

134 FERC ¶ 61,095
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Northern Pass Transmission LLC

Docket No. ER11-2377-000

ORDER ACCEPTING TRANSMISSION SERVICE AGREEMENT

(Issued February 11, 2011)

1. On December 15, 2010, Northern Pass Transmission LLC (Northern Pass)¹ submitted a bilateral, cost-based transmission service agreement (TSA) executed on October 4, 2010 by Northern Pass and H.Q. Hydro Renewable Energy, Inc. (HQ Hydro) for service over the proposed Northern Pass Transmission Line (NPT Line). Northern Pass requested an effective date for the TSA of February 14, 2011. For the reasons discussed below, we will accept the TSA for filing to be effective on February 14, 2011.

I. Background

Declaratory Order

2. In orders issued on May 22, 2009 and December 29, 2009,² the Commission granted a petition for declaratory order in which Northeast Utilities and NSTAR sought approval of the structure of a transaction involving the NPT Line that would include a long-term, bilateral transmission service agreement. The Commission granted the

¹ Northern Pass is a joint venture limited liability company formed by NU Transmission Ventures, Inc., a wholly-owned subsidiary of Northeast Utilities Service Co. (Northeast Utilities), and NSTAR Transmission Ventures, a wholly-owned subsidiary of NSTAR Electric Co. (NSTAR).

² *Northeast Utilities Service Company and NSTAR Electric Company*, 127 FERC ¶ 61,179 (May 22 Order), *reh'g denied*, 129 FERC ¶ 61,279 (2009) (December 29 Order) (together, Declaratory Orders).

petition subject to its further review (under section 205 of the Federal Power Act (FPA)) of the TSA, the Transmission Operating Agreement (TOA), and any other jurisdictional rate schedules.³ The May 22 Order explained that when the TSA is filed, the Commission will evaluate whether the rates, terms, and conditions of the executed TSA are just, reasonable and not unduly discriminatory or preferential.⁴

3. In the Declaratory Orders, the Commission found that allocating all of the available capacity on the transmission line to HQUS absent an open season did not contravene the open access requirements of Order Nos. 888⁵ and 890.⁶ We held that providing for participant funding of a transmission facility with priority rights to use that facility is consistent with long-standing open access policies and does not constitute undue discrimination or preference.⁷ The Commission further stated that any potential

³ While Northeast Utilities and NSTAR had filed the petition for declaratory order, Northern Pass is the signatory to the TSA. Similarly, while the petition referred to H.Q. Energy Services Inc. (HQUS), a U.S. subsidiary of Hydro-Québec, the other signatory to the TSA is HQ Hydro, a newly formed U.S. subsidiary of Hydro-Québec and an affiliate of HQUS.

⁴ May 22 Order, 122 FERC ¶ 61,179 at P 17.

⁵ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁶ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on reh'g*, Order No 890-D, 129 FERC ¶ 61,126 (2009).

⁷ On December 15, 2010, the same day Northern Pass made the instant filing of the TSA, Northern Pass filed an informational report in Docket No. EL09-20-000 providing information to the Commission with respect to a possible open season for an additional 200 MW of incremental capacity on the NPT Line. The report notes that, in an August 18, 2009 letter to NU and NSTAR, ISO-New England (ISO-NE) notified them

(continued...)

transmission customer has the right to request transmission service expansion from a transmission owning utility and that the owner is obligated to make any necessary system expansions and to offer service at the higher of an incremental cost or an embedded cost rate to the transmission customer.

4. The Commission also found that the transmission line project is not a merchant transmission project, but rather is a participant-funded, cost-based transmission project where the risk of the project has been shifted to HQUS, the customer, as opposed to a merchant transmission project where the transmission developer assumes the risk. We also found that the proposed use of bundled rates does not constitute a violation of the functional unbundling requirement of Order Nos. 888 and 890 because the rates for transmission service and power sales will be stated in separate rate schedules. We further found that the possibility of affiliate abuse does not exist because HQUS, and its subsidiaries are not affiliated with NU and NSTAR.

5. The Commission accepted ISO-NE and NU/NSTAR's statements that the project will be thoroughly vetted through the ISO-NE stakeholder planning process and that the project will undergo ISO-NE's Transmission, Markets and Services Tariff (Services Tariff) section I.3.9 reliability review process to ensure that it does not cause any adverse effects to system reliability.⁸ Finally, the Commission acknowledged the statements of benefits by NU/NSTAR, including: additional low-cost hydro-electric power that should help reduce greenhouse gas emissions and the dependence on fossil fuels, increased fuel diversity, and reduced price volatility and lower locational marginal prices (LMP) in New England.

that the maximum long-term, firm transfer capability for the NPT Line would be 1,200 MW. Based on ISO-NE's findings, Northern Pass concludes in the report that it cannot offer additional, long-term firm transmission service to third parties under rates, terms and conditions comparable to those with HQ Hydro.

⁸ General Terms and Conditions, Section I.3.9 of the Services Tariff relates to Proposed Plan Applications from market participants and transmission owners. Proposed Plan Applications detail any new or materially changed plans for additions or changes to any generation or demand response facilities. Within 60 to 90 days of receiving the section I.3.9 Proposed Plan Applications, ISO-NE must respond in writing as to whether the proposed plan will have significant adverse effects on reliability of the transmission owner's facilities, on another transmission owner's facilities, or on the system of a market participant. If ISO-NE finds that the Proposed Plan Applications will not have adverse effects, the market participant or transmission owner may proceed.

II. Filing

A. Description of the Project

6. The United States portion of the transmission interconnection that will link the Hydro-Québec TransÉnergie (TransÉnergie)⁹ system in Québec to the New England transmission system, known as the NPT Line, has an estimated cost of \$1.1 billion. The NPT Line consists of (i) a 1,200 MW high voltage direct current (HVDC) transmission line, approximately 140 miles in length, from the United States-Canada border to a converter station to be constructed in Franklin, New Hampshire, and (ii) a radial 345 kV alternating current (AC) transmission line, approximately 40 miles in length, between the Franklin converter station and the Public Service Company of New Hampshire (PSNH) Deerfield substation in Deerfield, New Hampshire. The NPT Line will interconnect at the international border with a new transmission line (Québec Line) to be owned and constructed in Québec by TransÉnergie. Construction is expected to commence in 2013 and the line is expected to be in-service in late 2015.¹⁰

7. Under the terms of the TSA at issue in this proceeding, Northern Pass will develop, site, finance, construct, own and maintain the NPT Line. It will sell 1,200 MW of firm transmission service over the NPT Line to HQ Hydro over a 40-year term. HQ Hydro will be responsible for providing approximately \$1.1 billion in initial construction costs and return on such costs, necessary additional capital expenditures and return, and other expenses associated with the line over the 40-year operating term of the TSA. HQ Hydro plans to recover these costs through competitive sales of wholesale power in the New England market.¹¹ Once the NPT Line becomes commercially operational, Northern Pass will transfer operating control of the line to ISO-NE pursuant to a TOA to be negotiated with ISO-NE.

8. In its transmittal letter, Northern Pass requests Commission approval under a number of alternative approaches under which the Commission would: (1) accept the TSA in its entirety as a *Mobile-Sierra* contract; (2) accept the TSA as a cost-based contract under the Commission's precedent; (3) accept the TSA using Commission Order

⁹ TransÉnergie is the transmission division of Hydro-Québec.

¹⁰ Filing at 21.

¹¹ HQ Hydro will apply for market-based rate authority. *Id.* at 4 n.5. HQ Hydro also may enter into a power purchase agreement with PSNH, an affiliate of Northeast Utilities, for a small portion of the power delivered over the NPT Line, subject to state commission approval. *Id.* at 8 n.8.

No. 679 to justify TSA provisions that could be characterized as transmission “incentives;” or (4) accept the TSA because it qualifies for and would be granted incentives pursuant to the Commission’s public policy standards under section 205 of the FPA in light of the significant public benefits produced by the NPT Line.

