

118 FERC ¶ 61,244  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Vermont Transco LLC Docket No. ER07-459-000

Vermont Electric Power Company Docket No. ER07-513-000

Lamoille County Systems

v. Docket No. EL07-11-000

Vermont Transco LLC  
Vermont Electric Power Company

ORDER ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued March 26, 2007)

1. On October 23, 2006, in Docket No. EL07-11-000, the Lamoille County Systems (LCS)<sup>1</sup> filed, under section 206 of the Federal Power Act (FPA),<sup>2</sup> a complaint against Vermont Transco LLC (VT Transco) and Vermont Electric Power Company (VELCO) (collectively VT Transco) in which LCS seek an order permitting them to withdraw from their 1991 Transmission Agreement (VTA) in order to take network integration transmission service under Schedule 21-VTransco, Local Service Schedule, of the ISO New England Inc.'s (ISO-NE) FERC Electric Tariff No. 3.<sup>3</sup>

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<sup>1</sup> The Lamoille County Systems consist of five municipal electric systems all located in Lamoille County, Vermont: the Town of Stowe Electric Department (Stowe), the Town of Hardwick Electric Department (Hardwick), the Village of Hyde Park Electric Department (Hyde Park), the Village of Johnson Water & Light Department (Johnson), and the Village of Morrisville Water & Light Department (Morrisville). LCS represents five of the nine utilities serving Lamoille County.

<sup>2</sup>16 U.S.C. § 824e (2000).

<sup>3</sup> Effective June 30, 2006, VELCO transferred to VT Transco ownership of VELCO's high voltage transmission facilities, and VT Transco succeeded to VELCO's role in numerous agreements, including the VTA.

2. On January 25, 2007, in Docket No. ER07-459-000, VT Transco filed revisions to the VTA. VT Transco proposes to modify the definition of Specific Facility and update Exhibit A, which contains information on its current allocation of Specific Facilities costs to each customer. VT Transco requests a March 26, 2007 effective date.<sup>4</sup>

3. On February 5, 2007, in Docket No. ER07-513-000 VT Transco filed additional revisions to the VTA. VT Transco requests an April 6, 2007 effective date.<sup>5</sup>

4. In this order, we accept, suspend, and make effective subject to refund, the proposed revisions to the VTA. We also establish hearing and settlement judge procedures. In addition, as to the Complaint, we also set for hearing and settlement judge procedures a limited number of issues set forth below. Finally, we consolidate the proceedings for purposes of settlement, hearing and decision.

## **I. Docket No. EL07-11-000**

### **A. Background**

5. In 1992 the Commission accepted, suspended, and set for hearing an agreement entered into in 1991 between VELCO and all 23 Vermont distribution utilities, including LCS, replacing a system of rolled-in transmission rates for all high-voltage (115 kV and above) facilities in Vermont with a rate structure that attempted to allocate transmission costs more specifically.<sup>6</sup> The VTA included a formula rate consisting of two main components. The first is the transmission customer's share of the cost of "Common Facilities" which were defined in the VTA as "facilities that comprise the state-wide, high-voltage transmission grid, interconnecting and serving the load centers of the State, and which are used in common by all Purchasers of transmission service on a state-wide basis, and any facilities that would otherwise be defined as Specific Facilities, but that were in service on 7/1/90 or that became Common Facilities after 10 years of service."<sup>7</sup> The other was the transmission customer's share of the cost of "Specific Facilities" which were defined in the VTA as "those high-voltage transmission lines, substations and other

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<sup>4</sup> Absent waiver of the prior notice provisions, March 27, 2007 is the earliest effective date allowed pursuant to section 205 of the FPA. 16 U.S.C. § 824(d) (2000). *E.g. Utah Power & Light Co.*, 30 FERC ¶ 61,015 at 61,024 n.9 (1985).

<sup>5</sup> Absent waiver of the prior notice provisions, April 7, 2007 is the earliest effective date allowed pursuant to section 205 of the FPA. 16 U.S.C. § 824(d) (2000). *E.g. Utah Power & Light Co.*, 30 FERC ¶ 61,015 at 61,024 n.9 (1985).

<sup>6</sup> *Vermont Electric Power Co.*, 60 FERC ¶ 61,296 (1992) (1992 suspension order).

<sup>7</sup> *See* VTA (Exhibit LCS-3) at 3-4.

appurtenances constituting a direct physical interconnection to the VT Transco system and not constituting part of VT Transco's looped transmission facilities, that are requested, used, and installed to benefit a requesting Purchaser of transmission service."<sup>8</sup> The costs of Common Facilities are allocated to all VT Transco customers on a load ratio share basis, while the costs of Specific Facilities are "allocated entirely to the requesting Purchaser of transmission service, until the Purchaser provides VT Transco with a written agreement under which additional Purchasers of transmission service agree to support a different allocation."<sup>9</sup> After ten years the Specific Facilities become Common Facilities, and their remaining costs are then rolled-in to all customers on a load ratio share basis.<sup>10</sup> Of importance here, the VTA did not include a provision establishing a primary term or termination provision.

6. In the 1992 suspension order the Commission expressed concern over the definition of Common Facilities because "VELCO does not clarify the precise criteria for distinguishing Specific Facilities from Common Facilities, and how VELCO intends to apply those criteria."<sup>11</sup> However, the parties subsequently submitted a settlement which included acceptance of the VTA as described above, including the same provisions for pricing of Common and Specific Facilities, which the Commission accepted by Letter Order.<sup>12</sup> Thus, the VTA as executed in 1991, remains in effect.<sup>13</sup>

7. The impetus for the instant Complaint is the Lamoille County Project (the Project), which is a transmission upgrade by VT Transco including a ten-mile, 115 kV transmission line and related substation facilities in an area of the State of Vermont that has been experiencing significant stress on the overburdened 34.5 kV network currently

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<sup>8</sup> *Id.* at 3.

<sup>9</sup> Complaint at 14 (citing the VTA).

