

107 FERC ¶ 61,242  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Patrick C. Lynch, Attorney General  
of the State of Rhode Island

Docket No. EL04-91-000

v.

ISO New England, Inc.

ORDER DISMISSING PETITION FOR DECLARATORY ORDER

(Issued June 2, 2004)

1. On March 22, 2004, Patrick C. Lynch, Attorney General of the State of Rhode Island (RIAG), filed a petition for declaratory order requesting that the Commission either (1) direct ISO New England, Inc. (ISO-NE) to immediately issue a ruling declaring that all customers of the New England regional transmission network will share cost responsibility for the planned relocation and reconstruction of the E-183 transmission line (as described further below), or (2) accept jurisdiction over the matter and directly order that cost responsibility will be shared. In this order, the Commission dismisses RIAG's petition as premature. This order benefits customers by preserving the established procedures for allocating the costs of transmission projects in New England and providing guidance to the region regarding transmission cost allocation.

**I. Background**

**A. The E-183 Line**

2. As described in RIAG's petition, the E-183 transmission line includes two bundled 115kV conductors and extends 16.2 miles between the Brayton Point Power Station in Somerset, Massachusetts and the Manchester Street Station in Providence, Rhode Island. According to RIAG, the line serves the reliability of the entire region and thus qualifies as a "Pooled Transmission Facility" (PTF) under the Restated New England Power Pool Agreement (NEPOOL Agreement).

3. Narragansett Electric Company (Narragansett), which owns the line, has filed an application with the Rhode Island Energy Facility Siting Board (EFSB) to relocate and reconstruct approximately 6200 feet of the line to accommodate a highway relocation project being conducted by the Rhode Island Department of Transportation (RI DOT) and the Federal Highway Administration (FHA). While relocating this line, Narragansett also plans to reconstruct two river crossings on either side of the 6200 foot segment due to their age and condition.

4. According to RIAG, the relocated line would pass over several parks, a historic district, and future planned waterfront parks, trails, and urban revitalization projects in Providence and East Providence, Rhode Island. As a result, several local and state governmental entities, including the Cities of Providence and East Providence, the Rhode Island Department of Environmental Management (RI DEM), and the Rhode Island House of Representatives, have opposed an overhead configuration for the relocated line and instead want the line buried.

#### **B. RIAG's Petition for Declaratory Order**

5. RIAG's petition for declaratory order<sup>1</sup> requests that the Commission either (1) enter "an order requiring ISO New England, Inc. to immediately issue a ruling declaring that all customers of the New England regional transmission network will be responsible to pay for planned upgrades of the E-183 transmission line," or (2) "itself accept jurisdiction of the matter, investigate the circumstances underlying the . . . Petition, and directly order the requested relief."<sup>2</sup> RIAG also filed a motion for expedited review of the petition and for an evidentiary hearing, pursuant to Rules 211<sup>3</sup> and 502(a)<sup>4</sup> of the Commission's Rules of Practice and Procedure.

6. RIAG submitted a memorandum, with supporting exhibits, describing the circumstances surrounding the relocation of the E-183 line and the public outcry against the proposed location and configuration. RIAG states that the reconstructed line would cross directly over three "urban, waterfront parks," a national historic district, and planned future "Riverwalk" parks and trails, as well as affect plans for future developments on the waterfront in East Providence and Providence, and that it would obstruct the view of the city skyline from the "arched Providence River Bridge that forms

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<sup>1</sup> See 18 C.F.R. § 385.207(a)(2) (2003).

<sup>2</sup> Emergency Petition of RIAG at 1.

<sup>3</sup> 18 C.F.R. § 385.211 (2003).

