



January 30, 2018

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: ISO New England Inc. and Vermont Electric Cooperative, Inc.
Filing of Service Agreement under Schedule 21-VEC of ISO New England
Inc.'s Open Access Transmission Tariff
Docket No. ER18-____-000
Filing Code 1030**

Dear Secretary Bose:

ISO New England Inc. (the “ISO”) and Vermont Electric Cooperative, Inc. (“VEC”), (together, the “Filing Parties”) hereby submit for filing a fully executed non-conforming Local Service Agreement (“LSA”) by and among VEC, Public Service Company of New Hampshire (“PSNH”), by its agent Eversource Energy Service Company (“Eversource”), and the ISO for Non-Firm Local Point-To-Point Service under Schedule 21-VEC of the ISO’s Open Access Transmission Tariff (“OATT”).¹ The ISO joins this filing solely as agent for VEC in order to fulfill the obligations to file non-conforming LSAs, in accordance with Article 3.03(d)(ii) of the Transmission Operating Agreement (“TOA”) between the ISO and the Participating Transmission Owners (“PTOs”).² The ISO does not offer or administer Local Service under Schedule 21-VEC, and it does not have Federal Power Act (“FPA”) Section 205 filing rights with respect to service provided thereunder.³ As discussed below, VEC, the affected PTO submits this filing with the ISO to the Commission, but represents that it is not a “public utility” subject to the obligations of Section 205 of the FPA, or the corresponding obligation to submit tariffs or rate schedules set out in 18 C.F.R. § 35.1 *et seq.* of the Commission’s Regulations.

¹ The LSA is filed under Schedule 21-Common of the OATT that applies to Local Service provided by New England utilities and Schedule 21-VEC of the OATT that applies to the provision of Local Service by VEC.

² See *ISO New England Inc.*, 124 FERC ¶ 61,297 (2008).

³ The ISO does not join nor does it take any position in any portions of this transmittal letter addressing jurisdictional matters. Specifically, the ISO does not join in Section 3 of this transmittal letter and the related request for the filing of the non-conforming LSA to be dismissed as moot.

The LSA is based on the form agreement contained in Schedule 21-Common of the ISO's OATT. While the LSA does not reflect revisions to the form agreement contained in Schedule 21-Common, it contains certain non-conforming provisions in order to reflect a long-standing agreement between Eversource and VEC to provide each other back-up transmission service to one another. The LSA is executed by all parties and contains rate provisions that are mutually satisfactory to them. To the extent necessary based on the unique jurisdictional circumstances, and as discussed in greater detail below, the Filing Parties respectfully ask the Commission to accept the LSA for filing and grant a **January 1, 2018** effective date, which is less than 30 days before the date of this filing. The Filing Parties are authorized by Eversource to state that it concurs in the request to accept the LSA for filing. If filing of rate schedules is not required where entities that are not "public utilities" such as VEC are the provider of service, and the rates and charges for service do not affect regional service provided or are not collected by the ISO, VEC requests that the Commission reject the filing as moot or alternatively, give further guidance on how such agreements that are non-conforming should be handled in the future.

1. The Filing Parties

a. ISO

The ISO is the private, non-profit entity that serves as the regional transmission organization ("RTO") for New England. The ISO plans and operates the New England bulk power system and administers New England's organized wholesale electricity market pursuant to the ISO's Transmission, Markets and Services Tariff ("Tariff") and the TOA with its member PTOs. In its capacity as an RTO, the ISO has the responsibility to protect the short-term reliability of the New England Control Area and to operate the system according to reliability standards established by the Northeast Power Coordinating Council and the North American Electric Reliability Corporation.

b. VEC

VEC is engaged primarily in the transmission and distribution of electricity to retail and wholesale electric service customers in Vermont. VEC owns "pool transmission facilities" or "PTF," access to which and the rates for which are subject to the OATT. VEC offers non-discriminatory Local Service over non-PTF facilities pursuant to the aforesaid Schedule 21-Common and Schedule 21-VEC. VEC, a consumer-owned cooperative utility in Vermont, completed its acquisition of Citizens Utilities Company's Vermont Electric Division on April 1, 2004.

