

138 FERC ¶ 61,161  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Central Vermont Public Service Corporation  
Gaz Métro Limited Partnership  
Northern New England Energy Corporation  
Green Mountain Power Corporation

Docket No. EC11-117-000

ORDER AUTHORIZING ACQUISITION AND MERGER AND DISPOSITION OF  
JURISDICTIONAL FACILITIES

(Issued March 6, 2012)

1. On September 9, 2011, Central Vermont Public Service Corporation (Central Vermont) and Gaz Métro Limited Partnership (Gaz Métro LP), Gaz Métro LP's wholly-owned subsidiary, Northern New England Energy Corporation (Northern New England Energy), and its wholly-owned subsidiary, Green Mountain Power Corporation (Green Mountain Power) (collectively, Applicants), filed a joint application under sections 203(a)(1) and 203(a)(2) of the Federal Power Act (FPA).<sup>1</sup> Applicants request Commission authorization for Gaz Métro LP to acquire Central Vermont (the Step 1 Transaction) and to subsequently merge Green Mountain Power with Central Vermont (the Step 2 Transaction). Applicants also request authorization for the conveyance of a portion of the common equity ownership of Vermont Electric Power Company, Inc. (VELCO) currently held by Central Vermont to the Vermont Low-Income Trust for Electricity, Inc. (VLITE), a public entity organized as a Vermont public benefit, non-profit corporation (the VELCO Conveyance, and together with the Step 1 Transaction and the Step 2 Transaction, the Transaction).

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<sup>1</sup> 16 U.S.C. § 824b (2006).

2. The Commission has reviewed the Transaction under the Commission's Merger Policy Statement.<sup>2</sup> As discussed below, we will authorize the Transaction under sections 203(a)(1) and 203(a)(2), as we find that it is consistent with the public interest.

## **I. Background**

### **A. Description of the Parties**

#### **1. Central Vermont**

3. Central Vermont engages principally in the purchase, production, transmission, distribution, and sale of electricity. Most of Central Vermont's revenues are derived from retail sales that are subject to the jurisdiction of the Vermont Public Service Board (Vermont Commission). Central Vermont sells excess power under market-based rates to wholesale customers and to the wholesale power markets operated by ISO-New England, Inc. (ISO-NE).<sup>3</sup> Central Vermont's principal sources of power are through long-term contracts with Vermont Yankee Nuclear Power Corporation (Vermont Yankee Corporation) in the amount of 182 megawatts (MW) and Hydro-Quebec in the amount of 145 MW of capacity. Central Vermont also directly owns limited transmission facilities and a share of the so-called Highgate Converter, which is directly connected to the Hydro-Quebec system to the north and to the Vermont Transco LLC (VTransco) system to the south.<sup>4</sup> The Highgate Converter can deliver power in either direction, but predominately delivers power from Hydro-Quebec to Vermont.

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<sup>2</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 FR 42277 (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>3</sup> *Central Vermont Public Service Corp.*, 83 FERC ¶ 61,166 (1998).

<sup>4</sup> Central Vermont's directly-owned "transmission" chiefly consists of sub-transmission facilities rated 34.5 and 46 kV. Central Vermont directly owns less than

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## 2. Green Mountain Power

4. Green Mountain Power is a vertically-integrated electric utility that is engaged primarily in the distribution and sale of electricity to retail and wholesale electric service customers in Vermont. Green Mountain Power owns or controls approximately 125 MW of generation within the area served by ISO-NE, and purchases approximately 240 MW of generation capacity under long-term power purchase agreements. Green Mountain Power has one full-requirements wholesale electric service customer, Washington Electric Cooperative, Inc. (Washington Electric Cooperative). Otherwise, Green Mountain Power makes wholesale sales of energy, capacity and ancillary services at market-based rates.<sup>5</sup> Green Mountain Power owns and operates eight hydroelectric generating plants in Vermont and has an 11 percent interest in the McNeil biomass generating facility. Green Mountain Power also owns and operates five solar-powered generating facilities with a total capacity of 550 kW, including a 200 kW solar plant in Berlin, Vermont. Green Mountain Power has operated a 6 MW wind-powered generator in Searsburg, Vermont since 1977, and recently received approval from the Vermont Commission to build the Kingdom Community Wind Project, a 63 MW wind facility in Lowell, Vermont, which is scheduled to begin operation by December 2012.<sup>6</sup> Green Mountain Power directly owns certain lower-voltage transmission and sub-transmission lines that are generally operated as radial lines to deliver power from the bulk power transmission system in Vermont to Green Mountain Power's retail customers. In addition, Green Mountain Power holds an interest in the Highgate Converter and Phase I/Phase II high voltage direct current interconnections between Hydro-Quebec and various utilities in New England. Applicants state that non-discriminatory transmission service is available over Green Mountain Power's transmission facilities pursuant to Schedule 20A-GMP and Schedule 21-GMP of the ISO-NE tariff.

## 3. Central Vermont and Green Mountain Power Joint Subsidiaries

5. Vermont Yankee Corporation owned and operated the Vermont Yankee Nuclear Power Plant until it was sold to a non-affiliated entity, Entergy Nuclear Vermont Yankee, LLC (Entergy-Vermont Yankee). Central Vermont and Green Mountain Power, respectively, own 58.85 percent and 33.63 percent of Vermont Yankee Corporation.

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20 miles of 69 kV and 115 kV lines, including a short 115 kV line connected to the Highgate Converter.

<sup>5</sup> *Green Mountain Power Corp.*, 109 FERC ¶ 61,136 (2004).

<sup>6</sup> A portion of the energy available from the Kingdom Community Wind Project will be supplied to Vermont Electric Cooperative.