<sup>10</sup> A third category was "Exclusive Facilities," which "consists of facilities intended to interconnect a single transmission customer to the 115 kV system, and those costs are directly assigned to the customer." Complaint, Exhibit LCS-1, Testimony of Gerald F. Spring at 11.

<sup>11</sup> 60 FERC at 62,061.

<sup>12</sup> *Vermont Electric Power Co.*, 63 FERC ¶ 61,343 (1993).

<sup>13</sup> *See New England Power Pool*, 83 FERC ¶ 61,045 (1998). The VTA was listed as an Excepted Transaction in section II. 40 of the 1998 ISO-NE OATT as Item No. 11 in Attachment G-1 to the tariff. That order stated: "[W]e decline to order NEPOOL to convert self-designated Excepted Transactions to service under the NEPOOL Tariff regardless of the length terms of those transactions." *Id.* at 61,242.

serving the area.<sup>14</sup> LCS assert that the new 115kV line will reduce line losses and improve voltage levels for all of the Lamoille County Systems, as well as for GMP, Central Vermont Public Service Corporation (CVPS), Washington Electric Cooperative, Inc. (WEC), and Vermont Electric Cooperative, Inc. (VEC) customers within Lamoille County.

8. Stowe, one of the five Lamoille County Systems, was the requesting party for the planning and construction of the Project in 2003 by letter dated September 3, 2003, wherein Stowe agreed to underwrite the permitting costs of the Project. Subsequently by Letter Agreement with VELCO dated September 16, 2003 (2003 Letter Agreement), Stowe specifically requested the 115 kV interconnection, and committed to pay its share of the Project costs pursuant to the terms of the VTA.<sup>15</sup> The 2003 Letter Agreement specified that the carrying costs for the new direct physical interconnection to Stowe would be treated as a Specific Facility under the VTA, and thus those costs would be paid by Stowe for ten years. The 2003 Letter Agreement also stated that the costs identified at that time were “only an estimate of the project costs and Stowe Electric Department will be liable for the actual costs to complete the project consistent with the terms of the VTA.”

### **B. The Complaint**

9. LCS state that Stowe is not directly connected to the VT Transco system. Rather, it is served through a sub-transmission (34.5 kV) connection with GMP. Between 86 and 89 percent of the total costs of the Project have been identified as Specific Facilities costs, for which Stowe would be responsible under the terms of the VTA. LCS state that in October 2003, the costs to bring the Project into commercial operation were estimated at \$12,490,000, of which \$9 million were identified as Specific Facilities costs. By late

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<sup>14</sup> More specifically, the Project consists of a new 115 kV SF6 circuit breaker in VELCO’s Middlesex substation (located in Moretown, Vermont); a new 0.3 mile side-by-side single pole, in and out, 115 kV tap off of VELCO’s K24 line; a new switching station in northern Duxbury, Vermont; a new 9.4 mile 115 kV transmission line within existing Green Mountain Power Company (GMP) rights-of-way from the new Duxbury switching station to a new 115 kV substation just south of Stowe’s existing Wilkins substation; removal of GMP’s existing 34.5 kV line between the new Duxbury switching station and GMP’s Blush Hill Switch; relocation of GMP’s existing 34.5 kV line between GMP’s Blush Hill Switch and the proposed 115 kV substation just south of Stowe’s existing Wilkins substation; relocation of GMP’s Blush Hill switching station; a new 115/34.5 kV 4-breaker ring substation just south of Stowe’s Wilkins substation; a new 34.5 kV line between the new Stowe substation and the Stowe Mountain tap; and removal of Stowe’s Moscow substation. VT Transco’ Answer, Exh. VTP-4, Direct Testimony of Dean LaForest at 3.

<sup>15</sup> VT Transco’s Answer, Exh. VTP 6.

August, 2006, however, LCS assert that VT Transco submitted a cost estimate of between \$38.5 and \$40 million. They assert that the vast majority of these costs—approximately \$35 million—would still be identified as Specific Facilities costs.

10. In their Complaint, LCS claim that the cost allocation provisions and the lack of a withdrawal, expiration or termination provision in the VTA are unjust, unreasonable, unduly discriminatory and contrary to the public interest. For those reasons, they request that the Commission issue an order determining that: (1) each of the Lamoille County Systems is entitled to withdraw from the VTA; (2) sixty days constitutes a reasonable prior notice period for their withdrawal from the VTA; and, (3) each of the Lamoille County Systems is entitled to take network integration transmission service under Schedule 21-VTransco of the ISO-NE FERC Electric Tariff No. 3 on sixty days notice to that effect and withdrawal from the VTA.<sup>16</sup>

11. LCS state that the geographical area involved with the Project is served, in part, aside from LCS themselves, by GMP, CVPS, WEC, and VEC, all of whom will benefit from the construction of the Project. LCS claim that the Project will reduce line losses and improve voltage levels for all of Lamoille County Systems as well as for CVPS, GMP, WEC and VEC customers within Lamoille County. Despite these claimed benefits to other parties, the cost allocation structure under the VTA does not require anyone but the requesting party, here Stowe, to pay for the cost of the Specific Facilities for the first ten years.<sup>17</sup>

12. LCS claim that the cost allocation structure of the VTA is contrary to Commission policy, as it provides neither an obligation nor any incentive for parties benefiting from the extension (other than the requesting transmission customer) to bear a proportionate share of the financial burden. As such, LCS contend this pricing policy is unduly discriminatory and, in addition, deters transmission customers from requesting or agreeing to participate in the costs of non-looped extensions to the system in Vermont. Furthermore, LCS claim that transmission customers who do not serve load in Vermont take transmission service under Schedule 21-VTransco of the ISO-NE tariff, which they

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<sup>16</sup> LCS assert that service under Schedule 21-VTransco is essentially the same network transmission service that LCS currently receive under the VTA.

