Texas*), the Commission found that it generally would suspend proposed rates for a five-month period when its preliminary analysis indicates that a proposed rate increase may be more than 10 percent excessive.

<sup>32</sup> 18 C.F.R. § 385.603 (2012).

by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>33</sup>

25. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the appointment of the settlement judge concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Applicants' proposed Schedules 21-GMP and 20A-GMP and notices of cancellation of Schedules 21-CV and 20A-CV are hereby accepted for filing, suspended for a nominal period, to become effective September 24, 2012 or on the closing date of the Green Mountain-Central Vermont merger, whichever occurs later, subject to refund, as discussed in the body of this order.

(B) Applicants are hereby directed to inform the Commission, within 30 days of the closing date of the Green Mountain-Central Vermont merger, of the effective date of the Schedules and notices of cancellation, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Applicant's proposed formula rate template and implementation protocols. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge

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<sup>33</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(E) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.