B. Formula Rate

9. Northern Pass proposes to use a formula rate to calculate HQ Hydro’s payment for transmission service over the NPT Line. Northern Pass states that the formula in the TSA is a forward-looking formula rate that calculates costs on a prospective basis. Under the formula the projected costs are trued-up to actual costs in order to permit Northern Pass to recover the annual revenue requirement associated with the NPT Line and any AC upgrade costs. Northern Pass states that the formula rate recovers a return on Northern Pass’s investment in the NPT Line plus associated income taxes, depreciation expense, operation and maintenance expenses, administrative and general expenses, municipal tax expense, and other expenses associated with the NPT Line (including AC upgrade costs).¹² Northern Pass explains that the formula allows it to project the revenue requirement for each calendar year and charge the resulting rates in that calendar year. Northern Pass claims that the formula rate in the TSA resembles formula rates that the Commission has accepted previously and also reflects Commission-approved ratemaking methodologies. Therefore, Northern Pass contends that the formula should be accepted.

C. Requested Incentives

1. Return on Equity

10. Northern Pass requests an overall Return on Equity (ROE) of 12.56 percent.

a. Prior to Commercial Operation

11. Prior to commercial operation, Northern Pass requests an ROE of 12.56 percent, consisting of a base ROE of 10.4 percent plus ROE adders of: (1) 50 basis points for Regional Transmission Organization (RTO) membership; and (2) 164 basis points for investment in new transmission.¹³ Northern Pass states that the 12.56 percent ROE prior to commercial operation is for purposes of accruing allowance for funds used during construction (AFUDC).

¹² *Id.* at 31.

¹³ *Id.* at 37 and App. F, Ex. No. NPT-603.

b. After Commercial Operation

12. Northern Pass requests, upon commercial operation, an ROE equal to the base ROE under the ISO-NE Open-Access Transmission Tariff (OATT) (currently 11.14 percent) plus the lesser of an adder of 142 basis points (50 basis points for RTO participation, plus 92 basis points for investment in new transmission) or an amount that would not cause the total ROE to exceed the applicable zone of reasonableness.¹⁴

2. Termination Rights

13. Northern Pass explains that, under section 3 of the TSA, the parties have the right to terminate the TSA under certain circumstances subject to certain cost reimbursement obligations. During the development phase, the construction phase, or following commercial operation, Northern Pass states that HQ Hydro may terminate the TSA for convenience.¹⁵

14. Northern Pass explains that other scenarios under which the parties may terminate the TSA include the failure to obtain U.S. regulatory approvals for the NPT Line (section 3.3.5); failure to obtain the necessary Canadian regulatory approvals for the Québec Line (section 3.3.4); or a material, uninsured loss occurrence during commercial operations (section 3.3.9).¹⁶

3. Regulatory Asset

15. Northern Pass states that it is seeking authorization to establish a regulatory asset for certain costs that it has incurred and will continue to incur prior to the NPT Line's commercial operation date that do not meet the requirements to be included in Construction Work In Progress (CWIP) (FERC Account No. 107). Northern Pass maintains that, under the TSA, the parties have agreed that Northern Pass's recovery of such costs will be deferred until the project enters commercial operation and then will be recovered from HQ Hydro through the formula rate.

¹⁴ *Id.* at 11, 41-42, and App. F, Ex. No. NPT-600 at 3.

¹⁵ *Id.* at App. A, Ex. No. NPT-100 at TSA §§ 3.3.2, 3.3.8, and 3.3.10.

¹⁶ *Id.* at 61.

III. Notice of Filings and Responsive Pleadings

16. Notice of Northern Pass's December 15, 2010 filing was published in the *Federal Register*, 75 Fed. Reg. 81,597 (2010), with interventions and protests due on or before January 6, 2011. Notices of intervention and timely motions to intervene raising no substantive issues were submitted by Bangor Hydro Electric Company, GenOn Parties, TransCanada Power Marketing Ltd., National Grid USA, Brookfield Energy Marketing LP, Massachusetts Attorney General, ISO-NE, New Hampshire Electric Cooperative, NextEra Energy Resources, LLC, and the Massachusetts Department of Public Utility. New England Power Generators Association Inc. (NEPGA) filed a timely motion to intervene and protest. HQ Hydro filed a timely motion to intervene and comments. Meriden Hill Property Owners (Meriden Hill) filed a timely motion to intervene, request for hearing, and comments. The New Hampshire Public Utilities Commission and the Maine Public Utilities Commission filed out-of-time motions to intervene, raising no substantive issues. Northern Pass, HQ Hydro, and ISO-NE filed answers to the protest and comments.

IV. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁷ the timely, unopposed motions to intervene and notices of intervention serve to make the entities that filed them parties to this proceeding.

18. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2010), the Commission will grant all late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We will accept the answers submitted because they have assisted us in our decision making process.

B. Substantive Matters

20. As described further below, the Commission accepts the TSA without modification, including its provisions that reflect Northern Pass's request for ratemaking

¹⁷ 18 C.F.R. § 385.214 (2010).

incentives pursuant to Order No. 679. The Commission also makes findings below regarding issues raised in the protest and comments, including unused transmission capacity on the NPT Line, the possible future rate treatment of the NPT Line by ISO-NE, access to information regarding certain possible upgrades in the Greater Boston area, environmental review concerns related to the NPT Line, and issues related to Hydro-Québec.

21. Because the Commission accepts the TSA without modification on the bases described below, we need not and do not reach the merits of the alternative approaches presented in Northern Pass's filing, including whether the TSA constitutes what Northern Pass characterizes as a "*Mobile-Sierra* contract."

1. Eligibility for Incentives: Section 219 Requirements

22. In the Energy Policy Act of 2005, Congress added section 219 to the FPA,¹⁸ directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in transmission infrastructure. The Commission subsequently issued Order No. 679, which sets forth processes by which a public utility may seek transmission rate incentives pursuant to section 219, including the incentives requested here by Northern Pass.¹⁹

23. Order No. 679 provides that a public utility may file a petition for declaratory order or a section 205 filing to obtain incentive rate treatment pursuant to section 219. Through either procedural route, consistent with section 219, an applicant must show that "the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion."²⁰ Order No. 679 established a rebuttable presumption that this standard is met if: (1) the transmission project results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission; or (2) a project has received construction approval from an appropriate state commission or state siting authority.²¹ Order No. 679-A clarifies the operation of this rebuttable presumption

¹⁸ Pub. L. No. 109-58, 119 Stat. 594, § 1241.

¹⁹ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

²⁰ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

²¹ *Id.* P 58.

by noting that the authorities and/or processes on which it is based (i.e., a regional planning process, a state commission, or siting authority) must, in fact, consider whether the project ensures reliability or reduces the cost of delivered power by reducing congestion.²²

a. Proposal

24. Northern Pass asserts that it is eligible for incentives under section 219, because the NPT Line will: (1) reduce the price of delivered power by reducing transmission congestion; (2) increase reliability by having another source of power on which to rely; (3) reduce costs to wholesale load customers;²³ (4) help meet environmental requirements for low carbon, renewable resources; and (5) provide enhanced access to hydro-electric power.

25. Northern Pass includes in its filing a study assessing the congestion reduction benefits of the NPT Line.²⁴ According to Northern Pass, this study demonstrates that the project will reduce congestion between Québec and ISO-NE, thus allowing economical power to be imported into the ISO-NE system. The study states that its base-case estimate of cost reduction to wholesale load customers will be \$1.58/MWh in 2015 and \$2.30/MWh in 2024, resulting in an estimated total cost reduction of \$206 million in 2015 and \$327 million in 2024. According to the study, without the additional capacity of the NPT Line, existing ties are expected to be fully utilized during 99.8 percent of peak hours. The study claims that with the addition of the NPT Line, up to 7.7 TWh of energy could be delivered to ISO-NE in 2015. This amount could increase to as much as 8.9 TWh by 2024 due to a planned expansion of hydro-electric generation. Finally, the study asserts that the NPT Line would displace fossil-fueled generation and provide fuel diversity benefits.²⁵

²² Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

²³ Northern Pass states that this cost savings is a result of displacing high-cost fossil-fired generation.

²⁴ Filing at App. G, Exhibit No. NPT-700 (providing a report by Charles River Associates, Inc. regarding congestion reduction benefits of the NPT Line) (CRA Report).

