

3. Green Mountain describes itself as a vertically-integrated electric utility engaged primarily in the distribution and sale of electricity to retail customers, but it concedes that it engages in certain wholesale power sales.³ It claims that its wholesale sales are *de minimis* as compared to the sales of the entire New England wholesale power market.⁴ It also states that it owns or controls approximately 125 MW of generation within the area served by ISO New England, Inc. (ISO-NE), and that it purchases approximately 240 MW of generation capacity under long-term power purchase agreements.⁵ It describes its transmission system as a discrete set of lower voltage transmission lines that are not part of the high voltage grid and are not operated by ISO-NE.⁶

4. Green Mountain states that, in 2004, the Commission granted it a waiver from the Standards of Conduct requirements⁷ based on a finding that Green Mountain met the waiver standards under *Black Creek*⁸ because it only had control over transmission facilities that were limited to small, discrete, stand-alone transmission facilities that were not part of the high voltage grid and were not operated by ISO-NE.⁹

5. Green Mountain reports that, on March 6, 2012, the Commission authorized a two-step merger between Green Mountain and Central Vermont.¹⁰ Green Mountain states that, upon completion of Step 2 of the merger, which is now complete, Green Mountain succeeded to the electric service responsibilities and ownership of Central

³ 2012 Filing at 1.

⁴ *Id.*

⁵ This is in addition to the facilities that Green Mountain acquired in 2012 as part of its merger with Central Vermont.

⁶ 2012 Filing at 2.

⁷ *Id.* at 2 & n.2 (citing *Central New York Oil and Gas Co., et al.*, 109 FERC ¶ 61,231 (2004)).

⁸ See 2012 Filing at n.9 (citing *Black Creek Hydro Inc.*, 77 FERC ¶ 61,232 (1996) (*Black Creek*)); but see *Black Hills Power, Inc., et al.*, 135 FERC ¶ 61,058 (2011) (*Black Hills*) and *Bangor Hydro Electric Company*, 136 FERC ¶ 61,182 (2011).

⁹ 2012 Filing at 2.

¹⁰ *Id.* (citing *Central Vermont Public Service Corporation, et al.*, 138 FERC ¶ 61,161 (2012)).

Vermont's facilities, and that Central Vermont no longer exists.¹¹ Green Mountain states that, as of December 31, 2011 (prior to its merger with Central Vermont), it owned and operated approximately 1.9 miles of 115 kV transmission lines, 10.9 miles of 69 kV transmission lines, 243.0 miles of 34.5 kV¹² transmission lines and 2.3 miles of 13.8 kV transmission lines.¹³ In its Supplemental Filing it reports that, as of May 2013, it owns and controls 376 miles of 34.5 kV lines.¹⁴ It reports a total workforce of 205 employees, including 150 employees stationed at its corporate headquarters in Colchester, Vermont.¹⁵

6. Green Mountain states that it has treated the three legacy Central Vermont marketing function employees – who now perform such functions for Green Mountain – as if they are subject to the Standards of Conduct.¹⁶ In addition, Green Mountain states it has transferred all marketing functions of legacy Green Mountain employees to the

¹¹ Green Mountain also points out that the Commission has not yet acted on Central Vermont's 2007 request for waiver of the Standards of Conduct in Docket No. TS07-4-000, 2012 Filing at 3. Given that Central Vermont merged with Green Mountain and no longer exists, we will dismiss its waiver request as moot.

¹² In the 2012 Filing, Green Mountain notes that the 2004 Application for Green Mountain Power Corporation for Exemption from Order No. 2004 in Docket No. TS04-277-000 erroneously described Green Mountain's 34.5 kV transmission line as being 24 miles long rather than 240 miles long. *See* 2012 Filing at n.11. Green Mountain made a similar erroneous representation about the length of its 34.5 kV transmission facilities in its 2004 updated market-based rate triennial filing. *See* August 26, 2004 Filing in Docket No. ER01-989-003 at 1. Green Mountain should have corrected its error in the 2004 waiver application as soon as it was discovered. We expect applicants and other participants in Commission proceedings to provide the Commission with the most accurate information possible; they also have an obligation to update and correct this information in an expeditious manner, if they later learn that it is erroneous.

¹³ 2012 Filing at 4.

¹⁴ Supplemental Filing at 11. Based on the Central Vermont 2007 Filing in Docket No. TS07-4-000, April 25, 2007, Central Vermont also owned 465 miles of 46 kV transmission lines, which are not described in the Green Mountain 2012 Filing.

