

## NORTH HARTLAND, LLC

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c/o ESSEX HYDRO ASSOCIATES, LLC  
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BOSTON, MASSACHUSETTS 02108 USA

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nhllc@essexhydro.com

January 26, 2007

Luly E. Massaro, Commission Clerk  
Rhode Island Public Utilities Commission  
89 Jefferson Blvd.  
Warwick, RI. 02888

### Re: Renewable Energy Resources Eligibility for North Hartland, LLC

Dear Ms. Massaro:

Please find enclosed an original and three copies of the request by North Hartland, LLC ("NHLLC") for Certification as (1) a New Renewable Energy Resource or, (2) in the alternative, as a partially New and partially Existing Renewable Energy Resource. As part of this request we are enclosing Renewable Energy Resources Eligibility Forms ("REREF") for the NHLLC 4.4 MW hydroelectric facility located in North Hartland, Vermont ("the Project").

As you will note from the enclosed information, the Project's history is unusual. The FERC license for the project was issued to the Vermont Electric Cooperative, Inc. ("VEC") on November 24, 1981. The license was transferred to Vermont Electric Generation and Transmission Cooperative, Inc. ("VEGT"), a subsidiary of VEC, on May 5, 1983. The Project was developed by VEGT and began commercial operation in 1985 and was operated by VEGT until June 1996 at which time the plant was shut down as part of the VEGT bankruptcy proceeding.

NHLLC acquired ownership of the Project in April 2005 and commenced making a significant capital investment in the facility. After being shut down for more than nine years, the Project achieved commercial operation under NHLLC ownership on September 26, 2005.

NHLLC is unclear how to interpret the Rules and Regulations Governing the Implementation of a Renewable Energy Standard (the "Rules") with regard to the Project's unique circumstances. Accordingly, NHLLC is submitting two alternative Renewable Energy Resources Eligibility Forms, REREF A and REREF B in support of this Certification request.

REREF A, which is the primary form being submitted herewith, has been prepared under the assumption that the Project's entire output would qualify as a New Renewable Energy Resource under the provisions of Section 3.22 of the Rules. NHLLC acquired ownership of the Project after December 31, 1997. The Project's entire resulting tax basis is derived from investments made by NHLLC in 2005 including the cost of acquisition and rehabilitation of the Project. At that time, the Project had not operated for nine years and was effectively abandoned as a generating site. There is no value assigned to the real property and intangible assets since the site is leased, not owned. There is no new impoundment or diversion of water as the Project is located at an existing U.S. Army Corps of Engineers dam.

In the event the Commission does not find that the Project's entire output qualifies as a New Renewable Energy Resource pursuant to REREF A, NHLLC herewith submits REREF B in the alternative. REREF B has been prepared under the assumption that, because of the predecessor project's operation by VEGT, the NHLLC Project would not qualify as a New Renewable Energy Resource even though it had been shut down for nine years and would not have restarted but for the investment by NHLLC to acquire and upgrade the Project with efficiency improvements in 2005. Pursuant to NHLLC's understanding of the Rules, the Project generation records for the three calendar years 1995 to 1997 are to be used to establish the Historical Generation Baseline. As shown in REREF B, the Project's Historical Generation Baseline would be 3,437 MWh. This Baseline is 22.9% of the Project's expected normal annual generation. Accordingly, NHLLC understands Section 3.22(vi) of the Rules to define 77.1% of the Project's output as a New Renewable Energy Resource.

NHLLC notes that the Project's Historical Generation Baseline is impacted by the previously mentioned VEGT bankruptcy which resulted in the Project's not operating for half of the 1995-97 Baseline period. Should the Commission determine that it should look beyond the period specified in its Rules for this unique Project, NHLLC also prepared a projection of the Project's long-term average annual output that would have been realized prior to the improvements made by NHLLC. That figure is 11,330 MWh annually, resulting in a conclusion that 24.5% of the Project's generation qualifies as a New Renewable Energy Resource.

Therefore, NHLLC requests that the Commission certify the Project as: (1) entirely a New Renewable Energy Resource in view of its unique history including a nine-year abandonment as a generating site, or (2) (a) 77.1% a New Renewable Energy Resource and 22.9% an Existing Renewable Energy Resource, or (b) such other allocation as a New Renewable Energy Resource and Existing Renewable Energy Resource as is appropriate under the circumstances.

If you should have any questions or require additional information please contact either Mr. Harry Wolf ([hw@essexhydro.com](mailto:hw@essexhydro.com)) or me ([ran@essexhydro.com](mailto:ran@essexhydro.com)).

NORTH HARTLAND, L.L.C.

By: Concord Hydro Associates  
Managing Member

By: Essex Hydro Associates, L.L.C.  
General Partner



Richard A. Norman  
President

enclosures

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<b>RIPUC Use Only</b>	
Date Application Received:	___/___/___
Date Review Completed:	___/___/___
Date Commission Action:	___/___/___
Date Commission Approved:	___/___/___

GIS Certification #:

11126**RENEWABLE ENERGY RESOURCES ELIGIBILITY FORM****The Standard Application Form**

Required of all Applicants for Certification of Eligibility of Renewable Energy Resource  
(Version 4 - November 7, 2006)

**STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION****Pursuant to the Renewable Energy Act****Section 39-26-1 et. seq. of the General Laws of Rhode Island****NOTICE:**

When completing this Renewable Energy Resources Eligibility Form and any applicable Appendices, please refer to the State of Rhode Island and Providence Plantations Public Utilities Commission Rules and Regulations Governing the Implementation of a Renewable Energy Standard (RES Regulations, Effective Date: January 1, 2006), and the associated RES Certification Filing Methodology Guide. All applicable regulations, procedures and guidelines are available on the Commission's web site: [www.ripuc.org/utilityinfo/res.html](http://www.ripuc.org/utilityinfo/res.html). Also, all filings must be in conformance with the Commission's Rules of Practice and Procedure, in particular, Rule 1.5, or its successor regulation, entitled "Formal Requirements as to Filings."

• Please complete the Renewable Energy Resources Eligibility Form and Appendices using a typewriter or black ink.

• Please submit one original and three copies of the completed Application Form, applicable Appendices and all supporting documentation to the Commission at the following address:

Rhode Island Public Utilities Commission  
89 Jefferson Blvd  
Warwick, RI 02888

Attn: Renewable Energy Resources Eligibility

In addition to the paper copies, electronic/email submittals are required under Commission regulations. Such electronic submittals should be sent to: Luly E. Massaro, Commission Clerk at [lmassaro@puc.state.ri.us](mailto:lmassaro@puc.state.ri.us)

• In addition to filing with the Commission, Applicants are required to send, electronically or electronically and in paper format, a copy of the completed Application including all attachments and supporting documentation, to the Division of Public Utilities and Carriers and to all interested parties. A list of interested parties can be obtained from the Commission's website at [www.ripuc.org/utilityinfo/res.html](http://www.ripuc.org/utilityinfo/res.html).

• Keep a copy of the completed Application for your records.

• The Commission will notify the Authorized Representative if the Application is incomplete.

• Pursuant to Section 6.0 of the RES Regulations, the Commission shall provide a thirty (30) day period for public comment following posting of any administratively complete Application.

• Please note that all information submitted on or attached to the Application is considered to be a public record unless the Commission agrees to deem some portion of the application confidential after consideration under section 1.2(g) of the Commission's Rules of Practice and Procedure.

• In accordance with Section 6.2 of the RES Regulations, the Commission will provide prospective reviews for Applicants seeking a preliminary determination as to whether a facility would be eligible prior to the formal certification process described in Section 6.1 of the RES Regulations. Please note that space is provided on the Form for applicant to designate the type of review being requested.

• Questions related to this Renewable Energy Resources Eligibility Form should be submitted in writing, preferably via email and directed to: Luly E. Massaro, Commission Clerk at [lmassaro@puc.state.ri.us](mailto:lmassaro@puc.state.ri.us)

**SECTION I: Identification Information**

- 1.1 Name of Generation Unit (sufficient for full and unique identification):  
~~North Hartland Hydroelectric Project~~
- 1.2 Type of Certification being requested (check one):  
? Standard Certification     Prospective Certification (Declaratory Judgment)
- 1.3 This Application includes: (Check all that apply)<sup>1</sup>
- APPENDIX A: Authorized Representative Certification for Individual Owner or Operator
  - APPENDIX B: Authorized Representative Certification for Non-Corporate Entities Other Than Individuals
  - APPENDIX C: Existing Renewable Energy Resources
  - APPENDIX D: Special Provisions for Aggregators of Customer-sited or Off-grid Generation Facilities
  - APPENDIX E: Special Provisions for a Generation Unit Located in a Control Area Adjacent to NEPOOL
  - APPENDIX F: Fuel Source Plan for Eligible Biomass Fuels
- 1.4 Primary Contact Person name and title: Richard A. Norman, President
- 1.5 Primary Contact Person address and contact information:  
Address: c/o Essex Hydro Associates, L.L.C.  
55 Union St., 4th Fl.  
Boston, MA 02108  
Phone: 617-367-0032                      Fax: 617-367-3796  
Email: ran@essexhydro.com
- 1.6 Backup Contact Person name and title: Harry Wolf, Vice President
- 1.7 Backup Contact Person address and contact information:  
Address: c/o Essex Hydro Associates, L.L.C.  
55 Union Street, 4th Fl.  
Boston, MA 02108  
Phone: 617-367-0032                      Fax: 617-367-3796  
Email: hw@essexhydro.com

<sup>1</sup> Please note that all Applicants are required to complete the Renewable Energy Resources Eligibility Standard Application Form and all of the Appendices that apply to the Generation Unit or Owner or Operator that is the subject of this Form. Please omit Appendices that do not apply.

- 1.8 Name and Title of Authorized Representative (*i.e.*, the individual responsible for certifying the accuracy of all information contained in this form and associated appendices, and whose signature will appear on the application):

Richard A. Norman, President

Appendix A or B (as appropriate) completed and attached?  Yes ? No ? N/A

- 1.9 Authorized Representative address and contact information:

Address: c/o Essex Hydro Associates, L.L.C.

55 Union Street, 4th Fl.

Boston, MA 02108

Phone: 617-367-0032

Fax: 617-367-3796

Email: ran@essexhydro.com

- 1.10 Owner name and title: North Hartland, LLC

- 1.11 Owner address and contact information:

Address: P.O. Box 419

Hartland, VT 05052

Phone: 802-280-2290

Fax: 802-280-2294

Email: nhl@essexhydro.com

- 1.12 Owner business organization type (check one):

Individual

Partnership

Corporation

Other: Limited Liability Company

- 1.13 Operator name and title: North Hartland, LLC

- 1.14 Operator address and contact information:

Address: P.O. Box 419

Hartland, VT 05052

Phone: 802-280-2290

Fax: 802-280-2294

Email: nhl@essexhydro.com

- 1.15 Operator business organization type (check one):

Individual

Partnership

Corporation

Other: Limited Liability Company

**SECTION II: Generation Unit Information, Fuels, Energy Resources and Technologies**

- 2.1 ISO-NE Generation Unit Asset Identification Number or NEPOOL GIS Identification Number (either or both as applicable): 11126
- 2.2 Generation Unit Nameplate Capacity: 4.0 MW
- 2.3 Maximum Demonstrated Capacity: 4.664 MW
- 2.4 Please indicate which of the following Eligible Renewable Energy Resources are used by the Generation Unit: (Check ALL that apply) – *per RES Regulations Section 5.0*
- Direct solar radiation
  - The wind
  - Movement of or the latent heat of the ocean
  - The heat of the earth
  - Small hydro facilities
  - Biomass facilities using Eligible Biomass Fuels and maintaining compliance with all aspects of current air permits; Eligible Biomass Fuels may be co-fired with fossil fuels, provided that only the renewable energy fraction of production from multi-fuel facilities shall be considered eligible.
  - Biomass facilities using unlisted biomass fuel
  - Biomass facilities, multi-fueled or using fossil fuel co-firing
  - Fuel cells using a renewable resource referenced in this section
- 2.5 If the box checked in Section 2.4 above is “Small hydro facilities”, please certify that the facility’s aggregate capacity does not exceed 30 MW. – *per RES Regulations Section 3.31*
- ← check this box to certify that the above statement is true  
? N/A or other (please explain) \_\_\_\_\_
- 2.6 If the box checked in Section 2.4 above is “Small hydro facilities”, please certify that the facility does not involve any new impoundment or diversion of water with an average salinity of twenty (20) parts per thousand or less. – *per RES Regulations Section 3.31*
- ← check this box to certify that the above statement is true  
? N/A or other (please explain) \_\_\_\_\_
- 2.7 If you checked one of the Biomass facilities boxes in Section 2.1 above, please respond to the following:
- A. Please specify the fuel or fuels used or to be used in the Unit: \_\_\_\_\_
- B. Please complete and attach Appendix F, Eligible Biomass Fuel Source Plan.  
Appendix F completed and attached?                      ? Yes   ? No   ? N/A

- 2.8 Has the Generation Unit been certified as a Renewable Energy Resource for eligibility in another state's renewable portfolio standard?  
 Yes  No If yes, please attach a copy of that state's certifying order.  
Copy of State's certifying order attached? ? Yes ? No ? N/A

**SECTION III: Commercial Operation Date**

Please provide documentation to support all claims and responses to the following questions:

- 3.1 Date Generation Unit first entered Commercial Operation: \_\_\_ / \_\_\_ / 85 at the site.  
**Note: Exact date not available to current owner.**
- 3.2 Is there an Existing Renewable Energy Resource located at the site of Generation Unit?  
 Yes  
 No
- 3.3 If the date entered in response to question 3.1 is earlier than December 31, 1997 or if you checked "Yes" in response to question 3.2 above, please complete Appendix C.  
Appendix C completed and attached?  Yes ? No ? N/A
- 3.4 Was all or any part of the Generation Unit used on or before December 31, 1997 to generate electricity at any other site?  
 Yes  
 No
- 3.5 If you checked "Yes" to question 3.4 above, please specify the power production equipment used and the address where such power production equipment produced electricity (attach more detail if the space provided is not sufficient):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION IV: Metering**

- 4.1 Please indicate how the Generation Unit's electrical energy output is verified (check all that apply):  
 ISO-NE Market Settlement System  
 Self-reported to the NEPOOL GIS Administrator  
 Other (please specify below and see Appendix D: Eligibility for Aggregations):  
\_\_\_\_\_

Appendix D completed and attached? ? Yes ? No ? N/A



**SECTION V: Location**

5.1 Please check one of the following that apply to the Generation Unit:

- Grid Connected Generation
- Off-Grid Generation (not connected to a utility transmission or distribution system)
- Customer Sited Generation (interconnected on the end-use customer side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the end-use customer)

5.2 Generation Unit address: 721 U.S. Route 5  
Hartland, VT 05052

5.3 Please provide the Generation Unit's geographic location information:

A. Universal Transverse Mercator Coordinates: N4831471.783/E12745.790 Zone 18

B. Longitude/Latitude: N43°36.2' /W72°21.5'

5.4 The Generation Unit located: (please check the appropriate box)

- In the NEPOOL control area
- In a control area adjacent to the NEPOOL control area
- In a control area other than NEPOOL which is not adjacent to the NEPOOL control area ← *If you checked this box, then the generator does not qualify for the RI RES – therefore, please do not complete/submit this form.*

5.5 If you checked "In a control area adjacent to the NEPOOL control area" in Section 5.4 above, please complete Appendix E.

Appendix E completed and attached?                      ? Yes   ? No   ? N/A

**SECTION VI: Certification**

6.1 Please attach documentation, using one of the applicable forms below, demonstrating the authority of the Authorized Representative indicated in Section 1.8 to certify and submit this Application.

**Corporations**

If the Owner or Operator is a corporation, the Authorized Representative shall provide **either**:

- (a) Evidence of a board of directors vote granting authority to the Authorized Representative to execute the Renewable Energy Resources Eligibility Form, **or**
- (b) A certification from the Corporate Clerk or Secretary of the Corporation that the Authorized Representative is authorized to execute the Renewable Energy Resources Eligibility Form or is otherwise authorized to legally bind the corporation in like matters.

Evidence of Board Vote provided?                                 ? Yes   ? No   ? N/A

Corporate Certification provided?                                 ? Yes   ? No   ? N/A

**Individuals**

If the Owner or Operator is an individual, that individual shall complete and attach APPENDIX A, or a similar form of certification from the Owner or Operator, duly notarized, that certifies that the Authorized Representative has authority to execute the Renewable Energy Resources Eligibility Form.

Appendix A completed and attached?                                 ? Yes   ? No   ? N/A

**Non-Corporate Entities**

(Proprietorships, Partnerships, Cooperatives, etc.) If the Owner or Operator is not an individual or a corporation, it shall complete and attach APPENDIX B or execute a resolution indicating that the Authorized Representative named in Section 1.8 has authority to execute the Renewable Energy Resources Eligibility Form or to otherwise legally bind the non-corporate entity in like matters.

