

166 FERC ¶ 61,126  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, Richard Glick,  
and Bernard L. McNamee.

Vermont Transco, LLC

Docket No. ER18-1259-001

ORDER GRANTING CLARIFICATION AND  
DENYING REHEARING

(Issued February 21, 2019)

1. On June 28, 2018, Vermont Transco, LLC (Vermont Transco) filed a request for clarification or, in the alternative, rehearing (Request) of the Commission's May 29, 2018 order rejecting, without prejudice, Vermont Transco's request for authorization to recover in its transmission rates \$639,780 in property transfer taxes, closing fees, and advisory fees related to its acquisition of certain ownership shares in the Highgate Transmission Facility (Cost Recovery Proceeding).<sup>1</sup> For the reasons discussed below, we grant clarification and deny rehearing.

**I. Background**

**A. Asset Transfer Proceeding**

2. On March 1, 2017, Vermont Transco filed an application pursuant to section 203(a)(1) of the Federal Power Act (FPA)<sup>2</sup> requesting authorization for Green Mountain Power Corporation (Green Mountain Power) to sell its undivided ownership share and for Vermont

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<sup>1</sup> *Vermont Transco, LLC*, 163 FERC ¶ 61,152 (2018) (Cost Recovery Order); *see also Green Mountain Power Corp.*, 159 FERC ¶ 62,191 (2017) (delegated order) (Asset Transfer Order). The Highgate Transmission Facility includes "a 345-kV transmission line, operated at 120 kV, located in Franklin and Highgate Vermont, as well as additional equipment for metering, telemetering, relaying, load control, communications, and other facilities necessary to effect the adequate and satisfactory operation of the facility." Cost Recovery Order, 163 FERC ¶ 61,152 at n.3.

<sup>2</sup> 16 U.S.C. § 824b (2012).

Transco to acquire Green Mountain Power's ownership share in the Highgate Transmission Facility (Transaction or Asset Transfer Proceeding). Green Mountain Power and Vermont Transco, as applicants, represented that the Transaction raised no concerns under the Commission's public interest analysis. In particular, with respect to the recovery of transaction-related costs,<sup>3</sup> Green Mountain Power and Vermont Transco represented the following:

With respect to transaction-related costs, there is no mechanism in [ISO New England, Inc.'s (ISO-NE)] cost-based transmission formula rate that allows the automatic pass-through of such costs. As such, consistent with Commission policy, should [Vermont Transco] or [Green Mountain Power] seek to recover any transaction-related costs, they will seek Commission approval by making a separate filing under section 205 of the FPA and making the required showing of 'specific, measurable, and substantial benefits to ratepayers' in that section 205 proceeding.<sup>4</sup>

3. On May 19, 2017, the Transaction was authorized. The Asset Transfer Order noted the representation by Green Mountain Power and Vermont Transco that "should [Vermont Transco] or [Green Mountain Power] seek to recover any transaction-related costs, they state that they will seek Commission approval by making a separate filing under section 205 of the FPA and making the required showing of *specific, measurable, and substantial benefits to ratepayers*."<sup>5</sup>

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<sup>3</sup> "Transaction-related costs" are defined, among other things, as the costs of preparing and reviewing the documents effectuating the transaction and professional fees incurred in the transaction. *See Policy Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189, at P 44 (2016) (Hold Harmless Policy Statement).

<sup>4</sup> Green Mountain Power Corporation and Vermont Transco, LLC, Application for Authorization under Section 203 of the Federal Power Act, Docket No. EC17-86-000, at 16 (filed Mar. 1, 2017) (citing Hold Harmless Policy Statement, 155 FERC ¶ 61,189 at PP 44, 47 ("providing a non-exhaustive list of 'transaction-related costs'")) (Asset Transfer Application).

<sup>5</sup> Asset Transfer Order, 159 FERC at 64,461 (emphasis added).