<sup>4</sup> 18 C.F.R. § 385.502(a) (2003).

the centerpiece of RIDOT's highway relocation project.<sup>5</sup> RIAG states that the proposed overhead configuration, and its affect on these parks and urban revitalization projects, has resulted in "civic and governmental resistance."<sup>6</sup> Specifically, RIAG notes that the Cities of Providence and East Providence have passed resolutions opposing an overhead configuration and favoring burying the line. Also, the RI DEM issued an advisory opinion opposing overhead construction, and the Rhode Island House of Representatives passed a resolution recommending burying the line.<sup>7</sup>

7. As a result of the opposition of governmental entities, and especially the Cities of Providence and East Providence, RIAG contends that the grant of an overhead easement for the relocated line is unlikely. RIAG states that if an easement cannot be obtained, Narragansett will be forced to initiate condemnation proceedings. Those proceedings might not be resolved quickly enough to place the new line in service before the old line is dismantled, which will occur by November 2005. RIAG argues that ISO-NE, NEPOOL and the Commission should consider the issue of cost responsibility for burying the reconstructed line immediately, to remove the uncertainty about the configuration of the line and likely expedite its siting, so that the existing line is not taken out of service without a replacement in service.

8. RIAG also argues that the costs of burying the relocated line should be shared throughout the entire region. Specifically, RIAG contends that under the NEPOOL Agreement and Schedule 12 of the NEPOOL Open Access Transmission Tariff (OATT) (which gives ISO-NE the authority to determine how transmission upgrade costs for PTFs are allocated), ISO-NE must consider the costs of construction, technical feasibility, environmental effects, whether a given route will require acquisition of real estate, and the impact a proposed route will have on the local community, local businesses and residents in determining whether costs should be borne regionally or locally.<sup>8</sup> RIAG asserts that given the "quantity of existing evidence demonstrating the negative environmental and socioeconomic impacts" of an overhead configuration for the line, and the fact that burying the line is technically feasible and would likely allow the line to be constructed more quickly, the costs of burying the E-183 line should be recovered from the entire region.<sup>9</sup>

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<sup>5</sup> Memorandum in Support of Emergency Petition of RIAG at 3-4.

<sup>6</sup> Id. at 4.

<sup>7</sup> Id. at 4-5.

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

<sup>9</sup> Id. at 8-9.

## II. Notice of Filing, Interventions, Comments and Protests

9. Notice of RIAG's filing was published in the Federal Register,<sup>10</sup> with comments, protests, and interventions due on or before April 12, 2004. Timely motions to intervene were filed by Central Maine Power Company; ISO-NE and the NEPOOL Participants Committee (jointly); the Maine Public Advocate; Narragansett and New England Power Company (jointly); Northeast Utilities Service Company on behalf of the NU Operating Companies<sup>11</sup> (collectively NU); and United Illuminating Company. Timely notices of intervention were filed by the Maine Public Utilities Commission (MPUC) and the Rhode Island Public Utilities Commission. The MPUC and Maine Public Advocate filed a joint request for summary disposition and protest.

10. The protestors and Narragansett generally urge the Commission to dismiss RIAG's petition for declaratory order as premature. They note that the proposed relocation of the E-183 line has not yet been submitted to ISO-NE for review under the transmission planning and cost allocation procedures set forth in the Restated NEPOOL Agreement and the ISO-NE OATT. Additionally, both the Protestors and Narragansett state that no final plan for the relocation and reconstruction of the line has been approved by Rhode Island siting authorities, making consideration of cost responsibility for the project premature.<sup>12</sup> Narragansett and New England Power Company also provide the Commission with additional information regarding the procedures that have taken place in Rhode Island involving relocation of the line. Their comments report on the status of the siting approvals in Rhode Island, their assessment of the costs of placing the relocated E-183 line underground, and the efforts to raise money to pay for the incremental cost of burying the line.

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<sup>10</sup> 69 Fed. Reg. 17,138 (2004).

<sup>11</sup> The NU Operating Companies are The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service Company of New Hampshire.

<sup>12</sup> Narragansett reports that the EFSB was scheduled to hold final hearings on the siting of the relocated E-183 line at the end of April 2004, and anticipated issuing a final ruling on the siting of the line in June 2004. See Motion to Intervene and Comments of Narragansett and New England Power Company at 6.

