

136 FERC ¶ 61,090
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. ER11-2377-001

ORDER ON REHEARING

(Issued August 5, 2011)

1. In this order, we deny the request for rehearing of the New Hampshire Public Utilities Commission (NHPUC) of the Commission's February 11, 2011 order, which accepted the bilateral, cost-based transmission service agreement (TSA) between Northern Pass Transmission LLC (Northern Pass) and H.Q. Renewable Energy Inc. (HQ Hydro) for transmission service over the proposed Northern Pass Transmission Line (NPT Line).¹ Specifically, NHPUC states that it seeks rehearing with respect to the Commission's authorization of: (1) a 166-basis point Return on Equity (ROE) adder for investment in new transmission facilities prior to and during construction, and (2) a 92-basis point ROE adder for investment in transmission facilities upon commercial operation of the NPT Line. In addition, NHPUC seeks rehearing on the Commission's authorization of a 50-basis point ROE adder for participation in a Regional Transmission Organization (RTO).

I. Background

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 Service Company (Northeast Utilities) and NSTAR Electric Company (NSTAR) sought approval of the

¹ *Northern Pass Transmission LLC*, 134 FERC ¶ 61,095 (2011) (February 2011 Order).

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).

structure of a transaction involving the NPT Line that would include a long-term, bilateral transmission service agreement.³ The Commission granted the petition subject to its further review under section 205 of the Federal Power Act (FPA)⁴ of the TSA, the transmission operating agreement (TOA), and any other jurisdictional rate schedules.⁵ The May 22 Order explained that when the TSA was filed, the Commission would evaluate whether the rates, terms, and conditions of the executed TSA are just, reasonable and not unduly discriminatory or preferential.⁶

3. On December 15, 2010, Northern Pass submitted a bilateral, cost-based TSA that was executed on October 4, 2010 by Northern Pass and HQ Hydro for service over the proposed NPT Line. Northern Pass requested an effective date for the TSA of February 14, 2011. Under the terms of the TSA, Northern Pass would develop, site, finance, construct, own, and maintain the NPT Line. It would sell 1,200 MW of firm transmission service over the NPT Line to HQ Hydro over a 40-year term. HQ Hydro would also 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 planned to recover these costs through competitive sales of wholesale power in the New England market. Once the NPT Line becomes commercially operational, Northern

³ The NPT Line consists of (i) a 1,200 MW high voltage direct current 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 transmission line, approximately 40 miles in length, between the Franklin converter station and the Public Service Company of New Hampshire 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. February 2011 Order, 134 FERC ¶ 61,095 at P 6.

⁴ 16 U.S.C. § 824d (2006).

⁵ 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., 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.

⁶ May 22 Order, 127 FERC ¶ 61,179 at P 17.

Pass will transfer operating control of the line to ISO-NE pursuant to a TOA to be negotiated with ISO-NE.

4. Northern Pass requested an overall ROE of 12.56 percent, including certain incentive ROE adders pursuant to Order No. 679. Prior to commercial operation, Northern Pass requested an ROE of 12.56 percent, consisting of a base ROE of 10.4 percent plus ROE adders, which included 50 basis points for RTO membership. Northern Pass stated that the 12.56 percent ROE prior to and during construction was for purposes of accruing allowance for funds used during construction (AFUDC). Northern Pass requested, 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.

5. The Commission accepted the TSA without modification, including its provisions that reflect Northern Pass's request for ratemaking incentives pursuant to Order No. 679. In its February 2011 Order, the Commission concluded that Northern Pass's base ROE for pre-commercial operation should be 10.4 percent.⁷ Based on the unique nature of Northern Pass's project and the unique commercial arrangements facilitating its construction, the Commission granted Northern Pass's request for an overall ROE of 12.56 percent with a 166 basis point incentive ROE adder prior to and during construction, along with a 50 basis point incentive ROE adder to reflect its participation in ISO-NE, consistent with past incentives that the Commission has granted to reflect an applicant's participation in an RTO. Upon commercial operation of the NPT Line and transfer of operational control of the line to ISO-NE, the Commission found that Northern Pass would be entitled to the base ROE under the ISO-NE OATT (11.14 percent). Likewise, the Commission approved a 92 basis point incentive ROE adder for investment in new transmission along with the 50 basis point incentive ROE adder to reflect participation in ISO-NE.⁸

II. Discussion

6. NHPUC seeks rehearing with respect to the Commission's authorization of: (1) a 166-basis point ROE adder for investment in new transmission facilities prior to and during construction, and (2) a 92-basis point ROE adder for investment in transmission facilities upon commercial operation of the NPT Line. In addition, NHPUC seeks

⁷ February 2011 Order, 134 FERC ¶ 61,095 at P 52-54.

⁸ *Id.* P 54-56, 58.

rehearing on the Commission's authorization of a 50-basis point ROE adder for participation in an RTO. As discussed below, we are not persuaded to grant rehearing of the Commission's decisions in the February 2011 Order.

