

121 FERC ¶ 61,308  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Northeast Utilities Service Company

Docket No. ER08-149-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING ACCOUNTING  
TREATMENT AND RATE RECOVERY OF REGIONAL TRANSMISSION  
ORGANIZATION FORMATION COSTS

(Issued December 31, 2007)

1. On November 1, 2007, Northeast Utilities Service Company (NUSCO) submitted for Commission approval its proposed accounting treatment for, and associated cost recovery of, certain deferred Regional Transmission Organization (RTO) formation costs through formula rates contained in Attachment F and in Schedule 21-NU of ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (Tariff). In this order we conditionally accept NUSCO's proposed accounting and cost recovery of its deferred RTO formation costs, effective January 1, 2008, and suspend for a nominal period, as discussed below.

**I. Background**

2. On July 12, 2001, the Commission issued an order granting in part and denying in part a petition for declaratory order establishing the New England Regional Transmission Organization (NERTO) to act as the RTO for New England.<sup>1</sup> NERTO would have been a hybrid structure between ISO-NE and the Northeast Independent Transmission Company (NEITC). The Commission found, however, that the proposed RTO did not comply with all of the minimum characteristics set forth for RTOs in Order No. 2000.<sup>2</sup> Concurrently,

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<sup>1</sup> *Bangor Hydro-Electric Co.*, 96 FERC ¶ 61,063 (2001).

<sup>2</sup> *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

the Commission issued an order initiating mediation to combine the three independent system operators in the Northeastern United States into a single RTO.<sup>3</sup>

3. On November 20, 2001, on behalf of the NU Operating Companies,<sup>4</sup> NUSCO requested approval from the Commission's Chief Accountant to defer RTO formation-related costs (including carrying charges) associated with establishment of both the NEITC and the joint petition for a declaratory order to form the NERTO.<sup>5</sup> On March 14, 2002, NUSCO's request was approved.<sup>6</sup>

4. After an extensive stakeholder process, ISO-NE and New York ISO filed a joint petition for declaratory order regarding the creation of the Northeastern RTO.<sup>7</sup> Due to the prospect of extensive litigation, however, ISO-NE and New York ISO decided to withdraw their joint petition.<sup>8</sup> Nevertheless, the parties continued discussions with stakeholders regarding the ISOs' next steps for achieving Order No. 2000's goals within the region.

5. Building upon these earlier attempts to form an RTO, and after a lengthy stakeholder process, ISO-NE and the New England transmission owners<sup>9</sup> submitted a

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<sup>3</sup> *Regional Transmission Organizations*, 96 FERC ¶ 61,065 (2001).

<sup>4</sup> The NU Operating Companies are: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, Holyoke Water Power Company and Holyoke Power and Electric Company (NU Operating Companies).

<sup>5</sup> New England Transmission Owners, January 16, 2001 Joint Petition for a Declaratory Order to Form the New England Regional Transmission Organization, Docket No. RT01-86-000.

<sup>6</sup> *Northeast Utilities Service Co.*, Docket No. AC02-6-000 (March 14, 2001) (unpublished letter order) (Deferred Accounting Order).

<sup>7</sup> ISO New England Inc., *et al.*, August 23, 2002 Joint Petition for Declaratory Order Regarding the Creation of a Northeastern Regional Transmission Organization, Docket No. RT02-3-000.

<sup>8</sup> ISO New England Inc., *et al.*, November 22, 2002 Joint Petition for Declaratory Order Regarding the Creation of a Northeastern Regional Transmission Organization, Docket No. RT02-3-000.

<sup>9</sup> Bangor Hydro-Electric Company; Central Maine Power Company; NSTAR Electric & Gas Corporation; New England Power Company; Northeast Utilities Service Company; The United Illuminating Company; and Vermont Electric Power Company.

proposal to establish an RTO for New England only (RTO-NE).<sup>10</sup> On November 4, 2003, the transmission owners, joined by Green Mountain Power Corporation and Central Vermont Public Service Corporation, submitted a related section 205 filing seeking approval of a 14 percent return on equity (ROE) for ISO-NE.<sup>11</sup> On March 24, 2004, the Commission granted RTO status to RTO-NE, subject to the fulfillment of certain requirements, and set the return on equity issue for hearing.<sup>12</sup> After additional settlement negotiations, ISO-NE became the RTO for New England.<sup>13</sup> ISO-NE became operational on February 1, 2005.

