

129 FERC ¶ 61,100
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northeast Utilities Service Company

Docket No. ER08-966-002

ORDER ACCEPTING COMPLIANCE FILING

(Issued November 2, 2009)

1. On August 18, 2008, Northeast Utilities Service Company (Northeast Utilities) filed a compliance filing in response to the Commission's July 17, 2008 order (July 17 Order).¹ As required by the July 17 Order, Northeast Utilities provided information regarding the specific transmission project costs to which it would be applying an advanced transmission technology adder. We accept Northeast Utilities' compliance filing, as discussed below.

I. Background

2. In the July 17 Order, the Commission conditionally granted, in part, Northeast Utilities' application for a 50 basis point adder under Order No. 679² for using advanced transmission technologies. Northeast Utilities limited its request to a 24-mile segment of the Middletown-to-Norwalk transmission project (Project) that was being constructed underground using 345-kV cross-linked polyethylene cable (XLPE). The Commission found that the Project's use of 345-kV XLPE underground cable over such long distances was both innovative and provided substantial benefits to Northeast Utilities and the region's ratepayers.³ We further found that the 24-mile segment of the Project satisfied the requirements of Order No. 679 because it mitigated congestion and enhanced grid

¹ *Northeast Utilities Services Co.*, 124 FERC ¶ 61,044 (2008) (July 17 Order), *reh'g denied*, 126 FERC ¶ 61,052 (2009).

² *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

³ July 17 Order, 124 FERC ¶ 61,044 at P 85-86.

reliability by increasing the capacity, efficiency or reliability of the existing transmission grid.⁴

3. The July 17 Order also required Northeast Utilities to submit a compliance filing providing more details regarding the application of this advanced transmission technology adder to the Project. In particular, protestors had expressed concern that Northeast Utilities could apply the adder to portions of the Project that did not qualify for the incentive, *i.e.*, the portion of the Project not associated with the 24-mile segment of underground XLPE cable. Protestors also expressed concern that Northeast Utilities could apply the adder to costs that arose before August 8, 2005, the date of the enactment of the Energy Policy Act of 2005 (EPAAct 2005).⁵ Noting these concerns, the July 17 Order required Northeast Utilities to submit a compliance filing that would “enable parties to determine which advanced transmission technology facilities are included in the line items for all segments of the Middletown-to-Norwalk Project, the advanced transmission technology utilized, and the dates such costs were incurred.”⁶

4. In the resulting compliance filing, which is before us here, Northeast Utilities provides details regarding how it intends to apply the advanced transmission technology adder to certain portions of the Project. The compliance filing includes three attachments. Attachment 1 provides general details regarding portions or segments of the Project to which Northeast Utilities would apply the advanced transmission technology adder, the type of advanced transmission technology that was employed for that segment, a general breakdown of the costs for each segment, and the amount of costs that were incurred before and after September 1, 2005. Northeast Utilities notes that while the July 17 Order only required it to exclude costs that were incurred prior to August 5, 2005, the date when EPAAct 2005 was enacted, Northeast Utilities’ accounts are kept on a monthly basis. Therefore, Northeast Utilities states that in order to comply with the July 17 Order, it will not seek the incentive for any costs incurred prior to September 1, 2005.⁷ Attachment 1 indicates that Northeast Utilities intends to apply the advanced transmission technology adder to \$453,012,105 in costs associated with the Project.

5. Attachment 2 provides more detailed information regarding the work and costs identified in Attachment 1 incurred both before and after September 1, 2005. For each

⁴ *Id.* P 82.

⁵ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

⁶ July 17 Order, 124 FERC ¶ 61,044 at P 90.

⁷ Northeast Utilities’ August 18, 2008 Compliance Filing at 3.

portion or segment of the Project identified in Attachment 1, Northeast Utilities breaks down its costs or expenses into four general categories including material costs, construction costs, engineering costs, and land/right of way costs. Each category then provides a detailed description of the nature of the costs (e.g., the types of materials that were purchased or the work that was performed) and the total amount spent by Northeast Utilities for the category.