Appendix B completed and attached?                                 ~~?~~ Yes   ? No   ? N/A

6.2 Authorized Representative Certification and Signature:

I hereby certify, under pains and penalties of perjury, that I have personally examined and am familiar with the information submitted herein and based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties, both civil and criminal, for submitting false information, including possible fines and punishment. My signature below certifies all information submitted on this Renewable Energy Resources Eligibility Form. The Renewable Energy Resources Eligibility Form includes the Standard Application Form and all required Appendices and attachments. I acknowledge that the Generation Unit is obligated to and will notify the Commission promptly in the event of a change in a generator's eligibility status (including, without limitation, the status of the air permits) and that when and if, in the Commission's opinion, after due consideration, there is a material change in the characteristics of a Generation Unit or its fuel stream that could alter its eligibility, such Generation Unit must be re-certified in accordance with Section 9.0 of the RES Regulations. I further acknowledge that the Generation Unit is obligated to and will file such quarterly or other reports as required by the Regulations and the Commission in its certification order. I understand that the Generation Unit will be immediately de-certified if it fails to file such reports.

Signature of Authorized Representative:

SIGNATURE:

DATE: 1-29-07

By: Concord Hydro Associates, Managing Member

By: Essex Hydro Assoc., L.L.C., General Partner



\_\_\_\_\_  
President

(Title)

GIS Certification #:  
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APPENDIX B  
(Required When Owner or Operator is a Non-Corporate Entity  
Other Than An Individual)

STATE OF RHODE ISLAND  
PUBLIC UTILITIES COMMISSION

RENEWABLE ENERGY RESOURCES ELIGIBILITY FORM  
Pursuant to the Renewable Energy Act  
Section 39-26-1 et. seq. of the General Laws of Rhode Island

RESOLUTION OF AUTHORIZATION

Resolved: that Richard A. Norman, named in  
Section 1.8 of the Renewable Energy Resources Eligibility Form as Authorized Representative,  
is authorized to execute the Application on the behalf of North Hartland, LLC,  
the Owner or Operator of the Generation Unit named in section 1.1 of the Application.

SIGNATURE:

DATE:

Concord Hydro Associates, Managing Member  
By: Essex Hydro Assoc., L.L.C., General Partner

01/29/07

Thomas A. Tarpey, Executive Vice President

State: Massachusetts

County: Suffolk

(TO BE COMPLETED BY NOTARY) I, Harry Wolf as a  
notary public, certify that I witnessed the signature of the above named Thomas A. Tarpey  
and that said person stated that he/she is authorized to execute this resolution, and the individual  
verified his/her identity to me, on this date: January 29, 2007.

SIGNATURE:

DATE:

My commission expires on

Harry Wolf

January 29, 2007

NOTARY SEAL:

HARRY WOLF  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
April 7, 2011

## APPENDIX C

(Required of all Applicants with Generation Units at the Site of Existing  
Renewable Energy Resources)

STATE OF RHODE ISLAND  
PUBLIC UTILITIES COMMISSION

## RENEWABLE ENERGY RESOURCES ELIGIBILITY FORM

Pursuant to the Renewable Energy Act  
Section 39-26-1 et. seq. of the General Laws of Rhode Island

If the Generation Unit: (1) first entered into commercial operation before December 31, 1997; or  
(2) is located at the exact site of an Existing Renewable Energy Resource, please complete the  
following and attach documentation, as necessary to support all responses:

- C.1 Is the Generating Unit seeking certification, either in whole or in part, as a New  
Renewable Energy Resource?  Yes ? No
- C.2 If you answered "Yes" to question C.1, please complete the remainder of Appendix C. If  
you answered "No" and are seeking certification entirely as an Existing Renewable  
Energy Resource, you do NOT need to complete the remainder of Appendix C.
- C.3 If an Existing Renewable Energy Resource is/was located at the site, has such Existing  
Renewable Energy Resource been retired and replaced with the new Generation Unit at  
the same site? ? Yes  No
- C.4 Is the Generation Unit a Repowered Generation Unit (as defined in Section 3.28 of the  
RES Regulations) which uses Eligible Renewable Energy Resources and which first  
entered commercial operation after December 31, 1997 at the site of an existing  
Generation Unit? Please refer to Supplementary  Yes ? No  
Exhibit C-1
- C.5 If you checked "Yes" to question C.4 above, please provide documentation to support  
that the entire output of the Repowered Generation Unit first entered commercial  
operation after December 31, 1997. Please refer to Supplementary Exhibit C-1
- C.6 Is the Generation Unit a multi-fuel facility in which an Eligible Biomass Fuel is first co-  
fired with fossil fuels after December 31, 1997? ? Yes  No

- C.7 If you checked "Yes" to question C.6 above, please provide documentation to support that the renewable energy fraction of the energy output first occurred after December 31, 1997.
- C.8 Is the Generation Unit an Existing Renewable Energy Resource other than an Intermittent Resource (as defined in Section 3.9 and 3.14 of the RES Regulations)? ? Yes  No
- C.9 If you checked "Yes" to question C.8 above, please attach evidence of completed capital investments after December 31, 1997 attributable to efficiency improvements or additions of capacity that are sufficient to, were intended to, and can be demonstrated to increase annual electricity output in excess of ten percent (10%). As specified in Section 3.22.v of the RES Regulations, the determination of incremental production shall not be based on any operational changes at such facility **not directly** associated with the efficiency improvements or additions of capacity.
- C.10 Is the Generating Unit an Existing Renewable Energy Resource that is an Intermittent Resource? Please refer to Supplementary Exhibit C-1 ? Yes ? No
- C.11 If you checked "Yes" to question C.10 above, please attach evidence of completed capital investments after December 31, 1997 attributable to efficiency improvements or additions of capacity that are sufficient to, were intended to, and have demonstrated on a normalized basis to increase annual electricity output in excess of ten percent (10%). The determination of incremental production shall not be based on any operational changes at such facility **not directly** associated with the efficiency improvements or additions of capacity. In no event shall any production that would have existed during the Historical Generation Baseline period in the absence of the efficiency improvements or additions to capacity be considered incremental production. Please refer to Section 3.22.vi of the RES Regulations for further guidance.
- C.12 If you checked "Yes" to C.10, provide the single proposed percentage of production to be deemed incremental, attributable to the efficiency improvements or additions of capacity placed in service after December 31, 1997. Please provide backup information sufficient for the Commission to make a determination of this incremental production percentage.
- C.13 If you checked "no" to both C.3 and C.4 above, please complete the following:
- a. Was the Existing Renewable Energy Resource located at the exact site at any time during calendar years 1995 through 1997? ? Yes ? No  
Please refer to Supplementary Exhibit C-1
  - b. If you checked "yes" in Subsection (a) above, please provide the Generation Unit Asset Identification Number and the average annual electrical production (MWhs) for the three calendar years 1995 through 1997, or for the first 36 months after the Commercial Operation Date if that date is after December 31, 1994, for each such Generation Unit.

- c. Please attach a copy of the derivation of the average provided in (b) above, along with documentation support (such as ISO reports) for the information provided in Subsection (b) above. Data must be consistent with quantities used for ISO Market Settlement System.

**Form A**  
**New Facility Request**

**Renewable Energy Resources Eligibility**

**Appendix C**  
**New Renewable Energy Resources**  
**Supplementary Information – Section III (3.3)**

Submitted by North Hartland, LLC

Project Description

Attached hereto as Appendix C-1 is a description of the North Hartland hydroelectric project and a technical fact sheet.

Ownership History

On November 24, 1981 the FERC issued a license to the Vermont Electric Cooperative, Inc. ("VEC") for the North Hartland hydroelectric project (the "Project"). On May 5, 1983 VEC transferred the license to the Vermont Electric Generation and Transmission Cooperative ("VEGT"). VEGT built the Project, which started commercial operation in 1985, and operated it until 1996 at which time VEGT filed a petition under Chapter 7 of the U.S. Bankruptcy code. As part of the bankruptcy filing by VEGT, the Project ceased operation sometime in June 1996.

As part of the bankruptcy settlement, the U.S. Department of Agriculture's Rural Utilities Service, the bankrupt's principal creditor, was authorized to negotiate the transfer of Project ownership. On June 27, 2000 the FERC issued an Order approving the transfer of the FERC license to North Hartland, LLC ("NHLLC") from VEGT. In 2000 the ownership of NHLLC was different from the present ownership of NHLLC. After significant delays in the bankruptcy proceeding and related regulatory proceedings, the former owners of NHLLC decided to sell their interest in NHLLC to Concord Hydro Associates ("CHA"), an experienced owner and operator of small hydroelectric projects. CHA acquired ownership of NHLLC in early 2005. Immediately after acquiring NHLLC ownership, CHA requested that the FERC grant it an extension of time in which to fulfill conditions necessary to purchase the Project and transfer the FERC license from VEGT to NHLLC. In April 2005, NHLLC acquired ownership of the Project from the Rural Utility Service ("RUS") and completed the transfer of the FERC license from VEGT to NHLLC. Enclosed with this Certification request are copies of: 1) the FERC Order dated June 27, 2000 which approved the transfer of the FERC license to NHLLC (Appendix C-2); 2) the FERC Order issued July 28, 2003 which describes the Project's background (Appendix C-3); 3) the FERC order



dated February 11, 2005 which granted the new owners of NHLLC, CHA, an extension of time in which to fulfill certain FERC requirements related to the purchase of the Project and the transfer of the FERC license (Appendix C-4) and 4) a letter dated April 12, 2005 from NHLLC to the FERC providing documentation that NHLLC had acquired ownership of the Project from the RUS and VEGT and met conditions which FERC had imposed regarding the transfer of the FERC license from VEGT to NHLLC (Appendix C-5).

Subsequent to acquiring the Project, NHLLC expended significant funds to rehabilitate and restart the Project. Expenditures were related to 1) replacement of the turbine's automation and control system; 2) replacement of several components of the interconnection equipment (as required by Central Vermont Public Service Corporation, the utility to which the project is interconnected and which purchases the Project's electric output; 3) replacement of the turbine and generator cooling system; 4) modification of the penstock, and 5) and repair and/or replacement of several service systems made necessary by deterioration during the nine year shutdown of the facility.

Rules and Regulation Requirements to Qualify as a New Renewable Energy Resource (Section 3.22 ii and iii):

Section 3.22(ii) states that New Renewable Energy Resources means:

*"[A]t the site of an Existing Renewable Energy Resource, the entire output of a new Generation Unit which uses Eligible Renewable Energy Resources and first entered commercial operation after December 31, 1997, provided that the Existing Renewable Energy Resource has been retired and replaced with such new Generation Unit".*

In the Project's case, the initial operating date under NHLLC ownership was September 26, 2005. Moreover, the project had been shut down for more than nine years and effectively had been abandoned by VEGT. In 2005, NHLLC had to incur a cost to acquire the Project from the RUS (formerly VEGT) as well as to rehabilitate the Project in order to achieve commercial operation. All interconnection and power purchase arrangements and agreements with CVPS and the Memorandum of Understanding with the U.S. Army Corps of Engineers also were negotiated by NHLLC. There were no carryover arrangements from the Project's former operation aside from the FERC license.

## NORTH HARTLAND GENERATING STATION

The North Hartland Generating Station (North Hartland) is located at a U.S. Army Corps of Engineers' (COE) North Hartland Dam on the Ottauquechee River in Windsor County, Vermont. The COE operates the dam as one unit in a coordinated system of flood control structures in the Connecticut River Basin. The dam is a rolled earth and rockfill dam with a 24-ft top width at an elevation of 572 feet MSL.

The powerhouse is located approximately 470 feet downstream from the toe of the dam. The powerhouse structure is of reinforced concrete and does not have a superstructure. Metal hatch covers are provided on the powerhouse roof to facilitate mobile crane access for major maintenance of equipment. A service area is provided on the west side of the powerhouse.

The project utilizes an existing outlet conduit at the dam and consists of: (1) the existing outlet lined with a 12-foot diameter steel pipe; (2) a 470-foot-long extension of the existing outlet connecting to the penstock; (3) a powerhouse containing a generator system rated at 4000 kW (4444 KVA at 0.9 pf); (4) a 12-foot diameter gated bypass outlet works branching from the penstock upstream of the powerhouse; (5) a 4.16/12.5-kv switchyard; (6) a 12.5-kv transmission line connecting the switchyard and the distribution system of the Central Vermont Public Service Corporation; and (7) appurtenant works.

### TECHNICAL FACT SHEET

Location --- Ottauquechee River, North Hartland, Vermont

Constructed --- 1982-1984

Capacity --- 4000 kilowatts

Turbine Design --- Vertical Kaplan, tubular type with horizontal inlet and draft tube

Rated Flow --- 810 cubic feet per second

Minimum Flow for Generation --- 215 cubic feet per second

Net Head --- 66 feet

#### Major Equipment Suppliers:

Turbine and Governor --- Voest-Alpine International

Generator --- Ideal Electric

Transformers --- Westinghouse Electric

Penstock --- Buffalo Tank Division, Bethlehem Steel

Generation Control --- Scipar

91 FERC ¶ 62,227

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSIONVermont Electric Generation  
& Transmission Cooperative, Inc.  
North Hartland, L.L.C.

Project No. 2816-007

## ORDER APPROVING TRANSFER OF LICENSE

(Issued June 27, 2000)

On February 17, 2000, Vermont Electric Generation & Transmission Cooperative, Inc., licensee for the North Hartland Hydroelectric Project No. 2816, by and through Mr. Gleb Glinka, trustee of its bankruptcy estate (VEGT or transferor), filed a joint application with North Hartland, L.L.C. (North Hartland or transferee) for approval of a transfer of the project license to North Hartland. The project is located at the U.S. Army Corps of Engineers North Hartland Dam on the Ottauquechee River in Windsor County, Vermont. As described below, the application will be approved.<sup>1</sup>

The license for the project was issued to the Vermont Electric Cooperative, Inc. on November 24, 1981.<sup>2</sup> The license was transferred to VEGT on May 5, 1983.<sup>3</sup> The instant transfer is being sought in connection with the settlement in VEGT's bankruptcy proceeding, as described below.

Public notice of the transfer application was issued on February 17, 2000. The Town of Hartland, Vermont, asked to be included on the Commission's mailing list for the transfer proceeding. No protests or motions to intervene were filed.

In April of 1996, VEGT filed a petition under Chapter 7 of the Bankruptcy Code (11 U.S.C. §§ 101, *et seq.*) in the United States Bankruptcy Court for the District of

<sup>1</sup>In a related proceeding in Docket No. EG00-85-000, by letter order issued March 7, 2000, the transferee was found to be an exempt wholesale generator under section 32 of the Public Utility Holding Company Act of 1935. 90 FERC ¶ 62,164.

<sup>2</sup>17 FERC ¶ 62,307.

<sup>3</sup>23 FERC ¶ 61,174.

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JUN 27 2000

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Vermont (Case No. 96-10335). Simultaneously, VEGT's trustees and officers resigned, and shortly thereafter, the court appointed VEGT's trustee in bankruptcy. The North Hartland Project ceased operations sometime in June 1996. On June 20, 1996, the Commission's New York Regional Office (NYRO) received notice that the licensee had filed for bankruptcy. On June 6, 1997, the bankruptcy court issued an order approving a stipulated settlement of claims (Exhibit B to the transfer application) under which the United States, acting through the U.S. Department of Agriculture's Rural Utilities Service, the bankruptcy estate's principal secured creditor, was authorized to negotiate the terms of a transfer of the project (pursuant to which the instant transfer was negotiated) and the trustee agreed to retain title to the project and cooperate in such transfer.

The NYRO inspected the project in August 1996 and August 1998, and the project was found to be in satisfactory condition. Recently, the project has been inspected by the original equipment manufacturer, engineers, and operators to identify and estimate the extent of repairs necessary to place the project back into operation. Barring latent defects, the transferee intends to resume project operation by six months following the conveyance to it of project properties. So that the restart can be coordinated with the NYRO, the transferee should file a plan and schedule for returning the project to operation.

Annual charges under the license have not been paid since the bankruptcy petition was filed. However, the transferee has offered to pay outstanding annual charges as a condition of the Commission's approval of the transfer application.<sup>4</sup>

The transferee is not a licensee of the Commission. Therefore, we have no compliance record to review. Nevertheless, the transferee is qualified to hold the license and to operate the property under the license. It has agreed to accept all the terms and conditions of the license, and to be bound by the license as if it were the original licensee.

The proposed transfer is consistent with the Commission's regulations and is in the public interest.

The Director orders:

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<sup>4</sup>Without relinquishing any remedies that may be available to the Commission, it is noted that the general rule is that a transferee assumes the unpaid annual charges liabilities of the transferor. *See, e.g.,* Niagara of Wisconsin Paper Corp., 54 FPC 2507 (1975).