²⁵ *Id.* at 3.

b. Commission Determination

26. Northern Pass does not claim that it qualifies for the rebuttable presumption under Order No. 679 with respect to ensuring reliability or reducing the cost of delivered power by reducing congestion. Rather than relying on that rebuttable presumption, Northern Pass submitted the above-noted study of congestion mitigation impacts of the NPT Line and resulting price reductions in New England that quantifies the effect of adding the line on LMP throughout the region. Based on our analysis of Northern Pass's study, we find that the NPT Line satisfies this section 219 requirement. Northern Pass's study provides a sufficient basis to conclude that the NPT Line will reduce congestion between Quebec and New England and facilitate integration and delivery of low-cost hydro-electric power. In addition, we find that with the addition of hydro-electric power to the base case, the existence of the NPT Line will help mitigate overloads.

2. The Nexus Requirement

27. In addition to satisfying the section 219 requirement of ensuring reliability and/or reducing the cost of delivered power by reducing congestion, an applicant must demonstrate that there is a nexus between the incentive sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is "tailored to address the demonstrable risks or challenges faced by the applicant."²⁶ The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.

28. As part of this evaluation, the Commission has found the question of whether a project is routine to be particularly probative.²⁷ In *Baltimore Gas and Electric Co.*, the Commission clarified how it will evaluate projects to determine whether they are routine. Specifically, the Commission will consider all relevant factors presented by an applicant. For example, an applicant may present evidence on: (1) the scope of the project (e.g., dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, effect on region); (2) the effect of the project (e.g., improving reliability or reducing congestion costs); and (3) the challenges or risks faced by the project (e.g., siting, internal competition for financing with other projects, long lead

²⁶ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

²⁷ *Baltimore Gas and Electric Co.*, 120 FERC ¶ 61,084, at P 48, *order granting incentive proposal*, 121 FERC ¶ 61,167 (2007), *reh'g denied*, 122 FERC ¶ 61,034, *reh'g denied*, 123 FERC ¶ 61,262 (2008).

times, regulatory and political risks, specific financing challenges, other impediments).²⁸ Additionally, the Commission clarified that “when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has shown, for purposes of the nexus test, that the project faces risks and challenges that merit an incentive.”²⁹

a. Proposal

29. Northern Pass states that there is a nexus between its requested incentives (an ROE of 12.56 percent, the termination rights, and the establishment of a regulatory asset) and the risks and challenges it faces in developing the NPT Line. Northern Pass also states that the NPT Line is non-routine due to its scope, in terms of cost and size, and its effects. In addition, Northern Pass states that the NPT Line faces siting, financial, and technological risks and challenges.³⁰

30. With respect to scope, Northern Pass maintains that the NPT Line is a large-scale transmission project; is readily distinguishable from other transmission projects or upgrades that are constructed in the ordinary course of a utility’s transmission service obligation to provide safe, reliable service to its customers; and in dollar terms, is among the largest transmission projects in New England. Northern Pass explains that the NPT Line will be the largest transmission project constructed in New Hampshire since the existing HVDC transmission tie was constructed in the 1980s. Northern Pass states that the NPT Line will affect 31 cities and towns and will take six to seven years (counting from the beginning of the development process in 2009) to design, plan, permit, and build.³¹

31. Northern Pass also maintains that from an electrical perspective the NPT Line is large by any standard. Northern Pass states that the construction of this project will vastly expand the New England transmission system’s ability to transfer power from low carbon, predominantly hydro-electric power to load, enhancing the performance and reliability of the existing transmission system.³² Further, Northern Pass states that the

²⁸ Filing at 52-55.

²⁹ *Id.* at 54.

³⁰ *Id.* at 45-46 and App. G, Ex. No. NPT-700 at 1.

³¹ *Id.* at 50.

³² *Id.* at 51.

NPT Line is significant in terms of both its scale and its costs because it will require construction of approximately 180 miles of new extra high voltage transmission lines in the United States (140 miles of new 300 kV HVDC transmission lines and 40 miles of 345 kV AC transmission lines) and may also require improvements to the existing AC transmission system as a result of the I.3.9 process.³³

32. With respect to the project's effects, Northern Pass states that the NPT Line is non-routine because it is not a typical reliability project.³⁴ Instead, the NPT Line is a large-scale regional transmission project to enhance the capability of the New England transmission system to advance regional and national energy policy by allowing for the delivery of substantial quantities of hydro-electric power from Québec, Canada.³⁵

33. Northern Pass states that the NPT Line will make available up to 1,200 MW of previously unavailable power from Québec, thus lowering electricity prices in New England, improving reliability, and promoting important environmental goals.³⁶

34. With respect to risks and challenges that make the NPT Line a non-routine project, Northern Pass identifies siting, financial, and technological risks and challenges. Northern Pass states that the NPT Line faces a unique level of siting and permitting risks because the construction of the NPT Line is subject to approval by federal³⁷ and state³⁸ authorities.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 52.

³⁶ *Id.* at CRA Report at 1-2 and App. B, Exh. No. NPT-200 at 16-22.

³⁷ *Id.* at 53-54. At the federal level, Northern Pass states it must obtain a Presidential Permit and have an Environmental Impact Statement developed by the U.S. Department of Energy (DOE). Northern Pass states that it may also need to obtain permits or approvals from the U.S. Forest Service, the U.S. Fish and Wildlife Service, the Army Corps of Engineers, and the Federal Aviation Administration.

³⁸ Northern Pass states that the state siting process will consider numerous factors for each project, including alternatives to each of the projects, such as route alternatives, potential environmental and social issues, engineering design, and costs. In New Hampshire, Northern Pass states it must obtain siting approval from the New Hampshire

35. Turning to financial risks and challenges, Northern Pass states that NU and NSTAR's respective shares of the project are a major investment for each company; NU's share is \$820 million while NSTAR's share of the NPT Line is \$275 million.³⁹ According to Northern Pass, in recent years NU has been investing large amounts of capital to upgrade its transmission system and will continue to do so in the coming years.⁴⁰ Northern Pass states that within this overall program, there will be internal competition for capital funding.⁴¹

36. Northern Pass also states that it bears a higher level of financial risk relative to a typical transmission project developed and built under the ISO-NE regional planning process because it is a "single-payer" contract, meaning that the success of the contract depends upon the credit and cooperation of one customer. Northern Pass contends that this dependence on one customer is unlike a typical transmission project under the New England regional planning process, where NU and NSTAR would recover their costs from a large class of customers.⁴² Northern Pass states that, in this respect, if HQ Hydro and its guarantor were to fail financially, Northern Pass would not have a single committed customer for the NPT Line.⁴³

Site Evaluation Committee, which is comprised of members of various state agencies each of which must review the application.

³⁹ Filing at 51.

⁴⁰ For instance, Northern Pass states that for the period 2001 through 2009, NU spent \$2.8 billion in new transmission construction. For the period 2011 through 2015, NU is expected to spend the same amount, including the NPT Line. Similarly, Northern Pass states that NSTAR's investment in the NPT Line represents part of an ambitious transmission capital investment program through which it projects to almost double its transmission rate base to approximately \$1.6 billion within five years.

⁴¹ Northern Pass states that the large capital expenditures required for the NPT Line will result in significant negative cash flows during the construction period due to the fact that the TSA does not provide for inclusion of CWIP in rate base during the construction period, which distinguishes this participant-funded project from most of the other transmission projects that have received incentive rate treatment under Order No. 679.

⁴² Filing at 55.

⁴³ *Id.*

37. Further, Northern Pass states that under the TSA, HQ Hydro has multiple rights to terminate the TSA and that the risk of customer termination is higher than would exist for a typical transmission project constructed under the ISO-NE regional transmission plan.⁴⁴ Northern Pass maintains that while it would be entitled to reimbursement of costs previously incurred upon early termination by HQ Hydro, HQ Hydro would not be required to pay the net present value of the equity return Northern Pass would have received during the remaining balance of the term (i.e., lost opportunity costs) unless HQ Hydro terminates the TSA during the commercial operation phase for convenience.⁴⁵ Northern Pass also states that if there is a delay caused by Northern Pass in the commercial operation date of the NPT Line, but the Québec Line is ready for start-up and service, Northern Pass will cease to accrue AFUDC and carrying charges.⁴⁶ As a result of these and other provisions, Northern Pass maintains that it is not fully protected against all of its potential losses.