**B. Cost Recovery Proceeding**

4. On March 30, 2018, pursuant to section 205 of the FPA,<sup>6</sup> Vermont Transco filed a request to recover in transmission rates property transfer taxes, closing fees, and advisory fees totaling \$639,780 related to the Transaction (Transaction-related costs).<sup>7</sup>

5. Vermont Transco stated that it had recorded the Transaction-related costs in Account 186 (Miscellaneous Deferred Debits). Vermont Transco thus requested approval to move the Transaction-related costs from this account to Account 182.3 (Other Regulatory Assets) and to amortize the costs over the remaining book life of the Highgate Transmission Facility to Account 923 (Outside Services Employed) for rate recovery through the ISO-NE Tariff.<sup>8</sup>

6. Vermont Transco explained that its transmission costs are recovered, as appropriate, through the ISO-NE formula rate from Regional Network Service (RNS) customers, Schedule-21-VTransco from Local Network Service (LNS) customers,<sup>9</sup> or the 1991 Vermont Transmission Agreement (Vermont Transmission Agreement) from Vermont customers.<sup>10</sup> However, Vermont Transco stated that no mechanism exists in the

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<sup>6</sup> 16 U.S.C. § 824d.

<sup>7</sup> Vermont Transco, Request to Recover Costs, Docket No. ER18-1259-000, at 2-3, n.6 (filed Mar. 30, 2018) (Cost Recovery Request).

<sup>8</sup> ISO New England, Inc. Transmission, Markets and Services Tariff (ISO-NE Tariff), Attachment F Annual Transmission Revenue Requirements, 18.0.0 (Regional Network Service rate), Schedule 21 - VT Transco, Schedule 21 - VT Transco, 5.0.0 (Local Network Service rate).

<sup>9</sup> Both the RNS rate and the LNS rate are transmission rates for service offered under the ISO-NE Tariff. Pursuant to FPA section 206, in Docket No. EL16-19-000, the Commission found both of these rates to be unjust and unreasonable and set them for hearing and settlement. *ISO New England Inc.*, 153 FERC ¶ 61,343 (2015). On August 17, 2018, in Docket No. ER18-2235-000, parties filed an offer of settlement proposing to resolve all issues in Docket No. EL16-19-000.

<sup>10</sup> The Vermont Transmission Agreement is a rate schedule under which Vermont Transco provides transmission service to several investor-owned utilities, municipalities, cooperatives, and towns. Through their ownership shares of Vermont Transco and/or Vermont Transco's parent, Vermont Transco's customers under this rate schedule are also Vermont Transco's owners. See Vermont Transco LLC, Transmittal, Docket No. ER07-459-000, at 2 (filed Jan. 25, 2007).

ISO-NE formula rate to allow Vermont Transco to pass through any Transaction-related costs. Vermont Transco explained that, because service over the Highgate Transmission Facility is provided under the RNS rate, Vermont Transco requested approval to pass the Transaction-related costs through the RNS rate based on cost causation and beneficiary pays principles. Vermont Transco also noted that, without Commission action, Vermont Transco was required to record the Transaction-related costs in Account 425 (Miscellaneous Amortization) and, by operation of the 1991 Vermont Transmission Agreement, recover the total expenses from Vermont customers.

7. Vermont Transco explained that, “[w]hile the applicants in the [Asset Transfer Proceeding] acknowledged that they would need to obtain Commission authorization under FPA section 205 to recover costs related to the [Transaction], the applicants did not make a hold harmless commitment.”<sup>11</sup> Vermont Transco also asserted that “the requirement to show ‘specific, measurable, and substantial benefits to ratepayers’ where an applicant is seeking to recover an acquisition premium is not applicable here as the costs at issue are not an acquisition premium.”<sup>12</sup>

8. In the Cost Recovery Order, the Commission rejected Vermont Transco’s request to recover the Transaction-related costs. The Commission specifically noted the commitment Vermont Transco made in the Asset Transfer Application, which was acknowledged in the Asset Transfer Order, regarding the recovery of any transaction-related costs, namely that it would show “specific, measurable, and substantial benefits to ratepayers.”<sup>13</sup> The Commission concluded that Vermont Transco had not made this showing. As such, the Commission rejected Vermont Transco’s Cost Recovery Request without prejudice.<sup>14</sup>

9. The Commission separately explained that Vermont Transco could not, absent Commission approval, recover the Transaction-related costs through the Vermont Transmission Agreement by simply placing those costs in Account 425. The Commission stated that, although the 1991 Vermont Transmission Agreement includes a line for Account 425 costs, authorization had not been granted for the automatic pass-through of the Transaction-related costs. The Commission emphasized that its accounting requirements provide for information and transparency in the development of a

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<sup>11</sup> Cost Recovery Request at 2 n.6.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> Cost Recovery Order, 163 FERC ¶ 61,152 at P 16 (citing Asset Transfer Order, 159 FERC at 64,461).