(A) Transfer of the license for Project No. 2816, the North Hartland Hydroelectric Project, from Vermont Electric Generation & Transmission Cooperative, Inc., by and through Mr. Gleb Glinka, trustee of its bankruptcy estate, to North Hartland, L.L.C. is approved.

(B) As described in this order, North Hartland, L.L.C. shall pay all annual charges that accrue up to the effective date of the transfer.<sup>5</sup>

(C) Approval of the transfer is contingent upon: (1) transfer of title of the properties under license and delivery of all license instruments to North Hartland, L.L.C., which shall be subject to the terms and conditions of the license as though it were the original licensee; and (2) North Hartland, L.L.C. acknowledging acceptance of this order and its terms and conditions by signing and returning the attached acceptance sheet. Within 60 days from the date of this order, North Hartland, L.L.C. shall submit certified copies of all instruments of conveyance and the signed acceptance sheet.

(D) North Hartland, L.L.C. shall file, within 60 days from the date of this order, a plan and schedule for returning the project to operation.

(E) 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 CFR 385.713.



Daniel M. Adamson  
Director  
Office of Energy Projects

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<sup>5</sup>Annual charges for Fiscal Years 1997, 1998, and 1999 amount to \$52,957.27. The Commission will soon issue the annual charge bills for Fiscal Year 2000.

Project No. 2816-007

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, North Hartland, L.L.C., this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, has caused its name to be signed hereto by \_\_\_\_\_, its \_\_\_\_\_, and its seal to be affixed hereto and attested by \_\_\_\_\_, its Secretary, pursuant to a resolution of its \_\_\_\_\_, duly adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a certified copy of the record of which is attached hereto.

By \_\_\_\_\_

Attest:

\_\_\_\_\_  
Secretary  
(Executed in quadruplicate)

104 FERC ¶ 61,151  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Vermont Electric Generation &  
Transmission Cooperative, Inc.,  
and North Hartland, LLC

Project No. 2816-020

ORDER AMENDING LICENSE

(Issued July 28, 2003)

1. This order grants an application by the licensee and pending transferee of the North Hartland Hydroelectric Project No. 2816 to amend the project license to add a seven-mile long primary transmission line.<sup>1</sup>

**BACKGROUND**

2. In 1981 the Commission issued to Vermont Electric Cooperative, Inc. (VEC) a 40-year license for the construction and operation of the 4-megawatt (MW) North Hartland Project, located at the U.S. Army Corps of Engineers' (Corps) North Hartland Dam on the Ottauquechee River in Windsor County, Vermont.<sup>2</sup> In 1983, the Commission approved transfer of the project license from VEC to Vermont Electric Generation & Transmission Cooperative, Inc. (VEGT).<sup>3</sup>

3. The project comprises an outlet conduit at the federal dam, a 470-foot-long penstock leading from the outlet to the project powerhouse, a 400-foot-long tailrace, and appurtenant facilities. As licensed, the project also included a proposed 1/4-mile long, 12.5-kilovolt (kV) transmission line extending south from the project's switchyard and

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<sup>1</sup>In a related filing in Docket No. EL03-51, filed January 15, 2003, the applicants have requested a declaratory order finding that certain tariff and interconnection charges do not apply to the proposed transmission line. That request will be decided in a separate order.

<sup>2</sup>17 FERC ¶ 62,307 (1981).

<sup>3</sup>23 FERC ¶ 61,174 (1983).

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connecting to the distribution system of Green Mountain Power Corporation.<sup>4</sup> However, before constructing the line, VEGT revised the location and configuration of the line to interconnect with the distribution system of Central Vermont Public Service Corporation (Central Vermont).<sup>5</sup> VEGT buried the first 600 or so feet of line from the powerhouse, then constructed a 4,000-foot above-ground line to pole 115 of Central Vermont Distribution Line 66. Pursuant to a 1984 agreement with VEGT,<sup>6</sup> Central Vermont reconstructed a six-mile segment of Line 66 to transmit the project's power from pole 115 to Central Vermont's Quechee substation, and reconstructed the substation to accommodate the new three-phase circuit.<sup>7</sup> Under the agreement, VEGT reimbursed Central Vermont for this work, and Central Vermont retained title to, operated, and maintained the six-mile segment of Line 66.

4. In 1988, VEGT filed the project as-built exhibits,<sup>8</sup> including drawings that showed a portion of the VEGT-constructed 4,000-foot line, with notations indicating the line's eventual connection to Central Vermont's Line 66 and its termination point at the Quechee substation.<sup>9</sup>

5. In 1996, VEGT ceased project operations and filed for bankruptcy under Chapter 7 of the Bankruptcy Code. In 2000, pursuant to a stipulated settlement of claims approved by the bankruptcy court, the U.S. Department of Agriculture's Rural Utilities

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<sup>4</sup>17 FERC ¶ 62,307 at 63,528.

<sup>5</sup>VEGT made these changes because it determined that reconstructing Green Mountain Power's system for the project's transmission line would cost more than reconstructing Central Vermont's line, and using Central Vermont's transmission system would reach more of VEGT's service area. See the October 12, 1983 letter from VEGT to the Corps, included in Exhibit B of the December 20, 2002 amendment application.

<sup>6</sup>The agreement, dated March 22, 1984, is included in Exhibit D of the December 20, 2002 amendment application.

<sup>7</sup>This included the installation of new circuit breakers and meters for measuring the project's output.

<sup>8</sup>These were required by Article 35 of the license, 17 FERC ¶ 62,307 at 63,529.

<sup>9</sup>See Figure F 1-1, Site Plan & General Arrangement, attached to VEGT's transmittal letter, dated March 24, 1988, and received by the Commission's New York Regional Office on April 4, 1988 (April 1988 filing).



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Service, VEGT's primary secured creditor, negotiated the sale of the project to North Hartland, LLC (North Hartland). The sale of the project and the transfer of the project's license were approved by the Commission that same year.<sup>10</sup> Consummation of the project sale has been delayed for a variety of reasons, including the instant amendment proceeding.

6. On December 20, 2002, VEGT and North Hartland (Applicants) filed an application to amend the license to "correct[] errors and omissions" in the 1988 as-built drawings approved by the Commission.<sup>11</sup> Specifically, Applicants want an amendment "clarifying" that the entire 7-mile length of transmission line extending from the project powerhouse to the Quechee Substation is a primary transmission line for licensing purposes and has in fact been approved as part of the license. They also request a Commission determination that, if six miles of this line are in fact owned by Central Vermont, then VEGT violated its license, notably Article 5, for failing to acquire and hold rights sufficient to operate and maintain this project work.

7. The Commission issued public notice of Applicants' amendment application on January 16, 2003, setting February 18, 2003, as the deadline for filing motions to intervene, comments, and protests. On February 19, 2003, the Vermont Department of Public Service (Vermont DPS) and Central Vermont each filed late motions to intervene, which were granted over applicants' opposition by unpublished notice issued March 14, 2003.<sup>12</sup> Vermont DPS took no position on the application. Central Vermont opposes the

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<sup>10</sup>91 FERC ¶ 62,227 (2000). Approval of the transfer is subject to North Hartland filing a form accepting the findings in the transfer order and filing copies of conveyance documents showing the transfer of title of the properties under the license and delivery of all license instruments to the transferee. North Hartland has accepted the transfer order, but it has requested and received a series of extensions of the deadline to complete the transfer. Pursuant to an unpublished order issued March 24, 2003, the deadline is currently September 26, 2003.

<sup>11</sup>December 20, 2002 filing at 2.

<sup>12</sup>Applicants (amendment application at 12) and separately North Hartland (motion filed May 7, 2003) request summary disposition of this proceeding, invoking Rules 217, 710, and 801 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.217, 385.710, and 385.801 (2003). Rule 710 applies only in proceedings before an administrative law judge. Rule 801 requires the parties to waive their right to a hearing, which, as described next, Central Vermont does not. Rule 217 requires the

(continued...)

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application and argues that the six-mile segment of the proposed transmission line between pole 115 and the Quechec substation is part of its distribution system, and should not be included in the license. The Department of the Interior filed a letter on February 19, 2003, stating that it had no comments on the amendment application.

## DISCUSSION

### A. The three-phase circuit on Line 66 is a part of the project's primary transmission line under FPA Part I

8. Section 4(e) of the FPA, 16 U.S.C. § 797(e), authorizes the Commission to "issue licenses . . . for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines, or other project works necessary or convenient for the development, transportation, and utilization of power . . ." Project works are the physical structures of a project.<sup>13</sup> FPA Section 3(11) defines a "project" as a complete unit of hydropower development, including:

the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system[.]<sup>14</sup>

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<sup>12</sup>(...continued)

decisional authority's determination that there are no genuine issues of fact material to the decision. In its February 19, 2003 motion to intervene and its May 22, 2003 reply to Applicants' May 7 motion, Central Vermont agrees that the Commission may properly dispose of Applicants' amendment application summarily, so long as it denies the application; otherwise, Central Vermont asks the Commission to set the matter for a trial-type evidentiary hearing. Because we conclude that there are no genuine issues of material fact that cannot be appropriately decided on the written record, we deny Central Vermont's motion. Applicants' motions for summary disposition, as well as North Hartlands's June 17, 2003 motion for fast-track processing and a status report, are mooted by this order.

<sup>13</sup>FPA Section 3(12), 16 U.S.C. § 796(12).

<sup>14</sup>FPA Section 3(11), 16 U.S.C. § 796(11). This provision states in its entirety:

"[P]roject" means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant

(continued...)

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The Commission's test for a primary line is that the line is used solely to transmit power from the licensed project to a load center, and that without the line there would be no way to transmit all the project power to market.<sup>15</sup> Under this test, the line leading from a project ceases to be a primary line at the point it is no longer used solely to transmit power from the project to the interconnected grid.

9. As noted, pursuant to its 1984 agreement with VEGT to transmit project power to the Quechee substation, Central Vermont reconstructed a six-mile segment of its Distribution Line 66. Specifically, it installed new, taller wooden poles, to which it attached its pre-existing single-phase electrical distribution circuit (serving retail customers) and a physically separate three-phase circuit to transmit the project's power.

10. Central Vermont contends that because the six-mile segment of Line 66 carries both the project-dedicated three-phase circuit and the single-phase distribution circuit, and because the three-phase circuit could one day serve both the project and a distribution function, the segment should be considered a distribution line, leaving as the project's primary line only the section between the powerhouse and pole 115 on Line 66.

11. That the three-phase circuit may at some point be used for distribution does not affect its current status. Moreover, Central Vermont allows that the Commission could consider the project-dedicated three-phase circuit as by itself constituting a primary transmission line,<sup>16</sup> although it argues that this would be unprecedented and would require a determination of what part of the shared poles and rights-of-way the licensee would have to obtain adequate property rights for, and how the licensee and Central

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<sup>14</sup>(...continued)

works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water-rights, rights-of-way, ditches, dams, reservoirs, lands or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit[.]

<sup>15</sup>See, e.g., New York Power Authority, 98 FERC ¶ 61,033 (2002); Pacific Gas and Electric Co., 85 FERC ¶ 61,411 (1998).

<sup>16</sup>February 19, 2003 protest at 21.

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Power would divide maintenance and other responsibilities of these shared items. We do not find such an allocation overly complex. The licensee does not need to hold fee title in the transmission facilities in question; it is sufficient that it hold a lease or easement giving it the right to use the relevant facilities for project purposes during the term of the license, with an option to renew the lease for any new license that is issued for the project. This has for years been an approved approach to allow licensees to use various project facilities without having to acquire them outright.<sup>17</sup>

12. Taking a different tack, Central Vermont argues that Line 66 is not a primary line, in that the licensee has never had problems getting project power to the grid, and because under FERC Order No. 888 Central Vermont is in any event required to provide open-access, non-discriminatory service under FERC-filed rate tariffs.<sup>18</sup> However, the determination of whether a transmission line is primary for FPA Part I purposes rests on physical feasibility, not contractual or economic feasibility. While Central Vermont's reasoning may have merit, it is for the Congress, not this Commission, to revise or remove the "primary transmission line" element of the statutory definition of a project under FPA Part I.<sup>19</sup>

13. Central Vermont next asserts that the Commission has impliedly found the six-mile segment of Line 66 not to constitute a primary line, inasmuch as it has never

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<sup>17</sup>See, e.g., *New York State Electric & Gas Corp.*, 16 FERC ¶ 61,176 (1981) and *Pennsylvania Hydroelectric Development Corp.*, 44 FERC ¶ 61,252 at 61,926-27 (1988) (lease to use state-owned dam for project purposes); *Allegheny Hydro No. 8, L.P.*, 53 FERC ¶ 61,446 (1990) (lease of entire project); *International Paper Company and Turners Falls Hydro LLC*, 100 FERC ¶ 61,114 (2002) (boundary line around project generating equipment includes "the walls of adjacent buildings and rooms necessary for structural support and for access to the licensed equipment and facilities for all operation and maintenance purposes;" licensee and buildings' owner "executed an agreement in which they exchanged cross-easements for such things as structural support and wiring and utilities").

<sup>18</sup>February 19, 2003 protest at 4, 17.

<sup>19</sup>The Commission does not have the discretion to waive the licensing of jurisdictional project works. See, e.g., *New York State Electric & Gas Corp.*, *supra*, 16 FERC ¶ 61,176 at 61,393-95 (Commission declined to exclude state-owned dam from the license despite its unexplained failure to include New York State-owned facilities in earlier licenses).

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previously required it to be licensed.<sup>20</sup> To the extent Central Vermont is suggesting that the Commission is somehow estopped by parties' reliance on the line's non-licensed history from now finding the line to be a project work, we do not find that this is a situation where estoppel lies against the government.<sup>21</sup> Indeed, every year the Commission makes findings as to whether it has mandatory licensing jurisdiction over various unlicensed operating hydroelectric projects, some of which it has never examined and even a few it or its predecessor, the Federal Power Commission, had previously found non-jurisdictional.

14. In sum, we hold that the primary transmission line of the North Hartland Project comprises the 600 feet of buried line, the 4,000-foot above-ground line to pole 115, and the approximately six-mile length of the three-phase circuit attached to Vermont Electric's Line 66 from pole 115 to its Quechee Substation.<sup>22</sup>

**B. The entire seven-mile primary line is not currently licensed**

15. As noted, Applicants seek an amendment "clarifying" that the entire above-described 7-mile primary transmission line has in fact been approved as part of the license. However, the 1988 as-built exhibit on which they rely does not support their position. The exhibit's project boundary map (Fig. G2-1) is unambiguous<sup>23</sup> and does not

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<sup>20</sup>Central Vermont also argues that neither it nor VEGT ever intended the segment to be a primary line. However, the determination of a primary line is one of function, not intent.

<sup>21</sup>See discussion of estoppel against the government in UAH-Braendly Hydro Associates, 47 FERC ¶ 61,448 (1989).

<sup>22</sup>Applicants' amendment application attaches, at Appendix C, a December 28, 2001 "Interim Order Re: Interconnection Issues," issued by a hearing officer of the Vermont Public Service Board) finding, inter alia, that the point of interconnection between the North Hartland Project and Central Vermont's distribution system is the Quechee Substation. In its February 19, 2003 protest (at 35), Central Vermont moves to strike the interim order, noting that the Board later issued an order finding that the interim order has no precedential value. We see no need to strike Appendix C; we have made our determination based on the facts described herein and pursuant to FPA standards.

<sup>23</sup>Applicants' reliance on the 1988 Exhibit F1-1, Site Plan & General

(continued...)

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include any part of Line 66, or apparently even the entire 4,000-foot line connecting to it,<sup>24</sup> within the project boundary line.<sup>25</sup> In approving the as-built exhibits, the May 10, 1988 order stated that "the constructed project works do not differ significantly from the design approved in the license."<sup>26</sup> This is a reasonable statement in light of the 1988 boundary map; it would not be an accurate description of the addition of six miles of transmission line. We conclude that the license does not currently include the six miles of three-phase circuit line attached to the poles carrying Line 66 from pole to Quechee Substation.

16. Applicants' amendment application includes a series of revised or new Exhibit F drawings, including a revised project boundary map. We are approving their submittals and are amending the license to so reflect.

17. Standard license Article 5 requires licensees to acquire and retain title in fee to, or the right to use in perpetuity, project property sufficient to accomplish all project purposes.<sup>27</sup> As noted, Applicants ask that, if Central Vermont owns the six miles of

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<sup>23</sup>(...continued)

Arrangement, does not help them, because it is not the purpose of that exhibit to show the project boundary.

<sup>24</sup>Exhibit F1-1 (Site Plan & General Arrangement) shows a 12.5-kV power cable extending to Pole PHH 3P-1, from which point the line's continuation is identified as "new transmission line to Central Vermont Public Service." Pole PHH 3P-1 is shown as located a short distance uphill from contour elevation line 525; however, on the project boundary map elevation line 525 is well outside the boundary on that side of the project. Pole PHH 3P-1 is presumably the same as Pole OHH 3-1, identified in Applicants' amendment application, Exhibit A.4 (Primary Line & Point of Junction), as the point at which the buried 12.5 kV three-phase circuit emerges and continues above-ground.

