

135 FERC ¶ 61, 270  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

Northeast Utilities Service Company and  
National Grid USA

Docket No. ER08-1548-001

ORDER DENYING REHEARING

(Issued June 28, 2011)

1. Public Parties<sup>1</sup> and Municipals<sup>2</sup> request rehearing of the Commission's November 2008 Order<sup>3</sup> authorizing transmission rate incentives pursuant to Order No. 679<sup>4</sup> for the New England East-West Solution transmission project (NEEWS Project) to be

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<sup>1</sup> Public Parties consist of: the New England Conference of Public Utilities Commissioners, Inc. (NECPUC), the Maine Public Utilities Commission (Maine PUC), the Massachusetts Department of Public Utilities, the Connecticut Department of Public Utility Control (Connecticut DPUC), the New Hampshire Public Utilities Commission, the Massachusetts Attorney General (Mass AG), the Attorney General of the State of Rhode Island (Rhode Island AG), the Rhode Island Division of Public Utilities and Carriers, and the Connecticut Office of Consumer Counsel.

<sup>2</sup> Municipals consist of: Massachusetts Municipal Wholesale Electric Company (MMWEC), Chicopee Municipal Lighting Company (Chicopee), and South Hadley Electric Light Department (South Hadley). Although Municipals filed a separate rehearing request, they joined Public Parties with respect to certain arguments, as indicated below.

<sup>3</sup> *Northeast Utilities Service Company and National Grid USA*, 125 FERC ¶ 61,183 (2008) (November 2008 Order).

<sup>4</sup> *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).

constructed by Northeast Utilities Service Company (Northeast Utilities) and National Grid USA (National Grid) (collectively, Applicants). For the reasons discussed below, we deny rehearing.

## **I. Background**

2. The NEEWS Project is a substantial addition to the New England 345-kV transmission system aimed at improving the reliability of electric transmission service in southern New England. As noted in the November 2008 Order, Applicants described the NEEWS Project as comprising four inter-related components and several related and necessary upgrades across three states: (1) the Greater Springfield Reliability Project (Springfield Component);<sup>5</sup> (2) the Interstate Reliability Project (Interstate Component);<sup>6</sup> (3) the Central Connecticut Reliability Project (Connecticut Component);<sup>7</sup> and (4) the Rhode Island Reliability Project (Rhode Island Component).<sup>8</sup> The NEEWS Project has an overall estimated cost of \$2.1 billion,<sup>9</sup> which is among the largest transmission infrastructure projects that Applicants have pursued. Applicants stated that the NEEWS Project will impose a significant strain upon their financial resources and face special siting and permitting risks because it requires regulatory approvals from multiple states.

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<sup>5</sup> The Springfield Component consists of upgrades to both the 115-kV local system, as well as to the 345-kV bulk power system between Massachusetts and Connecticut, and is expected to cost \$714 million and be fully in-service in 2013.

<sup>6</sup> The Interstate Component is comprised of new 345-kV lines, as well as improvements to existing 345-kV and 115-kV facilities, from Massachusetts through Rhode Island and terminating in Connecticut, and is expected to cost \$457 million and be placed in-service in 2012 or 2013.

<sup>7</sup> The Connecticut Component involves new 345-kV lines in central Connecticut, as well as improvements to existing 345-kV and 115-kV facilities, and is expected to cost \$313 million and be placed in-service in 2013.

<sup>8</sup> The Rhode Island Component consists of additional 345-kV lines, as well as improvements to existing 345-kV and 115-kV facilities, and is expected to cost \$634 million and be placed in-service in late 2012.

<sup>9</sup> Northeast Utilities' share has been estimated at \$1.49 billion and National Grid's share at \$634 million.

3. Northeast Utilities and National Grid<sup>10</sup> jointly submitted an application pursuant to sections 205 and 219 of the Federal Power Act (FPA)<sup>11</sup> and Order No. 679, requesting three incentives for the NEEWS Project: (1) a 150 basis point return on equity (ROE) adder; (2) recovery in rate base of 100 percent of construction work in progress (CWIP); and (3) 100 percent recovery of prudently incurred costs if the NEEWS Project is abandoned for reasons beyond the control of Applicants (abandonment).