## **II. Notice of Filing and Responsive Pleading**

6. Notice of NUSCO's filing was published in the *Federal Register*, 72 Fed. Reg. 64,559 (2007), with interventions and protests due on or before November 23, 2007. Chicopee Municipal Lighting Plant and South Hadley Electric Light Department (Chicopee and South Hadley) filed a timely motion to intervene and protest. The Connecticut Municipal Electric Energy Cooperative and Massachusetts Municipal Wholesale Electric Company (CMEEC and MMWEC) also filed a timely motion to intervene and protest along with a request for issuance of deficiency letter. On December 10, 2007, NUSCO filed an answer to the protests.

## **III. Discussion**

### **A. Procedural Matters**

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept NUSCO's answer because it has provided information that assisted us in our decision-making process.

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<sup>10</sup> ISO New England Inc., *et al.*, October 31, 2003 Request for Approval of Regional Transmission Operator for New England, Docket No. RT04-2-000.

<sup>11</sup> Bangor Hydro-Electric Co., *et al.*, November 4, 2003 Joint ROE Filing of New England Transmission Owners, Docket No. ER04-157-000.

<sup>12</sup> *ISO New England Inc.*, 106 FERC ¶ 61,280 (2004).

<sup>13</sup> *ISO New England Inc.*, 106 FERC ¶ 63,015, at P 5 (2004).

**B. NUSCO's Filing**

9. NUSCO states that since 2001 the NU Operating Companies have incurred approximately \$6.4 million of costs, including carrying charges, associated with their involvement in forming an RTO in New England. Consistent with the Commission's approval in the Deferred Accounting Order, NUSCO now seeks Commission approval to transfer these deferred costs to Account 182.3 (Other Regulatory Assets) to be amortized over a three-year period beginning January 1, 2008. NUSCO states that the amortized RTO formation costs and associated carrying costs will be charged to Account 928 (Regulatory Commission Expenses), which is customarily used to record legal, internal labor, and other costs associated with regulatory proceedings. Further, the costs would be allocated between local and regional transmission customers pursuant to the defined allocation factors in its formula rates and based on the ratio of investment in Pool Transmission Facilities (PTF) and Non-PTF facilities.

10. In support of its request, NUSCO states that the deferred costs were incurred from 2001 through the end of 2005 in response to Order No. 2000 and to comply with the Commission's orders regarding this matter. NUSCO states that the approved RTO proposal was the result of an effort spanning several years to develop, form and start-up an RTO encompassing New England. NUSCO adds that the deferred costs include costs associated with establishing an ROE for the rates charged by ISO-NE for regional service, which was a necessary part of the agreement among the transmission owners to transfer the responsibility for the regional service portion of the ISO-NE Tariff from the New England Power Pool to ISO-NE as an RTO, and that these costs were a direct result of the Commission's order approving the establishment of ISO-NE as an RTO. NUSCO further contends that the recovery of these costs is consistent with the Commission's policy of encouraging the formation of RTOs.<sup>14</sup> NUSCO states that the Commission has approved similar filings by two other transmission owners in New England that deferred recovery of their RTO startup costs.<sup>15</sup> NUSCO further states that its filing changes only how it proposes to account for the deferred interim RTO formation costs that otherwise would have been recoverable in rates on an "as incurred" basis as well as the timing of when those costs are reflected in its rates now that the RTO is fully operational.<sup>16</sup>

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<sup>14</sup> *Citing, e.g.,* Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,196.

<sup>15</sup> *Citing Bangor Hydro-Electric Co.,* Docket No. ER07-588-000 (Apr. 16, 2007) (unpublished letter order); *Central Maine Power Co.,* 116 FERC ¶ 61,129 (2006), *order on compliance filing,* Docket No. ER06-963-002 (Nov. 2, 2006) (unpublished letter order).

<sup>16</sup> NUSCO points out that other participants in the formation of ISO-NE's RTO, who did not seek deferral, have already recovered similar interim RTO formation costs in

11. In support of its costs, NUSCO provides a table showing the annual costs incurred by NU Operating Companies broken down by Legal, Consulting, Miscellaneous Fees, and Carrying Costs. Additional cost support, including the calculation of the total carrying charge,<sup>17</sup> is included in Attachment C. NUSCO requests that the Commission approve the proposed accounting treatment of the NU Operating Companies' deferred RTO startup costs without condition or modification effective January 1, 2008.

