

125 FERC ¶ 61,327
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.

NSTAR Electric Company

Docket No. ER08-1051-000
ER08-1051-001

ORDER ON ANNUAL INFORMATIONAL FILING

(Issued December 19, 2008)

1. On May 30, 2008, NSTAR Electric Company (NSTAR) submitted its Annual Informational Filing and on June 30, 2008, its construction work in progress (CWIP) Supplement pursuant to section 4.1(i) through (ix) of NSTAR Electric's Schedule-21 (Schedule 21-NSTAR), which is part of Section II of the Transmission, Markets and Services Tariff of ISO New England Inc., FERC Electric Tariff No. 3 (ISO-NE Tariff), and Section 4.2 of a settlement agreement (Settlement).¹ We accept the filings for informational purposes.

I. Background

2. This case arises in part from a proceeding in which the Commission accepted Boston Edison Company's (Boston Edison)² proposal filed on October 25, 2004, to include fifty percent construction work in progress (CWIP) in its rate base for three underground transmission circuits, subject to Boston Edison submitting annual informational filings.³ The Commission approved this treatment on several transmission projects that were listed in Exhibit BE-10 of Boston Edison's filing. The Commission also approved Boston Edison's request to capitalize, during the construction period, the remaining construction expenses that were not included in the 50 percent

¹ The Settlement, which is between NSTAR Electric, the Massachusetts Attorney General and the Town of Concord Municipal Light Plant, was approved on June 19, 2008. *NSTAR Electric Company*, 123 FERC ¶61,270 (2008).

² In January 2007, Boston Edison changed its name to NSTAR.

³ *Boston Edison Co.*, 109 FERC ¶ 61,300 (2004), *reh'g denied*, 111 FERC ¶ 61,266 (2005) (*Boston Edison*).

CWIP in the Local Network Service (LNS) rate base for the related projects, under Allowance For Funds Used During Construction (AFUDC) within its Regional Network Service rate.

A. Merger Proceedings

3. Subsequently, on October 20, 2006, the Commission approved a merger of Cambridge Electric Light Company (Cambridge), Commonwealth Electric Company (Commonwealth), and Canal Electric Company (Canal) into Boston Edison.⁴ Pursuant to these orders approving the merger in Docket No. ER07-549-000, NSTAR filed revisions to its Local Service Schedule, Schedule 21-NSTAR, to reflect the approved and consummated merger of its subsidiaries into NSTAR.⁵ NSTAR included a blanket CWIP provision in its formula rates that permitted it to recover 50 percent CWIP on several new transmission projects.

4. On July 9, 2007, the Commission accepted the new Schedule 21-NSTAR subject to refund, to become effective January 1, 2007, and established hearing and settlement judge proceedings.⁶ The Commission set the CWIP provision for hearing, stating that, “the Commission did not grant blanket CWIP treatment for all Boston Edison upgrades in perpetuity, nor did the Commission make any findings on projects that were not listed in Exhibit BE-10 as filed in Docket No. ER05-69-000.”⁷ The Commission treated these newly-listed projects as an initial request for CWIP treatment, and gave NSTAR the option of either establishing a record in the hearing proceeding or withdrawing the new CWIP treatment request. The Commission explained that if NSTAR chose the former, NSTAR would be required to fulfill the Commission’s regulations for CWIP in rate base, stating that “for example, NSTAR should include an assessment of the relative costs of adopting alternative strategies, and provide an explanation of why the program adopted is prudent and consistent with a least-cost energy supply program. Requiring this information is consistent with Commission policy.”⁸

⁴ *Boston Edison Co.*, 117 FERC ¶ 61,083, at P 32 (2006) (October 20 Order); *order on reh’g*, 117 FERC ¶ 61,240, at P 9 (2006) (November 28 Order) (jointly, Merger Proceedings).

⁵ Effective January 1, 2007, Cambridge, Commonwealth and Canal merged with and into Boston Edison and Boston Edison changed its name to NSTAR Electric Company.

