

141 FERC ¶ 61,016  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

Northeast Utilities Service Company

Docket No. EL12-25-000

ORDER GRANTING WAIVER OF AFFILIATE PRICING RULES  
UNDER ORDER NOS. 707 AND 707-A

(Issued October 5, 2012)

1. Northeast Utilities Service Company (NUSCO)<sup>1</sup> filed a petition seeking confirmation that it is complying with, or in the alternative, a waiver of, certain affiliate pricing rules as established under Order Nos. 707 and 707-A.<sup>2</sup> Specifically NUSCO requests confirmation that its use of at-cost pricing for the provision of certain non-power goods and services among the NU Companies through NUSCO, as an accounting intermediary, is an appropriate practice under Order No. 707. In the alternative, NUSCO seeks waiver of the Commission's "higher of cost or market" rule under Order No. 707, and sections 35.44(b)(1) and (b)(2) of the Commission's regulations,<sup>3</sup> so that it may use cost-based pricing for a limited set of transactions between the NU Companies through NUSCO. In this order, we grant the requested waivers, as discussed below.

**I. Background**

2. NUSCO and the NU Companies are wholly-owned subsidiaries of Northeast Utilities (NU), a holding company under the Public Utility Holding Company Act

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<sup>1</sup> NUSCO filed on behalf of its public utility affiliates: The Connecticut Light and Power Company, Public Service Company of New Hampshire, and Western Massachusetts Electric Company (collectively, the NU Companies).

<sup>2</sup> *Cross-Subsidization Restrictions on Affiliate Transactions*, Order No. 707, FERC Stats. & Regs. ¶ 31,264, *order on reh'g*, Order No. 707-A, FERC Stats. & Regs. ¶ 31,272 (2008).

<sup>3</sup> 18 C.F.R. § 35.44(b)(1)-(2) (2012).

of 2005. NU provides retail electric service to approximately 1.9 million customers in Connecticut, western Massachusetts, and New Hampshire through its three wholly-owned regulated public utility subsidiaries, the NU Companies. NUSCO states that the NU Companies own transmission facilities that provide regional network service, local network service, and point-to-point service under the ISO New England, Inc., open access transmission tariff (ISO-NE OATT). NUSCO states that the NU Companies operate in states that have retail choice programs; hence, their only obligation to sell power at retail is as a provider of last resort. NUSCO states that, for purposes of the Commission's affiliate pricing rules, none of the NU Companies have captive power customers.<sup>4</sup>

3. Within the NU system, NUSCO states that it acts as a centralized service company providing general and administrative services to the NU Companies. These services include administrative, managerial, financial, accounting, information technology, record keeping, legal, engineering, and tax services pursuant to long-standing service agreements. NUSCO states that its personnel directly charge to the appropriate company the actual costs incurred in carrying out activities for that company pursuant to the service agreement between NUSCO and the NU Companies. NUSCO states that it uses at-cost standards for the pricing of non-power goods and services consistent with the Securities and Exchange Commission's at-cost standard that was applicable prior to the repeal of the 1935 Act and the Commission's affiliate pricing rules under Order No. 707.

## **II. Waiver Request**

4. NUSCO states that typically NUSCO employees provide most of the general and administrative services to the NU Companies. However, in certain circumstances employees of one NU Company occasionally provide certain services for one or more other NU Companies. These services can include information technology, customer-support, or property and building maintenance. In these instances, the employees charge their time to NUSCO. NUSCO states that it then allocates these charges, without any mark-up, to the appropriate NU Company. In this scenario, NUSCO states that it acts as an accounting intermediary. NUSCO states that, in addition to non-power services, the NU Companies have sold or transferred non-power goods to each other using the same accounting treatment, whereby, costs are first billed to NUSCO and then allocated to the appropriate NU Company.<sup>5</sup>

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<sup>4</sup> NUSCO Filing at 6.

<sup>5</sup> NUSCO states that it acts as an accounting intermediary to ensure that the appropriate accounting and cost allocation methods are utilized. *Id* at 14.

5. NUSCO states that, since March 21, 2008, the effective date of Order No. 707, the NU Companies continued their prior practice of using at-cost pricing for non-power goods and services provided by one NU Company's employees working on limited projects, facilities or assignments that benefit multiple NU Companies. NUSCO states that, from 2008-2011, certain NU Company employees have charged non-power goods and services to the other NU Companies through NUSCO for yearly amounts varying from \$3.7-6 million, compared to the approximately \$400 million per year that NUSCO states that it billed the NU Companies.

6. NUSCO requests that the Commission confirm that the accounting pass-through method currently in use does not reflect a sale of non-power goods and services to NUSCO, a non-utility affiliate, for purposes of Order No. 707. NUSCO asserts that since it is not receiving the benefit of the service or product, essentially there is no sale between a utility and non-utility affiliate – that the actual sale is between two NU Companies, both utility affiliates. Therefore, NUSCO asserts, since there is no actual sale between a utility and non-utility affiliate, the Commission's higher of cost or market requirements should not apply.

7. In the alternative, NU seeks waiver of the higher of cost or market requirements in sections 35.44(b)(1) and (b)(2) of the Commission's regulations for its accounting of the transfer of services and goods from one NU Company to another. First, NUSCO seeks waiver with respect to activities performed by employees of one NU Company for the benefit of another NU Company and second, for the sale or transfer of non-power goods from one NU Company to another NU Company.