Under a purchase power contract that is scheduled to expire in March 2012, Vermont Yankee Corporation purchases 83.13 percent of the Entergy-Vermont Yankee generation. Central Vermont and Green Mountain Power are entitled to purchase 35 percent and 20 percent, respectively, of the generation sold by Entergy-Vermont Yankee to Vermont Yankee Corporation. According to Applicants, Central Vermont and Green Mountain Power do not control the operation of the Vermont Yankee Nuclear Power Plant, or the bidding and scheduling of its output into the ISO-NE market. Vermont Yankee Corporation's principal asset is its power purchase contract with Entergy-Vermont Yankee. Applicants state that they have no current plans to enter into a new power purchase contract with Entergy-Vermont Yankee following the termination of the existing contract between that company and Vermont Yankee Corporation.

6. VELCO was formed in 1956 as a state-wide transmission-only company to consolidate in a single entity the ownership and operation of all of the major transmission facilities in Vermont (i.e., transmission facilities operating at 115 kV and above). VELCO, a holding company as well as a public utility, is jointly-owned by Vermont investor-owned utilities, rural electric cooperatives, and municipal electric systems. Central Vermont currently owns 48.5 percent of VELCO's common equity and 49.2 percent of VELCO's preferred stock. Green Mountain Power currently owns 29.5 percent of VELCO's common equity and 30.9 percent of VELCO's preferred stock. Following the VELCO Conveyance, the aggregate common equity ownership of VELCO by Green Mountain Power and Central Vermont will be less than 50 percent.

7. In 2006, VELCO transferred substantially all of its assets and business operations to VTransco, which now owns the 660-mile high-voltage transmission system in Vermont.<sup>7</sup> VELCO and its employees manage and operate VTransco's facilities under a management service agreement known as the Vermont Transco LLC Operating Agreement (VTransco Operating Agreement). Applicants intend to enter into a contract that would prohibit them from unilaterally replacing VELCO as the manager of VTransco under the VTransco Operating Agreement. VELCO wholly owns Vermont Electric Transmission Company, Inc. (VETCO), which was formed to finance, construct, and operate the Vermont portion of the 450 kV DC transmission line (the Hydro-Quebec Phase I and II line) connecting Quebec and New England. Transmission service is provided over the VTransco transmission system to all of the electric utilities in Vermont pursuant to the Vermont Transmission Agreement, pursuant to which all of the Vermont utilities share in the cost of the VTransco transmission system on a load-ratio share basis.

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<sup>7</sup> The Commission authorized the reorganization of VELCO in *Vermont Electric Power Co.*, 115 FERC ¶ 62,285 (2006).

Transmission service over the VTransco transmission system is available to other potential transmission service customers through the ISO-NE Tariff.

#### 4. Gaz Métro LP and Its Affiliates

8. Gaz Métro LP, a limited partnership organized under the laws of Quebec, Canada, is the principal distributor of natural gas in the Province of Quebec. Gaz Métro inc. (GMi), a wholly-owned subsidiary of Noverco Inc. (Noverco), is the general partner of Gaz Métro LP. GMi holds a 70.99 percent interest in Gaz Métro LP, and a wholly-owned subsidiary of GMi, Gaz Métro Plus inc., holds an additional .01 percent interest. The remaining 29 percent limited partnership interest in Gaz Métro LP is held by Valener Inc., a publicly-held company that is not affiliated with GMi. Gaz Métro LP also owns interests in entities engaged in natural gas transportation and underground storage activities in Canada and a 272 MW wind project under development in Quebec, as well as interests in entities engaged in non-energy related activities. Gaz Métro LP is a 100 percent direct owner of Northern New England Energy, which, in turn, owns 100 percent of Green Mountain Power. As a result of the Transaction, Gaz Métro LP will become a 100 percent indirect owner of Central Vermont.

9. Caisse de dépôt et placement du Quebec (Caisse), is the ultimate indirect owner of Northern New England Energy and Green Mountain Power and one of the largest institutional fund managers in Canada and North America. Applicants state that the Caisse is a 25.9 percent indirect owner of Gaz Métro LP (excluding an additional Caisse ownership share through Enbridge Inc. (Enbridge), which is discussed below).<sup>8</sup>

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<sup>8</sup> The Caisse's 25.9 percent indirect equity ownership interest in Gaz Métro LP represents a "derivative share" interest that is calculated by multiplying the Caisse's direct and indirect partial ownership percentage interests in GMi, Noverco and a third intermediate holding company, Trencap L.P. (Trencap) (as more fully described in P 10). The Commission does not recognize this method of deriving ownership interests in downstream, partially-owned, entities for purposes of section 203 of the FPA or the Public Utility Holding Company Act of 2005, 42 U.S.C. § 16451 *et seq.* (PUHCA 2005). In this regard, we note that PUHCA 2005 defines the term "holding company" to mean "any company that *directly or indirectly* owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company *or of a holding company* of any public-utility company." 42 U.S.C. § 16451 (emphasis added). Also, in this case, the percentages Applicants use to calculate indirect equity ownership interests do not appear to represent or correspond to ownership interests in the outstanding "voting securities" of Trencap and Gaz Métro LP, both of which are limited partnerships.

According to Applicants, although the Caisse owns equity interests in electric utilities in the United States other than Green Mountain Power, its equity interest in each such other electric utility is less than 10 percent.<sup>9</sup> Applicants state that, pursuant to a management services agreement, the Caisse manages the day-to-day operations of Noverco.

10. Trencap is an investment limited partnership in Canada. As noted above, the Caisse is the general partner and main limited partner of Trencap.<sup>10</sup> Applicants state that the Caisse holds 59.64 percent of the membership units of Trencap. Applicants state that other investors in Trencap are limited partners whose interests in Trencap are wholly passive. They state that Trencap is a 43.4 percent indirect owner of Gaz Métro LP and is a 61.11 percent co-owner of Noverco. Applicants state that Enbridge owns the remaining 38.89 percent interest in Noverco. Enbridge is a publicly-traded company based in Canada. Applicants state that the Caisse indirectly owns or controls less than 10 percent of Enbridge's shares. Through various subsidiaries and affiliates, Enbridge is engaged in the transportation and distribution of crude oil and natural gas in Canada and the United States. Enbridge is a holding company that owns, directly or indirectly, among other things, St. Lawrence Gas Company, Inc., a local gas distribution company in northern New York state, as well as Cedar Point Wind, LCC, a wind-energy project near Denver, Colorado, and a 20 percent interest in Oregon USG Holdings, LLC, a small geothermal project in Malheur County, Oregon. Applicants state that Enbridge is a 27.6 percent indirect owner of Gaz Métro LP.