7. NHPUC argues that the ROE adders are not justified for several reasons. First, NHPUC contends that the ROE adders are not justified because Northern Pass has not demonstrated that the median returns of the applicable proxy group and the ISO-NE standard return are not sufficient to encourage investment in the proposed NPT Line.⁹ The Commission rejects this argument. In Order No. 679, the Commission expressly rejected the premise that an applicant must show that it would not build the facilities but for the incentives.¹⁰ The Commission does require applicants "to show some nexus between the incentives being requested and the investment being made,"¹¹ which Northern Pass satisfactorily demonstrated in its filing, as described in the February 2011 Order.¹²

8. NHPUC further argues that the ROE adders are not justified because the NPT Line project is a voluntary project and has not been identified by ISO-NE as one required to meet a reliability need. In addition, NHPUC contends that no ISO-NE stakeholder process has been conducted to date concerning the project either to assess its potential impact on the regional grid or to identify specific reliability needs or congestion concerns. The Commission rejects these arguments, as well. In implementing section 219 of the FPA,¹³ the Commission stated in Order No. 679 that we "will allow, when justified, an incentive-based ROE to all public utilities (i.e., traditional public utilities and Transcos) for new investments in transmission facilities that benefit consumers by ensuring reliability or reducing the cost of delivered power by reducing transmission congestion."¹⁴ Order No. 679 established a rebuttable presumption that this threshold is met when a project for which an applicant is seeking incentives has been

⁹ NHPUC Request for Rehearing at 5.

¹⁰ *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 48 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2002).

¹¹ *Id.*

¹² February 2011 Order, 134 FERC ¶ 61,095 at P 39-42.

¹³ 16 U.S.C. § 824s (2006).

¹⁴ February 2011 Order, 134 FERC ¶ 61,095 at P 91.

approved in an appropriate transmission planning process.¹⁵ However, such approval is not a prerequisite for the Commission to grant incentives pursuant to Order No. 679. Northern Pass did not claim that it qualified for this rebuttable presumption and instead submitted a study assessing the congestion reduction benefits of the NPT Line and resulting price reductions in New England that quantifies the effect of adding the line on locational marginal prices throughout the region.¹⁶ Based on our analysis of Northern Pass's study, we found that the NPT Line satisfied the above-noted threshold requirement of section 219 and Order No. 679.¹⁷ Furthermore, the fact that an applicant pursues a project voluntarily does not preclude it from seeking incentives for the project.

9. NHPUC also states that Northeast Utilities and NSTAR bear no real financial risk as the NPT Line is entirely participant funded with all costs paid by HQ Hydro under the terms of the TSA. We disagree. As we found in the February 2011 Order, HQ Hydro is responsible for all costs associated with the NPT Line under the terms of the bilateral, cost-based TSA¹⁸ With this type of "single-payer" contract, the project is completely dependent on a single customer. Should this customer fail, the line would not have a committed customer. Therefore, Northern Pass faces financial risk associated with the NPT Line. In addition, under the bilaterally negotiated termination provisions of the TSA, each of the parties carries significant financial risk under certain conditions during the pre- and post-commercial operation stages.¹⁹

¹⁵ Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062.

¹⁶ February 2011 Order, 134 FERC ¶ 61,095 at P 25; *see also* Northern Pass Filing at App. G, Exhibit No. NPT-700 (providing a report by Charles River Associates, Inc. regarding congestion reduction benefits of the NPT Line) at 3.

¹⁷ *Id.* P 26. We also note that in an earlier order, the Commission directed the developers of that facility to work with ISO-NE in its section I.3.9 reliability review process to ensure that it does not cause any adverse effects to system reliability." December 29 Order, 129 FERC ¶ 61,279 at P 48 (citing May 22 Order, 127 FERC ¶ 61,179 at P 63).

¹⁸ *Id.* P 82. The question of whether the costs of the NPT Line or any upgrades will be rolled into regional rates is a determination that has not been made by ISO-NE. *Id.*

¹⁹ *Id.* P 58, 60.

10. NHPUC asserts that the Commission has granted an RTO adder “automatically” without a specific request from the petitioning companies. NHPUC argues that Northeast Utilities and NSTAR are already members of ISO-NE, and there is no indication in the record that they are terminating their membership.

11. The Commission also rejects the notion that we granted an incentive RTO adder for RTO participation without receiving a specific request from Northern Pass. Northern Pass requested a 50 basis point incentive ROE adder “to reflect its participation in ISO-NE,” which was supported by the testimony of Dr. Avera included in the record.²⁰ The Commission’s action is consistent with Order No. 679, where the Commission stated that “entities that have already joined, and that remain members of, an RTO, ISO, or other Commission-approved Transmission Organization, are eligible to receive this incentive.”²¹

The Commission orders:

NHPUC’s request for rehearing is hereby denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁰ Northern Pass Filing at App. F, Exhibit No. NPT-600 at 81-83.

²¹ *Id.* P 55 n.77.