6. Attachment 3 identifies the costs that were incurred by Northeast Utilities prior to September 1, 2005. Attachment 3 identifies the pre-September 2005 costs by segment and by the category of the cost or expense (e.g., material costs, construction costs, engineering costs, and land/right of way costs). Attachment 3 also provides a general description of the type of materials or the work that was performed. Northeast Utilities identifies \$14,070,504 in costs that were incurred prior to September 1, 2005 and, thus, will not be subject to the adder.

II. Notice of Filing and Responsive Pleadings

7. Notice of the compliance filing was published in the *Federal Register*, 73 Fed. Reg. 50806 (2008), with interventions and protests due on or before September 8, 2008. The Connecticut Department of Public Utility Control (Connecticut DPUC) filed a timely protest and motion to reject the compliance filing.⁸

8. On September 22, 2008, the New England Conference of Public Utilities Commissioners, Inc., the Massachusetts Department of Public Utilities, and the Vermont Department of Public Service (collectively, Public Utilities Commissions) filed an answer in support of the Connecticut DPUC's motion to reject. On September 24, 2008, Northeast Utilities filed an answer to the Connecticut DPUC's motion to reject and protest.

III. Discussion

A. Procedural Matters

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We will accept Northeast Utilities' answer, as well as the Public

⁸ As part of its pleading, the Connecticut DPUC submits an affidavit from one of its employees, Michael P. Zawrotny. The purpose of the affidavit, according to Mr. Zawrotny, is to assess whether the compliance filing satisfied the requirements of the July 17 Order.

Utilities Commissions' answer, because they provided information that assisted us in our decision-making process.⁹

B. Substantive Matters

1. Protests

10. The Connecticut DPUC generally challenges the sufficiency of the compliance filing and requests that it be rejected. The Connecticut DPUC asserts that the compliance filing fails to provide “sufficient detail, in order to ensure that parties have the ability to thoroughly examine the assignment of projects costs for which Northeast Utilities proposes to apply the advanced transmission technology incentive ROE adder.”¹⁰ It further asserts that the compliance filing fails to “enable parties to determine which advanced transmission technology facilities are included in the line items for all segments of the Middletown-to-Norwalk Project, the advanced transmission technology utilized, and the dates such costs were incurred.”¹¹

11. In particular, the Connecticut DPUC argues that the compliance filing fails to provide detailed line-by-line cost information regarding the Project or the dates on which these costs were incurred. Instead, it asserts that Northeast Utilities provided summaries of the costs, which do not provide parties with an opportunity to “thoroughly examine” the allocation of costs to which the advanced transmission technology adder would apply.

12. The Connecticut DPUC further asserts that the information provided by Northeast Utilities is confusing and raises questions regarding the propriety of certain costs. For example, the Connecticut DPUC questions whether it is appropriate for Northeast Utilities to include costs “for paving and transportation of all labor, equipment, materials, and consumables to and from the jobsites,” as part of the advanced transmission technology adder.

13. The Connecticut DPUC protests rate base inclusion of items that should be classified as administrative and general expenses (A&G) or operation and maintenance

⁹ We do not discuss the Public Utilities Commissions' answer separately below because it summarizes the arguments made in the Connecticut DPUC's motion.

¹⁰ Connecticut DPUC Protest at 2, 4 (quoting July 17 Order, 124 FERC ¶ 61,044 at P 90).

¹¹ *Id.*

expenses (O&M),¹² and the inclusion of General Service Company Overheads in rate base. The Connecticut DPUC also states it believes that Northeast Utilities may be double-charging certain environmental-related expenses because these costs appear in both Attachment 2 and Attachment 3.