4. In the November 2008 Order, the Commission authorized most of the requested transmission incentives, finding that the NEEWS Project satisfied the criteria set forth in sections 205 and 219 of the FPA and Order No. 679. However, the Commission authorized a 125 basis point ROE adder rather than the requested 150 basis point ROE adder, finding that authorization of CWIP and abandonment reduced the NEEWS Project's overall risk.<sup>12</sup> The Commission's granting of the 125 basis point adder, in conjunction with the 11.64 percent base ROE authorized in Opinion No. 489,<sup>13</sup> resulted in a 12.89 percent ROE for the NEEWS Project.

## **II. Rehearing Requests**

### **A. Motion to Hold Application in Abeyance**

#### **1. November 2008 Order**

5. Prior to the issuance of the November 2008 Order, the Maine PUC, NECPUC, and the Connecticut DPUC (Joint Protesters)<sup>14</sup> moved to hold the application in abeyance pending the outcome of Applicants' requests for siting approvals before the Massachusetts Energy Facilities Siting Board and the Connecticut Siting Council (jointly,

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<sup>10</sup> Northeast Utilities' transmission-owning affiliates are: Connecticut Light and Power Company (Connecticut Light), Western Massachusetts Electric Company (Western Mass), Public Service Company of New Hampshire, and Holyoke Power and Electric Company. National Grid's wholly-owned public utility subsidiaries are Narragansett Electric Company and New England Power.

<sup>11</sup> 16 U.S.C. §§ 824d and 824s (2006).

<sup>12</sup> November 2008 Order, 125 FERC ¶ 61,183 at P 80-81.

<sup>13</sup> All of the affected companies have the same base ROE per *Bangor Hydro-Electric Co.*, 117 FERC ¶ 61,129 (2006) (Opinion No. 489), *order on reh'g*, 122 FERC ¶ 61,265 (2008) (Opinion No. 489 Rehearing Order).

<sup>14</sup> The Vermont Department of Public Service also filed a protest that adopted the arguments in the protests filed by both the Joint Protesters and Maine PUC.

State Authorities). Joint Protesters argued, *inter alia*, that holding the application in abeyance would guarantee that the Commission reviewed the NEEWS Project in its final form and eliminate the prospect of the Commission having to revisit its decision if facts changed as a result of the siting approval proceedings.

6. In the November 2008 Order, the Commission denied the Joint Protesters' motion, explaining that there was no significant risk of administrative inefficiency because the Commission analyzes requests for transmission incentives using different criteria than the State Authorities rely on in analyzing certificate of need applications.<sup>15</sup> The Commission also found that a decision on the application would provide Northeast Utilities and National Grid with a greater degree of certainty as they discussed their future financing needs with lenders and rating agencies, an outcome consistent with the goals of section 219.<sup>16</sup>

## 2. Rehearing Request

7. On rehearing, Public Parties claim that the Commission abused its discretion by denying the motion to hold the application in abeyance. Public Parties argue that the Commission's observation that it reviews incentive applications under different criteria than the State Authorities review certificate applications fails to consider that features of the NEEWS Project upon which the Commission based its incentive decision might change following the siting approval proceedings. Public Parties contend that the siting approval proceedings could produce a reconfigured NEEWS Project with a significantly smaller dollar investment or could affect the details of congestion and reliability benefits as well as details about the scope, size, location and cost of the components.<sup>17</sup>

8. Public Parties argue that, if the incentives are subject to review based on the outcome of the siting approval proceedings, it is questionable how much certainty is actually gained by denying the motion. Public Parties claim that the Commission's refusal to consider that the NEEWS Project may change after the state siting proceedings was arbitrary and capricious.<sup>18</sup>

9. Finally, Public Parties note that in Order No. 679 the Commission stated that it would "carefully consider" the views of state bodies and "appropriately coordinate" its

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<sup>15</sup> November 2008 Order, 125 FERC ¶ 61,183 at P 50.

<sup>16</sup> *Id.* P 51.

<sup>17</sup> Public Parties Rehearing Request at 14-16.

<sup>18</sup> *Id.* at 15.

consideration of incentives with the views of responsible state agencies. Public Parties argue that the Commission failed to explain in this case how it could carefully consider the views of state authorities or appropriately coordinate its consideration of incentives with the responsible state agencies, when the relevant state agencies had not yet even acted.<sup>19</sup>

### 3. Commission Determination

10. The Commission denies rehearing. Public Parties argue, in essence, that a project must, or at least should, receive state approval as a prerequisite to Commission authorization of transmission incentives. That argument is directly contrary to the Commission's findings in Order No. 679.