<sup>17</sup> LCS state that in 2004 a tentative cost allocation scheme was mediated by VELCO, in which Stowe would be responsible for 53.7 percent of the Project's Specific Facilities costs, and the other four LCS' would be responsible for 24.99 percent of these costs. However, LCS contend that because the costs estimated for the Project have increased, from \$12 million in 2003 to \$40 million now, the cost allocation agreement is no longer applicable.

claim does not directly assign the cost of non-looped 115kV transmission facilities. LCS claim this leads to a “two-tariff system” for access to the same facilities, which they assert is also unduly discriminatory.

13. LCS state that the VTA contains neither an expiration date nor any provision for withdrawal, transition or termination. They claim that the absence of such a provision denies transmission customers access to non-discriminatory, open-access transmission service under Schedule 21-VTransco of the ISO-NE Tariff, priced in accordance with the Commission’s Transmission Pricing Policy and integration standard.

14. LCS assert that they are not seeking to change any rate or to recover any refund.<sup>18</sup> Since they are merely seeking to withdraw from the VTA and effectively seek amendment of the VTA to allow withdrawal from the VTA upon reasonable notice, they contend the matter does not involve the “interpretation or performance of the agreement,” and therefore the arbitration clause in VTA, Article X is not applicable. LCS add that they have unsuccessfully negotiated with VELCO and the other four load serving entities providing service in Lamoille County (CVPS, GMP, VEC, and WEC) since 2004 to resolve the cost allocation issue, and the inability to achieve settlement has led LCS to the conclusion that withdrawal from the VTA and replacement of such service with network integration transmission service under Schedule 21-VTransco of the ISO-NE Tariff is the only reliable and sustainable solution. However, LCS state that they are not opposed to participation in settlement judge procedures if the Commission determines that such procedures may expedite resolution of this case.

15. LCS add that the “public interest” standard of review under the *Mobile-Sierra* doctrine<sup>19</sup> does not apply here because that applies to proposed changes to a “rate” and the complaint “does not seek to modify Vermont Transco’s rate under the [VTA],” but only “involves the request of customers to withdraw from a transmission contract that has no withdrawal or termination provision.”<sup>20</sup> LCS also assert that nevertheless “their inability to withdraw from the [VTA] on reasonable notice is not merely unjust and unreasonable, but also contrary to the public interest.”<sup>21</sup>

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<sup>18</sup> LCS also state that they do not seek “to be relieved from any obligation that they may have incurred to date to pay costs incurred by [VT Transco].” Complaint at 20-21.

<sup>19</sup> *United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

<sup>20</sup> Complaint at 23.

<sup>21</sup> *Id.*

### C. Notice and Responsive Pleadings

16. Notice of the Complaint was published in the *Federal Register*, 71 Fed. Reg. 65,096 (2006), with interventions and protests due on or before November 13, 2006, which was extended to December 15, 2006. VT Transco filed a timely answer to the Complaint. Timely motions to intervene were filed by: the City of Burlington, Vermont; Vermont Public Power Supply Authority; the Village of Swanton, Vermont; and WEC. GMP, CVPS and VEC filed timely motions to intervene and protests opposing the Complaint. Vermont Department of Public Service (VDPS) filed a timely motion to intervene with comments in support of the Complaint. The Burlington Electric Department (BEC), LCS, and VELCO and VT Transco filed answers.

#### 1. VT Transco' Answer

17. In their answer, VT Transco urges the Commission to dismiss the Complaint. It asserts that LCS failed to demonstrate that the VTA is unjust, unreasonable, and unduly discriminatory, or that being required to honor their contractual obligations under the VTA is contrary to public interest. Additionally, they warn that “granting [the relief requested in the Complaint] will destroy the consensual arrangement between public and private utilities in Vermont through which transmission service has been reliably provided for many years.”<sup>22</sup>

18. VT Transco states that, by requesting to withdraw from the VTA, LCS seek to alter the cost allocation from an incremental allocation to a rolled-in cost allocation that shifts the financial burden to others in Vermont who benefit very little, if at all, from the construction of the Project. VT Transco points out that LCS seek this shift despite their promise to pay the costs in the 2003 Letter Agreement when they initially requested the Project;<sup>23</sup> the fact that they will be the sole beneficiaries of the Project; and the fact that the need for the Project was driven by the dynamic load growth in the service territory of Stowe, arising largely from the development of a ski resort. They argue that since the Project consists of non-integrated radial facilities that stretch into a rural area in North-Central Vermont for the purpose of addressing Stowe's load growth, the direct assignment of the costs of the project to the utility benefiting from the Project is appropriate. VT Transco asserts that no power will flow out from these facilities to other customers on the grid and that the Commission consistently has directly assigned costs

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<sup>22</sup> VT Transco's Answer at 3.

<sup>23</sup> VT Transco notes that LCS challenged only the VTA and not the September 16, 2003 Letter Agreement. Accordingly, VT Transco contends that, regardless of the Commission's decision regarding the VTA, the September 16, 2003 Letter Agreement is not before the Commission for review, and thus Stowe would still be obligated to pay the Specific Facility costs under that agreement.

when the new facilities are not integrated with the transmission system as a whole.<sup>24</sup> VT Transco contends that while LCS suggest that the facilities will benefit other parties and therefore should be rolled-in under applicable Commission policies, they offer no support that the Project is “integrated” with the Vermont-wide transmission system.