By virtue of the changes to the FPA enacted in the Energy Policy Act of 2005, VEC ceased to be a "public utility," as defined in Section 201(f) of the FPA on August 8, 2005. VEC notified the Commission of its change in its jurisdictional status by letter dated May 4, 2006, as supplemented on May 26, 2006, in Docket No. ER06-959-000 and -001. On July 7, 2006, the Commission acknowledged VEC's status as an exempt entity and accepted its withdrawal of its jurisdictional rate schedules. As requested by VEC, the Commission did not withdraw those portions of its rate schedules that are contained within the ISO NE Tariff, namely Schedule 20A-VEC and Schedule 21-VEC.

2. Background and Agreement

Under the terms of an August 2, 1990 letter agreement (“Agreement”) accepted by the Commission,⁴ PSNH provided standby or “backup” transmission service to VEC at a mutually agreed upon rate. The parties anticipated that, at some point in the future, VEC’s system also would be capable of providing standby assistance to PSNH. Thus, the Agreement also required that, at such time when VEC could provide essentially the same support services to PSNH, the parties would enter into an interconnection agreement.⁵ In such circumstance, the Agreement requires that “neither Citizens nor PSNH will bill each other for providing backup services.”⁶

The parties to the Agreement have now ascertained that VEC’s system is capable of supplying backup assistance to PSNH under certain conditions. To implement the Agreement, the Filing Parties and Eversource determined that an interconnection agreement is no longer the appropriate form of arrangement to provide this service, but non-firm point to point transmission service under Schedule 21 would provide the negotiated mutual backup assistance. VEC has entered into the LSA with PSNH and the ISO reflecting no charge for back-up service. *See* LSA, Part III.4.j. Additionally, PSNH will concurrently file a Local Service Agreement among the same parties with mutual terms.

3. Jurisdictional Status

As noted above, VEC is not a “public utility” as such term is defined in Section 201 the FPA. VEC, not ISO, offers and administers Local Service and assesses and collects the associated charges under Schedule 21-VEC. While VEC’s obligation to maintain a Schedule 21 under the Tariff is derived from the TOA, pursuant to the Commission’s *City of Vernon* line of cases, the Commission does not require non-jurisdictional utilities like VEC to comply with its regulatory filing requirements, such as the submission of non-conforming agreements.⁷ Confirmation that Section 205 of the FPA only applies to “public utility” was further described in *New West Energy Corp.*⁸ wherein an entity that was not a public utility attempted to seek market-based rate authority. The Commission rejected that filing, stating: “Sections 205 and 206 provide the Commission authority over the rates, terms, and conditions of jurisdictional service by public utilities. Those sections do not make reference to the entities listed in Section 201 [of the FPA].”⁹ The Commission also explained that

⁴ PSNH FERC Electric Rate Schedule No. 178, FERC Docket No. ER94-662-000 (Letter order Nov. 14, 1994).

⁵ *See id.* at Section 5 (“Once Citizens has completed the construction of three-phase service to support its interconnections with PSNH and can demonstrate to PSNH’s satisfaction that it can provide essentially the same support services to PSNH as PSNH can provide to Citizens, within 120 days Citizens and PSNH shall enter into an interconnection agreement.”).

⁶ *Id.* (“Thereafter, for the term of the interconnection agreement, neither Citizens nor PSNH will bill each other for providing backup service.”)

⁷ *City of Vernon, Cal.*, Opinion No. 479,111 FERC ¶ 61,092 at PP 42,44 (“while the Commission has authority to apply the just and reasonable standard of review, it may not subject non-jurisdictional entities to other aspects of its section 205 authority, such as rate suspension or refund obligations.”), *order on reh’g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh’g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006), *aff’d in part and vacated in part, Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663.

⁸ 83 FERC ¶ 61,004, at p. 61,018 (1998).

