

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7076

Petition of North Hartland, LLC for interim)
authority to operate its North Hartland hydroelectric)
facility, and approval of proposed interconnection)
and power purchase agreements)

Order entered: 2/23/2006

PRESENT: Judith M. Kasper, Esq., Hearing Officer

APPEARANCES: Hans Huessy, Esq.
Kenlan, Schweibert & Facey
for North Harland, LLC

Morris L. Silver, Esq.
for Central Vermont Public Service Corporation

Geoffrey Commons, Esq.
for Vermont Department of Public Service

I. INTRODUCTION

This docket concerns a request by North Hartland, LLC ("North Hartland") for Public Service Board ("Board") approval of a power purchase agreement and an interconnection agreement between North Hartland and Central Vermont Public Service Corporation ("CVPS"). Pursuant to a Certificate of Consent and a Certificate of Public Good ("CPG"), both issued to North Hartland by the Board in Docket No. 6415, North Hartland is required to obtain Board approval for an interconnection agreement before it can operate the North Hartland Hydroelectric Plant, a hydroelectric generating facility located at the North Hartland Flood Control Dam and Reservoir in the Town of Hartland, Vermont (the "Facility"). Board approval of the power purchase and interconnection agreements also is required before North Hartland can submit a

petition to the Federal Energy Regulatory Commission ("FERC") for a boundary adjustment that is contemplated by the interconnection agreement.¹

North Hartland also seeks Board approval, pursuant to 30 V.S.A. § 107, for the transfer of a 100% equity interest in North Hartland to Concord Hydro Associates ("Concord Hydro").²

The Board already has granted North Hartland authority to operate the Facility on an interim basis pending final resolution of this docket.³ For the reasons set forth below, I recommend that the Board approve the equity interest transfer to Concord Hydro and grant final approval for the power purchase and interconnection agreements submitted by the parties in this docket.

Procedural History

On June 14, 2005, North Hartland filed a petition requesting Board approval for a power purchase agreement and an interconnection agreement between North Hartland and CVPS. Appended to the petition was a Nonlevelized Energy Sale and Purchase Agreement ("Power Purchase Agreement") and a draft Generation Interconnection Agreement between Central Vermont Public Service Corporation and North Hartland, LLC, for the North Hartland Hydroelectric Generating Station ("Interconnection Agreement"). In its petition, North Hartland also requested approval for authority to operate the Facility on an interim basis, pending final Board approval of the proposed Power Purchase and Interconnection Agreements.

On July 11, 2005, a prehearing conference in this matter was held. At that time, North Hartland confirmed that, in its June 14 filing, it already had filed with the Board the final draft of the proposed Power Purchase Agreement, and clarified that the final draft Interconnection Agreement would be forthcoming once the parties finalized the technical requirements and operating protocols (part of the Appendices to the Interconnection Agreement).⁴ In addition, at

1. Letter of Hans Huessy, dated January 26, 2006, at 1.

2. Letter of Hans Huessy, dated July 18, 2005.

3. Order of September 20, 2005.

4. On June 24, 2005, North Hartland filed an "Amendment to Petition for Interim Operating Authority, Approval of Proposed Interconnection and Power Purchase Agreements and Request for Expedited Hearing." The proposed

the prehearing conference, CVPS and North Hartland explained that, during the requested interim period for operating the Facility, they planned to use the same technical requirements and operating protocols to be included in the final draft of their Interconnection Agreement. All parties expressed particular concern that, during any interim period, appropriate measures be in place to ensure system stability, reliability and safety.⁵

On August 22, 2005, CVPS filed the final draft Generation Interconnection Agreement between Central Vermont Public Service Corporation and North Hartland, LLC, for the North Hartland Hydroelectric Generating Station, complete with Appendix A: Technical Requirements, and Appendix B: Operating Protocols.⁶

On September 20, 2005, the Board issued an order authorizing North Hartland to operate the North Hartland Hydroelectric Generating Station located in North Hartland, Vermont, on an interim basis pending final disposition of this docket.⁷

No party to this docket has requested a hearing.

Pursuant to 30 V.S.A. § 8, I report the following to the Board.

II. FINDINGS

1. North Hartland is a New Hampshire Limited Liability Company registered to do business in the State of Vermont. Petition Exhibit A.

2. The Facility, FERC Project P-2816-007, is a 4,000 kW hydroelectric generating facility located at the North Hartland Flood Control Dam and Reservoir in the Town of Hartland, Vermont. The Facility is a peaking plant, generating electricity during peak periods and impounding water during off-peak periods. Petition at 1; Docket No. 6415, Order of 2/11/03, at 4 (Finding No. 4).