19. VT Transco argues that LCS, rather than demonstrating or offering any evidence to support the claim that the VTA is unjust, unreasonable or unduly discriminatory, have merely pointed out that the VTA is a grandfathered agreement. However, VT Transco asserts, the Commission has continuously upheld the validity of such grandfathered agreements despite their divergence from the *pro forma* tariff. VT Transco claims that LCS offered no reason to abandon this line of precedent. Moreover, VT Transco argues that contrary to LCS’ contention, the VTA has not caused any delay in the development of the Project or other needed transmission infrastructure in Vermont, and refer to some \$511 million in other transmission upgrades that were constructed in Vermont under the VTA.<sup>25</sup>

20. VT Transco contends that, absent a compelling reason, the Commission has required parties to adhere to their contractual agreements, and here LCS have failed to establish any reason why LCS should not be required to adhere to their agreement.<sup>26</sup> Moreover, VT Transco asserts the Commission has not held that absence of a termination provision, which LCS rely upon as a reason for allowing them to withdraw from the VTA, is a sufficient basis on which to relieve a party of its obligations.<sup>27</sup> In fact, VT Transco points out, when the Commission accepted the ISO-NE OATT, it permitted the continuation of Excepted Transactions “regardless of the length terms of those transactions.”<sup>28</sup>

21. VT Transco also argues that if the LCS were permitted to withdraw from the VTA and take service under Schedule 21-VTransco, the Commission should determine that LCS should be charged an “incremental rate for any upgrades to the integrated transmission system that are required by their service request even if such costs are higher than the embedded cost rates.”<sup>29</sup>

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<sup>24</sup> *Citing Mansfield Municipal Elec. Department*, 97 FERC ¶ 61,134 (2001), *reh’g denied*, 98 FERC ¶ 61,115 (2002).

<sup>25</sup> *See* VT Transco’s Answer at 26.

<sup>26</sup> *See Southern California Edison Co.*, 115 FERC ¶ 61,100 at P 8-12 (2006).

<sup>27</sup> *Citing Boston Edison Co.*, 107 FERC ¶ 61,284 (2004).

<sup>28</sup> 83 FERC at 61,242.

<sup>29</sup> VT Transco’s Answer at 38.

22. As to the standard of review, VT Transco argues that there is no merit to LCS' argument that since they are not seeking to change a rate in the VTA, but only to withdraw from the VTA, the *Mobile-Sierra* public interest standard of review does not apply. VT Transco asserts that the Commission has stated that "the public interest standard is applicable to instances such as this case where a party seeks to amend the non-rate terms and conditions of a contract."<sup>30</sup>

## 2. Comments, Protests and Additional Answers

23. GMP, VEC, and CVPS oppose the complaint. CVPS asserts that LCS are seeking to modify the VTA, and that the Complaint must be reviewed under the *Mobile-Sierra* public interest standard of review. CVPS asserts that, contrary to LCS' contention, "if a contract is silent on what standard of review should apply to contract modifications, the public interest standard of review applies" and it applies "to proposals to modify both the rate provisions and the non-rate provisions of the contract."<sup>31</sup> CVPS further argues that LCS have failed to demonstrate that their proposed modification is required to avoid harm to the public – at best all they have shown is that the modification could avoid harm to them, as contracting parties to the VTA. CVPS states that the absence of a termination clause does not mean that a party can never withdraw from the VTA since a party may withdraw from the VTA with the agreement of the other parties to the VTA. CVPS suggests that, if the Commission does determine that a notice of termination provision should be added to the VTA, the Commission should require a notice period of ten years, but could require a shorter notice period if that party was not paying for Specific Facilities under the agreement. GMP states that if the Commission finds that the VTA is unjust, unreasonable, or unduly discriminatory, and that LCS have a right to withdraw from the VTA, then all parties to the VTA should be permitted to withdraw and take service under Schedule 21-VTransco, not LCS alone. Otherwise, GMP argues, utilities would inevitably begin to pick and choose between alternative transmission cost options. VEC urges the Commission to dismiss the complaint. However, if the complaint is not dismissed, VEC as well as GMP and CVPS request that the Commission set the matter for hearing, but that the hearing be deferred to allow further settlement discussions under the Commission's alternative dispute resolution procedures.

24. In support of the complaint, VDPS asserts that in the absence of any specified contractual term or provision for withdrawal or termination, the VTA may be treated as terminable "at will" upon reasonable notice. VDPS cites to section 204 of the Restatement of Contracts for that proposition, and contends that, in *Southern Bell*,<sup>32</sup> the

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<sup>30</sup> *Id.* at 46-47 (citing Order No. 888-A, *see infra* n. 46).

<sup>31</sup> CVPS Answer at 4.

<sup>32</sup> *Southern Bell Telephone and Telegraph Co. v. Florida East Coast Railway Co.*, 399 F.2d 854(5<sup>th</sup> Cir. 1968) (*Southern Bell*).

court held that a contract could be terminated at will, so long as one party has not relied to its detriment on the agreement or fulfilled its part of the bargain without corresponding performance on the part of the other party, which ruling VDPS contends is applicable here as well.

### 3. LCS' Response

25. In LCS' Answer to VT Transco's Answer, LCS reassert their arguments that the Project will benefit other parties, and thus the direct assignment of costs to them is unjust and unreasonable. They contend that VT Transco's assertion that Stowe is bound by the 2003 Letter Agreement (regardless of the Commission's ruling on whether LCS can withdraw from the VTA), is without merit since the 2003 Letter Agreement was never filed with the Commission and, "it is elementary that VELCO/VT Transco may not lawfully charge Stowe, or any other customer, any rate or charge for the transmission of electricity that is not on file with the Commission."<sup>33</sup> Furthermore, LCS claim that even if the 2003 Letter Agreement is subsequently filed with the Commission, they would still not be liable for the costs because all transmission service must be provided at a just and reasonable rate, regardless of whether the agreement was voluntary between two parties. They state that "the Commission has held, in the analogous context of the allocation of costs for network upgrades in connection with a new interconnection, that the agreement of the parties does not preclude its independent determination of the just and reasonable allocation of those costs in rates."<sup>34</sup>

## II. Docket No. ER07-459-000

### A. Background

26. The VTA defines Specific Facilities in part as:

A list of Specific Facilities and their allocation shall initially be as shown on Exhibit A, attached hereto, which Exhibit A shall be created and currently updated to reflect any changes in allocations as may be agreed to by the affected Purchasers of transmission service. (Any such change to Exhibit A shall be filed with the Federal Energy Regulatory Commission (Commission) pursuant to section 35.13 of the Commission's Regulations.)<sup>35</sup>

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<sup>33</sup> LCS' Answer at 6.