14. Similarly, the Connecticut DPUC questions whether Northeast Utilities provided sufficient information regarding the dates on which the costs were incurred. Rather than provide specific date information, it notes that Northeast Utilities merely identified all costs that were incurred prior to September 1, 2005, and thus, were ineligible for the advanced transmission technology adder. The Connecticut DPUC states that Northeast Utilities did not provide any detailed information regarding the post-September 2005 costs and when those costs were specifically incurred. The Connecticut DPUC argues further that viewing the non-qualifying project costs is necessary because the Commission granted 50 percent Construction Work in Progress (CWIP) in rate base for the Project, yet Northeast Utilities has a line item in Attachment 3 for Allowance of Funds Used During Construction (AFUDC) for this Project.¹³

15. Finally, the Connecticut DPUC argues that the compliance filing does not provide parties with an opportunity to challenge the “overall reasonableness of the cost allocations.” It claims that Northeast Utilities should have provided more detailed cost information for all segments of the Project, including those that would not be subject to the advanced transmission technology adder. The Connecticut DPUC requests that the Commission reject Northeast Utilities’ compliance filing and require it to resubmit more detailed cost information using the cost codes from FERC’s Uniform System of Accounts.¹⁴

2. Answer

16. Northeast Utilities argues that it provided more than sufficient information to comply with the July 17 Order. According to Northeast Utilities, the order merely required that the compliance filing identify and provide information regarding: (1) which advanced transmission technology facilities are included in the line items for all segments of the Project; (2) which advanced technologies are utilized for those segments; and

¹² The Connecticut DPUC states at 5-6 of its protest, for example, such costs include “[e]ngineering” costs, “training of owner’s employees,” real estate and survey support and review.

¹³ *Id.* at 8 (citing Zawrotny Aff. at P 12-14).

¹⁴ *Id.*

(3) the date in which these costs were incurred to determine whether they arose after the enactment of EAct 2005. Northeast Utilities contends that it satisfied these requirements.

17. With regard to the first and second requirements, Northeast Utilities states that it showed which advanced transmission technology facilities are included in the line items for the segments identified in its initial application. It further broke down the costs into four categories including land/right of way costs, engineering costs, material costs, and construction costs. It then provided summaries describing the type of work and material that occurred for each category and for all of the segments.

18. Northeast Utilities disagrees that these summaries are not sufficient to meet the July 17 Order. It argues that all cost filings that are submitted to the Commission are aggregations of thousands of individual cost items—in other words, the very type of “summary” that the Connecticut DPUC requests. Northeast Utilities states that examples of this are the Commission staff’s cost of service model for electric rates and Northeast Utilities’ cost of service statements accepted by the Commission in Docket No. ER03-1247. Northeast Utilities argues that even in an audit, which the Commission did not order here, only a selective portion of the documents underlying the aggregate costs would be examined.¹⁵ Northeast Utilities argues that these costs are aggregated into function and classification categories in order to make data useful. In this case alone, Northeast Utilities notes that there were 25,000 line items of costs for the \$14 million of costs that arose prior to August 2005. Providing this level of information for the entire Project, according to Northeast Utilities, would be unduly burdensome, inconsistent with Commission policy, and contrary to the requirements of the July 17 Order.

19. As for the third requirement, Northeast Utilities answers that the compliance filing shows the dates the costs were incurred for the advanced technologies by identifying which specific costs were incurred before September 1, 2005. According to Northeast Utilities, this provided parties with sufficient information to know which costs were incurred prior to the enactment of EAct 2005 and, thus, the effective date for receiving the advanced transmission technology incentive.

20. Northeast Utilities further disputes that there are inconsistencies in its compliance filing. For example, with regard to the claim regarding “paving and transportation costs,” Northeast Utilities indicates that these costs were incurred as a necessary part of the Project’s construction. Northeast Utilities states that it is unsure what additional information — other than every invoice — would satisfy the Connecticut DPUC. As for the alleged inconsistency between environmental costs, Northeast Utilities acknowledges

¹⁵ Northeast Utilities’ Answer at 10-11.

that they appear in both Attachment 2 and Attachment 3. However, it states that Attachment 2 is a detailed breakdown of all of the costs listed in Attachment 1, for the time period from October 1, 2002 to the Project in-service date. Northeast Utilities states that since a portion of these environmental costs occurred prior to September 1, 2005, they are properly included in Attachment 3 as a subtraction from, not an addition to, environmental costs in Attachment 1 and 2. Northeast Utilities also contends that the Connecticut DPUC's arguments regarding the calculation of AFUDC and CWIP, and the inclusion of certain costs in rate base, are beyond the scope of the compliance filing.