<sup>14</sup> *Id.*

cost-of-service, but they do not dictate the development of rates.<sup>15</sup> The Commission also explained that Vermont Transco should have deferred the Transaction-related costs in Account 182.3 from the beginning, rather than including them in Account 186. Further, the Commission explained that upon disallowance for rate recovery, the appropriate account to charge the write-off would be Account 426.5 (Other Deductions), not Account 425.<sup>16</sup> The Commission also stated that Vermont Transco's commitment in its Asset Transfer Application, and the basis for authorizing the Transaction, was not limited to one discrete group of transmission customers; rather, the "specific, measurable, and substantial benefits to ratepayers" commitment applied to all Commission-jurisdictional transmission rates on file, not simply the RNS rate.<sup>17</sup>

## II. Discussion

### A. Request

10. Vermont Transco requests clarification, or, in the alternative, rehearing, of several issues. Vermont Transco requests that the Commission clarify whether it intended to announce a policy of interpreting a commitment in an FPA section 203 proceeding to make a future filing under FPA section 205 as an indefinite hold harmless commitment. Vermont Transco asserts the following:

For the first time, the Commission explained in the [Cost Recovery Order] that [Vermont Transco], in the [Asset Transfer Proceeding], "committed to [the standard for the recovery of acquisition premiums] for the recovery of any transaction-related costs . . ." and "[t]hat commitment was specifically acknowledged in the [Asset Transfer Order]." However, rather than acknowledge a hold harmless commitment, the [Asset Transfer Order] only notes the effects on rate arguments made by [Vermont Transco and Green Mountain Power] in that proceeding.<sup>18</sup>

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<sup>15</sup> *Id.* P 17 (citing *Entergy Servs., Inc.*, 130 FERC ¶ 61,026, at P 89 (2010); *Southern Company Servs., Inc.*, 116 FERC ¶ 61,247, at P 23 (2006); *N. Penn Gas Co.*, 13 FERC ¶ 61,084, at 61,174 (1980)).

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

<sup>17</sup> *Id.* P 18.

<sup>18</sup> Request at 5-6.

Vermont Transco emphasizes that the Asset Transfer Order concluded that the Transaction was consistent with the public interest and “explicitly conditioned authorization of the [Transaction] ‘upon the terms and conditions and for the purposes set forth in the [Asset Transfer Application].’” Vermont Transco argues that the Asset Transfer Application stated that “if [Vermont Transco or Green Mountain Power] sought cost-recovery for transaction-related costs they would do so *consistent with Commission policy*.”<sup>19</sup> However, Vermont Transco argues that its commitment to making an FPA section 205 filing under the just and reasonable standard was construed by the Commission to be a hold harmless commitment, and Vermont Transco argues that it did not make such a commitment.<sup>20</sup>

11. Vermont Transco highlights that the Asset Transfer Application did not contain a hold harmless commitment, nor is Vermont Transco seeking to recover an acquisition premium. Further, Vermont Transco argues that it “is unaware of any Commission precedent or policy prior to the [Cost Recovery] Order that requires the showing of ‘specific, measurable, and substantial benefits to ratepayers’ in the absence of a request for recovery of acquisition premiums[,]” but, according to Vermont Transco, that appears to be the new policy created in the Cost Recovery Order.<sup>21</sup>

12. Vermont Transco argues that, if the Commission intended to announce a new hold harmless policy in the Cost Recovery Order, the Commission erred in not considering the full text of the commitment made by Vermont Transco and Green Mountain Power in the Asset Transfer Proceeding. Vermont Transco also argues that, if the Commission created a new policy in the Cost Recovery Order, it erred in applying the new policy retroactively.<sup>22</sup> Vermont Transco asserts that the Commission should grant rehearing and find that Vermont Transco and Green Mountain Power did not make a hold harmless commitment and that the standard applicable to Vermont Transco’s Cost Recovery Request is the just and reasonable standard under FPA section 205 with no additional requirement to show “specific, measurable, and substantial benefits” to ratepayers. Further, Vermont Transco requests that the Commission find that the Cost Recovery Request is consistent with Commission policy and that Vermont Transco has satisfied the

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<sup>19</sup> *Id.* at 6 (emphasis in original).