<sup>34</sup> *Id.* at 7-8.

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

27. VT Transco proposes to replace the above language with the following:

For informational purposes only, the cost of Specific Facilities allocated to each customer as of the most recent July 1 is listed in Exhibit A. On July 1 of each year, [VT Transco] will make an informational filing with the Federal Energy Regulatory Commission to update Exhibit A with the most recent data available at the time.

28. VT Transco also proposes to update Exhibit A to reflect current data. VT Transco states that, in this regard, the filing is informational in nature because this updated data is already used to calculate transmission customer's costs. Additionally, VT Transco states that its proposal would require VT Transco to annually update the Exhibit A and file it with the Commission on an informational basis.

29. According to VT Transco, these modifications will: (1) state more explicitly that Exhibit A is for informational purposes only, thereby clarifying the parties' intent as to the purpose of Exhibit A; and (2) adopt a more regular and predictable schedule for updating Exhibit A that coincides with updates that VT Transco does for its formula rates.

## **B. Notice and Responsive Pleadings**

30. Notice of VT Transco's filing was published in the *Federal Register*, 72 Fed. Reg. 5029 (2007), with interventions and protests due on or before February 15, 2007. LCS filed a motion to intervene and protest. On March 2, 2007, VT Transco filed an answer to LCS' protest.

### **1. LCS' Protest**

31. LCS protest VT Transco's revisions to the VTA and requests that the Commission summarily reject the revisions. They argue that the revisions are a unilateral, substantive modification of a contract, and that VT Transco did not present any evidence to suggest that the revisions meet the necessary public interest standard.

32. LCS state that, despite VT Transco's characterization of the revisions as "modest modifications," the proposed revisions are in fact substantive changes in the agreement. They state that, as proposed, the changes would relieve VT Transco of its obligation to make a rate change filing under section 35.13 of the Commission's regulations and replace it with an informational filing. LCS state that the existing provisions protect transmission customers by ensuring that VT Transco does not unreasonably directly assign Specific Facilities costs only to the requesting customer. LCS assert that Commission review, and the opportunity for transmission customers to protest, ensure

that the costs of Specific Facilities are allocated in a just and reasonable manner. LCS argue that, by replacing the filing requirement with an informational filing, transmission customers will lose this necessary protection.<sup>36</sup>

33. LCS also assert they have not agreed to such a revision and, therefore, VT Transco is unilaterally attempting to modify an existing agreement. Furthermore, LCS assert that VT Transco has not offered any justification as to why it is necessary or reasonable to replace a required filing with an informational one. LCS assert that prior to making this unilateral revision VT Transco is required to meet the public interest standard of the *Mobile-Sierra* doctrine.<sup>37</sup> LCS argue that VT Transco has not met the standard.

## 2. VT Transco's Answer

34. In its answer, VT Transco states that, contrary to LCS' statements, it is not trying to eliminate procedural rights so that it can force rate increases on its customers for the presumptive purpose of enriching its shareholders. VT Transco notes that all of VT Transco's customers under the VTA, including the LCS, are VT Transco's owners. Any profit VT Transco receives is returned to these same customers. This fact, VT Transco claims, refutes the rationality of the LCS' motion to reject.

35. According to VT Transco, Exhibit A is a table that lists, for informational purposes only, certain data that is used in the formula rate to calculate customer charges. VT Transco asserts that any update to Exhibit A has no substantive impact on the calculation of charges under the formula rate. Therefore, VT Transco argues that any change to Exhibit A would not constitute a rate change. VT Transco argues that the VTA does not provide that the data listed in Exhibit A shall be used in the formula rate. In fact, the current definition states that Exhibit A shall be updated to reflect changes to the allocations—therefore, according to VT Transco, the changes to the formula occur first and the associated changes to Exhibit A follow.

36. Further, VT Transco claims that applicable precedent also suggests that updating Exhibit A is not a rate change and does not require a full-blown rate case. VT Transco states that the U.S. Court of Appeals for the District of Columbia Circuit has explained that “the formula itself is the rate, not the particular components of the formula, . . . periodic adjustments made in accordance with the Commission-approved formula do not constitute changes in the rate itself and accordingly do not require [section] 205

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<sup>36</sup> LCS note that disputes over such allocations arise from time to time and cites the complaint it filed in Docket No. EL07-11-000, as discussed above, as an example.

<sup>37</sup> LCS Protest at 14-15.

filings.”<sup>38</sup> Therefore, when VT Transco updates the data used in the formula to calculate charges, it is not making a rate filing. For this reason, VT Transco argues that the Commission’s filing requirements cannot apply. VT Transco argues that the VTA’s reference to section 35.13 of the regulations was never intended to require a rate case when Exhibit A is updated.

37. VT Transco also asserts that the annual updates to Exhibit A are consistent with the public interest since they: (1) are limited in nature (mainly clarifying the process and rights already in place under the existing language); (2) do not diminish the current rights of an interested party to contest the accuracy of the data in Exhibit A; and (3) adopt a schedule for updating Exhibit A that is more administratively efficient and occurs with more predictability than the process currently in place.<sup>39</sup> Finally, VT Transco states that it has discussed concerns over its proposed changes with all its customers, and LCS, had raised none.

38. VT Transco argues that, contrary to LCS’ protest, it is not deleting any procedural protections with this proposal. VT Transco asserts that the Commission’s filing requirements referred to in the VTA’s definition of Specific Facilities is included only as a legal reference point to justify the legitimacy of VT Transco’s filings to the Commission, not as a requirement applicable to rate change proposals. VT Transco asserts that, since this is merely an informational filing, section 35.13 does not apply. Furthermore, VT Transco asserts that any data updates are used in the approved formula rate and, therefore, do not require a rate filing pursuant to section 35.13.