21. Northeast Utilities argues that the Connecticut DPUC's assertion that certain costs are not permissible in rate base, such as A&G, O&M, and General Service Company Overheads, is not correct. Northeast Utilities argues that the Commission's Electric Plant Instructions state that these costs are properly included in the cost of plant.¹⁶ Further, Northeast Utilities argues that the Connecticut DPUC's assertion of what costs should be included in rate base is beyond the scope of this proceeding.

3. Commission Determination

22. We will accept Northeast Utilities' compliance filing. Contrary to the protests, the compliance filing directive in the July 17 Order was not intended to require a line-by-line analysis of every cost associated with the Project's advanced transmission technology adder. Rather, it was meant to address concerns raised by several protestors regarding the facilities to which Northeast Utilities intended the advanced transmission technology adder to apply.¹⁷ In the underlying proceeding, protestors noted that Northeast Utilities only provided four line items to account for more than \$467 million in advanced transmission technology costs.¹⁸ In one particular line item, for segment 4 of the Project, Northeast Utilities listed over \$404 million in costs, but did not provide any information regarding the facilities or advanced technologies in the line item.¹⁹ Protestors also

¹⁶ *Id.* at 18.

¹⁷ The concerns were raised primarily by a group known as the "Public Parties," which included: the Connecticut DPUC, the Connecticut Office of the Attorney General, the Maine Public Utilities Commission, the Office of Consumer Counsel of the State of Connecticut, the Massachusetts Department of Public Utilities, the New Hampshire Public Utilities Commission, the Vermont Public Service Board, and the New England Conference of Public Utilities Commissioners, Inc. *See* Public Parties' June 13, 2008 Protest at 23.

¹⁸ *Id.*

¹⁹ *Id.*

expressed concern that some portion of the \$467 million in costs may have been incurred prior to the enactment of EAct 2005. Based on these concerns, the Commission ordered Northeast Utilities to provide additional information that would allow parties to “determine which advanced transmission technology facilities are included in the line items for all segments of the Middletown-to-Norwalk Project, the advanced transmission technology utilized, and the dates such costs were incurred.”²⁰

23. We find that the compliance filing meets these requirements. In particular, the compliance filing provides sufficient information to determine which facilities will be subject to the advanced transmission technology adder and the advanced technologies that will be used at those facilities. The compliance filing also provides more details regarding the underlying costs for each facility and breaks those costs into four general categories (i.e., land/right of way costs, engineering costs, material costs, and construction costs). The Connecticut DPUC’s request for even more detailed cost information goes beyond the requirements established by the Commission in the July 17 Order.

24. Nor is it appropriate to challenge the Project’s cost through a protest to the compliance filing. In the July 17 Order, we reviewed the Project’s cost support for all segments, including the 24-mile segment at issue here. Similarly, we reviewed and accepted the allocation of costs between CWIP and AFUDC in a separate proceeding. These issues are not appropriately reopened in response to a compliance filing.

25. With regard to the date when Project costs were incurred, the July 17 Order sought to ensure that Northeast Utilities did not apply the advanced transmission technology adder to costs that were incurred prior to the enactment of EAct 2005. Attachments 1 and 3 of the compliance filing identify and summarize more than \$14 million in costs that were incurred prior to September 1, 2005 and to which Northeast Utilities states it will not apply the advanced transmission technology adder. The compliance filing satisfies the requirements of the July 17 Order.

²⁰ July 17 Order, 124 FERC ¶ 61,044 at P 90.

The Commission orders:

Northeast Utilities' compliance filing is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.