<sup>20</sup> *Id.* n.14 (citing Massachusetts Attorney General, Protest, Docket No. ER18-1259-000, at 2-4 (filed Apr. 20, 2018)).

<sup>21</sup> *Id.* at 6-7.

<sup>22</sup> *Id.* at 8.

burden of showing that the recovery of the Transaction-related costs in RNS rates is just and reasonable.<sup>23</sup>

13. In addition, Vermont Transco asks that the Commission clarify the account in which Vermont Transco should record the Transaction-related costs. Specifically, Vermont Transco interprets the Commission's instructions in the Cost Recovery Order to require Vermont Transco to record the Transaction-related costs in Account 426.5. Vermont Transco argues that, because Account 426.5 is an account included for recovery in the Vermont Transmission Agreement, the Commission has in effect ordered Vermont Transco to recover the Transaction-related costs from local service customers. Vermont Transco requests clarification that, because the Commission stated that Vermont Transco "must seek and obtain authorization to pass through any transaction-related costs under any of its filed formula rates," the direction in the Cost Recovery Order constitutes such authorization.<sup>24</sup>

14. However, Vermont Transco also requests clarification regarding whether it should keep the Transaction-related costs in Account 182.3, or, in light of the disallowance for cost recovery, another account.<sup>25</sup> If the Commission directs Vermont Transco to keep the costs in Account 182.3 and the Commission does not provide the clarification or grant rehearing regarding the standard of review applicable to Vermont Transco's request for recovery, Vermont Transco further requests that the Commission clarify whether it intends RNS customers to avoid their share of costs related to the Highgate Transmission Facility.<sup>26</sup>

## **B. Commission Determination**

15. We grant Vermont Transco's request for clarification and deny rehearing.

16. With respect to Vermont Transco's request for clarification as to whether the Commission established a new policy of interpreting a commitment in an FPA section 203 proceeding to make a future filing under FPA section 205 as an indefinite hold harmless commitment, we clarify that in the Cost Recovery Order, the Commission did not establish a new policy regarding commitments in section 203 proceedings. Contrary to Vermont Transco's assertion, the Commission did not consider Vermont

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<sup>23</sup> *Id.* at 7-8.

<sup>24</sup> *Id.* at 5 (quoting Cost Recovery Order, 163 FERC ¶ 61,152 at P 18).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

Transco's particular commitment regarding the recovery of transaction-related costs in the Asset Transfer Proceeding to be a hold harmless commitment. In fact, the Cost Recovery Order specifically stated that Vermont Transco did not make a hold harmless commitment.<sup>27</sup>

17. We deny Vermont Transco's request that the Commission grant rehearing to find that it need not demonstrate "specific, measurable, and substantial benefits to ratepayers" in Vermont Transco's Cost Recovery Request to recover the Transaction-related costs under FPA section 205. Vermont Transco argues that, because it did not make a hold harmless commitment, the FPA section 205 just and reasonable standard applies to its request to recover the Transaction-related costs and there is no additional requirement to show "specific, measurable, and substantial benefits to ratepayers" in order to meet that standard. However, the issue is not what standard should apply to an FPA section 205 filing in general, but rather what Vermont Transco committed to demonstrate in its specific FPA section 205 filing in the Asset Transfer Proceeding.

18. In the Asset Transfer Application, Vermont Transco and Green Mountain Power explained that, "[w]ith respect to transaction-related costs, there is no mechanism in ISO-NE's cost-based transmission formula rate that allows the automatic pass-through of such costs."<sup>28</sup> Vermont Transco and Green Mountain Power then made the following commitment: "As such, consistent with Commission policy, should [Vermont Transco] or [Green Mountain Power] seek to recover any transaction-related costs, they will seek Commission approval by making a separate filing under section 205 of the FPA and making the required showing of 'specific, measurable, and substantial benefits to ratepayers' in that section 205 proceeding."<sup>29</sup>

19. Thus, in their Asset Transfer Application, Vermont Transco and Green Mountain Power represented that "the proposed Transaction will have no adverse effect on

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<sup>27</sup> Cost Recovery Order, 163 FERC ¶ 61,152 at P 6 ("[Vermont Transco] explains that, '[w]hile the applicants in the [Asset Transfer Proceeding] docket acknowledged that they would need to obtain Commission authorization under FPA section 205 to recover costs related to the [Transaction], the applicants did not make a hold harmless commitment not to seek such recovery.'").