11. Valener is a holding company and a 29 percent owner and limited partner in Gaz Métro LP. Although GMi is Gaz Métro LP's general partner and although Valener is a passive limited partner of Gaz Métro LP, Valener is directly represented on the GMi Board of Directors in accordance with the limited partnership agreement to the extent of its ownership interest in Gaz Métro LP. Applicants state that Valener is not otherwise affiliated with Noverco or GMi or any of their direct and indirect owners.

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<sup>9</sup> Applicants assert that, for purposes of PUHCA 2005, the Caisse is a foreign governmental authority not operating in the United States, and is therefore exempt from registration as a holding company under PUHCA 2005, and that, for similar reasons, Trencap, of which the Caisse is the general partner and the main limited partner, is also exempt from registration as a holding company under PUHCA 2005. However, it is not necessary for us to address this claim here, as the applicability of PUHCA 2005 to Caisse and Trencap is not germane to the issues we need to decide under section 203 in this proceeding.

<sup>10</sup> The other limited partners of Trencap are identified but not described.

## **5. Northern New England Energy**

12. Northern New England Energy, a Vermont corporation, is a wholly-owned subsidiary of Gaz Métro LP. Northern New England Energy was formed to own Gaz Métro LP's energy company investments in the United States, and currently owns all of the common stock of Green Mountain Power and of Vermont Gas Systems, Inc. (VGS), a local natural gas distributor in Vermont. Currently, VGS delivers negligible amounts of natural gas to generators in New England. Northern New England Energy also owns indirectly, through Northern New England Investment Company, Inc., a 38.29 percent equity interest in Portland Natural Gas Transmission System (PNGTS), an interstate natural gas pipeline with pipeline facilities in Maine and adjacent areas of eastern New England.<sup>11</sup>

## **6. Vermont Low-Income Trust For Electricity**

13. Vermont Low-Income Trust for Electricity (VLITE) will be organized and, through the VELCO Conveyance, will be the recipient of a significant portion of the VELCO voting common stock. Following the VELCO Conveyance, Central Vermont and Green Mountain Power in the aggregate will own a minority of the voting common equity ownership of VELCO. Applicants state that they will have no direct or indirect control over VLITE, which will be governed by a Board of Directors that is independent of Applicants. VLITE will have two ongoing responsibilities: (1) as needed, to exercise its ownership interest in VELCO consistent with VELCO bylaws and shareholder agreements, and (2) to disburse annual revenues from the VELCO dividend to fund beneficiaries of an energy assistance program for low income residents of Vermont established by the Vermont Commission.

### **B. Proposed Transaction**

14. The terms and conditions of the Step 1 Transaction are set forth in the Agreement and Plan of Merger, dated July 11, 2011, by and among Gaz Métro LP, Danaus Vermont Corporation, a special purpose indirect subsidiary of Gaz Métro LP formed solely to facilitate the Transaction, and Central Vermont (Merger Agreement). Under the terms of the Merger Agreement, Danaus will merge with and into Central Vermont. Danaus will cease to exist, and Central Vermont will survive as a separate corporate entity and as a direct, wholly-owned subsidiary of Northern New England Energy. After consummation of the Step 1 Transaction, all of the outstanding shares of common stock of Central Vermont will be held by Northern New England Energy and will no longer be publicly

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<sup>11</sup> The principal owner and operator of PNGTS is TCPL Portland, Inc., which is not affiliated with Gaz Métro LP.

traded. Neither Central Vermont nor Green Mountain Power will pledge or encumber utility assets or issue or incur debt in connection with the Step 1 Transaction.

15. According to Applicants, the Step 2 Transaction, consisting of the merger of Central Vermont and Green Mountain Power, will take place within a few months after the consummation of the Step 1 Transaction, and will be achieved through the merger of Central Vermont with and into Green Mountain Power or through the merger of Central Vermont and Green Mountain Power each into a yet-to-be formed company (Newco) without current assets or liabilities. Under the Step 2 Transaction, all of the outstanding common stock of Central Vermont or Central Vermont and Green Mountain Power will be converted into shares of the surviving company's common stock. Also, pursuant to the Step 2 Transaction, the surviving company will succeed to all of the assets and liabilities of the non-surviving company or companies, inclusive of all rights and obligations under FPA jurisdictional contracts. Since, according to Applicants, the Step 2 Transaction will be an internal corporate reorganization, it will be accomplished without an exchange of consideration. The result of the Step 2 Transaction will be the merger of all of the assets of Central Vermont and Green Mountain Power into a single Vermont corporation that is a direct, wholly-owned, subsidiary of Northern New England Energy. In addition, the Step 2 Transaction will consolidate ownership and operation of Central Vermont and Green Mountain Power transmission facilities into a single corporate entity. Therefore, Central Vermont and Green Mountain Power intend to propose a single rate schedule under the ISO-NE Tariff for service offered over their combined transmission systems at non-pancaked rates, to become effective concurrently with the closing of the Step 2 Transaction.

### **C. The VELCO Conveyance**

16. Central Vermont and Green Mountain Power own approximately 48.5 percent and 29.5 percent, respectively, of the outstanding Class B voting common stock of VELCO, as well as shares of Class C non-voting common stock. Contemporaneously with consummation of the Step 1 Transaction, through the VELCO Conveyance, Central Vermont will convey to VLITE shares of Class B voting and Class C non-voting common stock representing approximately 33 percent of VELCO's Class B voting common stock and approximately 31.7 percent of VELCO's Class C non-voting common stock. As a result of the VELCO Conveyance, the Central Vermont and Green Mountain Power voting common equity ownership in VELCO collectively will be reduced to approximately 45 percent.

