

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

USGen New England, Inc.  
TransCanada Hydro Northeast Inc.

Project Nos. 1855-028, 1892-018,  
1904-038, 2077-045, and 2323-144

ORDER APPROVING TRANSFER OF LICENSES

(Issued January 24, 2005)

By application filed October 29, 2004, as supplemented November 2, 2004, USGen New England, Inc. (USGenNE) and TransCanada Hydro Northeast Inc. (TC Hydro NE) request Commission approval of the transfer of USGenNE's licenses for the Bellows Falls, Wilder, Vernon, Fifteen Mile Falls, and Deerfield Hydroelectric Projects, FERC Nos. 1855, 1892, 1904, 2077, and 2323, respectively, to TC Hydro NE. The first four projects are located on the Connecticut River in Windham, Windsor, Orange, Caledonia, and Essex Counties, Vermont, and in Cheshire, Sullivan, Grafton, and Coos Counties, New Hampshire. The fifth project is located on the Deerfield River in Windham and Bennington Counties, Vermont, and in Franklin and Berkshire Counties, Massachusetts.

The applicants request approval to transfer the licenses from USGenNE to TC Hydro NE in order to implement part of USGenNE's plan to liquidate its assets pursuant to the U.S. Bankruptcy Code. On July 8, 2003, USGenNE filed with the United States Bankruptcy Court a voluntary petition for relief under Chapter 11 of the Bankruptcy Code due to its deteriorating financial condition. On September 29, 2004, USGenNE entered into an Asset Purchase and Sale Agreement with TC Hydro NE whereby TC Hydro NE would acquire the five hydroelectric projects, under a bidding/auction process conducted by the Bankruptcy Court. The application will be granted, as described below.

New licenses for the Bellows Falls, Wilder, and Vernon Projects were issued to New England Power Company (NEPCO) in 1979.<sup>1</sup> A new license for the Deerfield River Project was issued to NEPCO on April 4, 1997.<sup>2</sup> The licenses for these four

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<sup>1</sup> 8 FERC ¶ 61,122; 9 FERC ¶ 61,322; and 7 FERC ¶ 61,292.

<sup>2</sup> 79 FERC ¶ 61,006.

projects were transferred from NEPCO to USGenNE on February 27, 1998.<sup>3</sup> A new license for the Fifteen Mile Falls Project was issued to USGenNE on April 8, 2002.<sup>4</sup>

Public notice of the transfer application was issued on November 10, 2004, establishing December 13, 2004, as the deadline for filing comments, protests, or motions to intervene. The Nature Conservancy filed a timely motion to intervene.<sup>5</sup> The Appalachian Mountain Club, the Connecticut River Watershed Council, the Connecticut River Joint Commission, and the Northeast Chapter of Vermont Trout Unlimited (together, organizations) filed a late joint motion to intervene in the license transfers for the Fifteen Mile Falls and Deerfield River Projects on December 15, 2004.<sup>6</sup> No comments or protests have been filed.

## DISCUSSION

The Nature Conservancy describes its interests that it claims will be affected by the outcome of this proceeding. These interests include protecting and enhancing the ecosystem of the Connecticut River, as an owner of lands along the river, and as a recipient of conservation easements on lands owned by USGenNE. The Nature Conservancy requests party status to further those interests.

The organizations identify their interests in recreational use of the Connecticut and Deerfield Rivers and in restoring and conserving the natural resources of these rivers. They describe their contribution to the crafting of settlement agreements, the conditions of which were incorporated into the licenses for the projects. They request party status to protect those conditions in the transfer of the licenses.

Section 8 of the Federal Power Act provides that a transferee is subject to the conditions of the license as if it were the original licensee. Ordering paragraph (C) of this order makes approval of the transfer contingent upon the transferee's acceptance of the terms and conditions of this order, including the requirement making it subject to the terms and conditions of the five licenses as though it were the original licensee.

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<sup>3</sup> 82 FERC ¶ 62,138.

<sup>4</sup> 99 FERC ¶ 62,025.

<sup>5</sup> The motion was timely, unopposed, and accordingly granted by operation of Rule 214(c)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. Section 385.214(c)(1) (2004).

<sup>6</sup> A notice granting late intervention was issued on January 18, 2005.

## CONCLUSIONS

USGenNE has not paid annual charges totaling \$457,743.20 for the subject projects. Transferor obligates itself to pay all annual charges that accrue under the licenses to the date of the transfer to the extent required by the Commission.<sup>7</sup> Also, while transferors are liable for annual charges that accrue up to the time that their transfers become effective, when a transferee becomes the licensee for the project, it is liable for any unpaid annual charges of the transferor.<sup>8</sup>

TC Hydro NE is not a Commission licensee. Therefore, we have no hydroelectric compliance record to review. TC Hydro NE is a subsidiary of TransCanada Pipeline USA Ltd., a Nevada corporation, other subsidiaries of which hold ownership interests in the licensee of the Curtis/Palmer Falls Hydroelectric Project No. 2609. The licensee for Project No. 2609 has generally complied with the terms and conditions of its license. The transferee is qualified to hold the licenses and to operate the properties under the licenses. It has agreed to accept all the terms and conditions of the licenses, and to be bound by the licenses 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:

(A) Transfer of the licenses for the Bellows Falls Project No. 1855, Wilder Project No. 1892, Vernon Project No. 1904, Fifteen Mile Falls Project No. 2077, and Deerfield Project No. 2323 from USGen New England, Inc. to TransCanada Hydro Northeast Inc. is approved.

(B) USGen New England, Inc. shall pay all annual charges that accrue up to the effective date of the transfer. Any such unpaid annual charges will be assessed to TransCanada Hydro Northeast Inc.

(C) Approval of the transfer is contingent upon: (1) transfer of title of the properties under license and delivery of all license instruments to TransCanada Hydro Northeast Inc., which shall be subject to the terms and conditions of the licenses as though it were the original licensee; and (2) TransCanada Hydro Northeast Inc. acknowledging acceptance of this order and its terms and conditions by signing and returning the attached acceptance sheets. Within 60 days from the date of this order,

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<sup>7</sup> See p. 6 of the October 29, 2004 filing.

<sup>8</sup> See, e. g., G. W. Hydro, Inc., 59 FERC ¶ 61,151 (1992).

TransCanada Hydro Northeast Inc. shall submit certified copies of all instruments of conveyance and the signed acceptance sheets.

(D) 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.

Joseph D. Morgan  
Director, Division of Hydropower  
Administration and Compliance

Project No. 1855-028

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, TransCanada Hydro Northeast Inc., 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)

Project No. 1892-018

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, TransCanada Hydro Northeast Inc., 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)

Project No. 1904-038

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, TransCanada Hydro Northeast Inc., 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)

Project No. 2077-045

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, TransCanada Hydro Northeast Inc., 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)



Project No. 2323-144

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, TransCanada Hydro Northeast Inc., 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)