¹⁵ 2012 Filing at 6. However, the Supplemental filing describes Green Mountain as having 700 employees. Supplemental Filing at 1.

¹⁶ 2012 Filing at 6.

legacy Central Vermont marketing function employees, who are currently located in a separate building in southern Vermont that contains no transmission function employees.¹⁷ Consequently, Green Mountain states it complies with the Independent Functioning Rule, the No Conduit Rule, the Transparency Rule and the Non-Discrimination requirements with respect to those employees.¹⁸

7. Green Mountain states that it will continue to comply with these aspects of the Standards of Conduct with respect to the former Central Vermont employees and facilities while it awaits a ruling from the Commission.¹⁹ However, Green Mountain states that it intends to consolidate most of its operations in southern Vermont into a single building with an open floor plan in the near future, in keeping with the principles of integration and collaboration that sparked its economic turnaround.²⁰ It states that it considers waiver of the Standards of Conduct to be an essential element of Green Mountain's integration of legacy Central Vermont with legacy Green Mountain.²¹

8. Green Mountain states that the integrated high-voltage transmission system in Vermont is operated and managed by Vermont Electric Power Company (VELCO), the nation's first statewide transmission-only company.²² It states all utilities in Vermont are shareholders in VELCO and that VELCO's existing transmission assets are owned by Vermont Transco LLC (VT Transco), a limited liability company. Green Mountain further states that transmission service over VT Transco's facilities is provided by ISO-NE.²³ Green Mountain adds that neither VELCO nor VT Transco owns any generation assets, and neither company performs any marketing functions.²⁴ Green Mountain states that, in this regard, consistent with the Standards of Conduct, the state of Vermont already has separated its marketing functions from its transmission functions with respect

¹⁷ *Id.*

¹⁸ Supplemental Filing at 3.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 3-4.

²² *Id.* at 4.

²³ *Id.*

²⁴ *Id.*

to the integrated high voltage system.²⁵ Green Mountain states that it holds a 40 percent share of VELCO's common stock.²⁶

9. Green Mountain submits that, while its circumstances have changed as a result of the merger, the fundamental facts on which the Commission originally granted Green Mountain's waiver have not changed.²⁷ Therefore, Green Mountain argues that the Commission should hold, consistent with 18 C.F.R. § 358.1(d), that good cause exists for granting Green Mountain a continued waiver of the Standards of Conduct.²⁸

10. Specifically, Green Mountain argues that it meets the waiver test clarified in *Black Hills*,²⁹ that a public utility transmission owner or operator may qualify for waiver of the Standards of Conduct under 18 C.F.R. § 358.1(c) if (1) it has turned over operation or control of its transmission system to the ISO/RTO; (2) it has no access to information concerning the operation of the transmission facilities it has turned over to the ISO/RTO; and (3) it obtains information about such matters only by viewing the ISO/RTO's pertinent Open Access Same-Time Information System (OASIS).³⁰ Green Mountain argues that it continues to meet those criteria with respect to all of its transmission facilities that operate in excess of 46 kV and that are part of the integrated bulk transmission grid.³¹

11. Green Mountain also argues that it also qualifies for waiver of the Commission's Standards of Conduct with respect to its subtransmission facilities.³² In this regard, Green Mountain states that its subtransmission facilities are limited and discrete and argues that an entity can be granted a waiver if it can demonstrate that its transmission

²⁵ *Id.*

²⁶ *Id.* at n.6.

²⁷ *Id.* at 5.

²⁸ *Id.*

²⁹ *Id.* at 5 & n.8 (citing *Black Hills*, 135 FERC ¶ 61,058 at P 2).

³⁰ *Id.* at 5-10.

³¹ *Id.* at 9-10.