38. Finally, Northern Pass maintains that the NPT Line presents certain risks and challenges associated with the use of advanced technologies. Northern Pass states that the complexity of the NPT Line requires special skill sets for planning, engineering, design, operation, and maintenance of the project. Northern Pass states that the NPT Line employs the following technologies: HVDC technology, optical ground wire, high-temperature conductors, aerial laser survey technology, IEC 61850 Communications Protocols, as well as power electronics and related software. Northern Pass does not, however, request a stand-alone incentive ROE adder based on its proposed use of advanced technology.⁴⁷

b. Commission Determination

39. We find that Northern Pass has sufficiently demonstrated a nexus between the considerable risks and challenges it is undertaking to develop and construct the NPT Line and the incentives it has requested.

40. We find that the NPT Line is not routine based on the project's scope, effects, and the risks and challenges it faces. The scope of the project is significant. The NPT Line is a large-scale international project that involves a 140-mile HVDC transmission line and a

⁴⁴ *Id.* at 56.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at App. B, Ex. No NPT-200 at 16-17.

40-mile 345 kV AC transmission line with combined costs estimated at approximately \$1.1 billion.⁴⁸ The effects of the NPT Line will include making available up to 1,200 MW of hydro-electric power previously unavailable from Quebec.⁴⁹ The NPT Line will not only diversify New England's power supply mix, but it will also allow more energy imported from Quebec to be delivered during peak hours when marginal generation costs and market-clearing prices are highest.

41. We also find that Northern Pass faces significant risks and challenges in developing the NPT Line. For example, due to the project being international, Northern Pass must obtain a Presidential Permit from the DOE. Northern Pass must also obtain several other special use permits and a certificate of site and facility from the New Hampshire Site Evaluation Committee. Further, the project will affect 31 cities and towns, require the expansion of some areas of existing rights-of-way, and require the acquisition and development of approximately 50 miles of new rights-of-way.⁵⁰ Given the size of the financial commitment required by Northern Pass to complete the project, the NPT Line also presents significant financial risks and challenges.

42. Because we have found that the NPT Line satisfies the requirements of section 219 and the nexus test, we discuss below Northern Pass's request for specific incentives.

3. Incentives

a. Proposed ROE Including Incentive Adders

43. Northern Pass requests an overall ROE of 12.56 percent. Northern Pass submitted both a regional and national proxy group to assist the Commission in arriving at the requested overall ROE. Northern Pass states that an incentive ROE in the upper end of the zone of reasonableness is warranted, and that its requested overall ROE of 12.56 percent is 384 basis points below the upper end of the zone of reasonableness for both the regional and national proxy groups.⁵¹

44. Northern Pass's expert witness, Dr. Avera, asserts that because an incentive ROE from the upper end of the reasonable DCF range is warranted, there is no need to apply

⁴⁸ *Id.* at 50-51.

⁴⁹ *Id.* at 52 and App. B, Ex No. NPT-200 at 16-17.

⁵⁰ *Id.* at 52-54 and App. B, Ex. No. NPT-200 at 23-27.

⁵¹ *Id.* at 37.

either the median or the midpoint in setting the ROE.⁵² However, Northern Pass states that if the Commission finds it necessary to evaluate the proposed ROE using a reference point within the zone of reasonableness, it proposes a base ROE of 10.4 percent, which is the median⁵³ of its proposed zone of reasonableness resulting from a national proxy group.⁵⁴

45. To arrive at its proposed base ROE, Northern Pass applied a discounted cash flow analysis to a proxy group of transmission-owning utilities, which it states is consistent with Commission methodology.⁵⁵ Northern Pass states that it used a national proxy group,⁵⁶ consistent with the approach approved in the *PATH Rehearing Order* where the Commission found that “mere geographic proximity” is not the sole basis for inclusion of companies in a proxy group.⁵⁷ Therefore, Northern Pass used a starting sample of 24 predominantly electric utilities.⁵⁸ In addition, Northern Pass states that it evaluated its

⁵² *Id.* at Ex. NPT-600 at 45-46.

⁵³ Northern Pass’s request to use the median is contrary to Dr. Avera’s testimony, which noted that he would not support or recommend sole reliance on the median to evaluate the ROE for Northern Pass because the median values for the proxy groups of electric utilities produced using the Commission’s methodology fall consistently below other measures of central tendency, such as the midpoint. *Id.* at 36-37 and App. F, Ex. No. NPT-600 at 47-51.

⁵⁴ *Id.* at 37-38. Northern Pass asserts that a base ROE of 10.4 percent plus its requested incentive ROE adders for RTO participation and new transmission, result in an overall ROE of 12.56 percent that is within its proposed zone of reasonableness.

⁵⁵ *Id.* at 34 (citing *Atlantic Path 15, LLC*, 133 FERC ¶ 61,153 (2010) (*Atlantic Path 15*); *Potomac-Appalachian Transmission Highline, L.L.C.*, 133 FERC ¶ 61,152 (2010) (*PATH Rehearing Order*)).

⁵⁶ In addition to the national proxy group, Northern Pass submitted analytical support for a regional proxy group, a ratings screen proxy group, and a non-utility proxy group.

⁵⁷ Filing at App. F, Ex. NPT-600 at 30.

⁵⁸ Northern Pass’s proposed national proxy group includes: Ameren Corp., American Electric Power Co. Inc., Avista Corp., Black Hills Corp., CenterPoint Energy, Cleco Corp., CMS Energy, DTE Energy Co., Edison International, Great Plains Energy, Hawaiian Electric, IDACORP, Inc., Integrys Energy Group Inc., ITC Holdings Corp., Pepco Holdings Inc., PG&E Corp., Pinnacle West Capital, Portland General Electric,

(continued...)

national proxy group through several risk measures, including Standard and Poor's (S&P) corporate credit rating.⁵⁹ Because Northern Pass is targeting a credit rating from S&P of BBB, it eliminated utilities with credit ratings more than one rating notch above and below BBB.⁶⁰

46. Northern Pass explains that it included companies in its proxy group that: (1) are currently paying dividends; (2) have an S&P corporate credit rating between BBB- and BBB+; (3) have available Value Line data and IBES growth rate data; (4) have not been recently involved in merger and acquisition activity; and (5) have sustainable growth rates below 13.3 percent.⁶¹ Northern Pass then excluded eight companies from the proxy group because their low-end cost of equity was below or not sufficiently higher than the expected yields on BBB utility bonds, averaging 5.8 percent over the six-month period ending November 2010.⁶² In addition, Northern Pass states that it excluded ITC Holdings Corp. and Great Plains Energy because their high-end cost of equity estimates are extreme outliers, consistent with the rationale adopted by the Commission in *Bangor Hydro*.⁶³

47. Having established a proposed proxy group and a median ROE of 10.4 percent, Northern Pass requests that, during the construction period and for purposes of accruing AFUDC, the Commission approve the following incentive ROE adders: (1) 50 basis points for participation in a regional transmission organization; and (2) 164 basis points for investment in new transmission facilities. Northern Pass requests that these ROE adders, when added to its base ROE, produce an overall ROE of 12.56 percent.⁶⁴

PPL Corp., Progress Energy, TECO Energy, UIL Holdings, Westar Energy, and Wisconsin Energy Corp. *Id.* at App. F, Ex. NPT-602 at 1.

⁵⁹ *Id.* at App. F, Ex. NPT-600 at 30.

⁶⁰ *Id.* at App. F, Ex. NPT-600 at 31.

⁶¹ *Id.* at App. F, Ex. NPT-600 at 30.

⁶² *Id.* at App. F, Ex. NPT-600 at 42-43.

⁶³ *Id.* at App. F, Ex. NPT-600 at 44-45 (citing *ISO New England Inc., et al.*, 109 FERC ¶ 61,147, at P 205 (2004)).

⁶⁴ Because Northern Pass primarily emphasizes its proposed overall ROE of 12.56 percent, we will interpret its application to request the 166 basis point incentive ROE adder needed to produce that overall ROE.