### **Protests**

12. Chicopee and South Hadley request that the Commission suspend NUSCO's formula rate increase for five months, place the new rates into effect subject to refund, and set NUSCO's application for hearing. Chicopee and South Hadley contend that NUSCO did not provide an appropriate amount of detail to demonstrate the justness and reasonableness of its costs. Chicopee and South Hadley also state that the Deferred Accounting Order does not give NUSCO authority to transfer costs to new accounts for recovery without demonstrating that the proposed rate treatment is just and reasonable. Further, Chicopee and South Hadley state that NUSCO provided no justification for its decision to wait more than 33 months after ISO-NE became operational to seek recovery of its purported start up costs, which has contributed to a majority of its carrying costs.

13. Chicopee and South Hadley also state that the Deferred Accounting Order contemplates the recovery of costs incurred in forming, not opposing, an RTO. Thus, Chicopee and South Hadley contend that NUSCO should not be able to recover costs it incurred in opposing the creation of the proposed New England/New York RTO. Additionally, Chicopee and South Hadley state that NUSCO has failed to demonstrate that it is reasonable to recover costs of establishing an ROE for ISO-NE. For all of these reasons, Chicopee and South Hadley suggest that the Commission should set this matter for hearing to permit further analysis of NUSCO's rate recovery plan.

14. CMEEC and MMWEC argue that Commission should find NUSCO's proposed accounting treatment and rates to be unjust and unreasonable, or, at a minimum, should set the matter for hearing. CMEEC and MMWEC contend that customers should not bear 100 percent of the costs associated with NUSCO's voluntary participation in previous, unsuccessful attempts to form an RTO. CMEEC and MMWEC suggest that the Commission should either find NUSCO's proposed rates unjust and unreasonable to the extent they would pass-through such costs, or, and at most, require NUSCO to split the costs of such activities equally between customers and shareholders. CMEEC and MMWEC also argue that NUSCO's ROE litigation costs should be excluded from its

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their rates.

<sup>17</sup> NUSCO notes that the carrying cost calculation utilizes the weighted Allowance For Funds Used During Construction (AFUDC) for each NU Company. *See* 18 C.F.R. § 101 (17) (Electric Plant Instruction).

RTO startup costs. Like Chicopee and South Hadley, CMEEC and MMWEC contend that NUSCO's proposed carrying costs are excessive and lack justification as to why NUSCO waited more than two and a half years after ISO-NE began operation before seeking to recover its deferred RTO startup costs.

**Answer**

15. NUSCO responds that all of the costs for which it seeks recovery were incurred to form an RTO and that the Commission, in order to encourage RTO development has allowed companies, including NUSCO, to defer these costs so that they would have a means to request their recovery later. NUSCO states that the Commission has allowed for the recovery of such costs even in circumstances in which the work expended upon initially unsuccessful proposals was dramatically less connected to the final result than was the case in New England.<sup>18</sup> Thus, NUSCO contends that it should be able to recover its costs associated with its failed attempts to start-up an RTO.

16. With respect to inclusion of the costs associated with determining the ROE components of the RTO rates, NUSCO notes that the transmission owners considered the Joint ROE Filing to be an important and integral component of the agreement to form an RTO for the New England region.<sup>19</sup> Contrary to the protestors' claim, NUSCO advises that the New England transmission owners were not willing to go forward with the RTO without assurances from the Commission that their ROE proposal would be viewed favorably by the Commission.<sup>20</sup>

17. With respect to accruing carrying costs on the deferred RTO start-up costs through December 31, 2006, NUSCO states that Bangor Hydro had the exact same "delay" before its filing and Central Maine also did not file on February 1, 2005. NUSCO points out that there is no deadline under section 205 for a rate filing. NUSCO argues that carrying charges are proper because it has spent money on behalf of customers and it lost the time value of that money, asserting that compensation for time value is standard ratemaking. Further, NUSCO states that protestors have offered no reason why Bangor Hydro and Central Maine should be allowed carrying charges and NUSCO should not.

18. NUSCO asserts that its filing showed that its proposal is just and reasonable. NUSCO states that it has shown that it is just and reasonable to include its RTO start-up costs in its rates and the costs for which it seeks recovery are its actual costs that were

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<sup>18</sup> *Citing Alliance Cos.*, 99 FERC ¶ 61,105 (2002), *Illinois Power Co.*, 108 FERC ¶ 61,258 (2004); *Entergy Services, Inc.*, 117 FERC ¶61,320 (2006).