³² *Id.* at 10-14.

facilities are limited and discrete and do not form an integrated transmission grid.³³ Green Mountain asserts that the Commission has already found that its subtransmission facilities are not part of the integrated transmission grid and granted it a waiver in 2004 on this basis.³⁴ It concedes that it added additional subtransmission facilities to its system through its merger with Central Vermont,³⁵ but argues that this should not result in termination of its Standards of Conduct waiver.³⁶ It also concedes that “Green Mountain’s subtransmission facilities form an integrated subtransmission network” but argues these facilities “cannot be used to provide Green Mountain with a competitive advantage in the wholesale market because their principal purpose is to deliver energy from the VELCO transmission system to load.”³⁷ Thus, it argues that the Commission should hold that Green Mountain’s continued operational control of its 46 kV and 34.5 kV subtransmission facilities does not warrant termination of its waiver of the Standards of Conduct.³⁸

12. Notice of Green Mountain’s 2012 Filing was published in the *Federal Register*, 78 Fed. Reg. 5438 (2013) with interventions and protests due on or before February 7, 2013 and notice of Green Mountain’s Supplemental Filing was published in the *Federal Register*, 78 Fed. Reg. 29,366 (2013) with interventions and protests due on or before May 20, 2013. None was filed. On June 3, 2013, the Vermont Department of Public Service filed comments supporting Green Mountain’s waiver request and Senators Patrick Leahy and Bernard Sanders and Representative Peter Welch jointly sent a letter asking for full and fair consideration of Green Mountain’s waiver request.

II. Discussion

13. As explained above, the Commission granted Green Mountain a waiver of the Commission’s Standards of Conduct requirements in 2004, based on its claim that it had

³³ *Id.* at 10 & n.16 (citing *Black Hills*, 135 FERC ¶ 61,058 at P 3).

³⁴ *Id.* at 10.

³⁵ Green Mountain states that it now (as of May 2013) owns and controls approximately 465 miles of 46 kV lines and 376 miles of 34.5 kV lines. *Id.* at 11.

³⁶ *Id.* at 10-11.

³⁷ *Id.* at 11.

³⁸ *Id.*

“control over small and discrete, stand alone requirements facilities.”³⁹ After its merger with Central Vermont in 2012, it informed the Commission of the material change in circumstances represented by the Central Vermont merger, corrected the inaccuracy in its 2004 application, and requested a continuation of its Standards of Conduct waiver, notwithstanding the merger and the additional fact that it now no longer qualified for a waiver as a small entity. As a result of the merger, Green Mountain Power has acquired substantially more transmission facilities than it owned in 2004. For example, in 2004, Green Mountain claimed to have 5 miles of 46 kV transmission lines, but according to Green Mountain Power’s 2012 Form 1, it now has 552 miles of 46 kV transmission lines.

14. As restated and clarified in 2011, the Commission grants waivers of the Standards of Conduct based on various criteria.⁴⁰ Since 1996, the Commission has waived the Standards of Conduct for small public utilities that make energy sales below 4 million MWH (regardless of whether they have relinquished control of their operations to an ISO or RTO) and no other circumstances are present that indicate a waiver is not justified.⁴¹ The Commission also evaluates requests for Standards of Conduct waivers based on the criteria articulated in section 358.1(c) of the Commission’s regulations, which states that a transmission provider may request a waiver if it participates in a Commission-approved RTO or ISO and does not operate or control its transmission system and has no access to transmission function information.⁴² An entity may also qualify for a waiver if its transmission facilities are limited and discrete and do not form an integrated transmission grid.⁴³

15. Because, as acknowledged by Green Mountain, it makes sales of more than 4 million MWh/year,⁴⁴ it does not meet the criteria for a waiver as a small public utility. The Commission rejects Green Mountain’s efforts to argue that a waiver is warranted because its wholesale sales “are *de minimis* as compared to the sales of the entire New England wholesale power market.” Moreover, Green Mountain’s generation portfolio

³⁹ *Central New York Oil and Gas Co., et al.*, 109 FERC ¶ 61,231, at P 27 (2004).

⁴⁰ *Black Hills*, 135 FERC ¶ 61,058 at PP 2-3.

⁴¹ *Id.* P 3. See also *Black Creek*, 77 FERC ¶ 61,232.

⁴² 18 C.F.R. § 358.1(c) (2013).

⁴³ See *Black Hills*, 135 FERC ¶ 61,058 at P 3.

⁴⁴ Supplemental Filing at 10, 15. Green Mountain reports combined sales for 2012 of 4.98 million MWhs.

