

UNITED STATES OF AMERICA 117 FERC ¶62,203
FEDERAL ENERGY REGULATORY COMMISSION

Green Mountain Power Corporation
Northern New England Electric Corporation
Northstars Merger Subsidiary Corporation

Docket No. EC06-151-000

ORDER AUTHORIZING MERGER

(December 4, 2006)

On August 9, 2006, Green Mountain Power Corporation (Green Mountain Power), Northern New England Electric Corporation (Northern New England Electric) and Northstars Merger Subsidiary Corporation (Northstars) (collectively, Applicants) filed an application pursuant to section 203 of the Federal Power Act (FPA)¹ requesting Commission authorization for the merger that will result in Green Mountain Power becoming a wholly-owned subsidiary of Northern New England Electric (the “Transaction”).

Green Mountain Power is a vertically-integrated electric utility engaged primarily in distribution and sale of electricity to approximately 90,000 retail customers in Vermont. Green Mountain Power holds equity interests of approximately 30 percent in three public utilities: (1) Vermont Transco LLC (VTransco), which owns substantially all of the high voltage electric transmission facilities in Vermont; (2) Vermont Electric Power Company, Inc., which operates the transmission facilities owned by VTransco and which represents utilities in Vermont with respect to certain regional transmission arrangements; and (3) Vermont Yankee Nuclear Power Corporation (Vermont Yankee), which purchases and resells power supplied from the Vermont Yankee Nuclear Power Plant, which is owned by a non-affiliated entity. Green Mountain Power owns 91.4 megawatts of small hydro and fossil-fueled generators. It also offers to sell electricity pursuant to a market-based rate tariff.

Northern New England Electric is a Vermont corporation and the parent holding company of Vermont Gas Systems, Inc., a natural gas distribution company with 38,000 customers in Vermont. Northern New England Electric also holds a minority interest in Portland Natural Gas Transmission System, an interstate natural gas pipeline with pipeline facilities in Maine and adjacent areas of eastern New England. Northern New England Electric is a wholly-owned subsidiary of Gaz Metro, Limited Partnership (Gaz Metro), a limited partnership headquartered in Montreal, Canada, whose core business is

¹ 16 U.S.C. § 824b (2000), amended by Energy Policy Act of 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594 (2005).

the distribution of natural gas in the province of Quebec, Canada. Gaz Metro also holds interests in natural gas transportation and underground storage companies in Canada as well as non-energy related businesses. Northern New England Electric does not have any direct or indirect investment in any electric generation or transmission facilities in the United States.

Northstars is a wholly-owned subsidiary of Northern New England Electric which has been formed for the purpose of effectuating the Transaction. Northern New England, Northstars and Green Mountain Power have entered into an Agreement and Plan of Merger dated June 21, 2006, under which Northstars will merge with and into Green Mountain Power and Green Mountain Power will be the surviving entity in the merger. As a result, Green Mountain Power will be a direct, wholly-owned subsidiary of Northern New England Electric and an indirect, wholly-owned subsidiary of Gaz Metro.

Applicants state that the Transaction is consistent with the public interest and will not adversely affect competition, rates, or regulation. With respect to competition, Applicants state that the Transaction involves the combination of a *de minimis* amount of generation capacity owned or controlled by Northern New England Electric and Green Mountain Power in the relevant geographic markets – the New York Independent System Operator and ISO-New England. Applicants state that the Transaction does not raise vertical competitive issues with respect to the combination of generation and transmission assets because Northern New England Electric does not own or control transmission assets and Green Mountain Power's transmission assets are under the control of ISO-New England. In addition Applicants state that the Transaction does not raise vertical competitive issues with respect to the combination of generation and natural gas delivery assets because the amount of natural gas-fired electric generation capacity served by the Northern New England Electric's affiliates in the relevant markets is *de minimis*. Finally, they state that the Transaction will not allow the parties to erect barriers to entry, because the Applicants do not control potential electric generation sites and potential gas-fired generators have access to numerous natural gas suppliers in the relevant markets other than the Applicants.

Applicants state that the Transaction will not adversely affect the rates for wholesale electric power or transmission service. They state that Green Mountain Power currently serves two partial requirements wholesale customers. Neither customer is obligated to purchase from Green Mountain Power, therefore Applicants assert that as a practical matter those customers currently enjoy the benefits of an open season. They further commit that they will hold any and all transmission customers and customers taking wholesale power service under cost-based rates harmless from any Transaction-related costs in excess of any Transaction-related savings for a period of five years.

Applicants state that neither Commission nor state regulation will be affected by the Transaction. They state that there is nothing in the transaction that will affect any aspect of the Commission's jurisdiction. Applicants further state that the transaction will

have no effect on the regulatory jurisdiction of the Vermont Department of Public Service over the Applicants.

Applicants state that the Transaction will not result in cross-subsidization or the pledge or encumbrance of utility assets. Applicants verify that the Transaction does not result in, at the time of the Transaction or in the future: (1) transfers of facilities between a traditional utility associate company with wholesale or retail customers served under cost-based regulation and an associate company; (2) new issuances of securities by traditional utility associate companies with wholesale or retail customers served under cost-based regulation for the benefit of an associate company; (3) new pledges or encumbrances of assets of a traditional utility associate company with wholesale or retail customers served under cost-based regulation for the benefit of an associate company; (4) new affiliate contracts between non-utility associate companies and traditional utility associate companies with wholesale or retail customers served under cost-based regulation, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA. Applicants provide evidentiary support that the Transaction will not result in cross-subsidization or the pledge or encumbrance of utility assets in Appendix M of the Application.

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 absent access to the parent company'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 the Transaction is based on such examination ability.

Order No. 652 requires that sellers with market based rate authorization timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.² The foregoing authorization results in a change in status. Accordingly, Green Mountain Power must make a change in status filing as required by Order No. 652. In addition, Green Mountain Power shall make appropriate filings under section 205 of the FPA, to implement the Transaction.

The filing was noticed on August 14, 2006, with comments, protests, or interventions due on or before August 30, 2006. The Vermont Public Power Supply Authority filed a timely motion to intervene, raising no issues. The Vermont Department

² *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

of Public Service (VDPS) filed motion for leave to intervene out of time, raising no issues. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214. The late motion to intervene by VDPS is granted as it will cause no disruption in the proceeding.

After consideration, it is concluded that the Transaction is consistent with the public interest and is hereby authorized, subject to the following conditions:

- (1) The Transaction is authorized upon the terms and conditions and for the purposes set forth in the application;
- (2) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before the Commission;
- (3) 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;
- (4) The Commission retains authority under Sections 203(b) and 309 of the FPA to issue further orders as appropriate;
- (5) If the Transaction results in changes in the status or the upstream ownership of Applicants' or their affiliates' qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 shall be made;
- (6) Applicants shall make the appropriate filings under section 205 of the FPA, as necessary, to implement the Transaction; and
- (7) Green Mountain Power shall account for the Transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. In the event, the purchase price is pushed down to the books of Green Mountain Power, Green Mountain Power shall submit their proposed accounting within six months of the date of the merger, and the accounting submission shall provide all the accounting entries related to the merger along with narrative explanations describing the basis for the accounting entries.
- (8) Applicants shall notify the Commission within 10 days of the date that the merger has been consummated.

This action is taken pursuant to the authority delegated to the Director, Division of

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Tariffs and Market Development - West, under 18 C.F.R. § 375.307. This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order pursuant to 18 C.F.R. § 385.713.

Steve P. Rodgers
Director
Division of Tariffs and Market Development – West