48. Northern Pass requests that, upon commercial operation, the Commission approve the following incentive ROE adders: (1) 50 basis points for participation in a regional transmission organization; and (2) 92 basis points for investment in new transmission facilities. Northern Pass requests that these ROE adders, when added to the base ROE under the ISO-NE OATT to which Northern Pass states it would be entitled (currently 11.14 percent), again produce an overall ROE of 12.56 percent.⁶⁵

b. Protest

49. No parties protested the proxy group make-up or the results of the discounted cash flow analysis. However, NEPGA argues that, as a general matter for ISO-NE, the Commission previously rejected a proposal by the Transmission Owners for 50 and 100 basis point adders for Local Network Service (LNS) facilities, but accepted the 50 and 100 basis point adders for Regional Network Service. NEPGA states that, at best, Northern Pass's facilities are radial facilities that comprise what equates to LNS facilities because the radial facilities are not pool transmission facilities (PTF) under existing ISO-NE OATT provisions.⁶⁶

50. NEPGA argues that if the Commission were to grant these incentives, it would open the door for utilities to seek incentive rate treatment for any radial, non-network transmission line. Therefore, NEPGA argues that the Commission should reject the proposed incentive rate treatment.⁶⁷

c. Answers

51. In response to NEPGA's opposition to incentive rate treatment for the NPT Line, Northern Pass states that, contrary to NEPGA assertions, no Commission rule or order would prevent a transmission owner from requesting incentive treatment for local, non-PTF facilities in New England. Northern Pass states that the NPT Line is one of the largest transmission projects in New England and is not "routine" in the sense that the Commission has used the term in connection with its implementation of Order No. 679. Indeed, Northern Pass argues that the Commission has approved Order No. 679 incentives for projects that are similar to the NPT Line – i.e., long distance, high capacity

⁶⁵ *Id.* at 6, 41-42.

⁶⁶ NEPGA Protest at 8-9.

⁶⁷ *Id.* at 9.

transmission lines providing load centers with access to low carbon generation resources.⁶⁸

d. Commission Determination

52. The Commission finds that the 24 companies identified by Northern Pass are an appropriate starting point for developing a proxy group that reflects comparable risks. While geographic proximity may be a relevant factor in identifying companies with comparable risks, it is not the sole basis for inclusion of companies in a proxy group.⁶⁹ The Commission also finds that the corporate credit rating screen that Northern Pass used is consistent with Commission precedent.⁷⁰

53. However, the Commission finds that Northern Pass improperly removed Edison International, Great Plains Energy, Hawaiian Electric, and Integrys Energy Corp. from the final proxy group due to their low end cost of equity being at or below 7.5 percent. The Commission finds that a company should be eliminated from the final proxy group only if its low end cost of equity is about 100 basis points above the cost of debt.⁷¹ Thus, the Commission will exclude from the proxy group those companies whose low-end ROE is about 100 basis points above the cost of debt, taking into account the extent to which the excluded low-end ROEs are outliers from the low-end ROEs of other proxy group companies.⁷² Here, not only are Edison International's, Great Plains Energy's, Hawaiian Electric's, and Integrys Energy Corp.'s low-end ROEs more than 100 basis points above Moody's BBB bond yield, but they also do not appear to be significant outliers from the low-end ROEs of the other companies that remain in the proxy group, unlike the low-end

⁶⁸ Northern Pass Answer at 9-10 (citing *S. Cal. Edison Co.*, 121 FERC ¶ 61,168 (2007); *Green Energy Express LLC*, 129 FERC ¶ 61,165 (2009); *Pac. Gas and Elec. Co.*, 123 FERC ¶ 61,067 (2008)).

⁶⁹ *PATH Rehearing Order*, 133 FERC ¶ 61,152 at P 60.

⁷⁰ *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 95 (*PATH*). While Northern Pass has proposed Value Line's Safety Rank and Financial Strength Rating, the Commission finds the use of the corporate credit rating to be sufficient.

⁷¹ Moody's monthly yields on BBB utility bonds average 5.8 percent over the six-month period ending November 2010.

⁷² *Pioneer Transmission LLC*, 126 FERC ¶ 61,281, at 94 (2009), *reh'g denied*, 130 FERC ¶ 61,044 (2010).

ROEs of the four companies we are excluding from the proxy group.⁷³ We agree with Northern Pass that Ameren Corp., Black Hills Corp., Cleco Corp., and Pepco Holdings, Inc should be excluded from the proxy group because their low-end ROEs are not sufficiently above the cost of debt.⁷⁴ The Commission concludes that Northern Pass has failed to show that the low-end ROEs of Edison International, Great Plains Energy, Hawaiian Electric, and Integrys Energy Corp. are so low as to require the exclusion of those companies from the proxy group.⁷⁵ As a result of adding these companies to the proxy group, the low end ROE is reduced but the median remains unchanged.

54. Accounting for these changes, we conclude that Northern Pass's base ROE for pre-commercial operation should be 10.4 percent, which is the median of the proxy group adopted in this order.⁷⁶ We also find that, as Northern Pass requests, Northern Pass will be entitled to the base ROE under the ISO-NE OATT (currently 11.14 percent) upon commercial operation of the NPT Line and transfer of operational control of the line to ISO-NE.

55. We grant Northern Pass's request for a 50 basis point incentive ROE adder to reflect its participation in ISO-NE. Northern Pass's request is consistent with past incentives that the Commission has granted to reflect an applicant's participation in an RTO or ISO.⁷⁷

56. Additionally, based on the unique nature of Northern Pass's project and the unique commercial arrangements facilitating its construction, we will also grant Northern Pass's request for a 166 basis point incentive ROE adder during pre-commercial operation to arrive at an overall ROE of 12.56 percent. As discussed above, Northern Pass has shown a nexus between the requested incentives and the risks and challenges of the NPT Line.

⁷³ Edison International, Great Plains Energy and Integrys Energy Corp. have low-end ROEs of 7.1 percent while Hawaiian Electric has a low-end ROE of 7.5 percent.

⁷⁴ Ameren Corp., Black Hills Corp., Cleco Corp., and Pepco Holdings, Inc.'s low-end ROEs are the following: 1.5 percent, 6.2 percent, 6.3 percent, and 6.5 percent, respectively.

⁷⁵ Great Plains Energy was eliminated from the final proxy group due to its high end cost of equity being an extreme outlier.

⁷⁶ See *PATH Rehearing Order*, 133 FERC ¶ 61,152 at P 65.

⁷⁷ See, e.g., *S. Cal. Edison Co.*, 133 FERC ¶ 61,107 (2010); *S. Cal. Edison Co.*, 133 FERC ¶ 61,108 (2010).

For example, Northern Pass faces the difficult task of securing several permits (including a Presidential Permit from DOE), certificates, and rights-of-way. The NPT Line also presents significant financial risks and challenges. The Commission recognizes that this project is a major undertaking by both NU and NSTAR. Specifically, the \$1.1 billion capital commitment will significantly add to both companies' average transmission project investment.⁷⁸ The 166 basis point adder will help Northern Pass attract capital investment that will make it more likely that the project will be constructed.

57. Northern Pass's commitment to having none of the costs of the NPT Line or any ISO-NE-required or HQ Hydro-requested upgrades associated with the TSA included in any rates charged under the ISO-NE OATT to regional and local customers also weighs in our decision to grant the ROE adder.⁷⁹ The TSA obligates HQ Hydro to pay 100 percent of the capital and operating costs of the NPT Line and of any upgrades under the TSA. Therefore, no New England customers will be compelled to purchase Hydro-Quebec power delivered over the NPT Line at an above-market price.⁸⁰

58. Upon commercial operation of the NPT Line, we will similarly grant Northern Pass the requested 92 basis points incentive ROE to bring its overall ROE to 12.56 percent. We note that Northern Pass requested this reduction in its incentive ROE adder, corresponding to an increase in its base ROE when it joins ISO-NE and receives the base ROE under the ISO-NE OATT.

57. We disagree with NEPGA's position that the Commission should grant incentives only for Regional Network Service facilities in ISO-NE. We consider each case on an individual basis and are not persuaded by NEPGA's protest that the requested incentive ROE adders are not appropriate because the NPT Line is a radial facility. The proposed project faces significant risks and challenges, as discussed above, and the Commission finds that those factors support these requested incentives.

4. Termination Rights

a. Proposal

58. Northern Pass states that the NPT Line faces numerous uncertainties, and the parties have negotiated and agreed to certain termination rights and the parties' cost

⁷⁸ Filing at App. C, Ex. No. NPT-300 at 10-11.

⁷⁹ Filing at 7-8.

⁸⁰ *Id.* at 8-9.

responsibilities should those termination provisions be exercised. Northern Pass states that, under section 3 of the TSA, the parties have the right to terminate the TSA during the development phase, the construction phase, or following commercial operation. In addition, Northern Pass states that HQ Hydro may terminate the TSA for convenience. Northern Pass states that, under the TSA, it will have the right to recover the costs it has already incurred, including AFUDC, if the NPT Line were to be abandoned under the circumstances set forth in the TSA. Northern Pass maintains, however, that it will lose the right to recover a return on its anticipated equity investment in the project, a substantial lost opportunity cost.