"Generation Interconnection Agreement" (with blank appendices) was appended.

5. Tr. 7/11/05 at 10-11.

6. Letter of Morris Silver, dated August 22, 2005.

7. Docket No. 7076, Report and Recommendation Re Request for Interim Authority to Operate, 9/20/05.

3. The Facility commenced operation in 1985. It ceased operation in 1996 when its then owner, Vermont Electric Generation & Transmission Cooperative, Inc. ("VEG&T"), filed a voluntary Chapter 7 Bankruptcy Petition. The Facility has remained idle since 1996. Docket No. 6415, Order of 2/11/03 at 5.

4. Upon VEG&T's bankruptcy filing, the directors, trustees and officers of VEG&T resigned. Shortly after, the Bankruptcy Court appointed Gleb Glinka as trustee ("Trustee") of VEG&T's estate. As the representative of VEG&T's bankruptcy estate, the Trustee holds legal title to the property. *Id.*

5. In June 1997, the Bankruptcy Court issued an Order on Stipulated Settlement of Claims in which the Rural Utilities Service of the United States Department of Agriculture ("RUS") was authorized to negotiate, with the Trustee's cooperation, the transfer of the Facility. *Id.*

6. Contech Development Company, L.L.C. ("Contech"), the Trustee, and RUS executed an Assets Purchase Agreement, dated December 16, 1999 ("APA"). Contech subsequently assigned its rights under the APA to North Hartland. Subject to obtaining certain regulatory approvals, the APA provided for the transfer of the Facility from the Trustee to North Hartland. *Id.* at 6.

7. FERC issued an Order Approving Transfer of License for FERC Project P-2816 to North Hartland on June 27, 2000. *Id.*

8. In its June 27, 2000 Order, FERC issued findings that: (i) the sale and transfer of the FERC Project P2816-007 to North Hartland is in the public interest; (ii) that North Hartland is qualified to hold the license, and; (iii) that North Hartland is qualified to operate the property under the license. *Id.*

9. FERC Project P2816 is a Qualifying Small Power Production Facility ("Qualifying Facility") certified by FERC pursuant to Title 18 C.F.R. 292.207 (a)(1). *Id.*

10. North Hartland has been determined to be an Exempt Wholesale Generator by FERC in findings issued March 7, 2000, pursuant to Section 32 of the Public Utilities Holding Company Act ("PUHCA") of 1935. North Hartland will own and operate the Project as a Qualifying Facility that will sell electricity only at wholesale. *Id.*

11. North Hartland obtained from the Public Service Board a CPG and a Certificate of Consent, issued on February 11, 2003. Docket No. 6415, Order of 2/11/03.

12. On January 25, 2005, Concord Hydro, an affiliate of Essex Hydro Associates ("Essex Hydro"), acquired 100% of the equity interest in North Hartland. Letter of Hans Huessy, dated July 18, 2005, Exhibit A (Letter of Richard Norman).

13. North Hartland thereafter amended its petition to add a request for issuance of a Certificate of Consent pursuant to 30 V.S.A. § 107 for the ownership transfer of North Hartland. Letter of Hans Huessy, dated July 18, 2005.

14. On June 14, 2005, North Hartland and CVPS filed a Power Purchase Agreement for which they seek Board approval. Petition at 5; Petition Exhibit H.

15. The Power Purchase Agreement provides that CVPS will purchase all of the Facility's production and certain related ancillary products for a fixed percentage (95%) of the power and ancillary product's market value. Petition at 3; Petition Exhibit H, Attachment A.

16. The Power Purchase Agreement also provides that sales will be exclusive of any tradable renewable energy certificates or generation information certificates (together "RECs"), and that any such certificates will remain with Concord Hydro. Petition Exhibit A at 1.

17. The Power Purchase Agreement is long-term and will terminate on December 31, 2015. The Power Purchase Agreement also is contingent upon Board approval of the proposed Interconnection Agreement. Petition Exhibit A at 6 and 10.

18. On August 22, 2005, North Hartland and CVPS filed a Generation Interconnection Agreement ("Interconnection Agreement") for which they seek Board approval.

19. The Interconnection Agreement is long-term and set to terminate on December 31, 2015. Generation Interconnection Agreement at 3.

20. The Interconnection Agreement is contingent upon a FERC determination concerning a North Hartland/CVPS boundary adjustment, and the parties have represented that proceedings at FERC on this question cannot be initiated until the Board approves the proposed Interconnection Agreement. Generation Interconnection Agreement at 3; letter of Hans Huessy, dated January 26, 2006.