⁹ *Id.* at p. 61,015.

an entity that is not a public utility under the FPA cannot volunteer to be one. As we said before with respect to the South Carolina Public Service Authority, which is an authority of the state of South Carolina:

Moreover, because the Commission is prohibited by statute from regulating directly the activities of nonpublic utilities under Sections 205 and 206, the Authority cannot simply waive this restriction and volunteer to become subject to this Commission's jurisdiction under Section 205 and 206.

Likewise, New West cannot be regulated as a public utility simply because it desires to be so regulated.^[10]

More recently, a similar jurisdictional issue came up in the context of a Section 206 case involving Regional Network Service (“RNS”) administered by the ISO under the Tariff. In an order on rehearing – of a request submitted by VEC – the Commission clearly explained:

We agree with VEC that, as a general matter, pursuant to section 201(f) of the FPA, an exempt utility such as VEC is exempt from most provisions of Part II of the FPA, including sections 205 and 206. However, the Commission has authority pursuant to section 206 of the FPA to examine “any rule, regulation, practice, or contract affecting” the rates or charges of a public utility, including ISO-NE’s RNS rate. ***Thus, the Commission can review VEC’s LNS rates to the extent that these rates affect ISO-NE’s Commission-jurisdictional RNS rate, for the purpose of ensuring that Commission-jurisdictional rates are just and reasonable.***^[11]

For this reason, the Commission required investigation of “a jurisdictional public utility’s rate — ISO-NE’s RNS rate — and how all LNS rates, including VEC’s LNS rates, affect the jurisdictional RNS rate.”¹²

But this case is distinguished from the *ISO New England PTOAC* case and merits dismissal because, in this instance, the ISO’s RNS rate and services administered by the ISO are not at issue. And unlike the case cited, there is absolutely no potential for interaction between LNS provided by VEC to Eversource under Schedule 21-VEC and the ISO’s RNS service. In fact, as noted in section 2 of this transmittal letter, VEC will not assess any charges to Eversource for this backup service.

The Filing Parties and Eversource wish to ensure that the TOA obligations are met, and given that there is a corollary service provided by Eversource to VEC under Schedule 21-ES, VEC has agreed to submit the LSA to the Commission on an informational basis with ISO under

¹⁰ *Id.*, citing *South Carolina Pub. Serv. Auth.*, 75 FERC ¶ 61,209, at p. 61,696 (1996) and 16 U.S.C. §§ 824d, 824e; see also *Bonneville Power Admin. Et al. v. FERC*, 422 F.3d 908 (9th Cir 2005).

¹¹ *ISO New England, Inc. Participating, Transmission Owners Administrative Committee et al*, 154 FERC ¶ 61,230 (2016) (footnotes omitted, emphasis supplied) (“*ISO New England PTOAC*”).

¹² *Id.* at P 7.

a non-jurisdictional eTariff designation (Code 1030). Given that VEC cannot submit FPA Section 205 filings and the ISO does not have authority to submit FPA Section 205 filings under the TOA for a VEC LSA, the Filing Parties are unaware of any other alternative to put the LSA before the Commission to resolve the concerns described above.

VEC respectfully requests that the Commission confirm, consistent with the *City of Vernon, New West Energy Corp* and *ISO New England PTOAC* precedent cited above, that VEC need not comply with the requirements of Part 35 of the Commission's Regulations, which contain the filing requirements to comply with FPA Section 205. If confirmed, VEC requests that the Commission dismiss this filing for lack of jurisdiction over the non-confirming LSA, and confirm that VEC (and therefore, the ISO as agent for VEC) does not need to submit such filings in the future, unless and until such time as VEC qualifies as a "public utility."

4. Miscellaneous

If the Commission determines it must accept the filing, the Filing Parties, with Eversource's concurrence, request waiver of any provisions of the Commission's regulations, in particular, Part 35, 18 C.F.R. § 35, that may be needed in order for the Commission to accept the LSA for filing and allow it to become effective as of the date requested above. This filing has been sent to Eversource.

