

108 FERC ¶ 61,150
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Vermont Electric Cooperative, Inc.

Docket No. EL04-45-000

ORDER GRANTING IN PART AND DENYING IN PART
REQUEST FOR WAIVERS

(Issued August 5, 2004)

1. On December 24, 2003, Vermont Electric Cooperative, Inc. (Vermont Electric) filed a request for waiver of the Standards of Conduct requirements of Order Nos. 889¹ and 2004² and the Electric Quarterly Report reporting requirements of Order No. 2001.³ For the reasons discussed below, the Commission grants Vermont Electric's request for waiver of the Standards of Conduct requirements of Order No. 2004, and denies the request for waiver of the Electric Quarterly Report requirements of Order No. 2001.
2. This order benefits customers by minimizing the regulatory burden on Vermont Electric while ensuring that the Commission can monitor its transactions in the marketplace.

¹ Open Access Same-Time Information System (Formerly Real-Time Information Networks) and Standards of Conduct, Order No. 889, FERC Stats. & Regs., Regulations Preambles ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs., Regulations Preambles ¶ 31,049 (1997), *order on reh'g*, Order No. 889-B, 81 FERC ¶ 61,253 (1997), *order on reh'g*, Order No. 889-C, 82 FERC ¶ 61,046 (1998).

² Standards of Conduct for Transmission Providers, Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, 107 FERC ¶ 61,032 (2004), *pending reh'g*.

³ Revised Public Utility Filing Requirements, Order No. 2001, FERC Stats. & Regs., Regulations Preambles ¶ 31,127 (2002), *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,047 (2002).

Background

3. Vermont Electric is a consumer-owned, electric distribution cooperative⁴ that currently provides bundled retail distribution service to approximately 16,000 residential, small commercial and industrial customers in Vermont and Massachusetts. According to Vermont Electric, approximately 90 percent of its current customer base is rural residential. Vermont Electric asserts that it does not own any generating facilities and relies on third-party power supply contracts to meet its power needs. Vermont Electric owns 1,500 miles of overhead distribution lines and 57.35 miles of low voltage transmission facilities. According to Vermont Electric these distribution lines and transmission facilities do not comprise an integrated transmission grid. Vermont Electric notes that it is a member of the New England Power Pool (NEPOOL).

4. Vermont Electric states that it currently provides Commission-jurisdictional transmission service to only one customer, Central Vermont Public Service Company. Vermont Electric relies on the Vermont Electric Power Company's and the Central Vermont Public Service Company's transmission facilities to obtain the power it in turn distributes to its customers. It adds that, during 2002, it had retail sales of 144,978 MWh and received \$18,491,415 in sales revenue. Vermont Electric asserts, therefore, that it is a small public utility as defined by the Small Business Administration.⁵

5. Vermont Electric notes that it is acquiring additional distribution facilities and certain limited transmission facilities from Citizens Communications Company, d/b/a Citizens Energy Services (Citizens). On April 15, 2003, Vermont Electric entered into a Purchase and Sales Agreement with Citizens to purchase certain of Citizens' lower

⁴ Vermont Electric points out in its application that until, September 4, 1997, it was subject to the regulatory oversight of the Rural Utilities Service (RUS) and its predecessor agency, the Rural Electrification Administration. On September 4, 1997, Vermont Electric repurchased its RUS debt, and accordingly, is now subject to the Commission's jurisdiction. *See Dairyland Power Cooperative*, 32 FPC 12 (1997).

⁵ The Small Business Administration defines a small public utility as one that disposes of less than 4 million MWh per year. *See* 13 C.F.R. § 121.201; *see also* Order No. 888, FERC Stats. & Regs., Regulations Preambles ¶ 31,036 at 31,896, n.1072 (1997).

voltage transmission facilities and all of its distribution facilities.⁶ Vermont Electric states that its status as a rural electric cooperative will not change as a result of the Citizens' transaction; rather, Citizens' former distribution customers will become new member-owners of Vermont Electric.⁷ Vermont Electric notes that, in 2002, Citizens had retail sales of 302,182 MWh and received \$31,288,495 in sales revenue, of which \$1,191,895 was from wholesale transmission activities. Vermont Electric notes, further, that it will assume approximately \$560,000 of Citizens' sales revenue upon completion of the transaction. Vermont Electric also notes that, upon completion of the Citizens' transaction, it will have eight employees for its electric utility operations with one employee dealing with the non-operational aspects of its wholesale functions. Vermont Electric concludes, therefore, that Vermont Electric will continue to be a small public utility upon completion of its transaction with Citizens.

Notice of Filings

6. Notice of Vermont Electric's December 24, 2003 filing was published in the *Federal Register*, 69 Fed. Reg. 2347 (2004), with interventions and protests due on or before January 23, 2004. None was filed.