<sup>19</sup> Answer at 10, *citing* Transmittal Letter in Docket No. ER04-157-000 at 3.

<sup>20</sup> Answer at 11, *citing* Transmission Owners' Motion for Clarification and Request for Expedited Consideration at 22 in Docket Nos. RT04-2-000.

incurred as part of the long process culminating in the successful formation of an RTO in New England. NUSCO states that protestors have not challenged the prudence of these costs, nor created a reasonable doubt about their prudence. NUSCO further asserts that it has provided sufficient information to justify its filing, and that such information, if anything, is more detailed than that provided by Central Maine and Bangor Hydro.

### **Commission Determination**

19. We conditionally accept NUSCO's proposed accounting treatment for its deferred RTO formation costs and their subsequent cost recovery through formula rates. With respect to the proposed accounting, the instructions to Account 182.3 provide in part that this account will include specific expenses that would be included in net income determinations in one period under the general requirements of the Uniform System of Accounts but for it being probable that such expenses will be included in a different period for purposes of developing rates. As discussed below, provided that NUSCO furnishes the Commission with adequate support for the nature of its deferred RTO formation costs, it is appropriate, under the Commission's accounting regulations, to include these costs in Account 182.3 and amortize them to Account 928 to reflect their ratemaking treatment. NUSCO must also demonstrate that its proposed accounting treatment will not cause any greater economic harm to its customers than if NUSCO had filed earlier.

20. With respect to NUSCO's proposed rate recovery of the deferred RTO formation costs, we agree with NUSCO that the Commission has allowed full rate recovery of RTO formation costs, including costs associated with efforts that have not led to RTO formation.<sup>21</sup> Protestors have provided no reason for us to depart from such practice here, especially in light of the ultimate formation of ISO-NE as the RTO for New England. Further, we agree with NUSCO that the ROE determination is an integral part of the agreement to form ISO-NE and that the costs associated with such determination can be properly included in deferred RTO formation costs.

21. The Commission agrees with protestors that NUSCO has not made an adequate showing with respect to the nature of the deferred RTO formation costs. The information provided shows only that NUSCO incurred approximately \$3.9 million of legal costs, \$1.4 million of consulting costs, \$67 thousand of miscellaneous fees and \$1 million of carrying costs. NUSCO also provided total dollar amounts of these costs, by year and by company. However, nowhere does it describe the nature of the costs, or their relationship

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<sup>21</sup> See, e.g., *Alliance Cos.*, 99 FERC ¶61,105 (2002), *Illinois Power Co.*, 108 FERC ¶ 61,258 (2004); *Entergy Services, Inc.*, 117 FERC ¶ 61,320 (2006).

to its RTO formation efforts.<sup>22</sup> Therefore, we will conditionally accept NUSCO's proposal to amortize the deferred RTO costs over a three year period beginning January 1, 2008 and their inclusion in local and regional transmission rates, conditioned upon NUSCO filing, within 30 days of the date of this order, a compliance filing containing additional details about the nature and purpose of the deferred costs.<sup>23</sup> NUSCO's filing should also illustrate the rate impacts of its proposed accounting treatment, including an analysis of any economic harm to its customers that may have resulted from the delay in seeking rate recovery of RTO formation costs. Accordingly, NUSCO shall demonstrate what the rate impact would have been had NUSCO transferred this balance to Account 182.3 when ISO-NE became operational. This demonstration should assume that the Commission approved ratebase treatment for the deferred RTO regulatory costs, including any deferred income taxes. After review of such information, the Commission will issue a further order.

The Commission orders:

(A) NUSCO's proposed accounting treatment is hereby conditionally accepted and suspended for a nominal period, as discussed in the body of this order.

(B) NUSCO's proposed rate recovery of its deferred RTO formation costs is approved, effective January 1, 2008, subject to refund, and subject to NUSCO providing further information about its deferred RTO costs as described above, within 30 days of the date of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>22</sup> We note that our Deferred Accounting Order described the costs as including "...collaborative process costs, regulatory filings, consultant and legal fees, staffing costs, the cost of developing definitive agreements, organization costs, the cost of securing financing for the NE ITC, and the costs of participating in the Commission-ordered mediation." Deferred Accounting Order at 2.

<sup>23</sup> The details that NUSCO should provide includes updated information similar to that included in NUSCO's November 20, 2001 request for accounting approval to defer the costs, as well as any other information that would demonstrate the reasonableness of the deferred costs.