This filing includes following:

- This transmittal letter; and,
- The LSA as executed by ISO, Eversource and VEC

All correspondence and communications in this proceeding should be addressed to the undersigned for the ISO as follows:

Monica Gonzalez
Senior Regulatory Counsel
ISO New England Inc.
One Sullivan Road
Holyoke, MA 01040
Tel: (413) 535-4000
Fax: (413) 535-4379
E-mail: mgonzalez@iso-ne.com

And to VEC as follows:

Katie Orost
Vermont Electric Cooperative, Inc.
42 Wescom Rd.
Johnson, VT 05656
Tel: (802) 730-1166
E-mail: korost@vermontelectric.coop

and

Craig Silverstein
March Counsel LLC
1875 Connecticut Avenue NW
Suite 1000
Washington, DC 20009
Tel: (202) 640-2100
E-mail: craig.silverstein@marchcounsel.com

5. Conclusion

For the foregoing reasons, VEC requests that the Commission dismiss this filing for lack of jurisdiction, or in the alternative the Filing Parties respectfully request that the Commission accept the LSA for filing and grant an effective date of **January 1, 2018**.

Respectfully submitted,

ISO NEW ENGLAND INC.

By: Monica Gonzalez
Monica Gonzalez
Senior Regulatory Counsel
ISO New England Inc.
One Sullivan Road
Holyoke, MA 01040
Tel: (413) 535-4000
Fax: (413) 535-4379
E-mail: mgonzalez@iso-ne.com

VERMONT ELECTRIC COOPERATIVE, INC.

By: Craig Silverstein
Craig Silverstein
March Counsel LLC
1875 Connecticut Avenue NW
Suite 1000
Washington, DC 20009
Tel: (202) 640-2100
E-mail: craig.silverstein@marchcounsel.com

LOCAL SERVICE AGREEMENT

BY AND AMONG

ISO-NEW ENGLAND INC.

AND

EVERSOURCE ENERGY SERVICE COMPANY

AND

VERMONT ELECTRIC COOPERATIVE INC.

FOR

LOCAL NON-FIRM POINT-TO-POINT TRANSMISSION SERVICE

**SCHEDULE 21
ATTACHMENT A
FORM OF LOCAL SERVICE AGREEMENT**

This LOCAL SERVICE AGREEMENT, dated as of December 21, 2017 is entered into, by and between Vermont Electric Cooperative, Inc., a consumer owned not-for-profit electric utility organized and existing under the laws of the State of Vermont (“Transmission Owner”), Eversource Energy Service Company, (“ES”) a corporation organized and existing under the laws of the State of Connecticut (“Transmission Customer”) and ISO New England, Inc., a non-stock corporation organized and existing under the laws of the State of Delaware (“ISO”). Under this Agreement the Transmission Owner, Transmission Customer, and the ISO each may be referred to as a “Party” or collectively as the “Parties”.

PART I – General Terms and Conditions

1. Service Provided (Check applicable):
 Local Network Service
 Local Point-To-Point Service
 Firm
 Non-Firm
Regional Network Service customers must take either Local Network Service or Local Point-To-Point Service.
2. The Transmission Customer is an Eligible Customer under the Tariff and is a party to either a Market Participant Service Agreement or a Transmission Service Agreement.
3. The Transmission Customer has submitted a Completed Application and the required deposit, if applicable, for service under this Local Service Agreement and the Tariff.
4. The Transmission Customer agrees to supply information to the Transmission Owner that the Transmission Owner deems reasonably necessary in accordance with Schedule 21 and Good Utility Practice in order for it to receive the requested service.
5. The Transmission Owner agrees to provide and the Transmission Customer agrees to take and pay for service in accordance with the provisions of the Tariff and this Local Service Agreement.

ISO New England - ISO New England Inc. Transmission, Markets and Services Tariff

6. Service may be subject to some combination of the charges detailed in Schedule 21 of the OATT. The appropriate charges will be determined in accordance with the terms and conditions of Schedule 21.
7. Any notice or request made to or by either party regarding this Local Service Agreement shall be made to the representative of the other party as indicated below.