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

17. Notice of the application was published in the *Federal Register*, 76 Fed. Reg. 58,257 (2011), with interventions and protests due on or before November 8, 2011. Timely motions to intervene were filed by Entergy Nuclear Power Marketing, LLC and

the Vermont Department of Public Service. Timely motions to intervene and protest were filed by Washington Electric Cooperative and Vincent Illuzzi.

18. On November, 23, 2011, Applicants filed an answer to the protests.

19. On December 5, 2011, Mr. Illuzzi filed an answer to Applicants' answer. On December 8, 2011, Washington Electric Cooperative filed an answer to Applicants' answer. On December 20, 2011, Applicants filed an additional answer.

### **III. Discussion**

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

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>12</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Applicants' answer to the protests because it has provided information that assisted us in our decision-making process. However, we are not persuaded to accept the answers filed by Mr. Illuzzi and Washington Electric Cooperative, and the additional answer filed by Applicants, and will, therefore, reject them.

#### **B. Section 203 Application**

##### **1. Standard of Review**

21. Section 203(a)(4) of the FPA requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest.<sup>13</sup> The Commission's analysis of whether a transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.<sup>14</sup> Section 203(a)(4) also requires the Commission to find that the transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization,

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<sup>12</sup> 18 C.F.R. § 385.213(a)(2) (2011).

<sup>13</sup> 16 U.S.C. § 824b(a)(4) (2006).

<sup>14</sup> Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 ¶ 30,111.

pledge, or encumbrance will be consistent with the public interest.” The Commission’s regulations establish verification and informational requirements for applicants that seek a determination that a transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.<sup>15</sup>

## **2. Effect on Competition – Horizontal Market Power**

### **a. Applicants’ Analysis**

22. Applicants’ competitive analysis is provided through the affidavit and exhibits of Dr. William Hieronymus, who analyzed the Transaction’s potential horizontal and vertical market power impacts. Applicants state that the Transaction does not raise any horizontal market power concerns because Applicants are small utilities that own and contract for a limited share of the generation in the ISO-NE market, exercise control over very little of that generation, and use that generation chiefly to serve their own loads.

23. Applicants state that the Transaction will have no adverse effect on horizontal competition. Using a proprietary model called the “Competitive Analysis Screen Model” (CASm) to implement a Delivered Price Test (DPT) analysis, Applicants tested for market power using the Economic Capacity and Available Economic Capacity measures that encompassed the summer (June – August 2012), winter (January, February, and December 2012) and shoulder (March – May, September – November 2012) periods and evaluated peak and non-peak hours during those periods.<sup>16</sup>

24. Applicants state that the ISO-NE capacity market is unconcentrated with a rating on the Herfindahl-Hirschman Index (HHI) ranging from 492 to 881, with the HHIs in the low to mid 500s for the Economic Capacity Analysis and in the 600 to 750 range for the Available Economic Capacity Analysis.<sup>17</sup> Applicants performed an Economic Capacity

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<sup>15</sup> 18 C.F.R. § 33.2(j) (2011).

<sup>16</sup> Application at 26.

<sup>17</sup> The HHI is a widely accepted measure of market concentration, calculated by squaring the market share of each firm competing in the market and summing the results. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is less than 1,000 points are considered to be unconcentrated; markets in which the HHI is greater than or equal to 1,000 but less than 1,800 points are considered to be moderately concentrated; and markets in which the HHI is greater than or equal to 1,800 points are considered to be highly concentrated. In a horizontal merger, an increase of more than 50 HHI points in a highly concentrated market or an increase of 100 HHI points in a

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Analysis covering several on-peak and off-peak periods and determined that the HHI change was one in eight out of ten periods and zero in the other two periods. Applicants also performed an Available Economic Capacity Analysis and concluded that, in light of Applicants' limited capacity entitlements relative to their loads, the Available Economic Capacity Analysis showed there will be zero HHI change in all relevant time periods.<sup>18</sup>

25. Applicants also conducted two sensitivity analyses. The first sensitivity analysis employed the standard adjustment of increasing and decreasing fuel expense by 10 percent and recalculating the results of their Economic Capacity and Available Economic Capacity Analyses predicated on those changed fuel prices. Even though the base-case analysis and the 10 percent fuel price sensitivity analysis showed no competitive impact, Applicants performed a second sensitivity analysis. Applicants posited that they "control" all their owned capacity and their purchased capacity. Applicants concluded that they could not exercise market power even under the unrealistic assumption posited of Applicants controlling all their owned and purchased capacity. Applicants concluded that changes in the HHI for their Economic Capacity analysis would be *de minimis*. The Available Economic Capacity Analysis showed that changes in the HHI resulting from the Transaction would be zero.<sup>19</sup>

**b. Protests and Answer**

26. Mr. Illuzzi argues that the "Competitive Screen Analysis" should have treated Vermont as a separate market for purposes of the market concentration analysis. He states that Vermont has locational marginal prices, and is supposed to have a locational capacity market, each of which treat Vermont as a separate zone. Thus, he argues that if Vermont is a separate zone for these purposes, it is also a separate market for purposes of market concentration analysis. He argues that the Commission should reject Applicants' analysis and require them to analyze the market structures that the Commission has put in place.

27. Applicants contend that they properly prepared the market analysis on the basis of the ISO-NE geographic market as a whole because the market operated by ISO-NE meets

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moderately concentrated market fails its screen and warrants further review. Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,129; see *Order Reaffirming Commission Policy and Terminating Proceeding*, 138 FERC ¶ 61,109, (2012) (affirming the Commission's use of the thresholds adopted in the Merger Policy Statement).

<sup>18</sup> Application at 26.

<sup>19</sup> *Id.* at 27.

the criteria set forth in Order No. 697.<sup>20</sup> Applicants note that Order No. 697 states that sellers within a market controlled by a regional transmission organization (RTO) with a sufficient market structure and a single energy market with Commission-approved market monitoring and mitigation may consider the entire geographic market under the control of the RTO as the relevant geographic market for the purposes of evaluating horizontal market power.