11. While it is true that, in Order No. 679, the Commission found that approval of a certificate of need application may give rise to a rebuttable presumption that a project satisfies the requirements of section 219, an applicant may show that a project satisfies section 219 in other ways.<sup>20</sup> The absence of state siting approval or certification does not foreclose a project from qualifying for Commission-authorized transmission incentives.<sup>21</sup>

12. In fact, in Order No. 679, the Commission expressly stated that it would not require state approval as a condition for authorizing incentives.<sup>22</sup> It instead stated that applicants required to obtain state approval of their projects should initiate state proceedings in "due course," indicating that pendency of state proceedings would not preclude the Commission's evaluation of applications for incentives.<sup>23</sup> The Commission has explained that it analyzes requests for transmission incentives pursuant to section 219

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<sup>19</sup> *Id.* at 16 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 54; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 5).

<sup>20</sup> *See Central Maine Power Company*, 135 FERC ¶ 61,136, at P 16 (2011) (*Central Maine Rehearing*) ("[S]tate approval is not the only way to satisfy the section 219 requirement.")

<sup>21</sup> *Id.*

<sup>22</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 54 ("We will not, however, adopt any further requirements regarding state approval, such as the requirement that an applicant receive state approval of any proposed incentives. While state approval is desirable, it is not required by section 219.")

<sup>23</sup> *See Central Maine Rehearing*, 135 FERC ¶ 61,136 at P 15 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 54).

and Order No. 679 using different criteria than the states consider in evaluating certificate of need applications.<sup>24</sup>

13. In this case, Applicants did not need to rely on the rebuttable presumption for projects with state approval in order to satisfy the section 219 requirement. The Commission found that the NEEWS Project satisfied that requirement because it is included as a Reliability Transmission Upgrade in ISO New England's (ISO-NE) Regional System Plan, a planning process the Commission has determined is fair and open.<sup>25</sup>

## **B. Obligation to Build**

### **1. November 2008 Order**

14. In their protests, Joint Protesters, Municipals and the Mass AG argued that the Commission should deny Applicants' request for incentives because Applicants have a contractual obligation to build transmission projects included in ISO-NE's Regional System Plan, subject to approval by the relevant state siting authorities. MMWEC acknowledged that the Commission had already rejected this same argument in *Northeast Utilities*,<sup>26</sup> but argued that the Commission erred in that case.

15. In the November 2008 Order, the Commission rejected this argument as a collateral attack on *Northeast Utilities*. The Commission explained that, in *Northeast Utilities*, it rejected the same argument as a narrow interpretation of Order No. 679 that is at odds with the Commission's authority under section 219.<sup>27</sup>

### **2. Rehearing Request**

16. On rehearing, Public Parties reiterate the argument that, in granting incentives, the Commission must find a quantifiable relationship between the proposed incentives and

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<sup>24</sup> For example, as noted in *Central Maine Power Company*, 125 FERC ¶ 61,079, at P 39 (2008), *order on reh'g*, 135 FERC ¶ 61,136 (2011), the Maine Commission would determine whether the project is needed – a different standard that permits inquiry into a broader range of issues than the Commission considers in granting transmission incentives.

<sup>25</sup> November 2008 Order, 125 FERC ¶ 61,183 at P 56-57.

<sup>26</sup> *Northeast Utilities Service Co.*, 124 FERC ¶ 61,044, at P 89 (2008) (*Northeast Utilities*), *reh'g denied*, 126 FERC ¶ 61,052 (2009).

<sup>27</sup> November 2008 Order, 125 FERC ¶ 61,183 at P 60.

the benefits the incentives are supposed to produce. Public Parties assert that Applicants failed to establish such a relationship in this case. Asserting that Order No. 679-A states that an obligation to build may have a bearing on the nexus evaluation of individual incentive applications,<sup>28</sup> Public Parties argue that an ROE incentive might not be necessary where, such as here, there is an obligation to build and the transmission owners already receive a 50-basis point incentive for Regional Transmission Organization (RTO) participation.

### 3. Commission Determination

17. We deny rehearing and affirm the Commission's finding that the NEEWS Project is eligible for incentives, including an ROE incentive, even though Applicants may have a contractual obligation to build. Order No. 679-A stated that, as a general matter, a contractual, statutory, or regulatory obligation to build does not disqualify an applicant from receiving incentives.<sup>29</sup> In fact, in Order No. 679-A the Commission specifically rejected the argument that an obligation to build arising out of membership in an RTO creates a *per se* bar to incentives.<sup>30</sup>

18. While Public Parties ignore this aspect of Order No. 679-A, they do reference the Commission's statement, in the same paragraph, that a prior contractual commitment or statute may have a bearing on the nexus evaluation of individual incentive applications. Public Parties argue that the Commission dismissed Applicants' contractual commitment without adequately explaining why it has no bearing on the nexus evaluation and without identifying the circumstances in which it would have a bearing on the nexus evaluation.