Transmission Customer:

Eversource Energy Service Company

Attn: Nancy Richardson

56 Prospect Street

Hartford, CT 06103

Transmission Owner:

Vermont Electric Cooperative, Inc.

Attn: Chief Financial Officer

42 Wescom Rd.

Johnson, VT 05656-9579

The ISO:

ISO New England Inc.

Attn: Operations Tariff & Agreement Manager

Reliability & Operations Service Dept.

One Sullivan Road

Holyoke, MA 01040-2841

8. The ISO New England Inc. Transmission, Markets and Services Tariff (the "Tariff") is incorporated herein and made a part hereof. Capitalized terms used in this Local Service Agreement shall have the meanings ascribed in the Tariff.
9. Nothing contained in this Local Service Agreement shall be construed as affecting in any way the right of the Transmission Owner to file with the Commission under Section 205 of the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder for a change in any rates, terms, and conditions of this Local Service Agreement. Nothing contained in

this Local Service Agreement shall be construed as affecting in any way the ability of the Transmission Customer to file with the Commission under Section 206 of the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder for a change in any rates, terms, and conditions of this Local Service Agreement.

10. Nothing contained in this Local Service Agreement shall be construed as affecting or enlarging, in whole or in part, the limited responsibility of the ISO under the Transmission Operating Agreement ("TOA") to coordinate the Transmission Owner's provision of Local Service and to determine whether the provision of Local Service would have an impact on facilities used for the provision of Regional Transmission Service.

PART II – Local Network Service

1. The Transmission Customer has been determined by the Transmission Owner and the ISO to have a Completed Application for Local Network Service under the Tariff.
2. Service shall commence on the later of: (1) _____, or (2) the date on which construction of all interconnection equipment, any Direct Assignment Facilities and/or facility or Local Network Upgrades are completed, or (3) such other date as it is permitted to become effective by the Commission. Service shall terminate on _____.
3. Specifications for Local Network Service.
 - a. Term of Service:
 - b. List of Network Resources and Point(s) of Receipt:
 - c. Description of capacity and energy to be transmitted:
 - d. Description of Local Network Load:
 - e. List of Point(s) of Delivery and metering point(s) when they differ from Point(s) of Delivery:

ISO New England - ISO New England Inc. Transmission, Markets and Services Tariff

- f. List of non-Network Resource(s), to the extent known:
- g. Ancillary Services requested or proof of satisfactory arrangements for Ancillary Services:
- h. Identity of Designated Agent:

Authority of Designated Agent:

Term of Designated Agent's authority:

Division of responsibilities and obligations between Transmission Customer and Designated Agent:
- i. Interconnection facilities and associated equipment:
- j. Project name:
- k. Interconnecting Transmission Customer:
- l. Location:
- m. Transformer nameplate rating:
- n. Interconnection point:
- o. Additional facilities and/or associated equipment:
- p. Service under this Local Service Agreement shall be subject to the following charges:
- q. Additional terms and conditions:

4. Planned work schedule.

Estimated Time

Milestone

Period For Completion

ISO New England - ISO New England Inc. Transmission, Markets and Services Tariff

- | | (Activity) | (# of months) |
|----|--|---------------|
| 5. | Payment schedule and costs.
(Study grade estimate, +___% accuracy, year \$s)
Milestone | Amount (\$) |
| 6. | Policy and practices for protection requirements for new or modified load interconnections. | |
| 7. | Insurance requirements. | |

PART III – Local Point-To-Point Service

1. The Transmission Customer has been determined by the Transmission Owner and the ISO to have a Completed Application for Local Point-To-Point Service under the Tariff.
2. Service shall commence on (1) January 1, 2018, or (2) the date on which construction of any Direct Assignment Facilities and/or Local Network Upgrades are completed, or (3) such other date as is permitted to become effective by the Commission. Service shall terminate upon delivery of written notice to ISO and Transmission Owner of its intent to terminate at least 60 days prior to its proposed termination date.
3. Non-firm Local Point-To-Point Service shall be provided by the Transmission Owner upon request by an authorized representative of the Transmission Customer.
4. Specifications for Local Point-To-Point Service.
 - a. Term of Transaction: See item 2 above.
 - b. Description of capacity and energy to be transmitted by the Transmission Owner including the electric Control Area in which the transaction originates: This is for delivery of backup service only.
 - c. Point(s) of Receipt: PSNH and VEC:
 - West Stewartown NH/Canaan-Beecher Falls VT
 - North Stratford NH/Bloomfield VT
 - Northumberland NH/Guildhall VT