28. Furthermore, Applicants argue that Mr. Illuzzi has failed to demonstrate that Vermont is a separate geographic market within the ISO-NE. First, Applicants note that the only sub-markets within ISO-NE that have been identified by the Commission are the Southwestern Connecticut and the Connecticut Import interface.<sup>21</sup> Second, Applicants argue that Mr. Illuzzi has failed to provide any evidence, such as binding transmission constraints or price separation data, to support the existence of a separate market within Vermont, noting that, in *FirstEnergy*, the Commission explained that there is no need to perform a separate geographic market analysis absent sufficient evidence of transmission constraints or price separation that would prevent suppliers from selling into that market (in this case, Vermont).<sup>22</sup> Applicants add that Central Vermont and Green Mountain Power heavily rely on energy from owned and purchased generation that are both located outside of Vermont to meet the needs of customers within the state.

**c. Commission Determination**

29. We agree with Applicants that the relevant market is the geographic market of ISO-NE. We are not persuaded that Vermont is a separate submarket for the purposes of analyzing market concentration. We find that Mr. Illuzzi has failed to justify why the state of Vermont should be considered a separate submarket within ISO-NE. Mr. Illuzzi asserts that Vermont has locational marginal prices as well as a locational capacity

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<sup>20</sup> Applicants November 23 Answer at 16 (citing *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 235-240, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd subnom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9<sup>th</sup> Cir. 2011)).

<sup>21</sup> *Id.* at 16 (citing *FirstEnergy Corp. and Allegheny Energy, Inc.*, 133 FERC ¶ 61,222, at P 52 (2010) (*FirstEnergy*)).

<sup>22</sup> *Id.* at 17.

market that treats Vermont as a separate zone. However, locational marginal prices and a locational capacity market are not enough by themselves to support the existence of a separate Vermont submarket in ISO-NE. The Commission has stated that any proposal to use an alternative geographic market must include a demonstration regarding whether there are frequently binding transmission constraints during historical seasonal peaks and at other competitively significant times that prevent competing supply from reaching customers within the proposed alternative geographic market.<sup>23</sup> This demonstration could be made by providing evidence of binding transmission constraints or price separation data.<sup>24</sup>

30. For the foregoing reasons, we find that Applicants have demonstrated that the effect of combining their operations in the relevant geographic market is *de minimis*. In addition, the Transaction will not eliminate a competitor or materially increase market concentration in the relevant market. Therefore, we find that the proposed Transaction does not raise horizontal market power concerns.

### **3. Effect on Competition – Vertical Market Power**

#### **a. Applicants’ Analysis**

31. Applicants also assert that the Transaction does not raise any vertical market power concerns. Applicants state that they evaluated the possibility that the Transaction might create or enhance the ability of the combined companies to exercise market power in downstream electricity markets by control over the supply of natural gas or other inputs used by rival producers of electricity. Applicants concluded that the upstream market for supply of natural gas and the downstream market for sales of electricity are relatively unconcentrated and that affiliates of Gaz Métro LP (VGS and PNGTS) are relatively small participants in the relevant upstream markets. They further concluded that the amount of generation capacity within markets administered by ISO-NE that is supplied with gas delivered by those entities also is relatively small. They also conducted vertical downstream analyses of Economic Capacity and Available Economic Capacity in New England which showed that downstream electricity market screens were passed. Applicants also considered whether Applicants and their affiliates would be able to use control over transmission service or over access to potential sites for new generating facilities to restrict entry into the ISO-NE electricity market by potential competitors.

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<sup>23</sup> See *AEP Power Marketing, Inc.*, 124 FERC ¶ 61,274, at PP 24-25 (2008) (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 268. See also *Boralex Livermore Falls LP*, 122 FERC ¶ 61,033, order on reh’g, 123 FERC ¶ 61,279, at P 25 (2008)).

<sup>24</sup> See *First Energy*, 133 FERC ¶ 61,222 at P 52.

They concluded that there are no vertical market power issues arising from control over transmission or control over generating sites.<sup>25</sup>

32. Applicants note that ISO-NE has Commission-approved market power monitoring and mitigation procedures.<sup>26</sup> Applicants contend that, because ISO-NE has Commission-approved market monitoring and mitigation procedures, a rebuttable presumption exists that any potential market power concerns that could be associated with the Transaction would be adequately mitigated.<sup>27</sup>

**b. Protests and Answer**

33. Mr. Illuzzi argues that the proposed merger will harm competition because it will concentrate control of VELCO in the hands of the post-merger company. He asserts that, in today's world, Green Mountain Power's 29.5 percent ownership interest in VELCO acts as a counterweight to Central Vermont's 48.5 percent interest. Mr. Illuzzi argues that this diversity of economic interest disappears after the merger, and that the VELCO Conveyance does little to remedy the concern that this merger would give the two largest utilities in Vermont effective control over the decision making of Vermont's only owner of high voltage transmission facilities. He states that we know little of importance about VLITE and there is no assurance that the merged company will not be able to exert indirect control over VLITE or VELCO, or that the merged company will not be able to buy back some or all of the control that Applicants say they are giving up. He argues that divestiture that leaves an effective veto, or undue influence, in the hands of a merging party is ineffective and unacceptable.<sup>28</sup> Thus, he argues that the Commission should at least allow discovery and require a hearing to determine the real facts behind the VELCO Conveyance. He adds that this is particularly important because high voltage transmission in Vermont is subject to an old transmission agreement rather than to a tariff consistent with the Commission's Open Access Rules.

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<sup>25</sup> Application at 28.

<sup>26</sup> *Id.* (citing *ISO New England Inc. and New England Power Pool*, 130 FERC ¶ 61,054 (2010)).

<sup>27</sup> *Id.* (citing Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 111).

<sup>28</sup> Vincent Illuzzi Protest at 3 (citing *Yamaha Motor Corp. v. Federal Trade Comm'n*, 657 F.2d 971, 982 (8<sup>th</sup> Cir. 1981); *Ford Motor Co. v. U.S.*, 405 U.S. 562, 573 (1972)).