19. As in *Central Maine Rehearing*, we reject Public Parties' interpretation of Order No. 679.<sup>31</sup> The Commission's statement that a prior contractual commitment or statute may have a bearing on the nexus evaluation of individual incentive applications immediately followed its rejection of the unqualified claim that such an obligation is an absolute bar to incentives; as such the Commission's statement merely recognized that, while contractual or statutory obligations will not generally bar incentives, there may be some cases where protesters can show that such obligations are relevant to whether applicants can establish a nexus between the incentives sought and the investment being

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<sup>28</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 27.

<sup>29</sup> *Id.* P 122.

<sup>30</sup> *Id.*

<sup>31</sup> *Central Maine Rehearing*, 135 FERC ¶ 61,136 at P 31.

made.<sup>32</sup> And here, in their protests, neither Municipals nor the Joint Protesters provided the Commission with any reason why Applicants' obligation to build should factor into the nexus test in this particular case; instead, both argued that that obligation, standing alone, should disqualify the NEEWS Project from receiving incentives.<sup>33</sup>

20. Additionally, Public Parties argue that Applicants should be ineligible for an ROE incentive under Order No. 679 because the 50 basis point RTO adder they already receive is adequate compensation for undertaking the obligation to build.<sup>34</sup> However, they also acknowledge that the Commission may still grant incentives on top of that 50 basis point RTO adder, albeit in regions where the relevant transmission agreement does not provide for an obligation to build, suggesting such examples as where the right to invest or not belongs to the transmission companies' shareholders, and where the contractual obligation to build does not preclude awarding incentives.

21. As in *Central Maine Rehearing*, we reject Public Parties' arguments because the Commission did not authorize the 50 basis point RTO adder to compensate Applicants and other New England Transmission Owners for undertaking the obligation to build, as Public Parties argue. Instead, the Commission authorized the 50 basis point RTO adder as part of its effort to encourage entities to form or join RTOs and thereby make wholesale electric markets more competitive and efficient.<sup>35</sup> Thus, when the Commission granted the 50 basis point RTO adder, it cited the New England Owners'

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<sup>32</sup> *Id.* n.35 (“We observe that the Commission merely stated that a statutory or contractual obligation *may* have a bearing on the nexus evaluation; the Commission did not state or even imply that any effect on the nexus evaluation would always work against the applicant.”).

<sup>33</sup> Errata to Joint Protesters' Motion for Abeyance and Protest at 18-19; Motion to Intervene and Protest of Chicopee and South Hadley at 6-7; MMWEC Protest at 6-10.

<sup>34</sup> Public Parties Rehearing Request at 21.

<sup>35</sup> See November 2008 Order, 125 FERC ¶ 61,183 at P 60. Regional Transmission Organizations allow transmission facilities to be operated more reliably and efficiently because they result in regional transmission pricing and the elimination of rate pancaking, improved congestion management, more accurate estimates of available transmission capacity, more effective management of parallel path flows, and improved grid reliability. *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).

voluntary proposal to establish ISO-NE as a RTO and their commitment to transfer day-to-day operational control over their transmission facilities to ISO-NE.<sup>36</sup>

**C. ROE Adder and CWIP Incentive**

**1. November 2008 Order**

22. In the November 2008 Order, the Commission rejected Joint Protesters' argument that CWIP and abandonment incentives were sufficient to mitigate the financial and investment risks faced by the NEEWS Project and, thus, that an ROE incentive is not justified. The Commission found that Applicants had demonstrated that the total package of incentives was tailored to address the demonstrable risks and challenges faced by the NEEWS Project.<sup>37</sup> The Commission first explained why each individual incentive was justified and then why the package of incentives was tailored to address the demonstrable risks and challenges faced by the NEEWS Project.