### III. Discussion

#### A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

#### B. Analysis

12. As noted above, the Protestors and Narragansett urge the Commission to dismiss the petition as premature. ISO-NE and the NEPOOL Participants Committee characterize the petition as an "extraordinary request" to circumvent the established procedures for transmission planning, technical review and cost responsibility, including the transmission cost allocation provisions recently approved by the Commission.<sup>13</sup> Under those procedures, proposed modifications to the transmission system are initially submitted to ISO-NE so ISO-NE can decide what effect the modifications may have on the reliability or operational characteristics of the system.<sup>14</sup> If ISO-NE determines that there is no potential harm, or the participant submitting the proposed modifications takes action to avoid the harm, the modifications may proceed.

13. Once approved to proceed under section 18.4, ISO-NE decides who should pay the cost of the upgrade.<sup>15</sup> Schedule 12 of the NEPOOL OATT sets forth the procedures for transmission cost allocation.<sup>16</sup> Under those procedures, upgrades, modifications or additions to the transmission system are first put in one of the categories in Schedule 12(B). The categories allow certain upgrades and projects to be included in PTF costs recoverable from the entire region. Under Schedule 12C, ISO-NE must decide whether proposed upgrades, modifications or additions to the PTF include what are described in the OATT as "excessive costs." If "excessive costs" are identified, these costs are deemed to be localized costs, which are "the responsibility of the entity or entities causing or subject to such Localized Costs" under Schedule 12(B)(7).

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<sup>13</sup> See New England Power Pool, et al., 105 FERC ¶ 61,300 (2003), reh'g pending.

<sup>14</sup> Section 18.4 of the NEPOOL Agreement.

<sup>15</sup> Schedule 12.

<sup>16</sup> Approved by the Commission on December 18, 2003, and effective January 1, 2004.

### C. Commission Determination

14. The Commission will dismiss RIAG's petition, because the relief requested is premature. As Narragansett and others noted, even a final path of the relocated E-183 line has not yet been determined, and the Rhode Island EFSB has yet to issue a final ruling regarding the precise location of the line and whether it will have to be buried. Under NEPOOL and ISO-NE procedures, Narragansett must submit a specific proposal for the line before the cost allocation review process can begin. Narragansett cannot initiate this process until the EFSB issues a final ruling approving a specific location and configuration of the line.

15. Given this state of affairs, the Commission agrees with the Protestors and Narragansett that RIAG's petition is premature, and that to grant the petition would inappropriately circumvent established procedures in New England. As ISO-NE and the NEPOOL Participants Committee note, participants in NEPOOL have been required to submit proposed modifications to the transmission system to ISO-NE for technical review for decades. Additionally, the Commission recently approved the transmission cost allocation provisions for such upgrades, finding them to be "a clear, transparent, and non-discriminatory method for allocating these costs and consistent with the principles of open access transmission service."<sup>17</sup> The Commission will not interject itself into a dispute over transmission cost allocation before the process we have approved has run its course. Should the RIAG or any other entity object to the final outcome of these procedures, the Commission could then appropriately hear a complaint under section 206 of the Federal Power Act.<sup>18</sup>

16. The Commission does note, however, that it is helpful for siting boards like the EFSB to have some information regarding how the costs for projects under their consideration will be allocated. We approved the cost allocation provisions in part because we believed that they would "provide greater certainty to entities investing in transmission by providing certainty on cost recovery."<sup>19</sup> Siting boards are entitled to similar guidance to allow them to perform their function more effectively. While not making a specific direction or ordering any tariff revisions at this time, the Commission encourages ISO-NE to provide state siting boards with as much guidance as possible regarding the likely cost allocation for proposed transmission projects.

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<sup>17</sup> Id. at P 23.

<sup>18</sup> 16 U.S.C. § 824e (2000).

<sup>19</sup> New England Power Pool, et al., 105 FERC ¶ 61,300 at P 23.

17. Additionally, under the transmission cost allocation principles that we recently approved, costs that provide a region-wide economic or reliability benefit should be supported regionally.<sup>20</sup> Any costs incurred above these basic costs (which include the costs necessary to maintain a safe, reliable and adequate transmission infrastructure) should be borne by the locality that will benefit from them. When the final plan for the relocation and reconstruction of the E-183 line is submitted to ISO-NE and reviewed under the established procedures, these principles will control.

The Commission orders:

The emergency petition for declaratory order of RIAG is hereby dismissed, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>20</sup> Id. at P 26, 31.