

136 FERC ¶ 61,163
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.

ISO New England Inc.
Northeast Utilities Service Company

Docket Nos. ER11-4021-000
ER11-4022-000
ER11-4023-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued September 6, 2011)

1. On July 8, 2011, ISO New England, Inc. (ISO-NE) and Northeast Utilities Service Company (NUSCO)¹ submitted proposed revisions to ISO-NE's Open Access Transmission Tariff (Tariff) Schedule 21-NU in order to ensure that Localized Costs associated with the Glenbrook Cables Project (Glenbrook Project) are allocated entirely to load in Connecticut (July 8 Filing). In this order, the Commission accepts the proposed revisions, subject to condition, effective June 1, 2008, as requested.

I. Background

A. Glenbrook Project

2. The Glenbrook Project is one of four transmission projects the Connecticut Light and Power Company (CL&P) recently built in southwest Connecticut (SWCT).² It consists of two new 115 kV underground transmission lines from the Norwalk Substation to the Glenbrook Substation in Stamford, Connecticut, along with a spare underground conduit duct to accommodate the subsequent upgrade of the transmission lines to

¹ In turn, NUSCO is acting on behalf of the Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WEMCO) and Public Service Company of New Hampshire (PSNH) (collectively, NUSCO affiliates).

² July 8 Filing at 7. The four SWCT projects are the Bethel-Norwalk Project (B-N Project), the Middletown-Norwalk Project (M-N Project), the Glenbrook Cables Project, and the Long Island Replacement Cable Project.

345 kV.³ CL&P submitted a transmission cost allocation (TCA) application for the Glenbrook Project to ISO-NE in October 2007 in which CL&P indicated that the total projected cost for the project, including ancillary facilities, was \$234.2 million, initially identifying \$150,000 as potential Localized Costs.⁴

3. In New England, transmission owners recover transmission revenue requirements through a combination of local and regional rates. In general, each transmission owner maintains a Local Network Service (LNS) Schedule that includes a formula rate used to calculate the total transmission revenue requirement for all of its transmission facilities. Each transmission owner then subtracts from this total transmission revenue requirement the revenues that it receives from other sources, such as the provision of Regional Network Service (RNS). The transmission owners credit the revenues from RNS (and other sources) against their total transmission revenue requirements and recover the remainder from local customers. The RNS rate recovers costs for service over pool transmission facilities that are eligible for regional cost allocation.⁵ Under the New England transmission cost allocation process, ISO-NE, with the advice of stakeholders (i.e., the NEPOOL Reliability Committee),⁶ determines which pool transmission facilities are eligible for regional cost recovery, and the level of Localized Costs that should be recovered on a state or local basis.⁷ However, a determination that certain project costs should be treated as Localized Costs rather than recovered regionally does not mean that the project facilities themselves are not part of the regional grid. Rather, Localized Cost are excluded from regional treatment because those costs are determined by ISO-NE to exceed the estimated costs of a reasonable alternative that would have provided equivalent service, and are instead recovered from the state or local area.⁸

³ *Id.*

⁴ July 8 Filing at 7.

⁵ *Central Maine Pwr Co.*, 135 FERC ¶ 61,139, at P 2-3 (2011).

⁶ July 8 Filing at 3.

⁷ Statewide allocation of Localized Costs associated with the B-N Project had been previously approved by the Commission. *Northeast Utilities Service Co.*, 116 FERC ¶ 61,094, *order on reh'g*, 117 FERC ¶ 61,337 (2006) (*Northeast Utilities*).

⁸ In determining Localized Costs, ISO-NE Planning Procedure 4 requires consideration of: (1) good utility practice, (2) current engineering design and construction practices in the area in which the project is being built, (3) feasible and practical transmission alternatives, and (4) relative costs, operation, efficiency, reliability and timing of the implementation of the project.

4. NUSCO affiliates own and operate transmission facilities in Connecticut, Massachusetts and New Hampshire. NUSCO affiliates provide RNS under the ISO-NE Tariff, and LNS under Schedule 21-NU of the ISO-NE Tariff.⁹ Under the Schedule 21-NU rate design, LNS costs are divided into two categories: (1) Category A costs, which is NUSCO's total transmission revenue requirement not recovered from other sources, and is recovered from all customers receiving LNS; and (2) Category B costs, which include the revenue requirement for the pool transmission facilities that the ISO-NE determines should be treated as Localized Costs as a result of local requirements and should be recovered on a state or local basis.

