

109 FERC ¶ 61,195  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Central Vermont Public Service Corporation

Docket Nos. ER04-510-002  
ER04-510-003,  
EL04-88-001, and  
EL04-88-002

ORDER DISMISSING COMPLIANCE FILING

(Issued November 22, 2004)

1. In this order, the Commission dismisses the compliance filing submitted on April 12, 2004, by Central Vermont Public Service Corporation (Central Vermont). Central Vermont filed a revised unexecuted Interconnection Agreement with North Hartland, LLC (North Hartland) and modifications to Central Vermont's open access transmission tariff (OATT), in compliance with the Commission's order issued on March 12, 2004.<sup>1</sup> On June 18, 2004, Commission Staff requested additional information to process the filing. On July 6, 2004, Central Vermont submitted its response.<sup>2</sup> North Hartland has sought to become licensee of a hydroelectric project (project).

2. As discussed more fully below, transfer of the license was approved by the Commission subject to North Hartland's filing copies of conveyance documents showing transfer of title of the project to North Hartland. North Hartland has previously been granted nine extensions of time to make the filing. In an order issued concurrently with this order,<sup>3</sup> the Commission has denied North Hartland's most recent request for an extension of time and has rescinded its order approving the transfer of the license. As a

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<sup>1</sup> *Central Vermont Public Service Corp.*, 106 FERC ¶ 61,247 (2004) (March 12 Order).

<sup>2</sup> Docket Nos. ER04-510-003 and EL04-88-002.

<sup>3</sup> *North Hartland, LLC*, 109 FERC ¶ 61,194 (2004).

result, the Interconnection Agreement is no longer needed. The Commission will therefore terminate the Interconnection Agreement and dismiss Central Vermont's compliance filing as moot.

### **Background**

3. North Hartland has been attempting to buy a four MW 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.

4. The project 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>4</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.

5. In 1996, VEGT ceased project operations and filed for bankruptcy under Chapter 7 of the Bankruptcy Code.<sup>5</sup> 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 Commission approved the sale of the project and the

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<sup>4</sup> This included the installation of new circuit breakers and meters for measuring the project's output.

<sup>5</sup> 11 U.S.C. §§ 101, *et seq.* (2000).

transfer of the project's license that same year.<sup>6</sup> Consummation of the project sale has not taken place. Over the years, North Hartland has offered differing reasons as to why.

6. 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>7</sup>

### **Request for Declaratory Order**

7. The genesis of these proceedings was the January 15, 2003, request for declaratory order filed by North Hartland, in Docket No. EL03-51. 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 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 Public Service Board (Vermont Commission).<sup>8</sup>

8. 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

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<sup>6</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 requested and received a series of extensions of the deadline to complete the transfer. The Commission, however, has denied North Hartland's most recent request. *See* n.3 *supra*.

<sup>7</sup> *Vermont Electric Generation & Transmission Cooperative, Inc., and North Harland, LLC*, 104 FERC ¶ 61,151 at P 8-14 (July 28 Order), *order on reh'g*, 105 FERC ¶ 61,038 (2003).

<sup>8</sup> North Hartland Request for Declaratory Order at 1.

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. Several orders resulted from this request for declaratory order, as described below.

### **October 7 Order**

9. In an order issued on October 7, 2003,<sup>9</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 in a prior order<sup>10</sup> 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.

10. The Commission added that, if North Hartland, once it becomes the licensee,<sup>11</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.

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

11. 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

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<sup>9</sup> *North Hartland, LLC*, 105 FERC ¶ 61,036 (2003) (October 7 Order).

<sup>10</sup> *See* n. 6 *supra*.

<sup>11</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.

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.

12. In an order issued on November 13, 2003,<sup>12</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>13</sup>

13. 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>14</sup>

14. 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>15</sup>

15. 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>16</sup>

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<sup>12</sup> *North Hartland, LLC*, 105 FERC ¶ 61,192 (2003) (November 13 Order).

<sup>13</sup> *Id.* at P 15.

<sup>14</sup> *Id.* at P 17-18.

<sup>15</sup> *Id.* at P 17.

<sup>16</sup> *Id.* at P 21.

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

16. 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."

17. 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.

18. On November 17, 2003, North Hartland filed a request for a pre-filing meeting with Commission Staff (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>17</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 contested proceedings were invited and in which they could participate. A notice of the technical conference was issued on December 4, 2003.

19. 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

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<sup>17</sup> Docket Nos. P-2816, EL03-51 and Docket No. EL03-215-000.

interconnection agreement with Central Vermont before it will release funds necessary for North Hartland to acquire the project assets.

20. 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>18</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.

21. In the December 30 Order<sup>19</sup> the Commission granted clarification that an "interconnection agreement" was needed -- to address operation and maintenance issues related to the existing physical interconnection.<sup>20</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 Hartland to begin service after it acquires the project's assets and makes any necessary repairs.<sup>21</sup>

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<sup>18</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>19</sup> *North Hartland, LLC*, 105 FERC ¶ 61,392 (2003) (December 30 Order).

<sup>20</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.

<sup>21</sup> *Id.* at P 22-24.

22. North Hartland sought rehearing of the Commission's December 30 Order. Rehearing was denied by operation of law.<sup>22</sup>

### **Interconnection Agreement and March 12 Order**

23. 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 as well as with the commitment Central Vermont had made at the technical conference.