59. Northern Pass requests that the TSA termination provisions be characterized as eligible for the abandoned plant cost recovery incentive under Order No. 679. Northern Pass contends that the Commission has recognized that “the recovery of abandonment costs is an effective means of encouraging transmission development by reducing the risk of non-recovery of costs.”

b. Commission Determination

60. We find that Northern Pass has demonstrated a nexus between the risks and challenges of the project and the opportunity to recover costs as provided in the termination rights provisions of the TSA. As we have emphasized in other proceedings,⁸¹ recovery of abandoned plant costs in appropriate circumstances is an effective means to encourage transmission development by reducing the risk of non-recovery of costs. Accordingly, we accept the termination rights provisions of the TSA without modification.

5. Regulatory Asset

a. Proposal

61. Northern Pass seeks authorization to establish a regulatory asset for certain costs that it has incurred and will continue to incur prior to the NPT Line’s commercial operation date that do not meet the requirements to be included in CWIP. Northern Pass maintains that, under the TSA, the parties have agreed that Northern Pass’s recovery of such costs will be deferred until the project enters commercial operation and then will be recovered from HQ Hydro through the formula rate. Northern Pass explains that such costs exclude TSA negotiation costs, but may include the costs of AC upgrades billed to Northern Pass prior to the commercial operation date by third parties constructing such

⁸¹ See *PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068, at P 47 (2008); *S. Cal. Edison Co.*, 121 FERC ¶ 61,168 at P 72.

upgrades, and routine costs associated with Northern Pass during this period, such as accounting, cash management, and other administrative costs. Northern Pass states that it proposes to amortize this regulatory asset over a three-year period commencing on the commercial operation date of the project.⁸² Northern Pass asserts that the establishment of this regulatory asset will allow it to recover those costs that are incurred prior to the commercial operation date and is consistent with regulatory assets approved by the Commission in other Order No. 679 proceedings.⁸³

62. Northern Pass also seeks Commission authorization, to the extent necessary, to record a regulatory asset for the expenses related to an asset retirement obligation (ARO) created for the decommissioning of the NPT Line. Northern Pass explains that the TSA provides for the recovery of the estimated costs to decommission the NPT Line over the last five years of the 40-year term of the TSA. Northern Pass does not believe the establishment of this regulatory asset is an incentive under Order No. 679.⁸⁴

b. Commission Determination

63. The Commission grants Northern Pass's request for authorization to establish the regulatory asset. Granting this incentive will allow Northern Pass to defer recovery of pre-construction costs, as well as start-up and development costs, and recover them later. The Commission finds the incentive is tailored to Northern Pass's risks and challenges because this incentive will provide it with added up-front regulatory certainty and can reduce interest expense, improve coverage ratios, and facilitate the financing of the NPT Line on reasonable terms. Granting this incentive encourages increased development of transmission infrastructure, thereby fulfilling the goals of FPA section 219.⁸⁵

64. Northern Pass must record the regulatory asset for pre-commercial costs in Account 182.3, Other Regulatory Assets, and may only include amounts that otherwise would be chargeable to expense in the period incurred, are not recoverable in current rates, and are probable for recovery in rates in a different period.⁸⁶ Northern Pass may

⁸² Filing at 63.

⁸³ See *ITC Great Plains*, 126 FERC ¶ 61,223, at P 74 (2009); *Allegheny Energy, Inc.*, 116 FERC ¶ 61,058, at P 99 (2006).

⁸⁴ Filing at 11 n.11.

⁸⁵ See, e.g., *Green Power Express LP*, 127 FERC ¶ 61,031, at P 61 (2009).

⁸⁶ The term "probable" as used in the definition of regulatory assets, refers to that which can reasonably be expected or believed on the basis of available evidence or logic

(continued...)

also record a regulatory asset for the ARO expenses related to the decommissioning of the NPT Line in Account 182.3. The instructions to Account 182.3 require that amounts deferred in this account are to be charged to expense concurrent with the recovery of the amounts in rates. If rate recovery of all or part of the costs deferred in Account 182.3 is later disallowed, the disallowed amount shall be charged to Account 426.5, Other Deductions, in the year of disallowance.

C. Other Issues

1. Unused Capacity

a. Proposal

65. The TSA states that Northern Pass will make available to HQ Hydro firm transmission service on the NPT Line up to 1,200 MW, together with, on a non-firm basis, any additional transmission service that is incidental to the design, engineering, construction or operation of the NPT Line. In addition, if HQ Hydro determines that the transmission capacity of the NPT Line exceeds HQ Hydro's needs, the TSA states that HQ Hydro will offer to sell such unused capacity in accordance with applicable law, including Order No. 890. Any capacity on the NPT Line not scheduled by HQ Hydro by the applicable scheduling deadline for the following day is to be made available for resale to third parties through an OASIS site. The parties agree to jointly contract with independent, non-affiliated third parties for use of an OASIS site.⁸⁷

b. Protest and Comments

66. NEPGA states that the TSA improperly interferes with future third-party transmission rights in contravention to the Commission's May 22 Order and long-standing policies under the FPA. In particular, NEPGA argues that the parties to the TSA effectively claim a right to allow existing transmission capacity to lie fallow until HQ Hydro needs to use it,⁸⁸ which, according to NEPGA, conflicts with Commission

but is neither certain nor proved. *Revisions to Uniform Systems of Accounts to Account for Allowances under the Clear Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2, and 2-A*, Order No. 552, 62 FERC ¶ 61,299 (1993) .

⁸⁷ HQ Hydro Answer at 8.

⁸⁸ NEPGA Protest at 5 (citing TSA §§ 7.1.3 and 10.1).

precedent⁸⁹ and section 211 of the FPA. NEPGA asks the Commission to require Northern Pass to file, within 60 days of the receipt of a request for interconnection or transmission service, an OATT to provide for service to third parties. It further seeks clarification that, in accordance with *Aero Energy* and the May 22 Order, HQ Hydro cannot retain its firm transmission rights over the line if such transmission capacity goes unused.

c. Answers

67. Northern Pass states in its answer that NEPGA misunderstands the provisions of the TSA governing the resale of unused transmission capacity. Northern Pass clarifies that under section 10.1, Northern Pass has the right to determine on a going-forward basis if there is capacity available over the NPT Line that it does not need for its own use. Section 10.2 requires that, if HQ Hydro does not schedule transactions using the full transmission capacity of the NPT Line by the applicable ISO-NE scheduling deadline, the unused transmission capacity must be released for resale to third parties for daily and hourly transactions on the following day. Such unused capacity must then be posted on an OASIS site for resale under section 10.3. Thus, section 10 of the TSA provides for the mandatory posting and resale of unused transmission capacity over the NPT Line whenever HQ Hydro has not scheduled transactions using its full capacity rights, which is in compliance with the Commission's directive in the May 22 Order that unused capacity be made available to third parties pursuant to Order No. 890.

68. Northern Pass and HQ Hydro both argue that *Aero Energy* is inapposite, as that case involved unused firm transmission capacity, while here HQ Hydro has purchased the entire 1,200 MW of firm capacity on the line and has not generically reserved capacity for unknown future use or development. Accordingly, unlike *Aero Energy*, the only potentially relevant resale issue in the instant case involves the resale obligation of the purchaser, HQ Hydro, and not any obligation that Northern Pass would have to sell transmission service on an open access basis. HQ Hydro clarifies that its rights as a firm transmission customer under Order No. 890 to make business decisions as to when it may have excess capacity is preserved, while at the same time the ability of third parties to access capacity that is actually available and unused on any day or any hour is guaranteed to be handled in a fair and independent manner under the TSA.⁹⁰

69. HQ Hydro responds that NEPGA has misread the manner in which the TSA deals with unused capacity. It states that, under Order No. 890's open access principles, there

⁸⁹ See *Aero Energy LLC*, 116 FERC ¶ 61,149 (2006) (*Aero Energy*).