⁶ Vermont Electric notes that it filed a joint application with Citizens pursuant to section 203 of the Federal Power Act (FPA) (Section 203 Application) requesting Commission authorization for Citizens to transfer these facilities to Vermont Electric in Docket No. EC04-46-000. It also notes that it filed an application under section 205 of the FPA (Section 205 Application) to assume Citizens' Open Access Transmission Tariff (OATT) and related rate schedules covering grandfathered agreements for the low voltage transmission facilities Vermont Electric is acquiring from Citizens in Docket No. ER04-341-000. Both applications were accepted. *See Citizens Communications Co. and Vermont Electric Cooperative, Inc.*, 106 FERC ¶ 62,103 (2004); *Vermont Electric Cooperative, Inc.*, 106 FERC ¶ 61,131 (2004).

⁷ According to Vermont Electric, Citizen conveyed its higher voltage 120 kV transmission facilities to Vermont Electric Power Company (Vermont Electric Power), the primary Transmission Provider in the State of Vermont. Vermont states that Citizens and Vermont Electric Power filed a section 203 application and a section 205 application for Commission authorization for this transaction that the Commission approved on October 16, 2003. *See Citizens Communications Co. and Vermont Electric Power Co., Inc.*, 105 FERC ¶ 62,028 (2003).

Discussion

Requests for Waiver of Order Nos. 889 and 2004

7. Vermont Electric states that, upon completion of the transaction with Citizens, it will become a Commission-jurisdictional utility because of Citizens' jurisdictional activities. Vermont Electric contends, however, that it is now, and will still remain after the Citizens' transaction, a small public utility that does not operate an integrated transmission grid. Vermont Electric states that compliance with the separation of functions and standards of conduct, along with other related regulations, in Order Nos. 889, 2004 and 2001 will be unduly burdensome.

8. Vermont Electric notes that it is seeking waiver of the separation of functions and Standards of Conduct requirements of Order No. 889 because Order No. 2004 was not in effect at the time of its December 24, 2003 waiver request. Vermont Electric states, however, that if the Commission does not approve its Order No. 889 waiver application prior to the February 9, 2004 effective date for Order No. 2004, then it seeks Commission approval of waiver of the Order No. 2004 requirements. According to Vermont Electric, the same criteria for determining waiver of Order No. 889 should apply to its request for waiver of Order No. 2004.

9. Vermont Electric points out that the Commission has determined that waiver of its Order No. 889 requirements is appropriate for a public utility: (1) if the utility owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) if the entity is a small public utility that owns, operates, or controls an integrated transmission grid, unless it is a member of a tight power pool, or other circumstances are present that indicate that a waiver would not be justified.⁸ Vermont Electric argues that it owns, operates or controls only limited and discrete transmission facilities and will continue to do so even after the closing of the Citizens' transaction.

⁸ See *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 at 61,941 (1996) (*Black Creek*); *Central Illinois Generation, Inc.*, 101 FERC ¶ 61,082 at 61,274 (2002); *Southern California Water Co.*, 100 FERC ¶ 61,373 at 62,672 (2002); *Kansas Electric Power Cooperative, Inc.*, 100 FERC 61,099 at 61,398 (2002); *Umatilla Electric Cooperative Association*, 97 FERC ¶ 61,235 at 62, 073 (2001); *Northern States Power Co. (Minnesota)* and *Northern States Power Co. (Wisconsin), et al.*, 76 FERC ¶ 61,250 at 62,292-93, 62,296-97 (1996).

10. Vermont Electric concludes, therefore, that it meets the criteria for waiver of the Order No. 889 Standards of Conduct requirements and accordingly, the criteria for waiver of the Order No. 2004 Standards of Conduct requirements because, even after it acquires Citizens' lower voltage, radially operated transmission facilities, it will not own or operate an integrated transmission grid.⁹

11. In *Black Creek*,¹⁰ the Commission explained that it will grant requests for waiver of Order Nos. 888 and 889 for public utilities that can show that they own, operate, or control only limited and discrete transmission facilities (facilities that do not form an integrated transmission grid). Since the filing of Vermont Electric's application for waiver on December 24, 2003, the Standards of Conduct requirements in Order No. 889 have been superseded by the Standards of Conduct requirements in Order No. 2004. The Commission will apply the *Black Creek* criteria to determine whether an entity qualifies for a waiver of the Standards of Conduct requirements in Order No. 2004. Based on the statements in Vermont Electric's request, the Commission finds, consistent with the criteria in *Black Creek*, Vermont Electric is a small public utility that owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid). Therefore, the Commission is granting Vermont Electric's request for waiver of the Standards of Conduct requirements of Order No. 2004.

