

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northeast Utilities Service Company

Docket No. ER05-918-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATES AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued June 28, 2005)

1. In this order, we accept for filing Northeast Utilities Service Company's (NUSCO) proposed rates and suspend them for five months, to become effective November 29, 2005, subject to refund. We also establish hearing and settlement judge procedures. This order benefits customers because it provides the parties with a forum in which to resolve their disputes.

Background

2. On April 29, 2005, NUSCO, on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, and Holyoke Power and Electric Company (collectively, the NU Companies), filed under section 205 of the Federal Power Act (FPA)¹ an unexecuted Sixth Amendment (Sixth Amendment) to a comprehensive, long-term transmission service agreement (Transmission Agreement), as amended,² between the NU Companies and Connecticut Municipal Electric Energy Cooperative (Connecticut Coop.).³ NUSCO filed the Sixth

¹ 16 U.S.C. § 824d (2000).

² The Transmission Agreement, dated November 29, 1990, is designated as The Connecticut Light and Power Company First Revised Rate Schedule FERC No. 492, Western Massachusetts Electric Company First Revised Rate Schedule FERC No. 381, Holyoke Water Power Company First Revised Rate Schedule FERC No. 47, and Holyoke Power and Electric Company First Revised Rate Schedule FERC No. 24. *See* Letter Order issued on October 28, 2002 in Docket No. ER02-2418.

³ Connecticut Coop. consists of the municipal electric utility systems of the City of Norwich, the City of Groton, the Borough of Jewett City, the City of Norwalk Second Taxing District, and the City of Norwalk Third Taxing District.

Amendment to replace the existing fixed rate under the Transmission Agreement with the formula rate methodology for local transmission service contained in Schedule 21-NU of ISO New England, Inc.'s (ISO-NE) Open Access Transmission Tariff (OATT).

3. NUSCO claims that this filing is necessary to allow the NU Companies to cover their costs of providing transmission service to Connecticut Coop. It says that the rate includes new capital additions that benefit all of NU Companies' customers, including Connecticut Coop. NUSCO claims that the NU Companies have not been recovering their costs under the current Transmission Agreement rate. The Sixth Amendment proposes to replace the existing fixed rate with a formula rate that is the same rate in effect for the other NU Companies customers approved by the Commission.⁴ The rate contains a true-up mechanism that ensures that Connecticut Coop. will pay only for transmission service rendered. NUSCO also claims that, under the proposed Sixth Amendment, Connecticut Coop. will be treated the same as other similarly-situated load serving entities.

4. The original Transmission Agreement was signed before Order No. 888⁵ and is currently listed as a grandfathered contract under ISO-NE's OATT.⁶ Under the Transmission Agreement, Connecticut Coop. pays the NU Companies for comprehensive, network-like transmission service that is very similar to the Network Integration Transmission Service under Order No. 888. NUSCO states that Connecticut Coop. pays a fixed rate under a settlement agreement (1998 Settlement Agreement) that was intended to apply only during the NEPOOL transition period, ending February 28, 2003. In 1998, as part of the restructuring of NEPOOL, the Northeast Utilities

⁴ *Northeast Utilities Service Co.*, 105 FERC ¶ 61,089 (2003) (accepting and suspending the proposed formula rate and established hearing and settlement procedures); *Northeast Utilities Service Co.*, 108 FERC ¶ 61,240 (2004) (approving the uncontested settlement to resolve all issues of the proposed formula rate's justness and reasonableness).

⁵ Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services 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 (1997), 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 (1996), aff'd in part sub nom. *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. 2000), aff'd sub nom. *New York v. FERC*, 535 U.S. 1 (2002).

⁶ Originally the Transmission Agreement was designated as an Excepted Transaction under the New England Power Pool (NEPOOL) OATT, but the NEPOOL OATT was superseded by the ISO-NE OATT on February 1, 2005.

Companies, Connecticut Coop., and other transmission-dependent utilities entered into the 1998 Settlement Agreement to resolve a claim by the transmission-dependent utilities that they were being double-charged for transmission service provided under the NEPOOL Tariff and their respective Transmission Agreements.⁷ It prevented double-charging by forcing the NU Companies to credit any payment made by Connecticut Coop. under the NEPOOL tariff for Regional Network Service against payments made under the Transmission Agreement.