21. The terms of the Power Purchase and Interconnection Agreements for which final Board approval is now sought are the same terms set forth by the parties for operation during the interim operating period. *See*, Petition at 3.

III. DISCUSSION AND RECOMMENDATIONS

North Hartland seeks three approvals from the Board – approval of transfer of a 100% equity interest in North Hartland to Concord Hydro, approval of the Power Purchase Agreement between North Hartland and CVPS, and approval of the Interconnection Agreement between North Hartland and CVPS. Board jurisdiction to approve transfer of the 100% equity interest in North Hartland to Concord Hydro is derived under 30 V.S.A. § 107.⁸ Board jurisdiction to approve the proposed Power Purchase and Interconnection Agreements is derived under 30 V.S.A. § 209.

I recommend that the Board approve the transfer of North Hartland's equity interest to Concord Hydro. It appears that Concord Hydro is well suited to conduct the business of operating the Facility. North Hartland first approached the Board in August 2000 concerning its proposed purchase of the Facility from VEG&T's bankruptcy trustee as well as its proposed operation of the Facility.⁹ However, it was not until the company was acquired by Concord Hydro that North Hartland completed acquisition of the Facility from the Trustee, and was able to come to an agreement with CVPS concerning interconnection. In addition, Concord Hydro has experience as a partner in Dodge Falls Associates L.P., which owns and operates a qualifying facility and is a party to a long-term contract under Public Service Board Rule 4.100.¹⁰ Accordingly, I conclude that acquisition by Concord Hydro of 100% of North Hartland's assets will promote the public good, and I recommend that the Board approve the asset transfer.

I also recommend that the Board give final approval to the proposed Power Purchase Agreement and the proposed Interconnection Agreement. Since September 20, 2005, North Hartland has been authorized by the Board to operate the Facility, on an interim basis, under the terms set forth in those agreements. Neither CVPS, North Hartland nor the Department has

8. Both North Hartland and the Department of Public Service questioned whether the Board has jurisdiction over Concord Hydro's acquisition of a controlling interest in North Hartland because of North Hartland's QF status. However, notwithstanding such question, North Hartland chose to submit to Board jurisdiction on this issue. Letter of Hans Huessy, July 18, 2005, at 2.

9. Docket No. 6415, Petition of Gleb Glinka, et. al.

10. Docket No. 6270, Motion [of Concord Hydro] to Intervene for Limited Purpose, filed 9/17/99; *see*, Docket No. 6270, Order of 10/1/99 at 2; *see*, Docket No. 6270, Order of 10/1/99 at 2.

reported any difficulties with operation of the Facility during the interim operation period, and all parties to this docket support approval of the proposed Power Purchase and Interconnection Agreements.¹¹ The Facility makes an additional 4 MW of renewable energy available to consumers,¹² and CVPS and North Hartland have worked together, and with the Department, to ensure that the system will be stable, reliable and safe. Operation of the Facility depends upon Board approval of the proposed Power Purchase and Interconnection Agreements. Accordingly, I conclude that approval of the proposed Power Purchase and Interconnection Agreements will promote the public good.

IV. CONCLUSION

For the reasons set forth above, I conclude that Board approval of the transfer of a 100% equity interest in North Hartland to Concord Hydro and Board approval of the proposed Power Purchase and Interconnection Agreements will promote the good of the state. Accordingly, I recommend that these approvals be given by the Board.

Consistent with the provisions of 3 V.S.A. § 811, this report and recommendation has not been served on the parties to this proceeding because it is not adverse to any party.

Dated at Montpelier, Vermont, this 23rd day of February, 2006.

s/Judith M. Kasper

Judith M. Kasper
Hearing Officer

11. Letter of Hans Huessy, dated January 26, 2006.

12. Docket No. 6415, Order of 2/11/03 at 4; Petition at 4.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and recommendations of the Hearing Officer are adopted.
2. Pursuant to 30 V.S.A. § 107, approval is hereby given for Concord Hydro Associates' ("Concord Hydro") acquisition of a 100% equity interest in North Hartland, LLC ("North Hartland").
3. The Nonlevelized Energy Sale and Purchase Agreement between North Hartland and Central Vermont Public Service Corporation ("CVPS") filed on June 14, 2005, is hereby approved.
4. The Generation Interconnection Agreement between CVPS and North Hartland, filed on August 22, 2005, is hereby approved.
5. This docket shall be closed.

Dated at Montpelier, Vermont, this 23rd day of February, 2006.

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)	PUBLIC SERVICE
)	
s/David C. Coen)	BOARD
)	
)	OF VERMONT
s/John D. Burke)	

OFFICE OF THE CLERK

FILED: February 23, 2006

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.