<sup>25</sup>See VEGT's April 1988 filing at Figure G 2-1, Project Boundary Map.

<sup>26</sup>43 FERC ¶ 62,158 at 63,239 (1988).

<sup>27</sup>Standard Article 5 states in part:

The Licensee, within five years from date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance and operation of  
(continued...)

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project primary line on Line 66 – which it does – the Commission find that VEGT violated Article 5 of its license for failing to acquire<sup>28</sup> requisite rights to these six miles of primary line. Applicants reference the license transfer application form, 18 C.F.R. § 131.20 item (8), which provides for the transferor to certify that it "has fully complied with the terms and conditions of its license . . . ." <sup>29</sup> It is not clear to what end Applicants seek a finding that VEGT violated license Article 5. However, what is clear is that there is no point in trying to enforce any regulatory requirements on VEGT; its project assets are held by the trustee of its bankruptcy estate, and the estate's ownership of the project is encumbered with the security interest of the Rural Utilities Service. The order approving transfer of the North Hartland Project license is contingent on transfer of title of the properties "under license."<sup>30</sup> In order not to complicate completion of the transfer, the amendment adding the currently unlicensed portions of the primary line will be made effective as of the effective date of the license transfer.<sup>31</sup> Once the license transfer is

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<sup>27</sup>(...continued)

the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, . . . and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission . . . .

See Form L-2, 54 FPC 1808, 1810 (1975), incorporated by reference in the North Hartland Project license, 17 FERC ¶ 62,307 at 63,529 ordering para. D.

<sup>28</sup>We agree with Central Vermont (February 19, 2003 protest at 8-9, 28) that there is no basis for asserting that VEGT "ceded" these rights.

<sup>29</sup>Amendment application at 9. Applicants also reference standard Article 6 of the license (see Form L-2, n. 27, supra) in connection with a transferor's obligation to comply with its license. Article 6, which requires a licensee to "make good any defect of title to" project property, deals with a project at the end of its license term in the event the United States takes over the project pursuant to FPA Section 14 or the license is transferred to a new licensee under FPA Section 15, neither of which is the case in the instant proceeding.

<sup>30</sup>91 FERC ¶ 62,227 at 64,380, ordering para. C(1).

<sup>31</sup>The Commission will issue notice of that effective date.

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effective,<sup>32</sup> it will be up to the transferee/new licensee, North Hartland, to obtain the requisite rights to the entire primary line.

Finally, Central Vermont argues that Applicants' application to "clarify" the inclusion in the license of the entire primary line is "fatally flawed," inasmuch as neither VEGT nor North Hartland owns the six miles of circuitry at issue, and the Commission cannot appropriate private property by placing it under license.<sup>33</sup> Clearly, the inclusion of lands or facilities within a project boundary neither creates nor alters property rights.<sup>34</sup> Rather, as Central Vermont points out, the licensee must obtain such property or adequate rights therein through private contracts, or, failing that, the exercise of eminent domain authority under Section 21 of the FPA.<sup>35</sup>

The Commission orders:

(A) The application filed December 20, 2002, by Vermont Electric Generation & Transmission Cooperative, Inc., by and through Mr. Gleb Glinka, trustee in bankruptcy, and North Hartland, LLC is approved as described in this order, effective on the date the license transfer is effective, and is denied in all other respects.

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<sup>32</sup>As stated (n. 10, *supra*), North Hartland has obtained a series of extensions of the deadline to file copies of conveyance documents showing the transfer to it of title to the properties under the license and delivery of all license instruments. The deadline is currently September 26, 2003. We note that any further requests to extend the deadline will be carefully reviewed to determine whether there remain legal impediments to transfer of property title, or whether North Hartland seeks further extensions while it pursues modification or reversal of conditions applicable to authorizations to obtain the project property or of contractual issues involving transmission and sale of project power. It is not in the public interest for the North Hartland Project to remain in its current limbo.

<sup>33</sup>February 19, 2003 protest at 28.

<sup>34</sup>*See, e.g.,* Niagara Mohawk Power Corp., 77 FERC ¶ 61,306 at 62,391 (1996).

<sup>35</sup>Alternatively, Central Vermont could apply for a transmission-line-only license for the six-mile segment of three-circuit line (*see* 18 C.F.R. § 4.70) or could apply to become co-licensee of the North Hartland Project.



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(B) Central Vermont Public Service Corporation's motion to hold amendment proceeding in abeyance pending completion of Alternative Dispute Resolution proceedings is denied.

(C) Central Vermont Public Service Corporation's request for an evidentiary, trial-type hearing is denied.

(D) Central Vermont Public Service Corporation's motion to strike Exhibit C of the December 20, 2002 amendment application is denied.

(E) The parties' motions for summary disposition and for fast-track processing are dismissed as moot.

(F) Ordering paragraph (B)(2), item (7), of the license for the North Hartland Project license, 17 FERC ¶ 62,307 at 63,528 (1981), is amended to read as follows:

(7) a transmission line that comprises: (a) an approximately 600-foot underground segment of 12.5-kV, three-phase line from the project's substation to the riser pole owned by the New England Telephone Company(NET); (b) approximately 4,000 feet of 12.5-kV, three-phase line in NET's existing right-of-way from the riser pole to a junction with Central Vermont Public Service Corporation's (Central Vermont) utility system at Pole # 115 on Clay Hill Road; and (c) approximately six miles of 12.5-kV, three-phase line mounted on top of Central Vermont's distribution line (Line 66) along Clay Hill Road to Central Vermont's Quechee Substation;

(G) The following exhibits filed on December 20, 2002, are approved and made part of the license:

Approved Exhibit	Title	FERC Drawing No.	Superseded Drawing No.
A5 -1	Single Line Diagram	2816-21	2816-11
F1 -1	Site Plan and General Arrangement	2816-22	2816-12
G1 -1	Project Location Map	2816-23	2816-18 & 19

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G2 -1	Project Boundary Map	2816-24	2816-20
G2 -2	Project Boundary Map	2816-25	--

Superseded Drawings are eliminated from the license.

(H) Within 90 days of the date of issuance of this order, the licensee shall file three original sets of aperture cards of the approved drawing reproduced on silver or gelatin 35 mm microfilm. All microfilm should be mounted on Type D (3¼" x 7d") aperture cards. Prior to microfilming, the FERC Drawing Number (2816-21 through 25) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed in the upper right corner of each aperture card. Additionally, the Project Number, FERC exhibit (A5-1, G1 through G2), Drawing Title, and date of this order shall be typed in the upper left corner of each aperture card. Two sets of aperture cards shall be filed with the Secretary of the Commission. The third set of aperture cards shall be filed with the Commission's New York Regional Office.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

UNITED STATES OF AMERICA 110 FERC ¶61,130  
FEDERAL ENERGY REGULATORY COMMISSION

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

Vermont Electric Generation  
& Transmission Cooperative, Inc.

North Hartland, LLC

Project No. 2816-032

## ORDER GRANTING STAY

(Issued February 11, 2005)

1. North Hartland, LLC has filed a request for rehearing of the Commission's November 22, 2004, Order<sup>1</sup> denying a tenth extension of time to North Hartland to comply with the conditions applicable to the transfer to it of the license for the North Hartland Hydroelectric Project No. 2816, rescinding a prior order approving transfer of the license, and dismissing the underlying transfer application. The project is located on the Ottauquechee River, in Windsor County, Vermont. Concord Hydro Associates, L.L.C., which purchased North Hartland subsequent to the filing of the request for rehearing has filed a motion for reconsideration and for other relief. As discussed below, we are staying our previous order, in order to give Concord the chance to complete the transfer, which would be in the public interest.

**Background**

2. As discussed in detail in the November 22 Order, on June 27, 2000, Commission staff issued an order approving the transfer of the project license to North Hartland from the bankrupt licensee, Vermont Electric Generation & Transmission Cooperative, Inc. (VEGT).<sup>2</sup> Ordering paragraph (C) included a standard provision, stating that the transfer was contingent on transfer of the property under license, and that North Hartland accept the conditions of the transfer, and file with the Commission within 60 days (by August 28, 2000) certified copies of instruments of conveyance to it of project property.

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<sup>1</sup> 109 FERC ¶ 61,194.

<sup>2</sup> *Id.*

3. Between August 25, 2000, and June 21, 2004, North Hartland requested nine extensions of time to comply with the deadline for filing the conveyance documents, based on its inability to obtain state approvals and to conclude the transfer transaction. Each of the requests was granted.<sup>3</sup>

4. On March 12, 2004, the Commission issued an order accepting as summarily modified an unexecuted interconnection agreement filed by Central Vermont Public Service Corporation, between itself and North Hartland. The Commission also summarily modified provisions of Central Vermont's open access transmission tariff relating to the use of certain interconnection facilities.

5. On September 21, 2004, North Hartland filed a request for a tenth extension, for a time period not to exceed 12 months, until the following events occurred: (1) Vermont approved the interconnection agreement, (2) the transferor obtained authority to legally transfer the project, and (3) the transferor removed encumbrances to the title "or as otherwise agreed." North Hartland asserted that various matters beyond its control prevent completion of the transfer, including the federal government's lack of title to the project, the seller's refusal to seek authority from the bankruptcy court to transfer the project, and the lack of Vermont regulatory approval of the unexecuted interconnection agreement.

6. The request for extension was opposed by Central Vermont and Vermont Department of Public Service (Vermont DPS), both of which stated that it was North Hartland's responsibility, and not Central Vermont's, to obtain state approval of the interconnection agreement. Vermont DPS, Central Vermont, and another commenter, Essex Power Services, Inc., also raised the issue of North Hartland's status as a legal entity.<sup>4</sup> In addition, the U.S. Department of Agriculture's Rural Utilities Service (RUS), the transferor's major creditor, filed comments questioning various statements by North Hartland, including its assertion that it has financing commitments to acquire the project, and concluding North Hartland's alleged inability to close was primarily due to circumstances within its control.

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<sup>3</sup> *Id.* at P 6-19.

<sup>4</sup> Essex appended to its filing a November 1, 2002, letter to North Hartland from Mark Connolly (Deputy New Hampshire Secretary of State), stating that North Hartland, LLC, had been dissolved, as of that date, for the failure to file required reports and pay fees.

7. On November 22, 2004, the Commission issued an order denying the tenth request for extension, rescinding the 2000 transfer order, and dismissing the transfer application. We stated that while we strongly support the continued development and utilization of energy resources, and believe in making every reasonable effort to provide project proponents with the time to complete necessary business and regulatory transactions, in this case there appeared to be no reasonable prospect that the sales transaction will ever be completed. We concluded based on the record that there were significant, possibly insurmountable, disagreements among the parties to the sale, and between North Hartland and the Vermont regulators. Thus, we held that it was not in the public interest to allow the proceeding to go on indefinitely.<sup>5</sup>

8. On December 22, 2004, North Hartland filed a timely request for rehearing.

9. On January 19, 2005, Concord Hydro Associates, L.L.C. filed a motion for reconsideration and to reopen the record or, in the alternative, motion to lodge. Concord states that it is a reputable owner and operator of eight hydroelectric projects, and that it has purchased North Hartland. In consequence, Concord asserts that there are no longer impediments to the completion of the asset sale and license transfer.

### Discussion

10. Concord's filing presents a possible resolution of this long-running proceeding. If indeed Concord has acquired North Hartland and is willing and able to complete the purchase of the project assets, the end result could be the resumption of generation at the North Hartland Project (which has not operated since 1986) and the delivery into the grid of power from the project, an outcome that would be in the public interest.

11. However, we cannot simply reverse our prior order. In the November 22 Order, without laying blame on any party, we concluded that there appeared to be significant, possibly insurmountable, obstacles to conclusion of the sales transaction, based upon disputes between North Hartland and the sellers; and that North Hartland had encountered great difficulties in obtaining Vermont state approval of an interconnection agreement between itself and Central Vermont, which, although not a predicate to completing the transfer, certainly affects the financial viability of the deal.

12. We currently have before us only Concord's representations that it can resolve the ongoing problems. For us to grant rehearing or otherwise reverse our prior order, we will need more concrete proof that matters are moving toward a positive resolution.

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<sup>5</sup> *Id.* at P 29.

At the same time, we do not want to present any roadblock to the completion of the transfer. We will therefore stay the November 22 Order, such that Concord may take whatever steps are necessary to complete the transfer. We are also directing our staff to seek from Concord additional information, including the composition of North Hartland's new ownership, Concord's schedule for completing the transfer, the reactions of affected parties such as RUS, Central Vermont and Vermont DPS, and any other matters staff deems relevant. Staff is to report back to us, informally, within 60 days, so that we can determine how to proceed.

The Commission orders:

The Commission's November 22, 2004, Order denying request for extension, rescinding transfer order, and dismissing transfer application is stayed pending further order of the Commission.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

**NORTH HARTLAND, LLC**

c/o ESSEX HYDRO ASSOCIATES, LLC  
55 UNION STREET, 4TH FLOOR  
BOSTON, MASSACHUSETTS 02108 USA

TELEPHONE:  
FAX:  
E-MAIL:

+617-367-0032  
+617-367-3796  
nhllc@essexhydro.com

April 12, 2005

The Honorable Magalie R. Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Room 1-A  
Washington, DC 20426

Re: North Hartland, LLC, Project No. 2816

Dear Ms. Salas,

North Hartland, LLC ("NHL") is very pleased to report that a closing occurred on Tuesday, April 5, 2005 at which NHL acquired ownership of the North Hartland project works ("the NHL project") as authorized by the Order issued June 27, 2000 in the above-referenced proceeding<sup>1</sup> and consistent with the Commission's February 11, 2005 Order Granting Stay.<sup>2</sup> Prior to and at the closing NHL made payments to satisfy all parties to the bankruptcy settlement agreement dated June 6, 1997. In compliance with the Commission's regulations, the following closing documents are attached as evidence of conveyance. Because recordation of these documents was not necessary, a certification is included in compliance with the Commission's regulations.

- 1) Executed bill of sale and quit claim deed from the bankruptcy trustee to NHL (NH);
- 2) Release of lien from the RUS;
- 3) Executed release in connection with payment of taxes to the Town of Hartland; and
- 4) Executed release in connection with payment of past due electrical bills.

In addition, on March 30, 2005, NHL paid all outstanding amounts owed to the FERC for past-due annual charges. A copy of the certificate to do business in Vermont is attached.

NHL now has commenced work to repair and reactivate the North Hartland project. Project operations are expected to occur within the next 3-4 months. In addition, NHL has commenced negotiations with Central Vermont Public Service Corporation to lease or acquire ownership of that portion of the transmission line not owned by NHL which connects the North

<sup>1</sup> *Vermont Electric Generation & Transmission Cooperative, Inc. and North Hartland, LLC*, 91 FERC ¶ 62,227 (2000).

<sup>2</sup> *Vermont Electric Generation & Transmission Cooperative, Inc. and North Hartland, LLC*, 110 FERC ¶ 61,130 (2005).

Hartland project to the CVPS substation in Queeche, Vermont. NHL will make a further submission to the FERC on or about the date the project will commence operations.


NHL(NH) respectfully requests the FERC to take such action as is necessary related the FERC Order issued February 11, 2005 which granted a stay to NHL in connection with the transfer of the license for Project No. 2816.

If there are any further questions please contact either Richard Norman (617-367-0032) [ran@essexhydro.com](mailto:ran@essexhydro.com)) or Ms. Elizabeth Whittle (202-585-8338) ([ewhittle@nixonpeabody.com](mailto:ewhittle@nixonpeabody.com)).

Respectfully submitted,

Concord Hydro Associates  
Managing Member

By: Essex Hydro Associates L.L.C.  
General Partner

By:   
Richard A. Norman  
President

cc: E. Whittle  
Mr. William Guey-Lee  
Chief, Engineering and Jurisdiction Branch  
Division of Hydropower Administration and Compliance



North Hartland, LLC

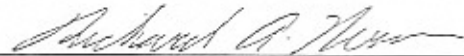
)

Project No. 2816

CERTIFICATION


I hereby certify that the following documents were executed and are now effective, evidencing ownership of the assets by North Hartland, LLC:

1. Executed bill of sale and quit claim deed from the bankruptcy trustee to NHL
2. Release of lien from the RUS;
3. Executed release in connection with payment of taxes to the Town of Hartland;  
and
4. Executed release in connection with payment of past due electrical bills.