5. By order issued June 30, 2008,¹⁰ the Commission accepted NUSCO's proposal to allocate the Localized Costs associated with the Glenbrook Project, as well as the M-N Project, on a statewide basis, i.e., to all of Connecticut. The Commission found that doing so was consistent with the allocation of another SWCT project's (the B-N Project's) Localized Costs, was supported by the Connecticut Department of Public Utility Control, would not result in rate shock, and was consistent with the ISO-NE Tariff. The Commission stated that, as with the B-N Project, NUSCO had established that the Glenbrook Project brings significant reliability benefits to the region and to all Connecticut customers.¹¹

6. The Commission further stated that, although ISO-NE had not made a final determination of the level of relevant costs, it was appropriate to begin with recovery of the regional costs through the RNS rates. The Commission noted that NUSCO had provided a mechanism that would ensure that any differences between estimated and actual amounts of Localized Costs will be appropriately reconciled such that both RNS customers and those paying the Localized Costs will ultimately pay only their finally determined shares of the Glenbrook Project.¹²

7. The Glenbrook Project subsequently was placed in service on November 11, 2008.

⁹ July 8 Filing at 6-7.

¹⁰ *Northeast Utilities Service Company*, 123 FERC ¶ 61,324 (2008) (June 30 Order).

¹¹ *Id.* P 29.

¹² *Id.* P 30.

II. Proposed Tariff Revisions

8. NUSCO states that the purpose of the July 8 Filing is to ensure that, consistent with the June 30 Order, the Localized Costs associated with the Glenbrook Project are allocated entirely to customer load in Connecticut (customers subject to Category B costs), rather than to NUSCO's customers in Connecticut, Massachusetts and New Hampshire (customers subject to Category A costs). To accomplish this, NUSCO seeks to amend Attachment NU-I of Schedule 21-NU to include Plant Held for Future Use (PHFU). NUSCO states that, although ISO-NE has determined that certain costs related to PHFU associated with the Glenbrook Project should be treated as Localized Facilities,¹³ the Localized Facility formula rate in Attachment NU-I of Schedule 21-NU, which is used to calculate the revenue requirement for Localized Facilities, does not currently include PHFU.

9. According to NUSCO, at the time the June 30 Order issued, CL&P had self-identified only \$150,000 of the Glenbrook Project's cost as potential Localized Costs. NUSCO points out that, although ISO-NE had not made a final determination as to whether these costs should be designated as "Localized" or "Regional," the Commission permitted CL&P to include as Localized Costs its estimate of its Glenbrook Project subject to true-up once a designation of these costs had been made.¹⁴ Subsequent to receiving Commission approval in the June 30 Order, ISO-NE determined that two sets of costs should be localized: (1) the cost of constructing a third underground conduit duct (estimated cost to be \$27,965,096¹⁵), and (2) the cost of cable/trench routing on Route 1 (estimated cost to be \$2,570,000).

10. NUSCO notes that the cost of the cable/trench routing on Route 1 is included and recovered through NUSCO's Localized Facility formula rate as Localized Transmission Plant and that the "cost is being assigned to all Connecticut load in true-up calculations consistent with the Commission's June 30, 2008 Order."¹⁶ However, NUSCO also points out that the cost of constructing the third underground conduit duct is not currently included in Schedule 21-NU. NUSCO states that the different treatment is due to the

¹³ See Exhibit NU-4 to July 8 Filing, ISO-NE September 14, 2010, *Final TCA Determination for the Glenbrook Cables Project*.

¹⁴ July 8 Filing at 2.

¹⁵ NUSCO asserts that the actual cost was \$31,396,302 and that this amount has been removed from regional rates. (*Id.* at 10, fn.14.)

¹⁶ *Id.* at 10; see *Northeast Utilities Service Company*, 123 FERC ¶ 61,324 (2008).

nature of the third underground conduit duct and the language of the rate schedule.¹⁷ Specifically, NUSCO asserts that the third underground conduit duct is a spare, and was originally constructed to accommodate a future increase in the cables to 345 kV¹⁸ and that the cost of the spare conduit duct is currently recorded in FERC Account No. 105, Plant Held for Future Use.¹⁹

11. NUSCO maintains that, accordingly, costs associated with the Glenbrook Project have been included in the Category A costs, and that unless the costs associated with the Glenbrook Project PHFU are included in NUSCO's Category B costs, under the filed rates, those costs would be shared with Massachusetts and New Hampshire customers rather than charged only to Connecticut customers.²⁰ Moreover, it notes that, although PHFU is included in the Category A formula rate, it is not included in the Category B formula rate for Localized Costs.²¹