⁹⁰ HQ Hydro Answer at 6.

are no established standards by which a firm transmission customer must make the capacity for which it holds a firm service agreement (and for which it is paying full tariff amounts) available to other parties when it does not use all of its capacity. Moreover, it notes that the TSA provides that any capacity that is unused by HQ Hydro during any hour of any day during the term of the TSA will be offered automatically to third parties by means of an OASIS posting, and the pricing of such capacity will be determined by independent third parties.

d. Commission Determination

70. We find that the TSA does not improperly interfere with future third party transmission rights. As discussed more fully below, HQ Hydro, as the entity participant-funding the project, is permitted to receive priority rights to use the facility. Furthermore, we find that the TSA properly commits to make available any unused transmission capacity.

71. NEPGA's first concern pertains to the availability to third parties of additional capacity that is incidental to the design, engineering, construction or operation of the NPT Line. Specifically, NEPGA protests section 7 of the TSA, in which HQ Hydro retains the right of first refusal for any non-firm "incidental" capacity over the 1,200 MW of contracted capacity.⁹¹ As the Commission found in the May 22 Order, providing for participant funding of a transmission facility and, in return, receiving priority rights to use that facility is fully consistent with long-standing open access policies and does not constitute undue preference or discrimination.⁹² Therefore, we disagree that section 7 of the TSA contravenes Commission policy. HQ Hydro, as the entity paying the costs of the project, may retain priority rights over the transmission capacity of the line, including the incidental capacity above the contracted capacity. These priority rights do not constitute undue preference or discrimination.

72. NEPGA further protests the TSA's treatment of unused capacity in the event that HQ Hydro's 1,200 MW of capacity exceeds its needs. On this issue, NEPGA has particular concern with section 10 of the TSA, which NEPGA argues will give HQ Hydro sole discretion in determining whether to offer to resell available capacity over the line

⁹¹ Section 7.1.1 of the TSA states that Northern Pass will provide HQ Hydro with non-firm transmission service for any "incidental" transmission capacity above 1,200 MW. Section 7.1.3 of the TSA states that Northern Pass has no other obligation to provide transmission service other than to HQ Hydro for the contracted 1,200 MW of firm capacity and the non-firm incidental capacity above 1,200 MW.

⁹² May 22 Order, 127 FERC ¶ 61,179 at P 27.

that exceeds its needs.⁹³ We agree with NEPGA that any unused transmission capacity must be made available pursuant to the requirements of Order No. 890 and the ISO-NE OATT. However, we disagree with NEPGA's interpretation of the TSA in this regard. Section 10 of the TSA, as clarified in the answers of Northern Pass and HQ Hydro, provides that, while HQ Hydro will retain the discretion to determine whether it has unused capacity during the scheduling period, any capacity not scheduled by the applicable scheduling deadline must be offered for resale to third parties through OASIS.⁹⁴ Thus, while HQ Hydro can make the initial business decision with respect to whether it should enter into bilateral agreements with third parties for capacity that it does not plan to use in the future, any capacity that is actually unscheduled by HQ-Hydro during any hour of any day during the term of the TSA will be offered automatically to third parties by means of an OASIS posting. The TSA further requires Northern Pass and HQ Hydro to contract with independent, non-affiliated third parties for use of an OASIS site and to carry out capacity release functions for daily and hourly re-sales.⁹⁵ We find that these provisions sufficiently ensure that all unused capacity will be made available pursuant to the relevant open access requirements.

2. Rate Treatment for the NPT Line

a. Proposal

73. Northern Pass states that in order to interconnect the proposed HVDC Line with the bulk power system in New England in a reliable manner, it has determined (and HQ Hydro has agreed) that it must construct an approximately 40-mile, 345 kV, radial AC Line extending from the southern end of the HVDC Line to an existing PSNH substation.

74. With respect to the AC Line, Northern Pass states that the parties to the TSA have taken into consideration the possibility that ISO-NE may require certain modifications or reinforcements to AC network transmission facilities in New England in order to satisfy the requirements of Section I.3.9 of the ISO-NE Services Tariff. Northern Pass maintains that this section requires ISO-NE to conduct an evaluation of the impacts of any new

⁹³ See Filing at App. A, Ex. No. NPT-100 at TSA §10.1 (“If and to the extent Purchaser determines from time to time, and in its sole discretion, that the transmission capacity available over the NPT Line exceeds Purchaser’s needs, Purchaser shall then offer to resell such unused capacity to third parties in accordance with Applicable Law . . .”).

⁹⁴ *Id.* at TSA §10.3.

⁹⁵ *Id.*

transmission facility rated 69 kV or above on the stability, reliability or operating characteristics of the network. On October 13, 2010, Northern Pass filed an application with ISO-NE for review of the NPT Line under Section I.3.9.⁹⁶ Northern Pass contends that, to the extent that ISO-NE determines that other AC upgrades are required, the TSA provides that HQ Hydro will be responsible for the costs thereof through the formula rate.

b. Protest and Comments

75. NEPGA objects to Northern Pass's and HQ Hydro's proposal to treat the 40-mile radial 345 kV line as a PTF by ISO-NE and potentially include it in rolled-in regional rates.⁹⁷ NEPGA states that Northern Pass is a participant-funded, radial transmission project and that neither the HVDC nor AC portion should be "considered an elective network upgrade or a [PTF] and would therefore not fit under existing ISO-NE OATT provisions."

76. NEPGA maintains that while the TSA provisions provide an opportunity for HQ to request roll-in of a portion of the NPT Line costs into the pool-supported PTF, the ISO-NE OATT, Schedule 12 B(2) and the ISO-NE tariff definition very clearly state that this option does not exist.⁹⁸

77. NEPGA asserts that TSA sections 8.6(b), (c), (e), and (f) are inconsistent with the ISO-NE Services Tariff provisions applicable to all other Elective Upgrade investments. According to NEPGA, the ISO-NE Services Tariff provides only one choice: Elective Transmission Upgrade costs are never rolled into Pool-Supported PTF costs and are allocated "to the entity or entities volunteering to make and pay for such Elective

⁹⁶ December 29 Order, 129 FERC ¶ 61,279 at P 48 (citing May 22 Order, 127 FERC ¶ 61,179 at P 63).

⁹⁷ See App. A, Ex. No. NPT-100 at TSA § 8.6(b).

⁹⁸ ISO-NE OATT, Schedule 12 B(2) states in whole, "The cost for all Elective Transmission Upgrades shall not be included in the Pool-Supported PTF costs recoverable under this OATT, but shall be allocated solely to the entity or entities volunteering to make and pay for such Elective Transmission Upgrades." ISO-NE Services Tariff, Section I, definitions at 63. Pool Supported PTF is defined as: (i) PTF first placed in service prior to January 1, 2000; (ii) Generator Interconnection Related Upgrades with respect to Category A and B projects (as defined in Schedule 11), but only to the extent not paid for by the interconnecting Generator Owner; and (iii) other PTF upgrades, but only to the extent the costs therefore are determined to be Pool Supported PTF in accordance with Schedule 12.

Transmission Upgrades.” In return, NEPGA maintains that the entity volunteering to make such payments receive the financial transmission rights created by such upgrades. NEPGA states that these sections of the TSA should be modified to be compliant with the ISO-NE Services Tariff.

c. Answers

78. Northern Pass argues that NEPGA has misconstrued the TSA. Northern Pass states that the customer, HQ Hydro, will pay for all of the costs related to the project.⁹⁹ It maintains that, as a radial facility necessary to interconnect the HVDC facilities with the regional network, the AC Line is part of the NPT Line and will be paid for by HQ Hydro under the TSA. In addition, according to Northern Pass, HQ Hydro is responsible for the cost of any AC upgrades that ISO-NE determines to be necessary to reliably interconnect the NPT Line to the system pursuant to section I.3.9 of the ISO-NE Services Tariff.¹⁰⁰

79. Northern Pass contends that the TSA has a 40-year term and that TSA section 8.6 simply contemplates possible future circumstances where the parties may wish to request that ISO-NE include the AC Line in regional rates, if such an action would be appropriate under the ISO-NE OATT, and consistent with the cost recovery treatment of other PTF facilities in New England.

80. Northern Pass asserts that section 8.6(b) is clear that including the AC Line in regional rates can occur only if the AC Line becomes a network transmission facility that is eligible to be categorized as PTF, and if ISO-NE then approves regional cost recovery for the AC Line. If this change occurs, according to Northern Pass, then the TSA provides that it may transfer ownership of the PTF portion of the AC Line to its affiliate, PSNH. In connection with any such transfer of ownership to PSNH, Northern Pass states it would enter into an agreement with PSNH under which Northern Pass would pay all of PSNH’s costs and expenses associated with the transferred facilities and it would recover these payments under the TSA formula rate; HQ Hydro would then be able to ask the owner of the AC Line to submit a request to ISO-NE that the AC Line should be included in regional rates.