34. In response, Applicants argue that Mr. Illuzzi's concerns do not take into account ISO-NE's control over access to, and day-to-day control over, the operations of the VELCO system. Applicants assert that, under ISO-NE's mantle, the operation of the higher voltage Vermont transmission system cannot be dedicated to serve parochial interests of any particular party. Applicants also cite the Commission's precedent finding that ownership of electric transmission facilities by merging electric utilities does not raise any vertical market power concerns where Applicants have turned over control of their facilities to ISO-NE, thereby eliminating their ability to use the transmission system to harm competition.<sup>29</sup> Applicants also note that the Vermont Commission exercises oversight over VELCO's activities as well as the development of its system. Applicants add that the addition of VLITE as an independent, Vermont public interest owner of VELCO, does not impair the important role that VELCO, acting under the Vermont Commission, has played and will continue to play on behalf of Vermont citizens.

35. Applicants also argue that Mr. Illuzzi's specific allegation that the Transaction will concentrate control of VELCO in the hands of the post-merger company to the detriment of competition is entirely unfounded. In support, Applicants argue that the partial divestiture of Applicants' common stock ownership of VELCO to VLITE cannot possibly be viewed as inconsistent with the public interest because VLITE is not in the public utility business and does not own any public utility assets, either directly or indirectly. In addition, Applicants contend that VLITE will be independent of the merged companies and not affiliated with Central Vermont and Green Mountain Power. Applicants also state that their post-merger ownership share (approximately 45 percent) is no more than the pre-merger ownership share of Central Vermont, which is currently VELCO's largest shareholder. Accordingly, Applicants assert that their merger, in conjunction with the VELCO Conveyance, does not increase their control over VELCO and instead ensures that the merged companies will lack the ability to exercise control over VELCO without agreement by other VELCO shareholders.

**c. Commission Determination**

36. In transactions combining electric generation assets with inputs to generating power (such as natural gas, transmission, or fuel), competition can be harmed if the transaction increases a firm's ability or incentive to exercise vertical market power in wholesale electricity markets. For example, by denying rival firms access to inputs or by raising their input costs, a post-transaction firm could impede entry of new competitors or inhibit existing competitors' ability to undercut an attempted price increase in the

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<sup>29</sup> Applicants Answer at 14 (citing *NSTAR and Northeast Utilities*, 136 FERC ¶ 61,016, at P 56 (2011)).

downstream wholesale electricity market. Applicants have shown that the combination of generation and natural gas distribution facilities will not harm competition. In Order No. 642, the Commission stated that in order for a merger to create or enhance vertical market power, both the upstream and downstream markets must be highly concentrated.<sup>30</sup> Applicants have demonstrated that the upstream market for supply of natural gas and the downstream market for sales of electricity are relatively unconcentrated. They have also conducted vertical downstream analyses of Economic Capacity and Available Economic Capacity in New England which showed that downstream electricity market screens were passed. For these reasons, we find that the proposed Transaction does not raise any vertical market power concerns.

37. We reject Mr. Illuzzi's request for a hearing regarding the VELCO Conveyance. In previous cases, the Commission has found that turning over operational control of transmission facilities to an independent entity eliminates any concerns about transmission-related vertical market power because it eliminates the ability for the merged firm to use its transmission system to harm competition in wholesale electricity markets.<sup>31</sup> Here, Applicants have turned over control of their transmission facilities to ISO-NE. Therefore, we do not need to reach the issue of whether the merged firm will have control over VELCO and find that there is no need to impose vertical market power mitigation.

#### **4. Effect on Rates**

##### **a. Applicants' Analysis**

38. Applicants state that the Transaction will have no adverse effect on the rates charged to either wholesale sales or transmission service customers. Applicants commit to hold wholesale requirements and transmission customers harmless from all costs related to the Transaction for a period of five years to the extent that such costs exceed savings related to the Transaction.<sup>32</sup> Applicants explain that Central Vermont does not have any cost-based wholesale requirements customers and sells power at wholesale at market-based rates. Green Mountain Power has only one cost-based wholesale customer, Washington Electric Cooperative, and otherwise sells wholesale power at market-based

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<sup>30</sup> Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,911.

<sup>31</sup> *National Grid plc and KeySpan Corp.*, 117 FERC ¶ 61,080, at P 45 (2006) (citing *American Electric Power Co. and Central and South West Corp.*, 90 FERC ¶ 61,242, at 61,788 (2000)).

<sup>32</sup> Application at 31.

rates. Applicants state that Washington Electric Cooperative will be held harmless from costs related to the Transaction except to the extent of merger-related savings.

39. According to Applicants, Central Vermont and Green Mountain Power provide cost-based transmission service through the ISO-NE Tariff for use of their sub-transmission systems and for use of the Phase I/II Hydro Quebec transmission line. Applicants note that Central Vermont and Green Mountain Power's jointly-owned affiliates, Vermont Yankee Corporation, VELCO, VTransco, and VETCO, each charge for services through formula rates which do not and could not include any transaction-related costs. However, Applicants state that they will apply their hold-harmless commitments to any of their costs that could be included in the affiliates' rates.

40. Applicants also state that the Step 2 Transaction will consolidate ownership and operation of the transmission facilities of Central Vermont and Green Mountain into a single corporate entity. Thus, Applicants state that they intend to propose a single rate schedule under which transmission service is offered over their combined transmission systems at non-pancaked rates, to be effective at the time of the Step 2 Transaction.<sup>33</sup>

**b. Protest and Answer**

41. Washington Electric Cooperative argues that Applicants' commitment to hold wholesale requirements and transmission customers harmless is insufficient. It argues that, without Commission-imposed mitigation measures, the Step 2 Transaction would have the effect of increasing the transmission charges currently paid by transmission customers served under Schedule 21-GMP by approximately 70 percent. It explains that this increase would result from the consolidation of ownership of two separate sets of lower voltage transmission facilities, and would not be accompanied by any offsetting benefit for current Green Mountain Power network transmission service customers. It asserts that, in comparable circumstances, the Commission has required merging transmission owners to retain in place the lower-cost transmission owner's rate base for purposes of calculating transmission charges to pre-merger customers of that transmission owner.<sup>34</sup>

42. Washington Electric Cooperative states that it has initiated discussions with Applicants to negotiate an appropriate ratepayer protection mechanism, but the parties did not reach a suitable understanding prior to the intervention deadline. Accordingly,

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<sup>33</sup> *Id.* at 33.