24. As requested by North Hartland, the interconnection agreement was based on the Small Generator Interconnection Rulemaking.<sup>23</sup> Because the project was already interconnected with Central Vermont, the terms and conditions of the agreement were largely operational in nature -- there being no need for the construction of new distribution or transmission network facilities or for interconnection studies. The agreement was tailored to reflect these circumstances.

25. In the March 12 Order, the Commission accepted as summarily modified the unexecuted interconnection agreement filed by Central Vermont. In addition the Commission summarily modified provisions of Central Vermont's 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).

26. The two modifications required by the Commission to the interconnection agreement were: first, that Central Vermont modify section 2.4 of the indemnification provision;<sup>24</sup> and second, that Central Vermont revise the interconnection agreement to include a rate for dedicated interconnection facilities because the Commission found that

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<sup>22</sup> *North Hartland, LLC*, 106 FERC ¶ 61,102 (2004).

<sup>23</sup> *See* n.16 *supra*.

<sup>24</sup> March 12 Order at P 32.

the facilities at issue in this proceeding<sup>25</sup> are for the sole use of North Hartland and thus are correctly considered interconnection facilities and not network facilities.<sup>26</sup>

27. Because the Commission found that the costs of these facilities should be directly assigned to North Hartland and charged for under the interconnection agreement, the Commission found that Central Vermont's charge for interconnection service pursuant to the rates contained in its OATT was unjust and unreasonable. The Commission ordered Central Vermont to revise its OATT to remove the costs of these dedicated interconnection facilities.<sup>27</sup>

28. Finally, the Commission concluded in the March 12 Order that the order gave North Hartland the "approved" interconnection agreement that it had sought.<sup>28</sup> In this regard, had North Hartland taken this "approved" interconnection agreement and closed on the financing (that North Hartland represented to the Commission was ready to go once it had an "approved" interconnection agreement) and acquired the facility, North Hartland could have taken service under the Interconnection Agreement as soon as North Hartland was ready to operate the facility.

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<sup>25</sup> The Commission stated that 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. March 12 Order at n. 21.

<sup>26</sup> *Id.* at P 34-35. In addition, North Hartland was ordered to modify Definition 46 of the interconnection agreement to reflect the Quechee Substation as the point of interconnection.

<sup>27</sup> This decision was not intended to affect Central Vermont's OATT or charges under the OATT for use of its facilities beyond the Quechee Substation. The Commission noted that to the extent 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. March 12 Order at n.23. 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. *Id.* at 22.

<sup>28</sup> The order did not, however, relieve North Hartland of its obligation to acquire and retain, as required by the license, title in fee to, or to acquire the right to use for the term of the license, the entire seven-mile line.

### **Compliance Filing**

29. On April 12, 2004, Central Vermont filed a revised unexecuted interconnection agreement with North Hartland. The revised agreement was intended to comply with the Commission's March 12 Order.

30. Notice of Central Vermont's April 12, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 22,498 (2004), with comments, protests and interventions due on or before May 3, 2004. North Hartland filed a timely motion to intervene and comments on April 26, 2004, and an untimely supplement to its motion to intervene on May 17, 2004. North Hartland objects to the rate contained in the interconnection agreement.

31. On June 18, 2004, Staff advised Central Vermont that it did not have sufficient information to process the April 12 filing and directed Central Vermont to file more information within 15 days. On July 6, 2004, Central Vermont filed information in response to the June 18 Staff letter.

32. Notice of Central Vermont's July 6, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 43,574 (2004), with comments, protests and interventions due on or before July 27, 2004.

33. On July 20, 2004, Robert L. Carey, Jr. who signs North Hartland's pleadings as North Hartland's "Managing Member" made an *ex parte* phone call to Commission decisional staff. A memo describing that phone call is reflected on the docket sheet.

34. On July 21, 2004, North Hartland filed an intervention and protest to Central Vermont's July 6 filing. In it, North Hartland renews its objections to the rate contained in the revised interconnection agreement.

### **Discussion**

35. In this order, we address the compliance filing made in response to the Commission's March 12 Order in this proceeding. When addressing a compliance filing, the Commission evaluates whether the filing in fact complies with the Commission's order requiring the filing.

36. In this proceeding, however, we need not address the compliance filing directly. That is because the filing concerns Central Vermont's approved interconnection agreement with North Hartland. The purpose of that agreement was to provide for terms and conditions of the interconnection between Central Vermont and North Hartland. North Hartland, however, has failed to consummate the acquisition of the hydroelectric

facility that it intended to purchase within the time limits required by the license transfer and subsequent extensions of time. In an order issued concurrently with this order,<sup>29</sup> the Commission has denied North Hartland's most recent request for an extension of time and has rescinded its order approving the transfer of the license. As a result, North Hartland will not be licensee and will not be operating the hydroelectric facility. Accordingly, there is no longer a need for an interconnection agreement between North Hartland and Central Vermont. The Commission therefore will terminate Central Vermont's approved Interconnection Agreement and will dismiss Central Vermont's compliance filing as moot.

The Commission orders:

(A) Central Vermont's approved Interconnection Agreement with North Hartland is hereby terminated, as discussed in the body of this order.

(B) Central Vermont's April 12, 2004 filing, as amended on July 6, 2004, is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>29</sup> *See* n.3 *supra*.