### **III. Docket No. ER07-513-000**

#### **A. Background**

39. Article IV of the VTA allows VT Transco to assess a transmission capacity charge each month for each customer using a formula rate. The formula has two general components: (1) a calculation to determine the charge for the customer's Specific Facilities, if any; and (2) a calculation to determine the customer's share of the costs of Common Facilities. For each customer with Specific Facilities, its Specific Facilities charge is calculated by multiplying total costs by the ratio of its Specific Facilities to total

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<sup>38</sup> *Public Utilities Commission of the States of California v. FERC*, 254 F.3d 250, 254 (D.C. Cir. 2001).

<sup>39</sup> VT Transco acknowledges the potential for a lag (of up to 11 months) between the time data is used in the formula and the time the update is submitted to the Commission. To the extent such a lag is actually experienced, the harm is inconsequential, VT Transco claims, since all of its customers under the VTA would have been informed of the new data via their representation on the Board of Directors of VELCO.

gross plant. Total cost (TC) is equal to all of VT Transco's expenses less income received by VT Transco, including all income recorded in VT Transco's Operating Revenues account (Account 400). Each customer's Common Facilities charge is calculated by multiplying its load ratio share by the total costs adjusted (TCA).<sup>40</sup> The TCA is equal to total costs less any revenue received for Specific Facilities. The definitions of TC and TCA have not been changed since the VTA was first adopted and do not explicitly provide for the inclusion of the Regional Network Services (RNS) revenues in the TC or TCA. However, LCS assert, and VT Transco does not dispute, that the VTA requires that RNS revenues be included in the TC component used for Specific Facilities.

40. In the instant filing, VT Transco proposes to revise the formula rate to reflect current practice of applying RNS revenues to offset the Common Facilities component. VT Transco states that this revision will reflect how VT Transco has treated RNS revenues since ISO-NE came into being.

## **B. Notice of Filings and Responsive Pleadings**

41. Notice of VT Transco's filing was published in the *Federal Register*, 72 Fed. Reg. 7,024 (2007), with interventions and protests due on February 26, 2007. On February 26, 2007, LCS filed a motion to intervene and protest. On February 27, 2007, LCS filed an errata to its February 26, 2007 filing. On March 13, 2007, VT Transco filed an answer to LCS' protest.

### **1. LCS' Protest**

42. LCS state that VT Transco, in its February 5, 2007 transmittal letter, acknowledges that "charges for service under the 1991 Agreement have been calculated in a way not explicitly described in the formula rate."<sup>41</sup> Rather than solicit the express written agreement of what VT Transco characterizes as "many of the customers" who "participated, directly or through representatives, in the discussion that led to" an unwritten agreement to apply the referenced language of the VTA other than as it is written, VT Transco has undertaken a unilateral filing pursuant to section 205 of the FPA.

43. According to LCS, in the absence of an agreed amendment to the VTA, executed by each party to that Agreement in accordance with the provision of Article I, VT Transco's submission in this docket is a unilateral effort to modify the contract. It is beyond dispute, according to LCS, that a seller's request for relief from a jurisdictional contract is subject to the stricter "public interest" standard rather than the "just and

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<sup>40</sup> See Transmittal Letter at 3-4 and Attachment A attached thereto.

<sup>41</sup> VT Transco's filing at 4.

reasonable” standard of section 205 of the FPA, under the *Mobile-Sierra* doctrine. In this docket, however, LCS state VT Transco offers no reason why its proposed unilateral change in the rate term of the VTA meets the public interest standard.

44. LCS also state VT Transco seeks to do in this docket, without support, what it vigorously argues that LCS cannot do in Docket No. EL07-11-000,<sup>42</sup> notwithstanding the arguments and evidence presented by the LCS with respect to public interest standard in the latter docket, *i.e.*, obtain Commission relief from a contract term without the consent of the other party to the contract. LCS request that the Commission summarily reject VT Transco’s filing because VT Transco seeks relief from a provision of the VTA without the consent of LCS or any other parties thereto, and has not presented any argument or evidence to show that the grounds for the relief requested meet the public interest standard.

## 2. VT Transco’s Response

45. According to VT Transco, the proposed modifications are consistent with the public interest because they: (1) clarify the parties’ long-held interpretation of the formula rate, consistent with the intent of the parties; and (2) were unanimously approved by VELCO’s Board of Directors, which is composed of representatives of VT Transco’s owner-customers, including LCS.<sup>43</sup>

46. VT Transco asserts that the amendment represents the collective intent of VELCO’s owner-customers, and also notes that, when the language was adopted in 1991, the parties could not have intended to address revenues from ISO-NE because ISO-NE did not exist.<sup>44</sup> VT Transco states that, for nearly a decade, each month that it received revenues from ISO-NE, the revenues effectively offset the cost of the Common Facilities. VT Transco argues that LCS were aware of how VT Transco treated the ISO-NE revenues and they did not complain that the revenues had been misapplied and that since

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<sup>42</sup> VT Transco Answer in Docket No. EL07-11-000 at 46-50.

<sup>43</sup> The customers taking service under the VTA directly hold membership units in VT Transco, and indirectly hold membership units in VT Transco through their ownership in VELCO. *See Vermont Electric Power Co. and Vermont Transco LLC*, Docket No. EC06-115-000, Filing Letter and section 203 Application (April 20, 2006). Customers exercise their management and oversight of VT Transco through the VELCO Board of Directors.