<sup>34</sup> Washington Electric Cooperative Protest at 9 (citing *New England Power Co., et al.*, 88 FERC ¶ 61,292, at 61,887-889 (1999) (*New England Power*)).

Washington Electric Cooperative requests that the Commission impose a hold-harmless condition to ensure that, in no event, shall the Transaction “cause the rates charged to transmission customers served prior to the merger under a transmission tariff with a revenue requirement based solely on the costs of Green Mountain Power’s transmission facilities to increase above the level at which such rates would have remained under a stand-alone [Green Mountain Power] transmission revenue requirement.”<sup>35</sup>

43. In their answer, Applicants argue that Washington Electric Cooperative’s argument is premature. Applicants state that they have committed to file a single rate schedule under which transmission service will be offered over their combined transmission systems at non-pancaked rates in a new section 205 proceeding prior to the consummation of the Step 2 Transaction. Applicants assert that the section 205 filing will include a full cost justification for the rate resulting from the Step 2 Transaction, and therefore will create the appropriate record for consideration and rejection of Washington Electric Cooperative’s claims. In addition, Applicants state that they have committed to submit the section 205 filing as a compliance filing in this docket, thus preserving the Commission’s merger jurisdiction over the rate.

44. However, if the Commission considers Washington Electric Cooperative’s claims now, then Applicants argue that the Commission should reject Washington Electric Cooperative’s claims. Applicants argue that the Commission’s ratepayer protection policy does not prohibit the blending or averaging of transmission rates resulting from the merger of two systems in circumstances where an increase to some customers is offset by a decrease to other customers and there is no overall increase in rates due to the merger. Furthermore, Applicants argue that the Commission’s ratepayer protection policy does not prohibit the post-merger blending of transmission rates in circumstances where there is no shareholder benefit, where any rate increases to some customers are offset by savings for other customers, and where overall transmission rates are not increased as a consequence of blending.<sup>36</sup> Applicants also disagree with Washington Electric Cooperative’s interpretation of *New England Power Company*, which, they assert, was decided within the context of the New England utilities’ transition to regional ISO-NE transmission rates, and “was rooted more in the preservation of contract rights rather than ratepayer protection.”<sup>37</sup>

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<sup>35</sup> *Id.*

<sup>36</sup> Applicants Answer at 7-8 (citing *Boston Edison Company, et al.*, 117 FERC ¶ 61,083, at P 33 (2006)).

<sup>37</sup> *Id.* at 5-6.

c. **Commission Determination**

45. We find that the Transaction will have no adverse effect on rates. With respect to transaction-related costs, we accept 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. We interpret Applicants' hold-harmless commitment to include all Transaction-related costs, not only costs related to consummating the Transaction.<sup>38</sup> We also note that nothing in the application indicates that rates to such customers will increase as a result of costs related to the Transaction. The Commission will be able to monitor Applicants' hold-harmless commitment under the books and records provision of PUHCA 2005 and its authority under section 301(c) of the FPA,<sup>39</sup> and the commitment is fully enforceable based on the Commission's authority under section 203 of the FPA.

46. 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. If Applicants seek to recover Transaction-related costs in an existing formula rate that allows for such recovery, then that compliance filing must be filed in the FPA section 205 docket in which the formula rate was approved by the Commission, as well as the instant section 203 docket.<sup>40</sup> We also note that, if Applicants seek to recover Transaction-related costs in a filing whereby they are proposing a *new* rate (either a new formula rate or a new stated rate), then that filing must be made in a *new* section 205 docket as well as in the instant section 203 docket.<sup>41</sup> The Commission will notice such filings for public comment. In the compliance filing, Applicants must: (1) specifically identify the Transaction-related costs they are seeking to recover, and (2) demonstrate that those costs are exceeded by the savings produced by the Transaction, in addition to any requirements associated with

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<sup>38</sup> We note, however, that any acquisition premium (or acquisition adjustment) associated with the proposed Transaction is not permitted to be included in rates absent Commission approval in a section 205 rate filing. The Commission has stated that it "historically has not permitted rate recovery of acquisition premiums." Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,126.

<sup>39</sup> 16 U.S.C. § 825 (2006).

<sup>40</sup> In this case the filing would be a compliance filing in both the section 203 and 205 dockets.

<sup>41</sup> In this case the filing would be a compliance filing in the section 203 docket, but a rate application in the section 205 docket.

filings made under section 205. Such a hold harmless commitment will protect customers' wholesale power and transmission rates from being adversely affected by the proposed Transaction.<sup>42</sup>

47. We also agree with Applicants that Washington Electric Cooperative's arguments regarding Applicants' future filing of a single transmission rate schedule for the survivor of the Central Vermont-Green Mountain Power merger are premature. The issue of approval of a single rate is not before the Commission in the instant proceeding. If and when Applicants wish to propose a single rate, it will be the subject of a separate FPA section 205 tariff filing, which will be subject to public notice and comment, as well as review by the Commission.<sup>43</sup> Washington Electric Cooperative will have the opportunity to challenge any proposed rate increase at that time.

48. Accordingly, in light of these considerations and requirements, we find that the Transaction will not adversely affect rates.