5. The 1998 Settlement Agreement further stipulated that parties would negotiate rates for the period following the NEPOOL restructuring period, and if no settlement could be reached, the NU Companies would have the right to unilaterally file unexecuted amendments to the Transmission Agreement with the Commission under section 205 of the FPA. Since the end of the NEPOOL restructuring period, the parties have been unable to agree upon Transmission Agreement amendments and have received four extensions of the 1998 Settlement Agreement, maintaining the settlement rate while negotiations continue.⁸

6. The NU Companies propose to add a new Appendix H⁹ to the Transmission Agreement to replace the old fixed rate, which was based on 1996 cost data. Appendix H calculates the NU Companies' revenue requirements based on estimates of costs. Once actual costs are known, the payments are trued up, with interest. Additionally, Connecticut Coop. would pay a charge for Scheduling, System Control and Dispatch Service, a charge imposed on all NU Companies' customers taking network transmission service.

⁷ Northeast Utilities Service Company, 88 FERC ¶ 61,006 (1999).

⁸Letter Order issued on April 15, 2003 in Docket No. ER03-586-000 accepting First Amendment to Settlement Agreement (granting ninety day extension); Letter Order issued on July 18, 2003 in Docket No. ER03-907-000 accepting the Second Amendment (granting sixty day extension); Letter Order issued on September 8, 2003 in Docket No. ER03-907-001 accepting Third Amendment (granting forty-five day extension); and Letter Order issued on November 13, 2003 in Docket No. ER03-1337-000 accepting the Fourth Amendment (granting a thirty day extension).

⁹ Northeast Service states that Appendix H is identical to Schedule NU-21 in the ISO-NE OATT. However, the return on equity of the New England Transmission Owners is currently at issue in the Commission's proceedings in Docket Nos. ER04-157 *et al.* and EL05-89-000. Northeast Service asks that the Commission accept the Sixth Amendment subject to the outcome of that hearing.

7. NUSCO requests a May 1, 2005 effective date, which would require waiver of the Commission's 60-day prior notice requirement. NUSCO states that while there is a contractual basis for NUSCO to seek a retroactive effective date of March 1, 2003 to recoup the transmission revenue shortfall NUSCO experienced during recent negotiations, NUSCO proposes a prospective effective date in the interest of customer relations. Additionally, NUSCO claims that the requested extensions of time specifically stated that any rate ultimately agreed upon by the parties would be made effective as of and subject to refund back to March 1, 2003.¹⁰ NUSCO further states that the existing rate mechanism under-recovers the NU Companies' costs so much that they have actually been paying Connecticut Coop. for service that the NU Companies provide. According to NUSCO, this is an unjust and unreasonable rate situation that merits waiver of the 60 days prior notice.

Notice of Filing and Responsive Pleadings

8. Notice of NUSCO's filing was published in the *Federal Register*, 70 Fed. Reg. 25,561 (2005), with comments, interventions, and protests due on or before May 20, 2005. Connecticut Coop. filed a motion to intervene, motion to reject, and protest. NUSCO filed an answer to Connecticut Coop.'s protest. Connecticut Coop. filed an answer to NUSCO's answer. NUSCO filed an answer to Connecticut Coop.'s answer.

9. Connecticut Coop. asks the Commission to reject the filing or, in the alternative, to suspend the filing for the maximum five month period and establish hearing procedures. Connecticut Coop. claims that it no longer takes any network service from the NU Companies. It says that once NEPOOL began its restructuring period, NEPOOL forced it to take all of its Regional Network Service under the NEPOOL Tariff. Connecticut Coop. claims that the only services it takes under the Transmission Agreement are: 1) local delivery service through non-PTF facilities to deliver resources moved via Regional Network Service over PTF facilities to certain points of delivery; and 2) use of local facilities at certain points of delivery, resulting in a separate charge. Connecticut Coop. also claims that the NU Companies are already fully compensated for Connecticut Coop.'s use of PTF facilities through Regional Network Service revenues received from ISO-NE.

10. Connecticut Coop. further argues that the NU Companies are attempting to charge all of Connecticut Coop.'s participants for Local Network Service rates over non-PTF facilities. According to Connecticut Coop., over 72 percent of its load is connected to PTF facilities and does not use Local Network Service, meaning that the proposed Sixth Amendment would overcharge by almost \$1.6 million on the Local Network Service rates alone. Connecticut Coop. notes that this is vastly in excess of the ten percent

¹⁰ NUSCO Transmittal at n. 20.

threshold necessary for maximum suspension. Connecticut Coop. also states that the NU Companies are attempting to charge Connecticut Coop. for ancillary services, when Connecticut Coop. is obligated to purchase all ancillary services from ISO-NE.

