

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Vermont Electric Generation
& Transmission Cooperative, Inc.

North Hartland, LLC

Project No. 2816-032

ORDER GRANTING STAY

(Issued February 11, 2005)

1. North Hartland, LLC has filed a request for rehearing of the Commission's November 22, 2004, Order¹ denying a tenth extension of time to North Hartland to comply with the conditions applicable to the transfer to it of the license for the North Hartland Hydroelectric Project No. 2816, rescinding a prior order approving transfer of the license, and dismissing the underlying transfer application. The project is located on the Ottauquechee River, in Windsor County, Vermont. Concord Hydro Associates, L.L.C., which purchased North Hartland subsequent to the filing of the request for rehearing has filed a motion for reconsideration and for other relief. As discussed below, we are staying our previous order, in order to give Concord the chance to complete the transfer, which would be in the public interest.

Background

2. As discussed in detail in the November 22 Order, on June 27, 2000, Commission staff issued an order approving the transfer of the project license to North Hartland from the bankrupt licensee, Vermont Electric Generation & Transmission Cooperative, Inc. (VEGT).² Ordering paragraph (C) included a standard provision, stating that the transfer was contingent on transfer of the property under license, and that North Hartland accept the conditions of the transfer, and file with the Commission within 60 days (by August 28, 2000) certified copies of instruments of conveyance to it of project property.

¹ 109 FERC ¶ 61,194.

² *Id.*

3. Between August 25, 2000, and June 21, 2004, North Hartland requested nine extensions of time to comply with the deadline for filing the conveyance documents, based on its inability to obtain state approvals and to conclude the transfer transaction. Each of the requests was granted.³

4. On March 12, 2004, the Commission issued an order accepting as summarily modified an unexecuted interconnection agreement filed by Central Vermont Public Service Corporation, between itself and North Hartland. The Commission also summarily modified provisions of Central Vermont's open access transmission tariff relating to the use of certain interconnection facilities.

5. On September 21, 2004, North Hartland filed a request for a tenth extension, for a time period not to exceed 12 months, until the following events occurred: (1) Vermont approved the interconnection agreement, (2) the transferor obtained authority to legally transfer the project, and (3) the transferor removed encumbrances to the title "or as otherwise agreed." North Hartland asserted that various matters beyond its control prevent completion of the transfer, including the federal government's lack of title to the project, the seller's refusal to seek authority from the bankruptcy court to transfer the project, and the lack of Vermont regulatory approval of the unexecuted interconnection agreement.

6. The request for extension was opposed by Central Vermont and Vermont Department of Public Service (Vermont DPS), both of which stated that it was North Hartland's responsibility, and not Central Vermont's, to obtain state approval of the interconnection agreement. Vermont DPS, Central Vermont, and another commenter, Essex Power Services, Inc., also raised the issue of North Hartland's status as a legal entity.⁴ In addition, the U.S. Department of Agriculture's Rural Utilities Service (RUS), the transferor's major creditor, filed comments questioning various statements by North Hartland, including its assertion that it has financing commitments to acquire the project, and concluding North Hartland's alleged inability to close was primarily due to circumstances within its control.

³ *Id.* at P 6-19.

⁴ Essex appended to its filing a November 1, 2002, letter to North Hartland from Mark Connolly (Deputy New Hampshire Secretary of State), stating that North Hartland, LLC, had been dissolved, as of that date, for the failure to file required reports and pay fees.

7. On November 22, 2004, the Commission issued an order denying the tenth request for extension, rescinding the 2000 transfer order, and dismissing the transfer application. We stated that while we strongly support the continued development and utilization of energy resources, and believe in making every reasonable effort to provide project proponents with the time to complete necessary business and regulatory transactions, in this case there appeared to be no reasonable prospect that the sales transaction will ever be completed. We concluded based on the record that there were significant, possibly insurmountable, disagreements among the parties to the sale, and between North Hartland and the Vermont regulators. Thus, we held that it was not in the public interest to allow the proceeding to go on indefinitely.⁵

8. On December 22, 2004, North Hartland filed a timely request for rehearing.

9. On January 19, 2005, Concord Hydro Associates, L.L.C. filed a motion for reconsideration and to reopen the record or, in the alternative, motion to lodge. Concord states that it is a reputable owner and operator of eight hydroelectric projects, and that it has purchased North Hartland. In consequence, Concord asserts that there are no longer impediments to the completion of the asset sale and license transfer.

Discussion

10. Concord's filing presents a possible resolution of this long-running proceeding. If indeed Concord has acquired North Hartland and is willing and able to complete the purchase of the project assets, the end result could be the resumption of generation at the North Hartland Project (which has not operated since 1986) and the delivery into the grid of power from the project, an outcome that would be in the public interest.

11. However, we cannot simply reverse our prior order. In the November 22 Order, without laying blame on any party, we concluded that there appeared to be significant, possibly insurmountable, obstacles to conclusion of the sales transaction, based upon disputes between North Hartland and the sellers; and that North Hartland had encountered great difficulties in obtaining Vermont state approval of an interconnection agreement between itself and Central Vermont, which, although not a predicate to completing the transfer, certainly affects the financial viability of the deal.

12. We currently have before us only Concord's representations that it can resolve the ongoing problems. For us to grant rehearing or otherwise reverse our prior order, we will need more concrete proof that matters are moving toward a positive resolution.

⁵ *Id.* at P 29.

At the same time, we do not want to present any roadblock to the completion of the transfer. We will therefore stay the November 22 Order, such that Concord may take whatever steps are necessary to complete the transfer. We are also directing our staff to seek from Concord additional information, including the composition of North Hartland's new ownership, Concord's schedule for completing the transfer, the reactions of affected parties such as RUS, Central Vermont and Vermont DPS, and any other matters staff deems relevant. Staff is to report back to us, informally, within 60 days, so that we can determine how to proceed.

The Commission orders:

The Commission's November 22, 2004, Order denying request for extension, rescinding transfer order, and dismissing transfer application is stayed pending further order of the Commission.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.