81. Northern Pass emphasizes that section 8.6 does not confer unilateral cost inclusion rights on Northern Pass, PSNH, or HQ Hydro, acting individually or collectively, because it recognizes that ISO-NE would make the ultimate determination on regional cost allocation if future system upgrades create a circumstance where the AC Line becomes a

⁹⁹ See December 29 Order, 129 FERC ¶ 61,279 at P 3.

¹⁰⁰ Filing at 5, 7-8, 19-20.

network facility providing a regional benefit. Northern Pass maintains that if ISO-NE determined that roll-in would be appropriate, the AC Line would be treated like all other network transmission facilities paid for by load, and HQ Hydro would no longer be entitled to congestion revenues associated with deliveries over the applicable network facilities. Northern Pass states that, at this time, whether ISO-NE will make a future determination that roll-in of the AC Line's costs would be appropriate, the circumstances upon which such a determination would be made, or even whether NEPGA in the future would object to such a future determination, are not known. However, according to HQ Hydro, the TSA must contemplate changes that may occur over a 40-plus year period, and it maintains that the purpose of this section from its standpoint is not to propose a roll-in of costs, but to ensure that the its rights, relating to this line, are at all times aligned with its cost responsibilities.

d. Commission Determination

82. We find that it is premature for parties to contest whether the cost of the AC Line or any upgrade will be rolled into regional rates. At present, HQ Hydro is responsible for all costs associated with the NPT Line, and there will be no impact on the rates for transmission service under the ISO-NE OATT. To be rolled into regional rates, ISO-NE must first determine that the cost of the line or any upgrades should receive regional rate treatment. If ISO-NE makes this determination and parties object to rolling the costs of the project into the regional rates, they can raise those concerns at that time. For these reasons, we accept Northern Pass's rate treatment for the NPT Line. Therefore, we reject NEPGA's protest on this issue.

3. Access to Information on Possible Greater Boston Area Upgrades

83. NEPGA alleges that prior knowledge by NU and NSTAR of the preferred Reliability Upgrades to address North Shore/Boston Massachusetts reliability needs, including a new 345kV line from Scobie, New Hampshire to Tewksbury, Massachusetts, together with related upgrades, may have improperly affected the TSA negotiations. NEPGA states that this knowledge may have benefited the Northern Pass TSA negotiations, as well as HQ Hydro's willingness to pay a premium ROE under the TSA and the valuation of such a premium.

84. NEPGA requests that the Commission direct ISO-NE to provide an exceptionally high level of scrutiny to any determinations that the Scobie-Tewksbury line and related Reliability Upgrades are truly necessary, and that they represent the best, least-cost solutions to local problems independent of Northern Pass. NEPGA asks the Commission to allocate any regionally-socialized transmission costs requested by Northern Pass to the benefiting transmission owner and not to the region as a whole.

85. Northern Pass answers that these arguments have no merit. Northern Pass states that NU and NSTAR have not transferred non-public information regarding the Scobie-Tewksbury upgrades to HQ Hydro. Northern Pass also responds to NEPGA that the NPT Line and the Scobie-Tewksbury upgrades are independent projects that are being considered separately by ISO-NE.

86. HQ Hydro answers that NEPGA's claim has no merit, because the Scobie-Tewksbury line has been the subject of discussion multiple times since at least 2008 in meetings open to all ISO-NE stakeholders. These meetings were held by the Planning Advisory Committee of ISO-NE as part of its regional planning process. HQ Hydro states that it participates in this process and received information at the same time as other stakeholders.

87. ISO-NE responds to NEPGA's claim and states that the Reliability Upgrades were developed in an open and transparent manner that included several presentations to the Planning Advisory Committee and inclusion of the Reliability Upgrades in the ISO-NE Regional System Plan. ISO-NE states that it has been studying the need for upgrades in the Greater Boston area for years and has been working through the open and transparent stakeholder process. Through this process, ISO-NE states that it has identified potential transmission solutions, including the Scobie to Tewksbury upgrades. ISO-NE notes that a discussion of the potential solutions, including the Scobie to Tewksbury upgrades, was presented at the March 18, 2010 Planning Advisory Committee meeting attended by numerous market participants, including many NEPGA members and other potential developers. ISO-NE further states that the December 16, 2010 Planning Advisory Committee presentation that NEPGA references in its protest as the first revelation of the Scobie to Tewksbury project was actually an update from the March 18, 2010 Planning Advisory Committee meeting, which showed the Scobie to Tewksbury option as the "preliminary preferred" option for technical, feasibility, and cost reasons. ISO-NE states that it expects to present a finalized solution addressing all the needs identified in the Greater Boston Needs Assessment to the Planning Advisory Committee by the end of 2011.

88. In response to NEPGA's claim that the reliability need for the Scobie to Tewksbury line is tied to the proposed NPT Line, ISO-NE provides that the Scobie to Tewksbury line is designed to address specific reliability needs identified in the planning process. The reliability needs identified in the Greater Boston Needs Assessment are in response to violations of NERC, NPCC, and ISO-NE criteria and that these violations are independent and completely separate from the NPT Line.

89. The Commission denies NEPGA's request to direct ISO-NE to provide an exceptionally high level of scrutiny to any determinations for the Scobie-Tewksbury line and to order any specific allocation of costs because NEPGA has failed to provide enough information to warrant such a direction from the Commission. Northern Pass,

HQ Hydro, and ISO-NE all provide factual support disputing the allegations made by NEPGA. Further, HQ Hydro affirmatively states that it received information at the same time as other stakeholders.

4. Environmental Review

90. Meriden Hill contends that the NPT Line will adversely affect its members' use and enjoyment of their properties, and that construction of the NPT Line would create adverse environmental impacts. Meriden Hill asks the Commission to consider the impact this project will have on the environment surrounding the project with the understanding that environmental review is being conducted as part of the Presidential Permitting process with the DOE.

91. In its answer, Northern Pass argues that the Commission has consistently, and properly, found that environmental issues are outside the scope of FPA section 205 proceedings.¹⁰¹

92. We agree with Northern Pass that the environmental issues raised by Meriden Hill are outside the scope of our review of the TSA.¹⁰² Therefore, the Commission declines to consider the environmental concerns raised by Meriden Hill here.

5. Issues Related to Hydro-Québec

93. Meriden Hill requests that the Commission hold hearings and permit discovery with respect to certain issues related to Hydro-Québec's status as a foreign corporation, including possible foreign control of eminent domain power, ability to set prices, and a lack of jurisdiction by the Commission.

94. HQ Hydro answers that Meriden Hill's comments lack support, misunderstand or mischaracterize the TSA, and misrepresent the issues properly before the Commission. First, HQ Hydro states that it is a U.S. corporation established to market electric power and related products in wholesale electric markets in the United States, and therefore it is subject to the same jurisdiction as any other jurisdictional power marketers. Second, HQ Hydro proposes to sell almost all of its power into the organized markets in ISO-NE. Third, HQ Hydro states that it is the transmission customer under the proposed TSA, and

¹⁰¹ Northern Pass Answer at 16.

¹⁰² See, e.g., *Monongahela Power Co.*, 39 FERC ¶ 61,350, at 62,096 (1987) (noting that Congress has not granted the Commission authority to reject rate filings on environmental grounds).

is no different than any other long-term, firm transmission customer under the Commission's open access rules.

95. Northern Pass answers that none of the concerns raised by Meriden Hill are relevant to the justness and reasonableness of Northern Pass's sale of transmission services under the TSA. Northern Pass also states that the Commission has never attempted to limit the ability of foreign entities to sell power competitively into the United States, and the Presidential Permit process demonstrates that there is no executive or legislative policy in opposition to such sales.

96. We agree with both Northern Pass and HQ Hydro that the issues raised by Meriden Hill lack merit and misunderstand the structure of the proposal, the identification of the parties to the TSA, and the Commission's jurisdiction over the parties. For these reasons, we decline to set these issues for hearing.

The Commission orders:

The TSA is hereby accepted for filing, effective February 14, 2011, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.