11. Connecticut Coop. states that a December 30, 1996 agreement with the NU Companies (1996 Agreement)¹¹ stipulated that following the NEPOOL restructuring period, Connecticut Coop.'s rate under the Transmission Agreement would be limited to charges for Local Facilities and non-PTFs. Connecticut Coop. claims that the Sixth Amendment would violate the 1996 Agreement by attempting to charge Connecticut Coop. for non-PTF service that it does not use, and for PTF service that is already recovered under the Regional Network Service rate.

12. Connecticut Coop. further claims that the Sixth Amendment would also violate the 1996 Agreement, since that agreement provided for the phase-out of all PTF costs from the Transmission Agreement because those costs would be recovered under the Regional Network Service rate. In addition, Connecticut Coop. claims that the Sixth Amendment would violate the grandfathered status of the Transmission Agreement under the ISO-NE OATT. It says that parties to a grandfathered agreement would not be required to purchase Local Network Service while the grandfathered agreement is in effect.

13. Connecticut Coop. claims that the Commission cannot accept this filing under section 205 because it contravenes the contractual obligations of a utility; rather, it must be dealt with through a section 206 proceeding. Connecticut Coop. further argues that if the Commission does accept the filing, the request for waiver of prior notice should be rejected, since there is no contractual reason to grant the waiver. Connecticut Coop. claims that there is nothing in either the 1996 Agreement or the 1998 Settlement Agreements that addresses when any amendments to the Transmission Agreement would become effective.

14. In its answer, NUSCO argues that under the Transmission Agreement, the NU Companies have long provided Connecticut Coop. with network transmission service. NUSCO disagrees with Connecticut Coop.'s claim regarding the provision of "limited local delivery service over discrete non-PTF transmission facilities" to Connecticut Coop., and argues that this phrase is not found at all in the Transmission Agreement. NUSCO also states that the NEPOOL restructuring period had no effect on the network transmission service provided by the NU Companies to Connecticut Coop.

15. Further, NUSCO asserts that the Commission should allow a May 1, 2005 effective date and reject Connecticut Coop.'s motion for a five-month suspension. According to NUSCO, the Transmission Agreement clearly requires Connecticut Coop. to pay a load ratio share of the costs of the NU Companies' transmission system based

¹¹ See Docket No. ER97-1987-000.

upon 100 percent of Connecticut Coop.'s load. NUSCO states that there is no provision that suggests that Connecticut Coop.'s members should be segregated between those who are directly connected to PTF and those connected to non-PTF for purposes of assessing transmission charges under the Transmission Agreement. As a result, NUSCO claims that Connecticut Coop. is incorrect in calculating the \$1.6 million overcharge, so there is no basis for a five-month suspension.

Discussion

Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, Connecticut Coop.'s timely, unopposed motion to intervene serves to make it a party to this proceeding.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest and answer unless otherwise permitted by the decisional authority. We will accept NUSCO's answer to Connecticut Coop.'s protest because it has provided information that assisted us in our decision-making process. We are not persuaded to accept Connecticut Coop.'s answer or NUSCO's subsequent answer and will, therefore, reject them.

Hearing Procedures

18. NUSCO's filing raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

19. Our preliminary analysis indicates that the proposed filing has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the proposed rates for filing, suspend them for five months (as discussed below), to be effective November 29, 2005, subject to refund, and set them for hearing and settlement judge procedures.

20. We deny NUSCO's request for waiver of the 60-day prior notice requirement to permit the proposed rates to become effective on May 1, 2005. Absent "a strong showing of good cause," the Commission will generally deny waiver for rate increases that do not implement a contract or settlement requirement.¹² In our view, NUSCO did not provide

¹² See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

the strong showing of good cause necessary for waiver of the prior notice requirement. Accordingly, the proposed increased rates will become effective five months from 60 days after filing, *i.e.*, on November 29, 2005.

21. In *West Texas Utilities Company (West Texas)*,¹³ the Commission explained that when its preliminary analysis indicates that the proposed rates may be unjust and unreasonable and may be substantially excessive, as defined in *West Texas*, the Commission generally would impose a maximum suspension. Here, our examination indicates that NUSCO's proposed rates may yield substantially excessive revenues. Therefore, we will suspend the proposed transmission rates for the maximum five month period.

22. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁴ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹⁵ The settlement judge shall report to the Chief Judge and the Commission within sixty (60) days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) NUSCO's proposed rates are hereby accepted for filing and suspended for five months, to become effective on November 29, 2005, subject to refund, as discussed in the body of this order.

¹³ 18 FERC ¶ 61,189 (1982).

¹⁴ 18 C.F.R. § 385.603 (2004).

¹⁵ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202)502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of NUSCO's proposed rates. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.