Request for Waiver of Order No. 2001

12. Vermont Electric also requests waiver of the requirement to file Electric Quarterly Reports (EQR) as required in Order No. 2001. Order No. 2001 provided for the availability of waivers where appropriate for small entities. In *Bridger Valley Electric Association, Inc., et al.*, 101 FERC ¶ 61,146 (2002) (*Bridger Valley*), the Commission applied the following criteria to the requests for waivers: (1) each applicant is a small entity within the meaning of the RFA [Regulatory Flexibility Act] and has qualified for a waiver under Order Nos. 888 and 889, serves a load of 45 MW or less, and has four or fewer employees engaged in accounting, billing, and regulatory activities; (2) none makes, or has authority to make, wholesale power sales at market-based rates; (3) each

⁹ Vermont Electric notes that it is not seeking waiver of Order No. 889's OASIS requirements because it is acquiring certain grandfathered transmission agreements and associated rate schedules as part of the Citizens' transaction. Vermont Electric states that it does not wish to disrupt the commercial practices employed by Citizens and its transmission customers under these agreements, and therefore, is willing to assume operation of Citizens' OASIS.

¹⁰ *Supra* note 8.

applicant makes all of its sales under a small number of cost-based rate agreements (four or fewer) that are all on file with the Commission; (4) each is obligated to file for Commission approval any new contracts or revisions to its existing contracts; and (5) each applicant's transmission system is essentially radial in nature and primarily used for distribution to its member-owners.¹¹

13. Vermont Electric submits that waiver of the EQR reporting requirements of Order No. 2001 is appropriate because, among other things, (1) it is a small entity as that term is defined under the Small Business Regulatory Fairness Act¹² and the Regulatory Flexibility Act;¹³ (2) it does not operate on an integrated transmission grid but rather on lower-voltage transmission facilities that are radially operated; (3) its transmission activities are incidental to its primary purpose of providing distribution service to its member owners; (4) it does not anticipate substantial transmission transactions under its new OATT; (5) it will have limited accounting, financial and regulatory staff to deal with the requirements of Commission regulations; (6) it is not authorized by the Commission to make, nor does it engage in, sales of energy at market-based rates;¹⁴ (7) it makes no wholesale sales of power; and (8) it has an obligation to file any new contracts or modifications to existing contracts with the Commission.

¹¹ See *Bridger Valley*, 101 FERC ¶ 61,146 at P 9.

¹² 5 U.S.C. § 804(2) (2000).

¹³ 5 U.S.C. § 601, et seq. See also *Platte-Clay Electric Cooperative, Inc.*, 99 FERC ¶ 61,236, n.8 (2002) (“To qualify as a small public utility, the applicant must meet the Small Business Administration’s definition of small electric utility, *i.e.*, disposes of no more than four million MWh annually.”)

¹⁴ However, Vermont Electric then asserts that it makes only limited sales of power that exceed its needs into the ISO New England day ahead and real time markets at whatever price prevails in those markets and that it is authorized to do so under the NEPOOL tariff. The Commission further notes that Vermont Electric filed on March 31, 2004 in Docket No. ER04-694-000 a section 205 application for market-based rate authority for these limited sales of excess power. Vermont Electric subsequently filed an amended application in that docket on July 9, 2004, which is pending before the Commission.

14. FPA section 205(c) requires the Commission to keep publicly available “all rates and charges for any transmission or sale subject to the jurisdiction of the Commission.”¹⁵ The Commission does not waive this obligation when it grants waivers of the Order No. 2001 filing requirements. Quite to the contrary, criteria (3) and (4) in *Bridger Valley* demonstrate that a waiver is granted only because the recipient of the waiver will continue to meet its statutory FPA section 205(c) obligations. That is, a waiver recipient has only cost-based sales under a small number of contracts that remain on file with the Commission, and the waiver recipient will file with the Commission any new or revised contracts.

15. Unless Vermont Electric complies with the filing requirements of Order No. 2001 (*i.e.*, filing EQRs), the rates and charges of the sales of excess power described by Vermont Electric in its application would not be on file with the Commission. Because the Commission cannot waive those statutory filing requirements, Vermont Electric’s request for waiver of the EQR reporting requirements in Order No. 2001 is denied. On January 30, 2004, VEC requested that the Commission accept a paper filing in lieu of an EQR filed electronically using the Commission’s EQR software. The Commission does not accept as valid EQRs filed using any other method than its software, which is provided for free to all utilities. Therefore, VEC’s request to file a paper copy in lieu of an electronic filing is denied.

The Commission orders:

(A) Vermont Electric’s request for waiver of the Standards of Conduct requirements of Order No. 2004 is granted, as discussed in the body of this order.

(B) Vermont Electric’s request for waiver of the EQR reporting requirements of Order No. 2001 is denied, as discussed in the body of this order.

By the Commission

(S E A L)

Linda Mitry,
Acting Secretary.

¹⁵ 16 U.S.C. § 824d(c) (2000).