(and presumably its volume of sales) is expected to increase by 145 MW on September 9, 2013.⁴⁵ Since 1996, the criteria for waivers to small public utilities have been based on the threshold of whether they dispose of no more than 4 million MWh annually.⁴⁶

16. With respect to the waiver criteria articulated in section 358.1(c) of the Commission's regulations, Green Mountain urges the Commission to consider its facilities on a piece-meal basis to support its claim that it meets the criteria for a waiver. Green Mountain argues that it meets the criteria for waiver because it: (1) has turned over operation or control of its high voltage transmission facilities to the ISO/RTO; (2) has no access to information concerning the operation of those transmission; and (3) obtains information about such matters only by viewing the ISO/RTO's pertinent OASIS site. While Green Mountain claims that its high-voltage transmission facilities are operated and controlled at the direction of ISO-NE, it is unclear whether Green Mountain still has physical control of these facilities.⁴⁷ To the extent that Green Mountain does have any physical control of these facilities, even if at the direction of ISO-NE, it does not meet the first criterion and likely cannot meet the second criterion of not having access to transmission information because by virtue of physically controlling the transmission facilities (even at the direction of ISO-NE) Green Mountain will have preferential access to transmission information. Until Green Mountain clarifies that it is not at all involved in the physical operations of the "high voltage" transmission lines, it is unclear whether Green Mountain meets the criteria articulated in section 358.1(c) of the Commission's regulations.

17. Moreover, while Green Mountain describes the length and voltage of some of its transmission facilities in its 2012 Filing and its Supplemental Filing, it does not describe the length of its "high voltage" transmission facilities under the control of ISO-NE.⁴⁸

⁴⁵ Green Mountain Power Corporation, Form 556, filed on May 31, 2013 in Docket No. QF13-468-000 (application to certify as a qualifying facility for 145 MW of solar resources.)

⁴⁶ See, e.g., *Black Creek, NaturEner Rim Rock Wind Energy, LLC*, 142 FERC ¶ 61,015, at P 11 (2013) (*NaturEner*); *Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009).

⁴⁷ By contrast, Green Mountain acknowledges that individual utilities in Vermont have physical control over the lower voltage non-PTF lines. Supplemental Filing at 4, n.7.

⁴⁸ Green Mountain's 2012 Form 1, which it filed on April 15, 2013, indicates that Green Mountain owns approximately 35 miles of 450 kV transmission lines, 3 miles of

(continued...)

18. Based on information Green Mountain provided in its 2012 Filing and in its Supplemental Filing, it appears that, in addition to its high voltage facilities, Green Mountain owns and operates approximately 10.9 miles of 69 kV transmission lines,⁴⁹ 465 miles of 46 kV transmission lines,⁵⁰ 376 miles of 34.5kV transmission lines,⁵¹ and 2.3 miles of 13.8 kV transmission lines.⁵² Green Mountain argues that these facilities form a limited and discrete subtransmission network. However, review of a map of Green Mountain's transmission facilities contained in Exhibit B of the Supplemental Filing demonstrates that Green Mountain's transmission lines crisscross throughout the state of Vermont; not only interconnecting with its own lines, but also with transmission lines of VELCO and other utilities. With the addition of the Central Vermont transmission lines, Green Mountain's transmission lines appear to form an integrated transmission grid in the state of Vermont. Green Mountain makes wholesale power sales and, absent a separation of functions, its employees engaged in marketing activities would have access to non-public transmission information about the system on which these sales are carried out.⁵³ In any event, the Commission does not distinguish between higher and lower voltage facilities when evaluating waiver requests.

19. It appears that, while in 2004 Green Mountain qualified for a waiver as a small public utility, Green Mountain no longer qualifies for waiver on that basis. The Commission now finds that, based on Green Mountain's changed circumstances (i.e., its merger with Central Vermont), it no longer qualifies for a waiver of the Commission's Standards of Conduct requirements.

115 kV transmission lines, 22 miles of 69 kV transmission lines, 552 miles of 46 kV transmission lines, 382 miles of 34.5 kV lines, 2.4 miles of 13.8 kV transmission lines and 2.75 miles of 11 kV transmission lines. Green Mountain 2013 FERC Form 1 filing at 422.

⁴⁹ 2012 Filing at 4.

⁵⁰ Supplemental Filing at 11.

⁵¹ *Id.*

⁵² 2012 Filing at 4.

⁵³ We note that Green Mountain states that it has been abiding to the separation of functions requirements while its waiver request is pending.

The Commission orders:

(A) Green Mountain's request for a continuation of its waiver of the Commission's Standards of Conduct requirements is hereby denied, as discussed in the body of this order.

(B) Central Vermont's request for a waiver of the Commission's Standards of Conduct requirements is dismissed as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.