12. NUSCO requests an effective date for the proposed revisions of June 1, 2008, which is the same effective date of the Tariff revisions accepted in the June 30 Order, wherein the Commission accepted NUSCO's proposal to allocate the Localized Costs of the Glenbrook Project to Connecticut customers.²²

13. NUSCO maintains that "good cause" exists to make the July 8 Filing effective June 1, 2008. It asserts that it is necessary that the effective date of its filing be the same time as the Tariff provisions accepted in the June 30 Order, to ensure that the costs of PHFU would be allocated to load in Connecticut at the same time the other Glenbrook Project Localized Costs were included in the Localized Facility formula rates.²³

¹⁷ *Id.* at 10-11.

¹⁸ See Exhibit NU-4 to July 8 Filing, ISO-NE September 14, 2010, *Final TCA Determination for the Glenbrook Cables Project*, at 10.

¹⁹ July 8 Filing at 11.

²⁰ *Id.*

²¹ *Id.* at 11-12.

²² *Id.*

²³ *Id.* at 19.

14. NUSCO further cites the June 30 Order's waiver of the 60-day prior notice requirement to protect NUSCO's customers in Massachusetts and New Hampshire from paying costs that should be recovered from Connecticut customers. NUSCO argues that without its proposed revisions, there will be an "inappropriate cost shift . . . contrary to the Commission's June 30, 2008 Order."²⁴ NUSCO asserts that it is the "Commission's policy . . . to grant waiver of notice when the effective date of a filing is prescribed by contract or settlement [and said] policy is equally applicable where the effective date is prescribed by a Commission order."²⁵

15. Finally, NUSCO asserts that although it is seeking a June 1, 2008 effective date, ISO-NE is unable to submit a Tariff Record with that effective date because it pre-dates the August 30, 2010 establishment of the relevant eTariff Database, and, thus, the earliest proposed effective date it could submit to eTariff would be August 30, 2010.²⁶ Citing two previous schedule changes, NUSCO maintains that, to fully comply with eTariff requirements, it needs to submit three separate versions of the Tariff Record, one for each of the following time periods: August 30, 2010 - November 30, 2010 (version 4.0.0); December 1, 2010 – March 31, 2011 (Version 5.0.0); and April 1, 2011 – present (Version 6.0.0).²⁷ Accordingly, NUSCO submitted the proposed revisions in the three separate above-captioned proceedings.

III. Notice and Pleadings

16. Notice of the July 8 Filing was published in the *Federal Register*, 76 Fed. Reg. 41,780 (2011), with interventions and protests due on or before July 29, 2011.

17. On July 29, 2011, NRG Companies filed a motion to intervene and United Illuminating Company (UI) submitted a motion to intervene and protest (UI Protest). NUSCO filed an answer (NUSCO Answer) to UI's protest on August 15, 2011.

A. UI Protest

18. UI recognizes that ISO-NE's TCA determination for the Glenbrook Project concluded that the Route 1 routing project was designed to comport with the Connecticut Department of Transportation's policy and thus identified as a Localized Cost; however,

²⁴ *Id.*

²⁵ *Id.* referencing June 30 Order at P 35 and *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993).

²⁶ *Id.* at 20.

²⁷ *Id.*

with respect to the third Glenbrook conduit, UI asserts that ISO-NE did not offer a similar basis for its justification to classify the project as a Localized Cost.²⁸ UI asserts that “ISO-NE merely reported that the purpose of the Third Glenbrook Conduit . . . ‘is to accommodate [a future] increase in the cables to 345 kV class . . . [and] during the TCA process, NUSCO ‘stated the need [to complete the upgrade to 345 kV] could occur within 20 years,’ but failed, in ISO-NE’s view, to ‘explain the basis for such a need.’”²⁹

19. UI contends that not only Connecticut RNS³⁰ customers, but also all RNS customers in New England, benefit from the enhanced regional reliability resulting from the Glenbrook Project, including all three conduits as currently configured.³¹ UI also maintains that NUSCO failed to sustain their burden of proof pursuant to section 205 of the Federal Power Act (FPA),³² instead seeking to impose the entire cost of the third Glenbrook Conduit upon Connecticut RNS customers without showing any commensurate benefit.³³ UI argues that CL&P did not incur the costs associated with the Glenbrook Project for any Connecticut state or local requirement.³⁴ Thus, UI argues that to allocate Localized Costs to Connecticut load would be inconsistent with section 205 of FPA; the Commission’s cost causation principle; ISO-NE’s Tariff; as well as the cost allocation principles set forth in Order No. 1000.³⁵

20. UI further states that the Commission previously has espoused, and recently reaffirmed in Order No. 1000, its well-established cost causation principle, by requiring rates to “reflect to some degree the costs actually caused by the customer who must pay them.”³⁶ UI asserts that one of the primary objectives of the Commission is to ensure

²⁸ UI Protest at 3.