Richard A. Norman

Sworn and Subscribed before me  
this 12<sup>th</sup> day of April, 2005

  
\_\_\_\_\_  
Notary Public

HARRY WOLF  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
April 7, 2011

**RIPUC Use Only**

Date Application Received: \_\_\_/\_\_\_/\_\_\_  
 Date Review Completed: \_\_\_/\_\_\_/\_\_\_  
 Date Commission Action: \_\_\_/\_\_\_/\_\_\_  
 Date Commission Approved: \_\_\_/\_\_\_/\_\_\_

GIS Certification #:

11126

**RENEWABLE ENERGY RESOURCES ELIGIBILITY FORM****The Standard Application Form**

Required of all Applicants for Certification of Eligibility of Renewable Energy Resource  
 (Version 4 - November 7, 2006)

**STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION****Pursuant to the Renewable Energy Act****Section 39-26-1 et. seq. of the General Laws of Rhode Island****NOTICE:**

When completing this Renewable Energy Resources Eligibility Form and any applicable Appendices, please refer to the State of Rhode Island and Providence Plantations Public Utilities Commission Rules and Regulations Governing the Implementation of a Renewable Energy Standard (RES Regulations, Effective Date: January 1, 2006), and the associated RES Certification Filing Methodology Guide. All applicable regulations, procedures and guidelines are available on the Commission's web site: [www.ripuc.org/utilityinfo/res.html](http://www.ripuc.org/utilityinfo/res.html). Also, all filings must be in conformance with the Commission's Rules of Practice and Procedure, in particular, Rule 1.5, or its successor regulation, entitled "Formal Requirements as to Filings."

- Please complete the Renewable Energy Resources Eligibility Form and Appendices using a typewriter or black ink.
  - Please submit one original and three copies of the completed Application Form, applicable Appendices and all supporting documentation to the Commission at the following address:  
 Rhode Island Public Utilities Commission  
 89 Jefferson Blvd  
 Warwick, RI 02888  
 Attn: Renewable Energy Resources Eligibility
- In addition to the paper copies, electronic/email submittals are required under Commission regulations. Such electronic submittals should be sent to: Luly E. Massaro, Commission Clerk at [lmassaro@puc.state.ri.us](mailto:lmassaro@puc.state.ri.us)
- In addition to filing with the Commission, Applicants are required to send, electronically or electronically and in paper format, a copy of the completed Application including all attachments and supporting documentation, to the Division of Public Utilities and Carriers and to all interested parties. A list of interested parties can be obtained from the Commission's website at [www.ripuc.org/utilityinfo/res.html](http://www.ripuc.org/utilityinfo/res.html).
  - Keep a copy of the completed Application for your records.
  - The Commission will notify the Authorized Representative if the Application is incomplete.
  - Pursuant to Section 6.0 of the RES Regulations, the Commission shall provide a thirty (30) day period for public comment following posting of any administratively complete Application.
  - Please note that all information submitted on or attached to the Application is considered to be a public record unless the Commission agrees to deem some portion of the application confidential after consideration under section 1.2(g) of the Commission's Rules of Practice and Procedure.
  - In accordance with Section 6.2 of the RES Regulations, the Commission will provide prospective reviews for Applicants seeking a preliminary determination as to whether a facility would be eligible prior to the formal certification process described in Section 6.1 of the RES Regulations. Please note that space is provided on the Form for applicant to designate the type of review being requested.
  - Questions related to this Renewable Energy Resources Eligibility Form should be submitted in writing, preferably via email and directed to: Luly E. Massaro, Commission Clerk at [lmassaro@puc.state.ri.us](mailto:lmassaro@puc.state.ri.us)

SECTION I: Identification Information

1.1 Name of Generation Unit (sufficient for full and unique identification):

North Hartland Hydroelectric Project

1.2 Type of Certification being requested (check one):

Standard Certification      ? Prospective Certification (Declaratory Judgment)

1.3 This Application includes: (Check all that apply)<sup>1</sup>

- APPENDIX A: Authorized Representative Certification for Individual Owner or Operator
- APPENDIX B: Authorized Representative Certification for Non-Corporate Entities Other Than Individuals
- APPENDIX C: Existing Renewable Energy Resources
- APPENDIX D: Special Provisions for Aggregators of Customer-sited or Off-grid Generation Facilities
- APPENDIX E: Special Provisions for a Generation Unit Located in a Control Area Adjacent to NEPOOL
- APPENDIX F: Fuel Source Plan for Eligible Biomass Fuels

1.4 Primary Contact Person name and title: Richard A. Norman, President

1.5 Primary Contact Person address and contact information:

Address: c/o Essex Hydro Associates, L.L.C.

55 Union St., 4th Fl.

Boston, MA 02108

Phone: 617-367-0032

Fax: 617-367-3796

Email: ran@essexhydro.com

1.6 Backup Contact Person name and title: Harry Wolf, Vice President

1.7 Backup Contact Person address and contact information:

Address: c/o Essex Hydro Associates, L.L.C.

55 Union Street, 4th Fl.

Boston, MA 02108

Phone: 617-367-0032

Fax: 617-367-3796

Email: hw@essexhydro.com

<sup>1</sup> Please note that all Applicants are required to complete the Renewable Energy Resources Eligibility Standard Application Form and all of the Appendices that apply to the Generation Unit or Owner or Operator that is the subject of this Form. Please omit Appendices that do not apply.

- 1.8 Name and Title of Authorized Representative (*i.e.*, the individual responsible for certifying the accuracy of all information contained in this form and associated appendices, and whose signature will appear on the application):

Richard A. Norman, President

Appendix A or B (as appropriate) completed and attached?  Yes ? No ? N/A

- 1.9 Authorized Representative address and contact information:

Address: c/o Essex Hydro Associates, L.L.C.

55 Union Street, 4th Fl.

Boston, MA 02108

Phone: 617-367-0032

Fax: 617-367-3796

Email: ran@essexhydro.com

- 1.10 Owner name and title: North Hartland, LLC

- 1.11 Owner address and contact information:

Address: P.O. Box 419

Hartland, VT 05052

Phone: 802-280-2290

Fax: 802-280-2294

Email: nhl@essexhydro.com

- 1.12 Owner business organization type (check one):

Individual

Partnership

Corporation

Other: Limited Liability Company

- 1.13 Operator name and title: North Hartland, LLC

- 1.14 Operator address and contact information:

Address: P.O. Box 419

Hartland, VT 05052

Phone: 802-280-2290

Fax: 802-280-2294

Email: nhl@essexhydro.com

- 1.15 Operator business organization type (check one):

Individual

Partnership

Corporation

Other: Limited Liability Company

**SECTION II: Generation Unit Information, Fuels, Energy Resources and Technologies**

- 2.1 ISO-NE Generation Unit Asset Identification Number or NEPOOL GIS Identification Number (either or both as applicable): 11126
- 2.2 Generation Unit Nameplate Capacity: 4.0 MW
- 2.3 Maximum Demonstrated Capacity: 4.664 MW
- 2.4 Please indicate which of the following Eligible Renewable Energy Resources are used by the Generation Unit: (Check ALL that apply) – *per RES Regulations Section 5.0*
- Direct solar radiation
  - The wind
  - Movement of or the latent heat of the ocean
  - The heat of the earth
  - Small hydro facilities
  - Biomass facilities using Eligible Biomass Fuels and maintaining compliance with all aspects of current air permits; Eligible Biomass Fuels may be co-fired with fossil fuels, provided that only the renewable energy fraction of production from multi-fuel facilities shall be considered eligible.
  - Biomass facilities using unlisted biomass fuel
  - Biomass facilities, multi-fueled or using fossil fuel co-firing
  - Fuel cells using a renewable resource referenced in this section
- 2.5 If the box checked in Section 2.4 above is “Small hydro facilities”, please certify that the facility’s aggregate capacity does not exceed 30 MW. – *per RES Regulations Section 3.31*
- ← check this box to certify that the above statement is true
- ? N/A or other (please explain) \_\_\_\_\_
- 2.6 If the box checked in Section 2.4 above is “Small hydro facilities”, please certify that the facility does not involve any new impoundment or diversion of water with an average salinity of twenty (20) parts per thousand or less. – *per RES Regulations Section 3.31*
- ← check this box to certify that the above statement is true
- ? N/A or other (please explain) \_\_\_\_\_
- 2.7 If you checked one of the Biomass facilities boxes in Section 2.1 above, please respond to the following:
- A. Please specify the fuel or fuels used or to be used in the Unit: \_\_\_\_\_
- B. Please complete and attach Appendix F, Eligible Biomass Fuel Source Plan.
- Appendix F completed and attached?                      ? Yes    ? No    ? N/A

- 2.8 Has the Generation Unit been certified as a Renewable Energy Resource for eligibility in another state's renewable portfolio standard?
- Yes  No If yes, please attach a copy of that state's certifying order.
- Copy of State's certifying order attached? ? Yes ? No ? N/A

### SECTION III: Commercial Operation Date

Please provide documentation to support all claims and responses to the following questions:

- 3.1 Date Generation Unit first entered Commercial Operation: \_\_\_ / \_\_\_ / 85 at the site. Note: Exact Date not available to current owner.
- 3.2 Is there an Existing Renewable Energy Resource located at the site of Generation Unit?
- Yes  
 No
- 3.3 If the date entered in response to question 3.1 is earlier than December 31, 1997 or if you checked "Yes" in response to question 3.2 above, please complete Appendix C.
- Appendix C completed and attached?  Yes ? No ? N/A
- 3.4 Was all or any part of the Generation Unit used on or before December 31, 1997 to generate electricity at any other site?
- Yes  
 No
- 3.5 If you checked "Yes" to question 3.4 above, please specify the power production equipment used and the address where such power production equipment produced electricity (attach more detail if the space provided is not sufficient):
- 
- 
- 

### SECTION IV: Metering

- 4.1 Please indicate how the Generation Unit's electrical energy output is verified (check all that apply):
- ISO-NE Market Settlement System  
 Self-reported to the NEPOOL GIS Administrator  
 Other (please specify below and see Appendix D: Eligibility for Aggregations):
- 

Appendix D completed and attached? ? Yes ? No ? N/A

**SECTION V: Location**

5.1 Please check one of the following that apply to the Generation Unit:

- Grid Connected Generation
- Off-Grid Generation (not connected to a utility transmission or distribution system)
- Customer Sited Generation (interconnected on the end-use customer side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the end-use customer)

5.2 Generation Unit address: 721 U.S. Route 5  
Hartland, VT 05052  
\_\_\_\_\_  
\_\_\_\_\_

5.3 Please provide the Generation Unit's geographic location information:

A. Universal Transverse Mercator Coordinates: N4831471.783/E12745.790 Zone 18

B. Longitude/Latitude: N43°36.2' /W72°21.5'

5.4 The Generation Unit located: (please check the appropriate box)

- In the NEPOOL control area
- In a control area adjacent to the NEPOOL control area
- In a control area other than NEPOOL which is not adjacent to the NEPOOL control area ← *If you checked this box, then the generator does not qualify for the RI RES – therefore, please do not complete/submit this form.*

5.5 If you checked "In a control area adjacent to the NEPOOL control area" in Section 5.4 above, please complete Appendix E.

Appendix E completed and attached?                      ? Yes   ? No   ? N/A





6.2 Authorized Representative Certification and Signature:

I hereby certify, under pains and penalties of perjury, that I have personally examined and am familiar with the information submitted herein and based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties, both civil and criminal, for submitting false information, including possible fines and punishment. My signature below certifies all information submitted on this Renewable Energy Resources Eligibility Form. The Renewable Energy Resources Eligibility Form includes the Standard Application Form and all required Appendices and attachments. I acknowledge that the Generation Unit is obligated to and will notify the Commission promptly in the event of a change in a generator's eligibility status (including, without limitation, the status of the air permits) and that when and if, in the Commission's opinion, after due consideration, there is a material change in the characteristics of a Generation Unit or its fuel stream that could alter its eligibility, such Generation Unit must be re-certified in accordance with Section 9.0 of the RES Regulations. I further acknowledge that the Generation Unit is obligated to and will file such quarterly or other reports as required by the Regulations and the Commission in its certification order. I understand that the Generation Unit will be immediately de-certified if it fails to file such reports.

Signature of Authorized Representative:

SIGNATURE:

DATE: 1-29-07

By: Concord Hydro Associates, Managing Member

By: Essex Hydro Assoc., L.L.C., General Partner



\_\_\_\_\_  
President

(Title)

GIS Certification #:  
-----

**APPENDIX B**  
**(Required When Owner or Operator is a Non-Corporate Entity**  
**Other Than An Individual)**

**STATE OF RHODE ISLAND**  
**PUBLIC UTILITIES COMMISSION**

**RENEWABLE ENERGY RESOURCES ELIGIBILITY FORM**  
Pursuant to the Renewable Energy Act  
Section 39-26-1 et. seq. of the General Laws of Rhode Island

**RESOLUTION OF AUTHORIZATION**

Resolved: that Richard A. Norman, named in  
Section 1.8 of the Renewable Energy Resources Eligibility Form as Authorized Representative,  
is authorized to execute the Application on the behalf of North Hartland, LLC,  
the Owner or Operator of the Generation Unit named in section 1.1 of the Application.

SIGNATURE:

DATE:

Concord Hydro Associates, Managing Member 01/29/07  
By: Essex Hydro Assoc., L.L.C., General Partner

Thomas A. Tarpey, Executive Vice President

State: Massachusetts

County: Suffolk

(TO BE COMPLETED BY NOTARY) I, Harry Wolf as a  
notary public, certify that I witnessed the signature of the above named Thomas A. Tarpey  
and that said person stated that he/she is authorized to execute this resolution, and the individual  
verified his/her identity to me, on this date: January 29, 2007

SIGNATURE:

DATE:

My commission expires on: \_\_\_\_\_

NOTARY SEAL:



HARRY WOLF  
Notary Public 50  
Commonwealth of Massachusetts  
My Commission Expires  
April 7, 2011



**Form B  
New/Existing Facility  
Request**

**RENEWABLE ENERGY RESOURCES ELIGIBILITY**

**Appendix C  
Existing Renewable Energy Resources  
Supplementary Information – Section III (3.3)**

**Submitted by North Hartland. LLC**

Project Description

Attached hereto as Appendix C-1 is a description of the North Hartland hydroelectric project and a technical fact sheet.

Ownership History

On November 24, 1981, the FERC issued a license to the Vermont Electric Cooperative, Inc. ("VEC") for the North Hartland hydroelectric project (the "Project"). On May 5, 1983, VEC transferred the license to the Vermont Electric Generation and Transmission Cooperative ("VEGT"). VEGT built the Project, which started commercial operation in 1985, and operated it until 1996 at which time VEGT filed a petition under Chapter 7 of the U.S. Bankruptcy code. As part of a bankruptcy filing by VEGT the Project ceased operation sometime in June 1996.

As part of the bankruptcy settlement, the U.S. Department of Agriculture's Rural Utilities Service, the bankrupt's principal creditor, was authorized to negotiate the transfer of Project ownership. On June 27, 2000 the FERC issued an Order approving the transfer of the FERC license to North Hartland LLC ("NHLLC") from VEGT. In 2000, the ownership of NHLLC was different from the present ownership of NHLLC. After significant delays in the bankruptcy proceeding and related regulatory proceedings, the former owners of NHLLC decided to sell their interest in NHLLC to Concord Hydro Associates ("CHA"), an experienced owner and operator of small hydroelectric projects. CHA acquired ownership of NHLLC in early 2005. Immediately after acquiring NHLLC ownership, CHA requested that the FERC grant it an extension of time in which to fulfill conditions necessary to purchase the Project and transfer the FERC

license from VEGT to NHLLC. In April 2005, NHLLC acquired ownership of the Project from the Rural Utility Service ("RUS") and completed the transfer of the FERC license from VEGT to NHLLC. Enclosed with this Request for Certification as a New Renewable Energy Resource in whole or in part are copies of: 1) the FERC Order dated June 27, 2000, which approved the transfer of the FERC license to NHLLC (Appendix C-2); 2) the FERC Order issued July 28, 2003, which describes the background of the Project (Appendix C-3); 3) the FERC order dated February 11, 2005, which granted the new owners of NHLLC, CHA, an extension of time in which to fulfill certain FERC requirements related to the purchase of the Project and the transfer of the FERC license (Appendix C-4); and 4) a letter dated April 12, 2005 from NHLLC to the FERC providing documentation that NHLLC had acquired ownership of the Project from the RUS and VEGT and met the conditions which FERC had imposed regarding the transfer of the FERC license from VEGT to NHLLC (Appendix C-5).

Please refer to REREF-A, Exhibit C, Section III (3.3), Appendix C (Attached to this submission are copies of the referenced Appendices.)

#### Historical Generation Baseline

The Rules and Regulations governing the Implementation of a Renewable Energy Standard specify the use of actual generation from the period 1995 through 1997 be used as the basis for determining the baseline generation for an existing renewable resource if the resource's Commercial Operation Date is on or before December 31, 1994. The table below shows the Project's generation history for the period January 1, 1995 to December 31, 1997 as compiled from either records of Central Vermont Public Service Corporation and information submitted by VEGT to the U.S. Department of Agriculture, the Project's lender at that time.