ISO New England - ISO New England Inc. Transmission, Markets and Services Tariff

- d. Delivering Party: VEC
- e. Point(s) of Delivery: Same as POR
- f. Receiving Party: PSNH
- g. Maximum amount of capacity and energy to be transmitted (Reserved Capacity): N/A
- h. Designation of party(ies) subject to reciprocal service obligation: N/A
- i. Name(s) of any intervening Control Areas providing transmission service: N/A
- j. Service under this Local Service Agreement shall be subject to the following Charges: No charge for this backup service, as per subsection R below.
- k. Interconnection facilities and associated equipment: N/A
- l. Project name: N/A
- m. Interconnecting Transmission Customer: PSNH
- n. Location: Vermont
- o. Transformer nameplate ratings: N/A
- p. Interconnection point: N/A
- q. Additional facilities and/or associated equipment: N/A

ISO New England - ISO New England Inc. Transmission, Markets and Services Tariff

r. Additional terms and conditions:

a. This agreement is associated with, and consistent with, the terms of backup service provided for in an agreement between Northeast Utilities Service Company, on behalf of PSNH, and Citizens Utilities (now VEC) in 1990, and accepted by FERC in Docket No. ER94-662 on November 14, 1994 as PSNH FERC Electric Rate Schedule No. 178.

5. Planned work schedule. N/A

Estimated Time - Milestone	Period for Completion
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6. Payment schedule and costs. N/A

(Study grade estimate, +____% accuracy, year \$s)

Milestone	Amount (\$)
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7. Policy and practices for protection requirements for new or modified load interconnections. N/A

8. Insurance requirements. N/A


ISO New England - ISO New England Inc. Transmission, Markets and Services Tariff

IN WITNESS WHEREOF, the Parties have caused this Local Service Agreement to be executed by their respective authorized officials.

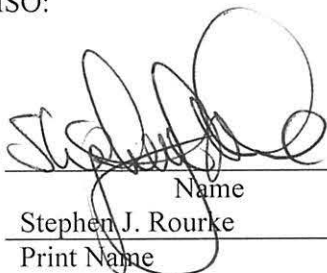
Transmission Customer:

By: _____ VP Operations-Eversource _____
Name Title Date
Paul Ramsey
Print Name

Transmission Owner:

By:  _____ Chief Financial Officer _____
Name Title Date
Michael Bursell
Print Name 12/28/17


The ISO:

By:  _____ Vice President, System Planning _____
Name Title Date
Stephen J. Rourke
Print Name 1/3/2018

ISO New England - ISO New England Inc. Transmission, Markets and Services Tariff

IN WITNESS WHEREOF, the Parties have caused this Local Service Agreement to be executed by their respective authorized officials.

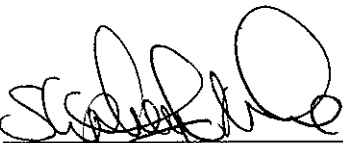
Transmission Customer:

By: <u></u>	<u>VP Operations-Eversource</u>	<u>December 28, 2017</u>
Name	Title	Date
<hr/>		
Paul Ramsey		
<hr/>		
Print Name		

Transmission Owner:

By: _____	<u>Chief Financial Officer</u>	_____
Name	Title	Date
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Michael Bursell		
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Print Name		

The ISO:

By: <u></u>	<u>Vice President, System Planning</u>	<u>1/3/2018</u>
Name	Title	Date
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Stephen J. Rourke		
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Print Name		