⁶ *NSTAR Electric Co.*, 120 FERC ¶ 61,027 (2007) (July 2007 Order).

⁷ *Id.* P 49.

⁸ *Id.* P 51.

B. Settlement

5. On March 12, 2008, after extensive negotiations, parties filed the Settlement resolving all issues set for hearing in the above-mentioned July 2007 Order. The Settlement provided for certain CWIP-related Tariff provisions agreed upon by the parties and discussed in more detail below.

6. As part of the Settlement, parties agreed to add section 4.1(ii) of Schedule 21-NSTAR.⁹ This section indicates that on or before May 31 of the year following the Service Year,¹⁰ NSTAR will file an informational filing with the Commission and post it on NSTAR's website. The informational filing will include a true-up of costs based on actual costs for the Service Year, when known, related to NSTAR's formula rates.

7. Section 4.1(ix) states that this Annual Informational Filing shall contain a CWIP Supplement to be filed with the Commission and posted on NSTAR's website (to the extent it does not include any critical energy infrastructure information) on or before June 30 of the Service Year, which will include the following:

NSTAR's most recent annual construction forecast. The CWIP Supplement shall provide for each project included in rate base during the Service Year, the actual amounts of CWIP recorded for each project, the related accounts, such as AFUDC and Regulatory Liability, inclusive of all subaccounts, and the resulting effect on the CWIP revenue requirement in line item detail. The CWIP Supplement shall also identify any changes in NSTAR's accounting practices related to the accrual of AFUDC and the inclusion of CWIP in rate base or related to ensuring that AFUDC is not accrued on CWIP balances that have been included in rate base.¹¹

⁹ First Revised Sheet No. 1809, ISO New England Inc., FERC Electric Tariff No. 3, Section II - Open Access Transmission Tariff, Schedule 21- NSTAR.

¹⁰ The Service Year is defined as "[the] calendar year in which the Transmission Customer is receiving service under the Local Service Schedule." Section 1.23, Sheet No. 1805, ISO New England Inc., FERC Electric Tariff No. 3, Section II - Open Access Transmission Tariff, Schedule 21- NSTAR.

¹¹ First Revised Sheet No. 1811 and Original Sheet No. 1811A, ISO New England Inc., FERC Electric Tariff No. 3, Section II- Open Access Transmission Tariff, Schedule 21 – NSTAR.

8. Section 4.1(ix) also states that for each “new project” (a project that is estimated to enter rate base for the first time in the Service Year), the CWIP Supplement will provide a detailed statement of the reasons for undertaking the project, the benefits derived from the project, and the alternatives to or consequences of not undertaking the project, to the extent this is not already provided in the construction forecast. Section 4.1(ix) also states:

In any proceeding regarding a new project, NSTAR shall bear the burden of proving that inclusion of CWIP related to the new project in rate base is just and reasonable. Any customer and/or the [Attorney General of the Commonwealth of Massachusetts (MassAG)] can request that the Commission institute an investigation into the justness and reasonableness of including CWIP for any project in rate base and the Commission may institute such an investigation *sua sponte*. Nothing in this Clause (ix) authorizes the inclusion in rate base of more than 50% of the CWIP balance attributable to the project. Absent a Commission finding of imprudence, NSTAR shall be entitled to accrue AFUDC as to any CWIP that is excluded from rate base.¹²

9. Section 4.1(v) through 4.1 (viii) granted to the MassAG, among other things, procedural rights to conduct an audit from July 1 through September 30 of the year following the Service Year, and further granted an additional thirty days to file a complaint challenging the filings.

10. On June 19, 2008, the Commission accepted the Settlement.¹³

C. Annual Informational Filing

11. Consistent with the Settlement, on May 30, 2008, in Docket No. ER08-1051-000, NSTAR filed its Annual Informational Filing containing its true-up of billings for the Service Year of January 1, 2007 through December 31, 2007.