	1995	1996*	1997*
Annual Generation (MWh)	6,192	4,120	0

\*As explained in the attached information, the Project was shut down in June 1996 as a result of the VEGT bankruptcy proceeding. There was no generation in the second half of 1996 or in 1997.

Based on these data, the Project's Historical Generation Baseline ("HGB") is 3,437 MWh.

#### Calculation of Efficiency Improvement Resulting from Investment

Since NHLLC acquired the Project, it has completed several upgrades. These were 1) replacement of the turbine's automation and control system;

2) replacement of several components of the interconnection equipment (as required by Central Vermont Public Service Corporation, the utility to which the project is interconnected and which purchases the Project's electric output; 3) replacement of the turbine and generator cooling system; 4) modification of the penstock, and 5) and repair and/or replacement of several service systems made necessary by deterioration during the nine year shutdown of the facility.

The new control system utilizes an Allen Bradley Control Logix Programmable Logic Controller that consolidated various existing task specific control systems into a single unified system and included the installation of a new pond input sensor and a fiber optic cable to connect to remote inputs. This new control system and associated hardware significantly improved the efficiency of the Project by allowing remote monitoring and modification of the plant operating regime to take into account existing and prospective conditions and allowing more accurate positioning of blades and gates for maximum efficiency at all times.

NHLLC has now operated the Project for 15 months. This operating history, in particular the twelve months of 2006, can be used to confirm the efficiency improvements that have resulted from NHLLC's investments. The monthly operating results for 2006 are shown below.

Monthly Generation MWh	
January, 2006	2,184.203
February, 2006	1,579.480
March, 2006	1,280.492
April, 2006	1,851.753
May, 2006	1,789.245
June, 2006	2,151.296
July, 2006	1,761.760
August, 2006	675.036
September, 2006	384.385
October, 2006	1,696.159
November, 2006	2,403.708
December, 2006	1,771.032
<b>2006 Total:</b>	<b>19,528.553</b>

The total 2006 annual generation for the project was 19,528.553 MWh. Since river flow was unusually high during 2006, NHLLC also is submitting flow data that can be used to normalize the 2006 Project generation to determine the output in an average flow year. Attached, as Appendix C-6, is the USGS flow data from gauge 1151500 for the period 1942-2006. (Please note that flow data for 2005 are provisional with missing data added from NHLLC's own records. The data for 2006 are

also from NHLLC's own database of the gauging station data as the USGS data for 2006 are not yet available for download.) The average flow from 1942 to 2006 was 409.1 cfs whereas the 2006 average flow was 532.4 cfs. If the 2006 operating results for the Project are normalized to average flow, the normalized 2006 output is 15,005.865 MWh [calculated as  $19,528.553 \times (409.1/532.4)$ ].

Comparing the Historical Generation Baseline of 3,437 MWh annually to the new normalized expected output produces the conclusion that 77.1% of the Project's generation should be classified as a New Renewable Energy Resource under Section 3.22 (vi) of the Commission's Rules and Regulations Governing the Implementation of a Renewable Energy Standard.

#### An Alternative Comparison

NHLLC is aware that the Project's Historical Generation Baseline is negatively impacted by the cessation of Project operations that resulted from the bankruptcy of the previous owner. Thus, while it is not addressed by the applicable rules, NHLLC recognizes that the RIPUC could determine that the 1995-1997 period should not be used to determine the HGB.

NHLLC has identified two alternatives that could be used: 1) the generation history for the entire period of the Project's operation through 1996; or 2) the generation determined by an internally prepared NHLLC output study based upon the hydrological record.

The generation history for the entire period of the Project's operation through 1996 is shown below.

Annual Generation (MWh)	1987	9,898
	1988	10,111
	1989	11,237
	1990	14,241
	1991	9,816
	1992	10,256
	1993	6,140 *
	1994	9,196
	1995	6,192
	1996	4,120

\*It is believed the Project was shut down for part of the year due to an operating problem.

Based on these data, the Project's average annual output is 8,130 MWh; 45.8% of the Project's output would be considered New Renewable

Energy Resource and the remaining 54.2% classified as Existing Renewable Energy Resource.

The NHLLC staff also prepared an energy study based upon the Project's long-term hydrological record. This analysis concluded that the Project, as originally constructed, was capable of producing 11,333 MWh annually. Using this information, 24.5% of the Project's output would be considered New Renewable Energy Resource and the remaining 75.5% Existing Renewable Energy Resource.

NHLLC therefore respectfully requests that both the required and supplementary information included in this submission be taken into consideration when determining how much of the Project's annual output capability should be classified as a New Renewable Energy Resource.

Rules and Regulation Requirements to Qualify as a New Renewable Energy Resource (Section 3.22 (vi))

Section 3.22 (vi) states that New Renewable Energy Resources means:

*"for an Existing Renewable Energy Resource that is an Intermittent Resource, provided that such Existing Renewable Energy Resource using Eligible Renewable Energy Resources was certified by the Commission pursuant to Section 6 to have demonstrably completed capital investments after December 31, 1997 attributable to the efficiency improvements or additions of capacity that are sufficient or intended to, and have demonstrated on a normalized basis to increase annual electricity output in excess of ten percent (10%), the incremental production in any Compliance Year. Such percentage shall be equal to the percentage of production in each month. . . ."*

The Project's initial operating date under NHLLC ownership was September 26, 2005. The Project had been shut down for more than nine years and effectively had been abandoned by VEGT. After December 31, 1997 NHLLC incurred the cost to acquire the Project from the RUS (formerly VEGT) and to rehabilitate the Project in order to achieve commercial operation. All currently effective interconnection and power purchase arrangements and agreements with the U.S. Army Corps of Engineers were negotiated by NHLLC after December 31, 1997. The increase in output of the Project has been demonstrated to be more than 10% in comparison to the Historical Generation Baseline period 1995 to 1997, as well as for the entire period of operation (1984-1996) and the results of NHLLC's internally prepared output study based upon the

hydrological record. Accordingly, NHLLC believes that, if the Project is not entirely classified as a New Renewable Energy Resource, a percentage of production should qualify as New Generation. Following the Commission's Rules produces the conclusion that 77.1% of the Project should be classified as a New Renewable Energy Resource.

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### NORTH HARTLAND GENERATING STATION

The North Hartland Generating Station (North Hartland) is located at a U.S. Army Corps of Engineers' (COE) North Hartland Dam on the Ottauquechee River in Windsor County, Vermont. The COE operates the dam as one unit in a coordinated system of flood control structures in the Connecticut River Basin. The dam is a rolled earth and rockfill dam with a 24-ft top width at an elevation of 572 feet MSL.

The powerhouse is located approximately 470 feet downstream from the toe of the dam. The powerhouse structure is of reinforced concrete and does not have a superstructure. Metal hatch covers are provided on the powerhouse roof to facilitate mobile crane access for major maintenance of equipment. A service area is provided on the west side of the powerhouse.

The project utilizes an existing outlet conduit at the dam and consists of: (1) the existing outlet lined with a 12-foot diameter steel pipe; (2) a 470-foot-long extension of the existing outlet connecting to the penstock; (3) a powerhouse containing a generator system rated at 4000 kW (4444 KVA at 0.9 pf); (4) a 12-foot diameter gated bypass outlet works branching from the penstock upstream of the powerhouse; (5) a 4.16/12.5-kv switchyard; (6) a 12.5-kv transmission line connecting the switchyard and the distribution system of the Central Vermont Public Service Corporation; and (7) appurtenant works.

### TECHNICAL FACT SHEET

Location --- Ottauquechee River, North Hartland, Vermont

Constructed --- 1982-1984

Capacity --- 4000 kilowatts

Turbine Design --- Vertical Kaplan, tubular type with horizontal inlet and draft tube

Rated Flow --- 810 cubic feet per second

Minimum Flow for Generation --- 215 cubic feet per second

Net Head --- 66 feet

#### Major Equipment Suppliers:

Turbine and Governor --- Voest-Alpine International

Generator --- Ideal Electric

Transformers --- Westinghouse Electric

Penstock --- Buffalo Tank Division, Bethlehem Steel

Generation Control --- Scipar

91 FERC ¶ 62,227

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Vermont Electric Generation  
& Transmission Cooperative, Inc.  
North Hartland, L.L.C.

Project No. 2816-007

## ORDER APPROVING TRANSFER OF LICENSE

(Issued June 27, 2000)

On February 17, 2000, Vermont Electric Generation & Transmission Cooperative, Inc., licensee for the North Hartland Hydroelectric Project No. 2816, by and through Mr. Gleb Glinka, trustee of its bankruptcy estate (VEGT or transferor), filed a joint application with North Hartland, L.L.C. (North Hartland or transferee) for approval of a transfer of the project license to North Hartland. The project is located at the U.S. Army Corps of Engineers North Hartland Dam on the Ottauquechee River in Windsor County, Vermont. As described below, the application will be approved.<sup>1</sup>

The license for the project was issued to the Vermont Electric Cooperative, Inc. on November 24, 1981.<sup>2</sup> The license was transferred to VEGT on May 5, 1983.<sup>3</sup> The instant transfer is being sought in connection with the settlement in VEGT's bankruptcy proceeding, as described below.

Public notice of the transfer application was issued on February 17, 2000. The Town of Hartland, Vermont, asked to be included on the Commission's mailing list for the transfer proceeding. No protests or motions to intervene were filed.

In April of 1996, VEGT filed a petition under Chapter 7 of the Bankruptcy Code (11 U.S.C. §§ 101, *et seq.*) in the United States Bankruptcy Court for the District of

<sup>1</sup>In a related proceeding in Docket No. EG00-85-000, by letter order issued March 7, 2000, the transferee was found to be an exempt wholesale generator under section 32 of the Public Utility Holding Company Act of 1935. 90 FERC ¶ 62,164.

<sup>2</sup>17 FERC ¶ 62,307.

<sup>3</sup>23 FERC ¶ 61,174.

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JUN 27 2000

000629-0167-3

Vermont (Case No. 96-10335). Simultaneously, VEGT's trustees and officers resigned, and shortly thereafter, the court appointed VEGT's trustee in bankruptcy. The North Hartland Project ceased operations sometime in June 1996. On June 20, 1996, the Commission's New York Regional Office (NYRO) received notice that the licensee had filed for bankruptcy. On June 6, 1997, the bankruptcy court issued an order approving a stipulated settlement of claims (Exhibit B to the transfer application) under which the United States, acting through the U.S. Department of Agriculture's Rural Utilities Service, the bankruptcy estate's principal secured creditor, was authorized to negotiate the terms of a transfer of the project (pursuant to which the instant transfer was negotiated) and the trustee agreed to retain title to the project and cooperate in such transfer.

The NYRO inspected the project in August 1996 and August 1998, and the project was found to be in satisfactory condition. Recently, the project has been inspected by the original equipment manufacturer, engineers, and operators to identify and estimate the extent of repairs necessary to place the project back into operation. Barring latent defects, the transferee intends to resume project operation by six months following the conveyance to it of project properties. So that the restart can be coordinated with the NYRO, the transferee should file a plan and schedule for returning the project to operation.

Annual charges under the license have not been paid since the bankruptcy petition was filed. However, the transferee has offered to pay outstanding annual charges as a condition of the Commission's approval of the transfer application.<sup>4</sup>

The transferee is not a licensee of the Commission. Therefore, we have no compliance record to review. Nevertheless, the transferee is qualified to hold the license and to operate the property under the license. It has agreed to accept all the terms and conditions of the license, and to be bound by the license as if it were the original licensee.

The proposed transfer is consistent with the Commission's regulations and is in the public interest.

The Director orders:

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<sup>4</sup>Without relinquishing any remedies that may be available to the Commission, it is noted that the general rule is that a transferee assumes the unpaid annual charges liabilities of the transferor. *See, e.g.,* Niagara of Wisconsin Paper Corp., 54 FPC 2507 (1975).

(A) Transfer of the license for Project No. 2816, the North Hartland Hydroelectric Project, from Vermont Electric Generation & Transmission Cooperative, Inc., by and through Mr. Gleb Glinka, trustee of its bankruptcy estate, to North Hartland, L.L.C. is approved.

(B) As described in this order, North Hartland, L.L.C. shall pay all annual charges that accrue up to the effective date of the transfer.<sup>5</sup>

(C) Approval of the transfer is contingent upon: (1) transfer of title of the properties under license and delivery of all license instruments to North Hartland, L.L.C., which shall be subject to the terms and conditions of the license as though it were the original licensee; and (2) North Hartland, L.L.C. acknowledging acceptance of this order and its terms and conditions by signing and returning the attached acceptance sheet. Within 60 days from the date of this order, North Hartland, L.L.C. shall submit certified copies of all instruments of conveyance and the signed acceptance sheet.

(D) North Hartland, L.L.C. shall file, within 60 days from the date of this order, a plan and schedule for returning the project to operation.

(E) 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 CFR 385.713.



Daniel M. Adamson  
Director  
Office of Energy Projects

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<sup>5</sup>Annual charges for Fiscal Years 1997, 1998, and 1999 amount to \$52,957.27. The Commission will soon issue the annual charge bills for Fiscal Year 2000.

Project No. 2816-007

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, North Hartland, L.L.C., this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, has caused its name to be signed hereto by \_\_\_\_\_, its \_\_\_\_\_, and its seal to be affixed hereto and attested by \_\_\_\_\_, its Secretary, pursuant to a resolution of its \_\_\_\_\_, duly adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a certified copy of the record of which is attached hereto.

By \_\_\_\_\_

Attest:

\_\_\_\_\_  
Secretary  
(Executed in quadruplicate)

104 FERC ¶ 61,151  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Vermont Electric Generation &  
Transmission Cooperative, Inc.,  
and North Hartland, LLC

Project No. 2816-020

ORDER AMENDING LICENSE

(Issued July 28, 2003)

1. This order grants an application by the licensee and pending transferee of the North Hartland Hydroelectric Project No. 2816 to amend the project license to add a seven-mile long primary transmission line.<sup>1</sup>

**BACKGROUND**

2. In 1981 the Commission issued to Vermont Electric Cooperative, Inc. (VEC) a 40-year license for the construction and operation of the 4-megawatt (MW) North Hartland Project, located at the U.S. Army Corps of Engineers' (Corps) North Hartland Dam on the Ottauquechee River in Windsor County, Vermont.<sup>2</sup> In 1983, the Commission approved transfer of the project license from VEC to Vermont Electric Generation & Transmission Cooperative, Inc. (VEGT).<sup>3</sup>

3. The project comprises an outlet conduit at the federal dam, a 470-foot-long penstock leading from the outlet to the project powerhouse, a 400-foot-long tailrace, and appurtenant facilities. As licensed, the project also included a proposed 1/4-mile long, 12.5-kilovolt (kV) transmission line extending south from the project's switchyard and

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<sup>1</sup>In a related filing in Docket No. EL03-51, filed January 15, 2003, the applicants have requested a declaratory order finding that certain tariff and interconnection charges do not apply to the proposed transmission line. That request will be decided in a separate order.

<sup>2</sup>17 FERC ¶ 62,307 (1981).

<sup>3</sup>23 FERC ¶ 61,174 (1983).

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connecting to the distribution system of Green Mountain Power Corporation.<sup>4</sup> However, before constructing the line, VEGT revised the location and configuration of the line to interconnect with the distribution system of Central Vermont Public Service Corporation (Central Vermont).<sup>5</sup> VEGT buried the first 600 or so feet of line from the powerhouse, then constructed a 4,000-foot above-ground line to pole 115 of Central Vermont Distribution Line 66. Pursuant to a 1984 agreement with VEGT,<sup>6</sup> Central Vermont reconstructed a six-mile segment of Line 66 to transmit the project's power from pole 115 to Central Vermont's Quechee substation, and reconstructed the substation to accommodate the new three-phase circuit.<sup>7</sup> Under the agreement, VEGT reimbursed Central Vermont for this work, and Central Vermont retained title to, operated, and maintained the six-mile segment of Line 66.

4. In 1988, VEGT filed the project as-built exhibits,<sup>8</sup> including drawings that showed a portion of the VEGT-constructed 4,000-foot line, with notations indicating the line's eventual connection to Central Vermont's Line 66 and its termination point at the Quechee substation.<sup>9</sup>

5. In 1996, VEGT ceased project operations and filed for bankruptcy under Chapter 7 of the Bankruptcy Code. In 2000, pursuant to a stipulated settlement of claims approved by the bankruptcy court, the U.S. Department of Agriculture's Rural Utilities

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<sup>4</sup>17 FERC ¶ 62,307 at 63,528.

<sup>5</sup>VEGT made these changes because it determined that reconstructing Green Mountain Power's system for the project's transmission line would cost more than reconstructing Central Vermont's line, and using Central Vermont's transmission system would reach more of VEGT's service area. See the October 12, 1983 letter from VEGT to the Corps, included in Exhibit B of the December 20, 2002 amendment application.