²⁹ *Id.*

³⁰ Regional Network Transmission Service.

³¹ *Id.* at 6.

³² 16 U.S.C. § 824d (2006).

³³ UI Protest at 6.

³⁴ *Id.*

³⁵ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 Fed. Reg. 29,842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 (2011).

³⁶ UI Protest at 7 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 504 (quoting *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992))).

that the costs of transmission solutions chosen to meet regional transmission needs are allocated fairly to those who receive benefits from them.³⁷

21. Additionally, UI states that Schedules 12 and 12C of ISO-NE's Tariff also capture the cost causation principle, in that ISO-NE's Tariff classifies transmission upgrades into two classes: Regional Benefit Upgrades (RBU) and Localized Costs. UI states that an RBU is defined as a transmission project or upgrade that is "(i) rated 115 kV or above; (ii) meets all of the non-voltage criteria for PTF classification specified in the OATT; and (iii) is included in the [ISO-NE] Regional System Plan as either a Reliability Transmission Upgrade or [a] Market Efficiency Transmission Upgrade."³⁸ UI contrasts Localized Costs not as pertaining to a type of transmission facility, but rather to a category of costs that ISO-NE might identify as part of the overall cost of certain transmission upgrades.³⁹ Further UI states that Localized Costs are defined to be incremental costs that exceed the requirements that ISO-NE deems reasonable and consistent with Good Utility Practice and the current engineering design and construction practices in the area in which the transmission upgrade is built.⁴⁰

22. UI maintains that pursuant to Schedule 12 the costs of RBUs are included in the Pool-Supported PTF costs which are recoverable under the Tariff and allocated to all transmission customers whereas Localized Costs, by contrast, are not included in the Pool-Supported PTF and instead, are the responsibility of the entities subject to such Localized Costs.⁴¹ Thus, under this construct, transmission upgrades that address identified reliability needs receive regional cost support, and are not Localized Costs.

B. Answer

23. NUSCO states that UI's protest is a collateral attack on the Commission-approved cost allocation process for reliability projects in New England. NUSCO asserts that "UI's Protest represents its third attempt to undermine a long-settled cost allocation methodology for Localized Costs associated with the Connecticut-based reliability

³⁷ *Id.* at 8.

³⁸ *Id.* at 9, (citing ISO-NE's OATT § II.49 (Introduction)).

³⁹ *Id.*

⁴⁰ *Id.* at 9-10.

⁴¹ *Id.* at 10.

projects, one that has been supported by Connecticut regulators and has been beneficial to UI.”⁴²

24. NUSCO states that the July 8 Filing does not propose a cost allocation methodology for the Glenbrook Project Localized Costs because such methodology had already been accepted in the June 30 Order, allocating all Localized Costs associated with the Glenbrook Project to all transmission load serving entities in Connecticut. NUSCO states the July 8 Filing was for the limited purpose of revising Attachment NU-I of Schedule 21-NU to add a FERC Account No. 105, PHFU to the formula rate used in calculating Localized Costs. NUSCO asserts that “UI does not raise any specific objection to the relief requested in NUSCO’s July 8 Filing, which was to amend Attachment NU-1 to add plant held for future use as a rate base item.”⁴³

25. NUSCO further takes issue with UI’s argument that, in order to be consistent with Order No. 1000, Localized Costs of the Glenbrook Project’s spare conduit duct should be allocated regionally. NUSCO points out that the Commission has explained that the requirements and principles in Order No. 1000 apply to new transmission facilities, and not to projects that are already approved as part of the regional transmission planning process.⁴⁴

IV. Commission Determination

A. Procedural Issues

26. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,⁴⁵ NRG Companies’ and UI’s timely, uncontested motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure prohibit an answer to a protest unless otherwise ordered by the decisional authority.⁴⁶ We will accept NUSCO’s answer because it has provided information that has assisted us in our decision-making process.

⁴² Answer at 1-2.

⁴³ Answer at 2.

⁴⁴ *See* Order No. 1000 at P 65.