<sup>44</sup> VT Transco’s Answer at 6. However, VT Transco admits that revenues from the ISO-NE for the use of Pool Transmission Facilities is consistent with the phrase “all income received.” *Id.*

all customers, including LCS, signed the VTA again in October 2005, they ratified the prevailing interpretation of the VTA.<sup>45</sup> Thus, VT Transco argues that LCS are objecting to decisions they knew about and agreed to.<sup>46</sup>

47. VT Transco contends that, as compared to the prevailing interpretation of the formula rate, the modifications that it proposes have no substantive impact. They merely clean up the language to state more clearly how the RNS revenues have been applied in practice for many years. VT Transco argues that everyone involved – the customers, the regulators, VT Transco and all other interested parties – benefits from the use of clearer language that is less susceptible to confusion and misunderstanding. In contrast, VT Transco argues that failure to accept the modifications will harm everyone involved by furthering the potential for confusion as to the treatment of revenues from ISO-NE. Accordingly, VT Transco concludes that the public interest allows the Commission to accept the modifications that VT Transco has proposed in the instant case.

#### IV. Discussion

##### A. Procedural Matters

48. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they intervened. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest or an answer to an answer, unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

##### B. Analysis

49. Each of the three above-captioned proceedings involves unilateral changes to the VTA. For the reasons described below, we find that each proposed change is subject to the public interest standard of review under *Mobile-Sierra*. Because the proceedings share common issues of law and fact, we will consolidate Docket Nos. EL07-11-000, ER07-459-000, and ER07-513-000 for purposes of settlement, hearing and decision.

50. With respect to LCS' complaint, we find no merit in LCS' contention that *Mobile-Sierra* does not apply because they are only seeking to withdraw from the VTA, not

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<sup>45</sup> Citing *Gulf States Utilities Company*, 47 FERC ¶ 61,063 (1989).

<sup>46</sup> VT Transco's Answer at 7.

change any rates under the VTA. The Commission views proposed changes to non-rate terms and conditions of an existing contract as governed by the same rules applicable to proposed changes to rates in that contract.<sup>47</sup>

51. In addressing the issue of LCS' request to unilaterally amend the VTA in the complaint proceeding, we first must look to the agreement itself to determine whether it contains any provisions concerning future unilateral proposed changes to the agreement. We must do so because "fixed rate contracts are not subject to unilateral amendment by a party to the contract, and once accepted for filing" may be modified "only upon [a] finding that the modification is required by the 'public interest.'"<sup>48</sup> The specification of rates, terms and conditions in a contract accepted by the Commission invokes the "public interest" standard of review unless the parties by contract have negated that implication.<sup>49</sup> The VTA contains no provision allowing either party to unilaterally seek changes in the contract. In the absence of such a provision in the VTA, we find that the *Mobile-Sierra* "public interest" standard of review applies.

52. The only language in the VTA that at all comes close to such a provision is VTA Article VIII, which states that "This agreement is made subject to present or future state or federal laws and to present and future regulations or orders properly issued by state or federal bodies having jurisdiction," but otherwise does not address the standard of review for proposed unilateral changes to the VTA. In this regard, in *Texaco Inc. v. FERC*,<sup>50</sup> the court examined a clause in the contract that similarly provided that the contract "shall

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<sup>47</sup> See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), order on *reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,194 n.43, ("The same contractual arrangements also would apply to non-rate terms and condition."); order on *reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on *reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd* in relevant part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *aff'd* sub nom. New York v. FERC, 535 U.S. 1 (2002).

<sup>48</sup> *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 283 (D.C. Cir. 2006); *accord, Mobile*, 350 U.S. at 343 (1956) (parties may "fix by contract, and change only by mutual agreement, the rate agreed upon with a particular customer"); *Boston Edison Co. v. FERC*, 233 F.3d 60, 65 (1<sup>st</sup> Cir. 2000) (*Boston Edison*) (where the parties have contracted for a particular rate and the Commission has accepted the contract and allowed it to become effective, a party cannot unilaterally seek a new superseding rate).

<sup>49</sup> *Boston Edison*, 233 F.3d at 67.

<sup>50</sup> 148 F.3d 1091 (D.C. Cir. 1998).

comply with all applicable laws, statutes, ordinances, safety codes and rules and regulations of governmental authorities having jurisdiction,” and that otherwise did not address the standard of review for proposed changes to the contract. The court held that such a clause does not reserve the right to seek unilateral modification of the contract during the term of the contract upon a showing that the contract is unjust and unreasonable. Rather, the court stated “The law is quite clear: absent contractual language ‘susceptible to the construction that the rate may be altered while the contract[] subsist[s],’ the *Mobile-Sierra* doctrine applies.”<sup>51</sup> And here, as noted, the VTA contains no such language at all.

53. We find that the Complaint otherwise raises issues of material fact that cannot be resolved on the record before us, and are more appropriately addressed in the hearing and settlement judge proceedings established below. We therefore will set for hearing and settlement judge procedures: (1) whether the lack of a termination provision applicable to any party to the VTA is in the public interest; and (2) if the lack of a termination provision is not in the public interest (a) what notice should be provided and (b) whether an exit fee is appropriate, and, if so, the amount of the exit fee. The Complaint is denied to the extent that it raises issues beyond the limited issues set forth above.

54. Where, as here, the Commission institutes an FPA section 206 investigation on a complaint, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date of the filing of such complaint nor later than 5 months after the filing of such complaint. We will establish the statutorily-directed refund effective date at the earliest date allowed, the date of the filing of the Complaint, October 23, 2006.

55. Section 206(b) also requires that if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Based on our review of the record and in consideration of the nature of the issues set for hearing, and assuming that the parties are unable to reach a settlement, we expect that a presiding judge should be able to render a decision within approximately twelve months, or, if the parties were to proceed to trial-type evidentiary hearing procedures immediately, on or before February 28, 2008. If a presiding judge were to render an initial decision by that date, and assuming the case does not settle, we estimate that we will be able to issue our decision within approximately six months of the filing of briefs on and opposing exceptions or by October 30, 2008.