<sup>6</sup>The agreement, dated March 22, 1984, is included in Exhibit D of the December 20, 2002 amendment application.

<sup>7</sup>This included the installation of new circuit breakers and meters for measuring the project's output.

<sup>8</sup>These were required by Article 35 of the license, 17 FERC ¶ 62,307 at 63,529.

<sup>9</sup>See Figure F 1-1, Site Plan & General Arrangement, attached to VEGT's transmittal letter, dated March 24, 1988, and received by the Commission's New York Regional Office on April 4, 1988 (April 1988 filing).

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Service, VEGT's primary secured creditor, negotiated the sale of the project to North Hartland, LLC (North Hartland). The sale of the project and the transfer of the project's license were approved by the Commission that same year.<sup>10</sup> Consummation of the project sale has been delayed for a variety of reasons, including the instant amendment proceeding.

6. On December 20, 2002, VEGT and North Hartland (Applicants) filed an application to amend the license to "correct[] errors and omissions" in the 1988 as-built drawings approved by the Commission.<sup>11</sup> Specifically, Applicants want an amendment "clarifying" that the entire 7-mile length of transmission line extending from the project powerhouse to the Quechee Substation is a primary transmission line for licensing purposes and has in fact been approved as part of the license. They also request a Commission determination that, if six miles of this line are in fact owned by Central Vermont, then VEGT violated its license, notably Article 5, for failing to acquire and hold rights sufficient to operate and maintain this project work.

7. The Commission issued public notice of Applicants' amendment application on January 16, 2003, setting February 18, 2003, as the deadline for filing motions to intervene, comments, and protests. On February 19, 2003, the Vermont Department of Public Service (Vermont DPS) and Central Vermont each filed late motions to intervene, which were granted over applicants' opposition by unpublished notice issued March 14, 2003.<sup>12</sup> Vermont DPS took no position on the application. Central Vermont opposes the

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<sup>10</sup>91 FERC ¶ 62,227 (2000). Approval of the transfer is subject to North Hartland filing a form accepting the findings in the transfer order and filing copies of conveyance documents showing the transfer of title of the properties under the license and delivery of all license instruments to the transferee. North Hartland has accepted the transfer order, but it has requested and received a series of extensions of the deadline to complete the transfer. Pursuant to an unpublished order issued March 24, 2003, the deadline is currently September 26, 2003.

<sup>11</sup>December 20, 2002 filing at 2.

<sup>12</sup>Applicants (amendment application at 12) and separately North Hartland (motion filed May 7, 2003) request summary disposition of this proceeding, invoking Rules 217, 710, and 801 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.217, 385.710, and 385.801 (2003). Rule 710 applies only in proceedings before an administrative law judge. Rule 801 requires the parties to waive their right to a hearing, which, as described next, Central Vermont does not. Rule 217 requires the

(continued...)



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application and argues that the six-mile segment of the proposed transmission line between pole 115 and the Quechee substation is part of its distribution system, and should not be included in the license. The Department of the Interior filed a letter on February 19, 2003, stating that it had no comments on the amendment application.

## DISCUSSION

### A. The three-phase circuit on Line 66 is a part of the project's primary transmission line under FPA Part I

8. Section 4(e) of the FPA, 16 U.S.C. §797(e), authorizes the Commission to "issue licenses . . . for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines, or other project works necessary or convenient for the development, transportation, and utilization of power . . ." Project works are the physical structures of a project.<sup>13</sup> FPA Section 3(11) defines a "project" as a complete unit of hydropower development, including:

the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system[. <sup>14</sup>]

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<sup>12</sup>(...continued)

decisional authority's determination that there are no genuine issues of fact material to the decision. In its February 19, 2003 motion to intervene and its May 22, 2003 reply to Applicants' May 7 motion, Central Vermont agrees that the Commission may properly dispose of Applicants' amendment application summarily, so long as it denies the application; otherwise, Central Vermont asks the Commission to set the matter for a trial-type evidentiary hearing. Because we conclude that there are no genuine issues of material fact that cannot be appropriately decided on the written record, we deny Central Vermont's motion. Applicants' motions for summary disposition, as well as North Hartlands's June 17, 2003 motion for fast-track processing and a status report, are mooted by this order.

<sup>13</sup>FPA Section 3(12), 16 U.S.C. § 796(12).

<sup>14</sup>FPA Section 3(11), 16 U.S.C. § 796(11). This provision states in its entirety:

"[P]roject" means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant

(continued...)

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The Commission's test for a primary line is that the line is used solely to transmit power from the licensed project to a load center, and that without the line there would be no way to transmit all the project power to market.<sup>15</sup> Under this test, the line leading from a project ceases to be a primary line at the point it is no longer used solely to transmit power from the project to the interconnected grid.

9. As noted, pursuant to its 1984 agreement with VEGT to transmit project power to the Quechee substation, Central Vermont reconstructed a six-mile segment of its Distribution Line 66. Specifically, it installed new, taller wooden poles, to which it attached its pre-existing single-phase electrical distribution circuit (serving retail customers) and a physically separate three-phase circuit to transmit the project's power.

10. Central Vermont contends that because the six-mile segment of Line 66 carries both the project-dedicated three-phase circuit and the single-phase distribution circuit, and because the three-phase circuit could one day serve both the project and a distribution function, the segment should be considered a distribution line, leaving as the project's primary line only the section between the powerhouse and pole 115 on Line 66.

11. That the three-phase circuit may at some point be used for distribution does not affect its current status. Moreover, Central Vermont allows that the Commission could consider the project-dedicated three-phase circuit as by itself constituting a primary transmission line,<sup>16</sup> although it argues that this would be unprecedented and would require a determination of what part of the shared poles and rights-of-way the licensee would have to obtain adequate property rights for, and how the licensee and Central

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<sup>14</sup>(...continued)

works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water-rights, rights-of-way, ditches, dams, reservoirs, lands or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit[.]

<sup>15</sup>See, e.g., New York Power Authority, 98 FERC ¶ 61,033( 2002); Pacific Gas and Electric Co., 85 FERC ¶ 61,411 (1998).

<sup>16</sup>February 19, 2003 protest at 21.

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Power would divide maintenance and other responsibilities of these shared items. We do not find such an allocation overly complex. The licensee does not need to hold fee title in the transmission facilities in question; it is sufficient that it hold a lease or easement giving it the right to use the relevant facilities for project purposes during the term of the license, with an option to renew the lease for any new license that is issued for the project. This has for years been an approved approach to allow licensees to use various project facilities without having to acquire them outright.<sup>17</sup>

12. Taking a different tack, Central Vermont argues that Line 66 is not a primary line, in that the licensee has never had problems getting project power to the grid, and because under FERC Order No. 888 Central Vermont is in any event required to provide open-access, non-discriminatory service under FERC-filed rate tariffs.<sup>18</sup> However, the determination of whether a transmission line is primary for FPA Part I purposes rests on physical feasibility, not contractual or economic feasibility. While Central Vermont's reasoning may have merit, it is for the Congress, not this Commission, to revise or remove the "primary transmission line" element of the statutory definition of a project under FPA Part I.<sup>19</sup>

13. Central Vermont next asserts that the Commission has impliedly found the six-mile segment of Line 66 not to constitute a primary line, inasmuch as it has never

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<sup>17</sup>See, e.g., *New York State Electric & Gas Corp.*, 16 FERC ¶ 61,176 (1981) and *Pennsylvania Hydroelectric Development Corp.*, 44 FERC ¶ 61,252 at 61,926-27 (1988) (lease to use state-owned dam for project purposes); *Allegheny Hydro No. 8, L.P.*, 53 FERC ¶ 61,446 (1990) (lease of entire project); *International Paper Company and Turners Falls Hydro LLC*, 100 FERC ¶ 61,114 (2002) (boundary line around project generating equipment includes "the walls of adjacent buildings and rooms necessary for structural support and for access to the licensed equipment and facilities for all operation and maintenance purposes:" licensee and buildings' owner "executed an agreement in which they exchanged cross-easements for such things as structural support and wiring and utilities").

<sup>18</sup>February 19, 2003 protest at 4, 17.

<sup>19</sup>The Commission does not have the discretion to waive the licensing of jurisdictional project works. See, e.g., *New York State Electric & Gas Corp.*, *supra*, 16 FERC ¶ 61,176 at 61,393-95 (Commission declined to exclude state-owned dam from the license despite its unexplained failure to include New York State-owned facilities in earlier licenses).

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previously required it to be licensed.<sup>20</sup> To the extent Central Vermont is suggesting that the Commission is somehow estopped by parties' reliance on the line's non-licensed history from now finding the line to be a project work, we do not find that this is a situation where estoppel lies against the government.<sup>21</sup> Indeed, every year the Commission makes findings as to whether it has mandatory licensing jurisdiction over various unlicensed operating hydroelectric projects, some of which it has never examined and even a few it or its predecessor, the Federal Power Commission, had previously found non-jurisdictional.

14. In sum, we hold that the primary transmission line of the North Hartland Project comprises the 600 feet of buried line, the 4,000-foot above-ground line to pole 115, and the approximately six-mile length of the three-phase circuit attached to Vermont Electric's Line 66 from pole 115 to its Quechee Substation.<sup>22</sup>

**B. The entire seven-mile primary line is not currently licensed**

15. As noted, Applicants seek an amendment "clarifying" that the entire above-described 7-mile primary transmission line has in fact been approved as part of the license. However, the 1988 as-built exhibit on which they rely does not support their position. The exhibit's project boundary map (Fig. G2-1) is unambiguous<sup>23</sup> and does not

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<sup>20</sup>Central Vermont also argues that neither it nor VEGT ever intended the segment to be a primary line. However, the determination of a primary line is one of function, not intent.

<sup>21</sup>See discussion of estoppel against the government in UAH-Braendly Hydro Associates, 47 FERC ¶ 61,448 (1989).

<sup>22</sup>Applicants' amendment application attaches, at Appendix C, a December 28, 2001 "Interim Order Re: Interconnection Issues," issued by a hearing officer of the Vermont Public Service Board) finding, *inter alia*, that the point of interconnection between the North Hartland Project and Central Vermont's distribution system is the Quechee Substation. In its February 19, 2003 protest (at 35), Central Vermont moves to strike the interim order, noting that the Board later issued an order finding that the interim order has no precedential value. We see no need to strike Appendix C; we have made our determination based on the facts described herein and pursuant to FPA standards.

<sup>23</sup>Applicants' reliance on the 1988 Exhibit F1-1, Site Plan & General

(continued...)

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include any part of Line 66, or apparently even the entire 4,000-foot line connecting to it,<sup>24</sup> within the project boundary line.<sup>25</sup> In approving the as-built exhibits, the May 10, 1988 order stated that "the constructed project works do not differ significantly from the design approved in the license."<sup>26</sup> This is a reasonable statement in light of the 1988 boundary map; it would not be an accurate description of the addition of six miles of transmission line. We conclude that the license does not currently include the six miles of three-phase circuit line attached to the poles carrying Line 66 from pole to Quechee Substation.

16. Applicants' amendment application includes a series of revised or new Exhibit F drawings, including a revised project boundary map. We are approving their submittals and are amending the license to so reflect.

17. Standard license Article 5 requires licensees to acquire and retain title in fee to, or the right to use in perpetuity, project property sufficient to accomplish all project purposes.<sup>27</sup> As noted, Applicants ask that, if Central Vermont owns the six miles of

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<sup>23</sup>(...continued)

Arrangement, does not help them, because it is not the purpose of that exhibit to show the project boundary.

<sup>24</sup>Exhibit F1-1 (Site Plan & General Arrangement) shows a 12.5-kV power cable extending to Pole PHH 3P-1, from which point the line's continuation is identified as "new transmission line to Central Vermont Public Service." Pole PHH 3P-1 is shown as located a short distance uphill from contour elevation line 525; however, on the project boundary map elevation line 525 is well outside the boundary on that side of the project. Pole PHH 3P-1 is presumably the same as Pole OHH 3-1, identified in Applicants' amendment application, Exhibit A.4 (Primary Line & Point of Junction), as the point at which the buried 12.5 kV three-phase circuit emerges and continues above-ground.

<sup>25</sup>See VEGT's April 1988 filing at Figure G 2-1, Project Boundary Map.

<sup>26</sup>43 FERC ¶ 62,158 at 63,239 (1988).

<sup>27</sup>Standard Article 5 states in part:

The Licensee, within five years from date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance and operation of  
(continued...)

Project No. 2816-020

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project primary line on Line 66 – which it does – the Commission find that VEGT violated Article 5 of its license for failing to acquire<sup>28</sup> requisite rights to these six miles of primary line. Applicants reference the license transfer application form, 18 C.F.R. § 131.20 item (8), which provides for the transferor to certify that it "has fully complied with the terms and conditions of its license . . . ."<sup>29</sup> It is not clear to what end Applicants seek a finding that VEGT violated license Article 5. However, what is clear is that there is no point in trying to enforce any regulatory requirements on VEGT; its project assets are held by the trustee of its bankruptcy estate, and the estate's ownership of the project is encumbered with the security interest of the Rural Utilities Service. The order approving transfer of the North Hartland Project license is contingent on transfer of title of the properties "under license."<sup>30</sup> In order not to complicate completion of the transfer, the amendment adding the currently unlicensed portions of the primary line will be made effective as of the effective date of the license transfer.<sup>31</sup> Once the license transfer is

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<sup>27</sup>(...continued)

the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, . . . and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission . . . .

See Form L-2, 54 FPC 1808, 1810 (1975), incorporated by reference in the North Hartland Project license, 17 FERC ¶ 62,307 at 63,529 ordering para. D.

<sup>28</sup>We agree with Central Vermont (February 19, 2003 protest at 8-9, 28) that there is no basis for asserting that VEGT "ceded" these rights.

<sup>29</sup>Amendment application at 9. Applicants also reference standard Article 6 of the license (see Form L-2, n. 27, supra) in connection with a transferor's obligation to comply with its license. Article 6, which requires a licensee to "make good any defect of title to" project property, deals with a project at the end of its license term in the event the United States takes over the project pursuant to FPA Section 14 or the license is transferred to a new licensee under FPA Section 15, neither of which is the case in the instant proceeding.

<sup>30</sup>91 FERC ¶ 62,227 at 64,380, ordering para. C(1).

<sup>31</sup>The Commission will issue notice of that effective date.

Project No. 2816-020

- 10 -

effective,<sup>32</sup> it will be up to the transferee/new licensee, North Hartland, to obtain the requisite rights to the entire primary line.

Finally, Central Vermont argues that Applicants' application to "clarify" the inclusion in the license of the entire primary line is "fatally flawed," inasmuch as neither VEGT nor North Hartland owns the six miles of circuitry at issue, and the Commission cannot appropriate private property by placing it under license.<sup>33</sup> Clearly, the inclusion of lands or facilities within a project boundary neither creates nor alters property rights.<sup>34</sup> Rather, as Central Vermont points out, the licensee must obtain such property or adequate rights therein through private contracts, or, failing that, the exercise of eminent domain authority under Section 21 of the FPA.<sup>35</sup>

The Commission orders:

(A) The application filed December 20, 2002, by Vermont Electric Generation & Transmission Cooperative, Inc., by and through Mr. Gleb Glinka, trustee in bankruptcy, and North Hartland, LLC is approved as described in this order, effective on the date the license transfer is effective, and is denied in all other respects.

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<sup>32</sup>As stated (n. 10, *supra*), North Hartland has obtained a series of extensions of the deadline to file copies of conveyance documents showing the transfer to it of title to the properties under the license and delivery of all license instruments. The deadline is currently September 26, 2003. We note that any further requests to extend the deadline will be carefully reviewed to determine whether there remain legal impediments to transfer of property title, or whether North Hartland seeks further extensions while it pursues modification or reversal of conditions applicable to authorizations to obtain the project property or of contractual issues involving transmission and sale of project power. It is not in the public interest for the North Hartland Project to remain in its current limbo.

<sup>33</sup>February 19, 2003 protest at 28.

<sup>34</sup>*See, e.g.,* Niagara Mohawk Power Corp., 77 FERC ¶ 61,306 at 62,391 (1996).

<sup>35</sup>Alternatively, Central Vermont could apply for a transmission-line-only license for the six-mile segment of three-circuit line (*see* 18 C.F.R. § 4.70) or could apply to become co-licensee of the North Hartland Project.

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(B) Central Vermont Public Service Corporation's motion to hold amendment proceeding in abeyance pending completion of Alternative Dispute Resolution proceedings is denied.

(C) Central Vermont Public Service Corporation's request for an evidentiary, trial-type hearing is denied.

(D) Central Vermont Public Service Corporation's motion to strike Exhibit C of the December 20, 2002 amendment application is denied.

(E) The parties' motions for summary disposition and for fast-track processing are dismissed as moot.