<sup>28</sup> Asset Transfer Application at 16 (citing Hold Harmless Policy Statement, 155 FERC ¶ 61,189 at P 44). Vermont Transco and Green Mountain Power noted that P 44 of the Hold Harmless Policy Statement provides "a non-exhaustive list of 'transaction-related costs'." *Id.* n.29.

<sup>29</sup> *Id.* (citing Hold Harmless Policy Statement, 155 FERC ¶ 61,189 at P 47).



wholesale ratepayers or transmission customers”<sup>30</sup> and further committed to seek to recover transaction-related costs only after a showing of “specific, measurable, and substantial benefits to ratepayers.” As explained in the Cost Recovery Order, that commitment was specifically referenced in the Asset Transfer Order<sup>31</sup> and was relied upon in determining that the Transaction would not have an adverse effect on rates.<sup>32</sup> Moreover, Vermont Transco itself notes that this particular commitment was part of its “effects on rates arguments.”<sup>33</sup> Therefore, allowing Vermont Transco to recover transaction-related costs without demonstrating the “specific, measurable, and substantial benefits to ratepayers” would be inconsistent with the representations and commitments made in Vermont Transco’s Asset Transfer Application, which the Commission relied upon in determining that the Transaction would not have an adverse effect on rates. Accordingly, if Vermont Transco seeks to recover transaction-related costs, it must submit a new FPA section 205 filing proposing to recover the transaction-related costs and demonstrating “specific, measurable, and substantial benefits to ratepayers.”<sup>34</sup>

20. Finally, because Vermont Transco provided a specific commitment regarding the recovery of any transaction-related costs in its Asset Transfer Application and the Commission did not establish a new policy in the Cost Recovery Order, we need not address Vermont Transco’s request regarding the appropriate standard for recovery of transaction-related costs when an applicant provides no hold harmless commitment.

21. In addition, Vermont Transco is correct that it should record the Transaction-related costs in Account 426.5, as directed by the Commission.<sup>35</sup> As the Commission

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<sup>30</sup> *Id.*

<sup>31</sup> Cost Recovery Order, 163 FERC ¶ 61,152 at P 16 (citing Asset Transfer Order, 159 FERC at 64,461).

<sup>32</sup> Asset Transfer Order, 159 FERC at 64,461.

<sup>33</sup> Request at 6.

<sup>34</sup> *See also Emera Maine*, 155 FERC ¶ 61,233, at PP 33-37 (2016), *order denying reh’g, accepting compliance filing and directing further filing*, 158 FERC ¶ 61,012, at P 18 (2017).

<sup>35</sup> Cost Recovery Order, 163 FERC ¶ 61,152 at P 17. In the Cost Recovery Order, the Commission explained that Vermont Transco should have recorded the costs in Account 182.3 at the outset. *Id.* P 18 (citing *Ameren Corp.*, 140 FERC ¶ 61,034 (2012), *order rejecting refund report and providing guidance*, 143 FERC ¶ 61,240 (2013), *reh’g denied*, 147 FERC ¶ 61,225, at PP 28, 30-35 (2014)).

explained in the Cost Recovery Order, accounting does not dictate ratemaking and does not establish particular rates.<sup>36</sup> In addition, the Commission denied recovery of the Transaction-related costs. Therefore, the Commission did not, in effect, order Vermont Transco to recover the Transaction-related costs from local service customers in the Cost Recovery Order, as Vermont Transco asserts. Rather, in denying cost recovery, the Commission directed Vermont Transco to record the Transaction-related costs in Account 426.5. Because the Commission denied cost recovery in the Cost Recovery Order, Vermont Transco should record the Transaction-related costs in the portion of Account 426.5 that does not pass through in rates. The Transaction-related costs should not be recovered in rates because Vermont Transco has not made the showing of “specific, measurable, and substantial benefits to ratepayers” that it committed to in the Asset Transfer Proceeding. In Account 426.5, the Transaction-related costs should be separate from costs that have been authorized to be included in rates.

The Commission orders:

Vermont Transco’s request for clarification is hereby granted, and its alternative request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>36</sup> *Id.* (citing *Entergy Servs., Inc.*, 130 FERC ¶ 61,026 at P 89; *Southern Company Servs., Inc.*, 116 FERC ¶ 61,247 at P 23; *N. Penn Gas Co.*, 13 FERC at 61,174).