⁴⁵ 18 C.F.R. § 385.214 (2011).

⁴⁶ 18 C.F.R. § 385.213(a)(2) (2011).

B. Discussion

27. We will accept NUSCO's proposed tariff revisions as consistent with the June 30 Order, allowing allocation of Localized Costs for the Glenbrook Project entirely to Connecticut load. We agree with NUSCO that, absent these revisions, Localized Costs would be allocated to all NUSCO's Category A customers (i.e., customers in Connecticut, Massachusetts, and New Hampshire), which is at odds with the reasoning set forth in the June 30 Order and summarized above.

28. We are not persuaded by UI's arguments against accepting the filing. UI's protest primarily assails prior Commission orders, issued in separate proceedings, concerning the cost allocation process in New England and the allocation of Localized Costs for the Glenbrook Project.⁴⁷ As such, UI's arguments constitute collateral attacks on those orders and are beyond the scope of this proceeding. For the same reason, we reject UI's arguments to the effect that allocating Localized Costs for the Glenbrook Project solely to Connecticut customers is inconsistent with ISO-NE's Tariff. In the June 30 Order, the Commission expressly determined that such an allocation is consistent with the Tariff, and thus UI's arguments on this issue constitute a collateral attack on that order. UI's remaining arguments concerning Order No. 1000 are inapplicable here. Order No. 1000 applies to new transmission facilities being evaluated in a planning process after the effective date of the public utility transmission provider's filing adopting the requirements of the rule but not to projects that have already been approved (and built) as part of the regional process.⁴⁸

29. As to the effective date, we agree with NUSCO that good cause exists to grant an effective date of June 1, 2008 for the tariff revisions accepted here.⁴⁹ The proposed effective date is consistent with the effective date in the Commission's June 30 Order approving the cost allocation process for the Glenbrook Project. That order acknowledged that ISO-NE had not yet made a determination of the Localized Costs for the Glenbrook Project and that some of the costs being recovered through RNS rates could be determined by ISO-NE to be Localized Costs, and therefore subsequently excluded from regional recovery.⁵⁰

⁴⁷ See *New England Power Pool*, 105 FERC ¶ 61,300 (2003); June 30 Order.

⁴⁸ See Order No. 1000 at P 65. Moreover, the Commission found in the June 30 Order that the Glenbrook Project will indeed benefit Connecticut customers.

⁴⁹ *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

⁵⁰ June 30 Order at P 9.

30. The June 30 Order also approved a true-up mechanism to allocate those costs to the appropriate customer classes, which would ensure that any differences between estimated and actual amounts of Localized Costs will be appropriately reconciled such that both RNS customers and those paying the Localized Costs will ultimately pay only their finally determined shares of the costs of the Glenbrook Project.⁵¹

31. We find that the requested June 1, 2008, effective date for the proposed tariff revisions is appropriate, in order to implement the cost allocation methodology coincidental with the annual rate changes for RNS under the Tariff provisions that the Commission accepted in the June 30 Order.⁵² Accordingly, we grant waiver of the Commission's 60-day prior notice requirement to allow the proposed tariff revisions for PHFU with respect to Localized Costs to be effective June 1, 2008.

32. Lastly, although the July 8 Filing indicates that the additional Localized Costs have been removed from RNS rates in accordance with ISO-NE's determination, it neither indicates when that occurred, nor how the revenue requirements for PHFU for those costs that have now been determined to be Localized Costs have been collected since the in-service date of the Glenbrook Project. Accordingly, we direct NUSCO to submit, within 45 days of the issuance of this order, a detailed explanation of how the true-up mechanism has been applied. The explanation should include a reconciliation of the amounts trued-up for both local and regional customers, for each of the preceding three years that would be affected by the tariff revisions accepted here.⁵³ Additionally, in its compliance filing NUSCO shall specify how the PHFU variables operate in the true-up mechanism formulas included in Attachments NU-H and NU-I to the tariff.⁵⁴

The Commission orders:

(A) NUSCO's proposed tariff revisions are hereby accepted for filing, subject to the compliance filing ordered below, effective June 1, 2008, as discussed in the body of this order.

⁵¹ *Id.* P 30.

⁵² *Id.* P 35.

⁵³ Years 2008, 2009, and 2010; *see* July 8 Filing at 10, n.15.

⁵⁴ Attachment to July 8 Filing, Northeast Utilities Companies, SCHEDULE 21-NU, *see* Attachments NU-H and NU-I.

(B) NUSCO is hereby directed to submit a compliance filing within 45 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.