(F) Ordering paragraph (B)(2), item (7), of the license for the North Hartland Project license, 17 FERC ¶ 62,307 at 63,528 (1981), is amended to read as follows:

(7) a transmission line that comprises: (a) an approximately 600-foot underground segment of 12.5-kV, three-phase line from the project's substation to the riser pole owned by the New England Telephone Company(NET); (b) approximately 4,000 feet of 12.5-kV, three-phase line in NET's existing right-of-way from the riser pole to a junction with Central Vermont Public Service Corporation's (Central Vermont) utility system at Pole # 115 on Clay Hill Road; and (c) approximately six miles of 12.5-kV, three-phase line mounted on top of Central Vermont's distribution line (Line 66) along Clay Hill Road to Central Vermont's Quechee Substation;

(G) The following exhibits filed on December 20, 2002, are approved and made part of the license:

Approved Exhibit	Title	FERC Drawing No.	Superseded Drawing No.
A5 -1	Single Line Diagram	2816-21	2816-11
F1 -1	Site Plan and General Arrangement	2816-22	2816-12
G1 -1	Project Location Map	2816-23	2816-18 & 19



Project No. 2816-020

- 12 -

G2 -1	Project Boundary Map	2816-24	2816-20
G2 -2	Project Boundary Map	2816-25	--

Superseded Drawings are eliminated from the license.

(H) Within 90 days of the date of issuance of this order, the licensee shall file three original sets of aperture cards of the approved drawing reproduced on silver or gelatin 35 mm microfilm. All microfilm should be mounted on Type D (3¼" x 7") aperture cards. Prior to microfilming, the FERC Drawing Number (2816-21 through 25) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed in the upper right corner of each aperture card. Additionally, the Project Number, FERC exhibit (A5-1, G1 through G2), Drawing Title, and date of this order shall be typed in the upper left corner of each aperture card. Two sets of aperture cards shall be filed with the Secretary of the Commission. The third set of aperture cards shall be filed with the Commission's New York Regional Office.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

UNITED STATES OF AMERICA 110 FERC ¶61,130  
FEDERAL ENERGY REGULATORY COMMISSION

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

Vermont Electric Generation  
& Transmission Cooperative, Inc.

North Hartland, LLC

Project No. 2816-032

ORDER GRANTING STAY

(Issued February 11, 2005)

1. North Hartland, LLC has filed a request for rehearing of the Commission's November 22, 2004, Order<sup>1</sup> denying a tenth extension of time to North Hartland to comply with the conditions applicable to the transfer to it of the license for the North Hartland Hydroelectric Project No. 2816, rescinding a prior order approving transfer of the license, and dismissing the underlying transfer application. The project is located on the Ottauquechee River, in Windsor County, Vermont. Concord Hydro Associates, L.L.C., which purchased North Hartland subsequent to the filing of the request for rehearing has filed a motion for reconsideration and for other relief. As discussed below, we are staying our previous order, in order to give Concord the chance to complete the transfer, which would be in the public interest.

**Background**

2. As discussed in detail in the November 22 Order, on June 27, 2000, Commission staff issued an order approving the transfer of the project license to North Hartland from the bankrupt licensee, Vermont Electric Generation & Transmission Cooperative, Inc. (VEGT).<sup>2</sup> Ordering paragraph (C) included a standard provision, stating that the transfer was contingent on transfer of the property under license, and that North Hartland accept the conditions of the transfer, and file with the Commission within 60 days (by August 28, 2000) certified copies of instruments of conveyance to it of project property.

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<sup>1</sup> 109 FERC ¶ 61,194.

<sup>2</sup> *Id.*

3. Between August 25, 2000, and June 21, 2004, North Hartland requested nine extensions of time to comply with the deadline for filing the conveyance documents, based on its inability to obtain state approvals and to conclude the transfer transaction. Each of the requests was granted.<sup>3</sup>

4. On March 12, 2004, the Commission issued an order accepting as summarily modified an unexecuted interconnection agreement filed by Central Vermont Public Service Corporation, between itself and North Hartland. The Commission also summarily modified provisions of Central Vermont's open access transmission tariff relating to the use of certain interconnection facilities.

5. On September 21, 2004, North Hartland filed a request for a tenth extension, for a time period not to exceed 12 months, until the following events occurred: (1) Vermont approved the interconnection agreement, (2) the transferor obtained authority to legally transfer the project, and (3) the transferor removed encumbrances to the title "or as otherwise agreed." North Hartland asserted that various matters beyond its control prevent completion of the transfer, including the federal government's lack of title to the project, the seller's refusal to seek authority from the bankruptcy court to transfer the project, and the lack of Vermont regulatory approval of the unexecuted interconnection agreement.

6. The request for extension was opposed by Central Vermont and Vermont Department of Public Service (Vermont DPS), both of which stated that it was North Hartland's responsibility, and not Central Vermont's, to obtain state approval of the interconnection agreement. Vermont DPS, Central Vermont, and another commenter, Essex Power Services, Inc., also raised the issue of North Hartland's status as a legal entity.<sup>4</sup> In addition, the U.S. Department of Agriculture's Rural Utilities Service (RUS), the transferor's major creditor, filed comments questioning various statements by North Hartland, including its assertion that it has financing commitments to acquire the project, and concluding North Hartland's alleged inability to close was primarily due to circumstances within its control.

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<sup>3</sup> *Id.* at P 6-19.

<sup>4</sup> Essex appended to its filing a November 1, 2002, letter to North Hartland from Mark Connolly (Deputy New Hampshire Secretary of State), stating that North Hartland, LLC, had been dissolved, as of that date, for the failure to file required reports and pay fees.

7. On November 22, 2004, the Commission issued an order denying the tenth request for extension, rescinding the 2000 transfer order, and dismissing the transfer application. We stated that while we strongly support the continued development and utilization of energy resources, and believe in making every reasonable effort to provide project proponents with the time to complete necessary business and regulatory transactions, in this case there appeared to be no reasonable prospect that the sales transaction will ever be completed. We concluded based on the record that there were significant, possibly insurmountable, disagreements among the parties to the sale, and between North Hartland and the Vermont regulators. Thus, we held that it was not in the public interest to allow the proceeding to go on indefinitely.<sup>5</sup>

8. On December 22, 2004, North Hartland filed a timely request for rehearing.

9. On January 19, 2005, Concord Hydro Associates, L.L.C. filed a motion for reconsideration and to reopen the record or, in the alternative, motion to lodge. Concord states that it is a reputable owner and operator of eight hydroelectric projects, and that it has purchased North Hartland. In consequence, Concord asserts that there are no longer impediments to the completion of the asset sale and license transfer.

### Discussion

10. Concord's filing presents a possible resolution of this long-running proceeding. If indeed Concord has acquired North Hartland and is willing and able to complete the purchase of the project assets, the end result could be the resumption of generation at the North Hartland Project (which has not operated since 1986) and the delivery into the grid of power from the project, an outcome that would be in the public interest.

11. However, we cannot simply reverse our prior order. In the November 22 Order, without laying blame on any party, we concluded that there appeared to be significant, possibly insurmountable, obstacles to conclusion of the sales transaction, based upon disputes between North Hartland and the sellers; and that North Hartland had encountered great difficulties in obtaining Vermont state approval of an interconnection agreement between itself and Central Vermont, which, although not a predicate to completing the transfer, certainly affects the financial viability of the deal.

12. We currently have before us only Concord's representations that it can resolve the ongoing problems. For us to grant rehearing or otherwise reverse our prior order, we will need more concrete proof that matters are moving toward a positive resolution.

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<sup>5</sup> *Id.* at P 29.

At the same time, we do not want to present any roadblock to the completion of the transfer. We will therefore stay the November 22 Order, such that Concord may take whatever steps are necessary to complete the transfer. We are also directing our staff to seek from Concord additional information, including the composition of North Hartland's new ownership, Concord's schedule for completing the transfer, the reactions of affected parties such as RUS, Central Vermont and Vermont DPS, and any other matters staff deems relevant. Staff is to report back to us, informally, within 60 days, so that we can determine how to proceed.

The Commission orders:

The Commission's November 22, 2004, Order denying request for extension, rescinding transfer order, and dismissing transfer application is stayed pending further order of the Commission.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.


**NORTH HARTLAND, LLC**

 c/o ESSEX HYDRO ASSOCIATES, LLC  
 55 UNION STREET, 4TH FLOOR  
 BOSTON, MASSACHUSETTS 02108 USA

TELEPHONE:

+617-367-0032

FAX:

+617-367-3796

E-MAIL:

nhllc@essexhydro.com

April 12, 2005

The Honorable Magalie R. Salas  
 Secretary  
 Federal Energy Regulatory Commission  
 888 First Street, N.E.  
 Room 1-A  
 Washington, DC 20426

Re: North Hartland, LLC, Project No. 2816

Dear Ms. Salas,

North Hartland, LLC ("NHL") is very pleased to report that a closing occurred on Tuesday, April 5, 2005 at which NHL acquired ownership of the North Hartland project works ("the NHL project") as authorized by the Order issued June 27, 2000 in the above-referenced proceeding<sup>1</sup> and consistent with the Commission's February 11, 2005 Order Granting Stay.<sup>2</sup> Prior to and at the closing NHL made payments to satisfy all parties to the bankruptcy settlement agreement dated June 6, 1997. In compliance with the Commission's regulations, the following closing documents are attached as evidence of conveyance. Because recordation of these documents was not necessary, a certification is included in compliance with the Commission's regulations.

- 1) Executed bill of sale and quit claim deed from the bankruptcy trustee to NHL (NH);
- 2) Release of lien from the RUS;
- 3) Executed release in connection with payment of taxes to the Town of Hartland; and
- 4) Executed release in connection with payment of past due electrical bills.

In addition, on March 30, 2005, NHL paid all outstanding amounts owed to the FERC for past-due annual charges. A copy of the certificate to do business in Vermont is attached.

NHL now has commenced work to repair and reactivate the North Hartland project. Project operations are expected to occur within the next 3-4 months. In addition, NHL has commenced negotiations with Central Vermont Public Service Corporation to lease or acquire ownership of that portion of the transmission line not owned by NHL which connects the North

<sup>1</sup> *Vermont Electric Generation & Transmission Cooperative, Inc. and North Hartland, LLC*, 91 FERC ¶ 62,227 (2000).

<sup>2</sup> *Vermont Electric Generation & Transmission Cooperative, Inc. and North Hartland, LLC*, 110 FERC ¶ 61,130 (2005).

Hartland project to the CVPS substation in Queeche, Vermont. NHL will make a further submission to the FERC on or about the date the project will commence operations.


NHL(NH) respectfully requests the FERC to take such action as is necessary related the FERC Order issued February 11, 2005 which granted a stay to NHL in connection with the transfer of the license for Project No. 2816.

If there are any further questions please contact either Richard Norman (617-367-0032) ([ran@essexhydro.com](mailto:ran@essexhydro.com)) or Ms. Elizabeth Whittle (202-585-8338) ([ewhittle@nixonpeabody.com](mailto:ewhittle@nixonpeabody.com)).

Respectfully submitted,

Concord Hydro Associates  
Managing Member

By: Essex Hydro Associates L.L.C.  
General Partner

By:   
Richard A. Norman  
President

cc: E. Whittle  
Mr. William Guey-Lee  
Chief, Engineering and Jurisdiction Branch  
Division of Hydropower Administration and Compliance

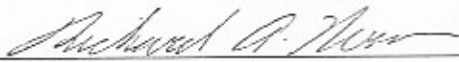
North Hartland, LLC )

Project No. 2816

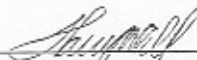
CERTIFICATION

I hereby certify that the following documents were executed and are now effective, evidencing ownership of the assets by North Hartland, LLC:

1. Executed bill of sale and quit claim deed from the bankruptcy trustee to NHL
2. Release of lien from the RUS;
3. Executed release in connection with payment of taxes to the Town of Hartland;  
and
4. Executed release in connection with payment of past due electrical bills.

  
Richard A. Norman

Sworn and Subscribed before me  
this 12<sup>th</sup> day of April, 2005

  
Notary Public



HARRY WOLF  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
April 7, 2011





```

#
# US Geological Survey, Water Resources Data
# retrieved: 2006-12-21 14:32:26 EST
#
# This file contains USGS Surface-Water Annual Statistics

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#                               Year   Mean Flow
#Note: The statistics generated from this site are based on approved d
#The user is responsible for assessment and use of statistics from this
#For more details on why the statistics may not match, visit http://wate
#
#** No Incomplete Data is used for Statistics Calculation
#
# This file includes the following columns:
#
#
# agency_cd  agency code
# site_no   USGS site number
#parameter_cd
#dd_nu
# year_nu   Calendar year for value
# mean_va   annual-mean value.
#           if there is not complete record
#           for a year this field is blank
#
#
# Sites in this file include:
# USGS 01151500 OTTAUQUECHEE RIVER AT NORTH HARTLANC
#
# Explanation of Parameter Code and dd_nu used in the Statistics Dat:
# parameter Parameter Name
# 00060      Discharge, cubic feet ;      1
#
#
#

```

agency_cd	site_no	parameter	dd_nu	year_nu	mean_va	
5s	15s	5s	3n	4s	12n	
USGS	1151500	60		1	1951	476.20
USGS	1151500	60		1	1952	455.00
USGS	1151500	60		1	1953	440.70
USGS	1151500	60		1	1954	491.50
USGS	1151500	60		1	1955	414.30
USGS	1151500	60		1	1956	417.40
USGS	1151500	60		1	1957	285.00
USGS	1151500	60		1	1958	389.00
USGS	1151500	60		1	1959	433.00
USGS	1151500	60		1	1960	434.20
USGS	1151500	60		1	1961	287.20
USGS	1151500	60		1	1962	347.60
USGS	1151500	60		1	1963	283.90
USGS	1151500	60		1	1964	259.10
USGS	1151500	60		1	1965	215.80
USGS	1151500	60		1	1966	318.20
USGS	1151500	60		1	1967	322.80
USGS	1151500	60		1	1968	328.20
USGS	1151500	60		1	1969	470.80
USGS	1151500	60		1	1970	355.50

```

#
# US Geological Survey, Water Resources Data
# retrieved: 2006-12-21 14:32:26 EST
#
# This file contains USGS Surface-Water Annual Statistics

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#
# Year Mean Flow
#Note: The statistics generated from this site are based on approved d
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#** No Incomplete Data is used for Statistics Calculation
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# This file includes the following columns:
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# agency_cd agency code
# site_no USGS site number
#parameter_cd
#dd_nu
# year_nu Calendar year for value
# mean_va annual-mean value.
# if there is not complete record
# for a year this field is blank
#
#

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# Sites in this file include:
# USGS 01151500 OTTAUQUECHEE RIVER AT NORTH HARTLANC
#

```

```

# Explanation of Parameter Code and dd_nu used in the Statistics Dat:
# paramet Parameter Name
# 00060 Discharge, cubic feet p 1
#
#

```

agency_cd	site_no	parameter	dd_nu	year_nu	mean_va	
5s	15s	5s	3n	4s	12n	
USGS	1151500	60		1	1971	349.30
USGS	1151500	60		1	1972	501.90
USGS	1151500	60		1	1973	608.10
USGS	1151500	60		1	1974	435.00
USGS	1151500	60		1	1975	481.70
USGS	1151500	60		1	1976	639.30
USGS	1151500	60		1	1977	453.10
USGS	1151500	60		1	1978	402.90
USGS	1151500	60		1	1979	462.30
USGS	1151500	60		1	1980	262.10
USGS	1151500	60		1	1981	425.90
USGS	1151500	60		1	1982	346.30
USGS	1151500	60		1	1983	526.40
USGS	1151500	60		1	1984	466.60
USGS	1151500	60		1	1985	308.60
USGS	1151500	60		1	1986	464.70
USGS	1151500	60		1	1987	542.30
USGS	1151500	60		1	1988	334.90
USGS	1151500	60		1	1989	401.10
USGS	1151500	60		1	1990	549.60
USGS	1151500	60		1	1991	326.10

```

#
# US Geological Survey, Water Resources Data
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#
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```

```

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# agency_cd agency code
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# parameter Parameter Name
# 00060 Discharge, cubic feet p 1
#
#

```

agency_cd	site_no	parameter	dd_nu	year_nu	mean_va
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USGS	1151500	60		1993	361.20
USGS	1151500	60		1994	402.00
USGS	1151500	60		1995	298.60
USGS	1151500	60		1996	638.40
USGS	1151500	60		1997	397.80
USGS	1151500	60		1998	483.10
USGS	1151500	60		1999	393.60
USGS	1151500	60		2000	522.30
USGS	1151500	60		2001	337.10
USGS	1151500	60		2002	373.70
USGS	1151500	60		2003	554.90
USGS	1151500	60		2004	343.40
USGS (Provisional)				2005	550.50
ESSEX	1151500			2006	532.40