12. Also consistent with Settlement, on June 30, 2008, in Docket No. ER08-1051-001, NSTAR filed its CWIP Supplement to the Annual Informational Filing for the Service Year of January 1, 2007 through December 31, 2007. In its CWIP Supplement, NSTAR lists three “new” projects included in rate base starting in Service Year 2007 for which it recovered 50 percent CWIP in rate base.

¹² Original Sheet No. 1811B, ISO New England Inc., FERC Electric Tariff No. 3, Section II- Open Access Transmission Tariff, Schedule 21 - NSTAR.

¹³ *NSTAR Electric Co.*, 123 FERC ¶ 61,270 (2008) (Settlement Order).

13. NSTAR states that these three Southeast Massachusetts Reliability Region (SEMA) Upgrade Projects (Brook Street, Carver and Barnstable) are being added in accordance with the settlement agreement approved by the Commission in Docket No. ER07-921-000 on June 21, 2007.¹⁴

14. NSTAR states the “benefits” of these projects as improving reliability in ISO-New England’s Southeastern Massachusetts Reliability Region by providing alternate paths for power, improving communications, allowing instantaneous response to system faults and protecting against voltage collapse. The Brook Street Project,¹⁵ located just north of Cape Cod, entered into service in June 2008, and consists of a new substation, an additional 115 kV transmission line, new breaker and protection systems and fiber optic communications. NSTAR states that this project will improve reliability and bolster the 115 kV supply to the lower SEMA area in the range of 170 MW to 220 MW.

15. The Carver Project,¹⁶ which is expected to enter service in June 2009, provides additional transmission support at both the 345 kV and 115 kV levels. The Carver substation is also located north of Cape Cod and consists of 345 kV and 115 kV substations and one 345 kV/115 kV autotransformer. This project involves enlarging the substation, increasing its 345 kV to 115 kV transformation capacity, and adding facilities to enhance reliability. NSTAR states that the project will increase transfer capability of the 115 kV transmission system serving that area by a range of 100 MW to 130 MW, and further promotes reliability by creating new 345 kV paths for electricity to reach the Cape Cod area.

16. NSTAR states that the Barnstable Project¹⁷ is expected to enter service in September 2009 and involves the installation of a Flexible AC Transmission System (FACTS) at the Barnstable Switching Station, which is located in the middle of Cape Cod. This project involves the installation of a Static VAR Compensation (SVC) System, the purpose of which is to instantaneously inject reactive power into Cape Cod’s 115 kV transmission system should the system voltage fall below a prescribed set point, thereby maintaining system voltage and preventing voltage collapse. This project is expected to increase power imports into the lower SEMA area by approximately 170 MW to 220 MW.

¹⁴ CWIP Supplement, “New Project” (*sic*) Description, Ex. No. F at 1.

¹⁵ CWIP Supplement, Ex. No. F, ISO New England ID 694, 833, and 960.

¹⁶ CWIP Supplement, Ex. No. F, ISO New England ID 695, 830, 831.

¹⁷ CWIP Supplement, Ex. No. F, ISO New England ID 832.

17. According to NSTAR, these SEMA upgrades will reduce the need to operate the two oil-burning Canal generators that Cape Cod currently relies on for voltage support, resulting in savings to consumers.

II. Notice, Interventions, and Protests

18. Notice of Docket No. ER08-1051-000 was published in the *Federal Register*, 73 Fed. Reg. 33,069 (2008), with interventions and protests due on or before June 23, 2008. Notice of Docket No. ER08-1051-001 was published in the *Federal Register*, 73 Fed. Reg. 40,561 (2008), with interventions and protests due on or before July 11, 2008. On July 10, 2008, the MassAG filed a motion to intervene and comments, exercising its rights under the Settlement and Schedule 21-NSTAR, notifying the Commission that the MassAG requested an audit of both the Annual Informational Filing and the CWIP Supplement. The MassAG requested that the Commission grant its motion to intervene, and allow time to proceed with the examination pursuant to the Settlement, and grant such further relief as necessary.