## **5. Effect on Regulation**

### **a. Applicants' Analysis**

49. Applicants state that the Transaction will not diminish federal regulatory authority over Applicants and/or their affiliates. They state that, after the Step Transaction 1 Transaction, Central Vermont will remain a jurisdictional utility subject to Commission regulation until the Step 2 Transaction is consummated, and that the Step 1 Transaction will have no impact on the Commission's jurisdiction over Green Mountain Power. Applicants further state that, upon completion of the Step 2 Transaction, the Commission's jurisdiction over Central Vermont and Green Mountain Power will continue, except that its jurisdiction will be exercised through Green Mountain Power, if Green Mountain Power is the surviving company in the Step 2 Transaction. Applicants further state that, if Newco is the surviving company in the Step 2 Transaction, the Commission will have the same regulatory authority over Newco and its public utility affiliates that it now has over Central Vermont and Green Mountain Power and their

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<sup>42</sup> See *ITC Midwest LLC and Northern States Power Co., a Minnesota Corp.*, 133 FERC ¶ 61,169, at PP 24-25 (2010); *FirstEnergy*, 133 FERC ¶ 61,222 at P 63; *PPL Corp. and E.On U.S. LLC*, 133 FERC ¶ 61,083, at PP 26-27 (2010).

<sup>43</sup> See, e.g., *BHE Holdings Inc.*, 133 FERC ¶ 61,231, at P 40 (finding that potential increases in transmission rates in the event that the Northern Maine transmission system is integrated into ISO-NE at some future time were beyond the scope of the section 203 proceeding).

public utility affiliates. Applicants also state that, following the Step 2 Transaction, Green Mountain Power or Newco, whichever is the surviving company in the Step 2 Transaction, will continue to be holding companies that are subject to regulation by the Commission under PUHCA 2005 to the same extent Central Vermont and Green Mountain Power were so regulated by the Commission before the Transaction. Finally, Applicants note that consummation of the Transaction is expressly conditioned on approvals of the Vermont Commission and the public utility commissions of the states of Maine, New Hampshire and New York.

**b. Commission Determination**

50. We find that neither state nor federal regulation will be impaired by the Transaction. The Commission's review of a transaction's effect on regulation is focused on ensuring that the transaction does not result in a regulatory gap at the federal level or the state level.<sup>44</sup> We find that the Transaction will not create a regulatory gap at the federal level because the Commission will retain its authority over Applicants, or will have authority over Newco if Newco is the survivor in the Step 2 Transaction. We note that no party alleges that regulation would be impaired by the Transaction, and no state commission has requested that the Commission address the issue of the effect of the Transaction on state regulation. Based on the facts presented in the application, we find that the Transaction will not have an adverse effect on federal or state regulation.

**6. Cross-Subsidization**

**a. Applicants' Analysis**

51. Applicants state, based on facts and circumstances known to them or that are reasonably foreseeable, that the Transaction will not result in, at the time of the Transaction or in the future: (1) any transfers of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuances of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional facilities, for the benefit of an associate company; or (4) any new affiliate contracts between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional

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<sup>44</sup> Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.

**b. Commission Determination**

52. Based on the facts presented in the application, we find that the Transaction will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company. We note that no party has argued otherwise.

53. When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired unless it has access to the acquirer's books and records. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of this Transaction is based on such ability to examine books and records.

**C. Accounting Analysis**

54. Applicants explain that the Transaction will be accomplished in two distinct steps. In the Step 1 Transaction, Applicants state that Central Vermont will merge with an indirect subsidiary of Gaz Métro LP and become a direct, wholly-owned subsidiary of Northern New England Energy and an affiliate of Green Mountain Power. Applicants also state that the Step 1 Transaction will be recorded on the books of Gaz Métro LP and/or Northern New England Energy and any related acquisition premium and goodwill will not be pushed down on to the books of Central Vermont. Applicants also state that the Step 1 Transaction will not change the value of the assets and liabilities recorded on the books of Central Vermont. Further, Applicants state that, in the event the purchase accounting is pushed down to Central Vermont, Central Vermont shall submit its proposed accounting within six months of the date of the Transaction, and the accounting submission shall provide all the accounting entries related to the Transaction along with explanations describing the basis for the accounting entries. Therefore, to the extent Central Vermont records any aspect of the proposed Transaction on its books, it is directed to file its accounting entries with the Commission within six months of the consummation of the Transaction.

55. In the Step 2 Transaction, Applicants state that Central Vermont and Green Mountain Power will be merged either through the merger of Central Vermont with and into Green Mountain Power or through the merger of Central Vermont and Green Mountain Power into a new company (Newco). Both Central Vermont and Green Mountain Power maintain their books and records in accordance with the Commission's Uniform System of Accounts (USofA) and Newco, in the event it is used to accomplish the merger, will also be required to maintain its books of account in accordance with the

USofA. Therefore, Central Vermont, Green Mountain Power, and Newco, if used to facilitate the Step 2 Transaction, shall account for the Step 2 Transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the USofA.<sup>45</sup> In addition, Central Vermont, Green Mountain Power, and Newco shall submit their final accounting entries within six months of the date that the Step 2 Transaction is consummated. Finally, Applicants are directed as part of any accounting filing to include narrative explanations describing the basis and the rate impact of accounting entries related to any aspect of the Transaction on Central Vermont's, or Green Mountain Power's, or Newco's books.

**D. Other Considerations**

56. Information and/or systems connected to the bulk system involved in this Transaction may be subject to reliability and cyber security standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cyber security standards. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cyber security standards.<sup>46</sup>

The Commission orders:

- (A) The Transaction is hereby authorized, as discussed in the body of this order.
- (B) Applicants must inform the Commission within 30 days of any material change in circumstances that departs from the facts the Commission relied upon in granting the application.
- (C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts,

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<sup>45</sup> 18 C.F.R. Part 101 (2011).

<sup>46</sup> See also *AEE 2, L.L.C., et al.*, 130 FERC ¶ 62,205 (2010) (delegated order).

valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Applicants shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Transaction.

(G) Applicants shall adhere to the accounting requirements discussed in the body of the order.

(H) If Applicants seek to recover Transaction-related costs through their wholesale power or transmission rates, they must first submit a compliance filing in this docket that details how they are satisfying the hold harmless requirement in addition to a section 205 filing. In particular, in such a filing, Applicants must: (1) specifically identify the Transaction-related costs they are seeking to recover; and (2) demonstrate that those costs are exceeded by the savings produced by the Transaction.

(I) Applicants shall notify the Commission within 10 days of the date on which the Step 1 Transaction and the Step 2 Transaction are consummated, respectively.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.