8. NUSCO explains that due to union restrictions, physical location, or temporary assignment, occasionally it is more efficient and/or cost effective for NUSCO to share the cost of some employees on projects that benefit multiple NU Companies than to transfer the employees into NUSCO or to obtain services from outside of NU. In this scenario, employees charge their time or expense to NUSCO using at-cost pricing<sup>6</sup> after which NUSCO allocates such costs to the NU Company that received the benefit of the services.

9. Regarding the sale or transfer of non-power goods between the NU Companies, NUSCO states that the actual costs of the goods are first billed to NUSCO and then allocated to the relevant NU Company using the goods.

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<sup>6</sup> NUSCO clarifies that at-cost pricing is based on the fully allocated costs of the employees' salaries, benefits, and overheads or actual expenses based on the premise that the NU Company is not providing such services to NUSCO but rather to other NU Companies.

10. NUSCO likens its situation to the circumstances involved in *National Grid*,<sup>7</sup> in which the Commission previously granted waiver, because, according to NUSCO, it is not acquiring the services for its own use or to service non-affiliates. Therefore, NUSCO states it is not in the position to benefit from the acquisition of these goods or services from its utility affiliate at below market prices. Similar to the Commission's finding in *National Grid*, NUSCO states that under these circumstances there is no opportunity for cross-subsidization of a non-utility affiliate. NUSCO states that, since the NU Companies do not provide general or administrative service to any non-affiliate third party, it is not foregoing profits when it sells such goods and services at cost to an affiliate.

### **III. Notice of Filing**

11. Notice of NUSCO's filing was published in the *Federal Register*, 77 Fed. Reg. 10,501 (2012), with interventions and protests due on or before March 9, 2012. None was filed.

### **IV. Discussion**

12. The Commission's regulations specify that unless otherwise permitted by Commission rule or order: (1) a franchised public utility that has captive customers or owns or provides transmission service over jurisdictional transmission facilities and that provides non-power goods and services to a market-regulated power sales affiliate or a non-utility affiliate must sell them at a price that is the higher of cost or market price;<sup>8</sup> and (2) a franchised public utility that has captive customers or owns or provides transmission service over jurisdictional transmission facilities may not purchase non-power goods or services from a market-regulated power sales affiliate or a non-utility affiliate at a price above market price.<sup>9</sup> The Commission's regulations further specify that a company in a single-state holding company system may provide or receive such non-power goods and services from its affiliates at cost.<sup>10</sup>

13. In Order No. 707-A, the Commission stated that, in the case of multi-state holding company systems, it would consider requests to waive these requirements on a case-by-case basis.<sup>11</sup> However, an applicant, such as NUSCO, must demonstrate that

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<sup>7</sup> *National Grid USA*, 133 FERC ¶ 61,241 (2010) (*National Grid*).

<sup>8</sup> 18 C.F.R. § 35.44(b)(1) (2012).

<sup>9</sup> 18 C.F.R. § 35.44(b)(2) (2012).

<sup>10</sup> 18 C.F.R. § 35.44(b)(4) (2012).

<sup>11</sup> Order No. 707-A, FERC Stats. & Regs. ¶ 31,272 at P 28.

transmission customers are adequately protected against inappropriate cross-subsidization.<sup>12</sup>

14. NU operates a multi-state holding company system and, therefore, cannot rely on the waiver provided under section 35.44(b)(4) of the Commission's regulations for at-cost pricing for any of the transactions described above. Nevertheless, based on the information NUSCO has provided, we will grant the requested waivers for the specific transactions described in NUSCO's waiver request.<sup>13</sup>

15. Similar to the circumstances in *National Grid*,<sup>14</sup> where the Commission previously granted waiver, we find that, for the specific transactions described in NUSCO's waiver request, NUSCO is not acquiring the relevant services for its own use or to service non-utility affiliates. Therefore, NUSCO is not in the position to benefit from the acquisition of these goods or services from the NU Companies at below market prices. NUSCO serves only as an accounting intermediary, and provides goods or services that it procures from utility affiliates at cost, and thus there is no opportunity for inappropriate cross-subsidization of a non-utility affiliate.

16. Finally, as we found in similar circumstances in *National Grid*, there is no basis for finding that the NU Companies are foregoing profits when one NU Company is making at-cost sales of non power goods or services to another NU Company via NUSCO as an accounting intermediary.<sup>15</sup>

17. Therefore, consistent with our action in *National Grid*, we will grant NUSCO's requested waiver of the affiliate restrictions in sections 35.44(b)(1) and 35.44(b)(2) for the transactions discussed above.

The Commission orders:

(A) NUSCO's request for waivers of the affiliate restrictions under sections 35.44(b)(1) and 35.44(b)(2) is hereby granted for the transactions identified in the body of this order, as discussed in the body of this order.

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<sup>12</sup> Order No. 707, FERC Stats. & Regs. ¶ 31,264 at P 48 & n.46

<sup>13</sup> We note that our action does not preclude complaints in specific instances alleging that an at-cost price for a specific service supplied to a franchised public utility exceeds the market price and leads to effects on rates that are unjust and unreasonable.

<sup>14</sup> *National Grid*, 133 FERC ¶ 61,241 at P 35-40. National Grid operates a multi-state system holding company.

<sup>15</sup> *Id.*

(B) NUSCO must inform the Commission within 30 days of any material change in circumstances that would reflect a departure from the facts, policies, and procedures the Commission relied upon in granting the waivers herein.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.