19. On October 30, 2008 the MassAG filed a protest, arguing that NSTAR has not demonstrated that it has met the Commission's conditions that would allow the inclusion of 50 percent of CWIP in rate base for the new construction projects. Specifically, the MassAG states that through discovery, NSTAR has indicated that the new projects have not been approved through the ISO-New England transmission planning process, or that the costs of alternative plans have been considered.¹⁸ The MassAG argues that therefore, the Commission should deny CWIP treatment and reimburse customers for any related CWIP charges levied on customers to date.¹⁹

20. On November 14, 2008, NSTAR filed a Motion for Leave to Answer and an Answer to the MassAG's protest.

III. Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

¹⁸ The MassAG cites to "NSTAR Response to AG-1-1". See MassAG protest at 3, footnote 11. This document has not been submitted as part of the record.

¹⁹ The MassAG did not request that FERC initiate an investigation, as was their right under the Settlement.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept NSTAR's answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

23. We accept for informational purposes NSTAR's true-up filing and CWIP supplement and deny the MassAG's protest. First, NSTAR has provided all of the information required by the Settlement on these projects.²⁰ Consistent with the Settlement, NSTAR has provided a construction forecast for each project included in rate base during the Service Year,²¹ the actual amounts of CWIP recorded for each project, the related accounts, such as AFUDC and Regulatory Liability, inclusive of all subaccounts, and the resulting effect on the CWIP revenue requirement in line item detail.²² NSTAR has also identified changes in its accounting practices related to the accrual of AFUDC and the inclusion of CWIP in rate base or related to ensuring that AFUDC is not accrued on CWIP balances that have been included in rate base.²³ This is consistent with the Commission's regulations for CWIP.²⁴

24. We also find that, consistent with the Settlement, NSTAR has provided a detailed statement of the reasons for undertaking each of these projects. For example, NSTAR reports that in 2006 alone, the excess out-of-merit costs that could have been avoided by implementation of these upgrades may have been approximately \$84 million.²⁵ NSTAR also reported that these projects are needed to prevent possible voltage collapse.

25. Second, contrary to the MassAG's assertion, the projects have undergone review by the ISO New England. These projects have been given an ISO New England

²⁰ See NSTAR Answer at 8-13.

²¹ See CWIP Supplement, Docket No. ER08-1051-001, Ex. No. B.

²² See CWIP Supplement, Docket No. ER08-1051-001, Ex. No. C.

²³ See CWIP Supplement, Docket No. ER08-1051-001, Ex. No. E. NSTAR reports that there are no accounting changes to report.

²⁴ 18 C.F.R. §35.25(f).

²⁵ See CWIP Supplement, Docket No. ER08-1051-001, Ex. No. F.

identifier, and the ISO New England, as a party to the settlement approved by the Commission in ER07-921-000, has agreed to support these projects' inclusion in its Regional System Plan.²⁶

26. Finally, the MassAG proffers no evidence to support its claims. Generally, the party seeking to call the prudence of any particular expenditure into question must do so by adducing evidence or citing to material of which the Commission may take official notice.²⁷ Here, the MassAG provides no evidence to refute the compelling demonstration in the CWIP Supplement that these project costs are prudently incurred to avoid possible voltage collapse and excess out-of-merit order costs, and that these projects have been actively supported as needed for reliability by ISO New England.

The Commission orders:

We accept NSTAR's annual true-up filing, including its CWIP supplement, for informational purposes as discussed herein.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁶ See NSTAR Answer at 4-8; see also *ISO New England Inc., et al.* Docket No. ER07-921-000 (unpublished letter order) Section 6 (a)(iii) of the settlement agreement states that all parties agree to support the projects listed in Appendix E in the Regional System Plan. The Carver Project, the Brook Street Project, and the Barnstable Project are all listed in Appendix E of the settlement agreement filed by ISO New England.

²⁷ *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,224, at P 28 (2006); (citing *Minnesota Power and Light Co.*, Opinion No. 86, 11 FERC ¶ 61,312 at 61,644-45 & n.45, *reh'g denied*, Opinion No. 86-A, 12 FERC ¶ 61,264 (1980).