56. In Docket Nos. ER07-459-000, and ER07-513-000, where VT Transco filed under section 205 to amend the VTA, VT Transco acknowledges that the public interest standard applies to its proposed amendments. However, as in Docket No. EL07-11-000,

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<sup>51</sup> *Id.* at 1096; accord *Boston Edison*, 233 F.3d at 66-67.

whether or not VT Transco met that standard raises issues of fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

57. Our preliminary analysis indicates that VT Transco's proposed revisions have not been shown to be just and reasonable and may be unjust and unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept VT Transco's proposed revisions to the VTA for filing, suspend them for a nominal period and make them effective on March 27, 2007 in Docket No. ER07-459-000, and April 7, 2007 for Docket No. ER07-513-000, subject to refund and set them for hearing and settlement judge procedures. The issues set for hearing in Docket No. ER07-459-000 include, but are not limited to, whether VT Transco has met its public interest burden to modify the VTA. The issues set for hearing in Docket No. ER07-513-000 include, but are not limited to, whether or not VT Transco has met its public interest burden to modify the VTA as proposed, whether VT Transco's past and current practices of offsetting the common facilities costs with RNS revenues violated its filed rate, and if so, whether refunds are appropriate.

58. While we are setting these matters for a trial-type evidentiary hearing, we encourage parties to make every effort to settle their dispute before hearing procedures commence. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.603 (2006). If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>52</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) In Docket No. EL07-11-000, the refund effective date established pursuant to section 206(b) of the FPA is October 23, 2006, the date of filing of the Complaint.

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<sup>52</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) --click on Office of Administrative Law Judges).

(B) In Docket No. ER07-459-000, VT Transco's proposed revisions are hereby accepted for filing and suspended, to become effective March 27, 2007, subject to refund, as discussed in the body of this order.

(C) In Docket No. ER07-513-000, VT Transco's proposed revisions are hereby accepted for filing and suspended, to become effective April 7, 2007, subject to refund as discussed in the body of this order

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. ER07-459-000 concerning VT Transco's proposed revisions. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (H) and (I) below.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. ER07-513-000 concerning VT Transco's proposed revisions. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (H) and (I) below

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. EL07-11-000 concerning issues set forth above involving the Complaint, and all other issues in the Complaint are denied. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (H) and (I) below.

(G) Docket Nos. ER07-459-000, ER07-513-000 and EL07-11-000, are hereby consolidated for the purpose of settlement, hearing and decision

(H) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2006), the Chief Judge is hereby directed to appoint a settlement judge within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference

as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(I) Within thirty (30) days of being appointed by the Chief Judge, the settlement judge shall file an initial report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(J) If the settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission. Commissioner Kelly concurring in part with a separate statement attached.

Commissioner Wellinghoff concurring in part and dissenting in part with a separate statement attached.

( S E A L )

Philis J. Posey,  
Acting Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Vermont Transco LLC Docket No. ER07-459-000

Vermont Electric Power Company Docket No. ER07-513-000

Lamoille County Systems Docket No. EL07-11-000

v.

Vermont Transco LLC  
Vermont Electric Power Company

(Issued March 26, 2007)

KELLY, Commissioner, *concurring in part*:

These proceedings involve proposed revisions to a Commission-approved 1991 Transmission Agreement (VTA), which was entered into by Vermont Transco (VT Transco) and each of its owners, including Lamoille County Systems (LCS). The VTA is a private, bilateral agreement that establishes a formula rate for the allocation of transmission costs among the co-owners for existing and new transmission facilities and provides that the co-owners take all of their transmission service under the VTA. In this respect, the VTA is similar to the fixed-rate, bilateral contracts at issue in *Mobile*<sup>53</sup> and *Sierra*.<sup>54</sup>

In Docket Nos. ER07-459-000 and ER07-513-000, VT Transco seeks to revise certain provisions in the VTA under FPA section 205. VT Transco acknowledges that the *Mobile-Sierra* “public interest” standard should apply in reviewing the proposed modifications and that its filings demonstrate that the standard is satisfied. In Docket No. EL07-11-000, LCS filed a complaint pursuant to FPA section 206, seeking to permit withdrawal from the VTA. While acknowledging that the *Mobile-Sierra* “public interest” standard applies to proposed changes to the rate in the VTA, LCS argue that they are not seeking to change a rate charged under the VTA.<sup>55</sup> In the alternative, LCS argue that their filing demonstrates they

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<sup>53</sup> *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956).

<sup>54</sup> *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

<sup>55</sup> As the order correctly notes, however, proposed changes to non-rate terms and conditions of an existing contract are governed by the same rules that apply to proposed changes to rates in that contract. Citing Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at

have met the *Mobile-Sierra* “public interest” standard in requesting a modification to the VTA to include a withdrawal provision.<sup>56</sup>

Under the facts presented here, with respect to modifying a bilateral transmission agreement, similar to the fixed-rate, bilateral contracts at issue in *Mobile* and *Sierra*, and where both parties acknowledge that the “public interest” standard applies, I agree that this standard is appropriate in this case. Accordingly, I respectfully concur in part.

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Suedeen G. Kelly

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30,194 & n.43.

<sup>56</sup> LCS’ Complaint at p. 23.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Vermont Transco LLC	Docket No. ER07-459-000
Vermont Electric Power Company	Docket No. ER07-513-000
Lamoille County Systems	Docket No. EL07-11-000
v.	
Vermont Transco LLC	
Vermont Electric Power Company	

(Issued March 26, 2007)

WELLINGHOFF, Commissioner, concurring in part and dissenting in part:

Each of the captioned proceedings involves unilaterally proposed changes to the VTA. I agree with the Commission that these proceedings raise issues of material fact that cannot be resolved on the existing record. I also agree with the Commission that it is appropriate to consolidate these proceedings for purposes of settlement, hearing, and decision because they share common issues of law and fact.

I disagree, however, with the Commission's finding that the proposed changes to the VTA are subject to the "public interest" standard of review. I believe that the "just and reasonable" standard is more appropriately applied in this instance, for the reasons that I identified in *Entergy Services, Inc.*<sup>57</sup> Therefore, I respectfully dissent in part.

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Jon Wellinghoff  
Commissioner

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<sup>57</sup> 117 FERC ¶ 61,055 (2006).