23. The Commission found that an ROE incentive was justified because the NEEWS Project is not routine and faces significant siting, construction, regulatory, environmental, and financial risks and challenges. The Commission noted that the NEEWS Project is expected to be built along over 300 miles of transmission corridors; cover three states and require a joint siting effort of two utilities; and receive approval from at least 15 state agencies, three federal agencies, and numerous municipalities. The Commission further found that the NEEWS Project is expected to cost approximately \$2.1 billion and is among the largest transmission infrastructure projects that Applicants have pursued.<sup>38</sup> Finally, the Commission found that Applicants face substantial challenges and risks – financial, regulatory, environmental, and siting as well as facing internal competition for financing from other projects.<sup>39</sup>

24. The Commission also found that authorizing CWIP would further the goals of section 219 because it would provide Applicants with up-front regulatory certainty, rate stability, and improved cash flow, thereby reducing the pressure on the companies'

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<sup>36</sup> *ISO New England, Inc.*, 106 FERC ¶ 61,280, at P 245, *order on reh'g and compliance*, 109 FERC ¶ 61,147 (2004), *order on reh'g and compliance*, 110 FERC ¶ 61,111, *order on reh'g and compliance*, 110 FERC ¶ 61,335, *order on reh'g*, 111 FERC ¶ 61,344 (2005).

<sup>37</sup> November 2008 Order, 125 FERC ¶ 61,183 at P 80.

<sup>38</sup> *Id.* P 67-69.

<sup>39</sup> *Id.* P 69.

finances caused by investing in the NEEWS Project.<sup>40</sup> The Commission also found that authorizing CWIP would result in better rate stability for consumers and will help consumers avoid a return on and of capitalized Allowance for Funds Used During Construction (AFUDC).<sup>41</sup>

25. The Commission further found that an abandonment incentive was justified because it would reduce the risk of non-recovery of costs and be an effective means to encourage the NEEWS Project's completion.<sup>42</sup> After explaining why each individual incentive was justified, the Commission found that the total package of incentives requested was tailored to address the demonstrable risks and challenges faced by the NEEWS Project. The Commission noted, however, that when it considers a request for an enhanced ROE, Order No. 679-A requires it to take into account any incentives in the total package of requested incentives that reduce the project's risk.<sup>43</sup> Thus, the Commission found that, while the NEEWS Project faces risks and challenges that warrant an ROE incentive, its overall risk was reduced by the Commission's decision to authorize CWIP and abandonment.<sup>44</sup> Given these factors, the Commission determined that the NEEWS Project warranted a 125 basis point ROE adder, rather than the 150 basis point ROE adder that Applicants requested.

## 2. Rehearing Request

26. Public Parties argue on rehearing that the Commission did not adequately support its decision to authorize an ROE incentive in light of its decision to authorize CWIP. Public Parties contend that the Commission acknowledged that CWIP helps offset the investment risks associated with the NEEWS Project and yet failed to account for any fact or set of facts upon which it relied in concluding that a 125 basis point ROE adder was necessary. Public Parties argue that the Commission failed to account for evidence that, according to Public Parties, demonstrates that abandonment and CWIP would be more than enough to insulate Applicants, their lenders, and their equity investors from the investment risks associated with the NEEWS Project.

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<sup>40</sup> *Id.* P 87.

<sup>41</sup> *Id.* P 89.

<sup>42</sup> *Id.* P 94.

<sup>43</sup> *Id.* P 99.

<sup>44</sup> *Id.* P 81, 99.

27. Public Parties also contend that the Commission did not adequately explain its rationale for rejecting the State Parties’<sup>45</sup> argument, which, according to Public Parties, posited that Applicants’ own evidence demonstrated that an ROE incentive would be unnecessary if the Commission authorized CWIP because both incentives addressed the same risks and that these risks could be addressed by CWIP without the need for an ROE adder. Public Parties assert that Applicants’ witnesses testified that CWIP would alleviate further downward pressure on Applicants’ financial health and help Applicants raise equity and debt capital from investors who may otherwise be discouraged by long delays in the recovery of expenses. Public Parties further argue that Applicants emphasized how CWIP recovery and the ROE adder would offset financial risks by bolstering credit ratings and help attract investment but failed to identify where the effect of one incentive stops and where another begins. Public Parties also assert that the State Parties presented evidence that CWIP alone would permit Applicants to maintain its solid investment rating.

### 3. Commission Determination

28. We deny rehearing. Contrary to Public Parties’ assertion, the Commission did consider the request for an ROE incentive in light of its decision to authorize CWIP and abandonment. The Commission first identified the factors that led it to conclude that an ROE incentive was justified and then considered to what extent CWIP and abandonment reduced the NEEWS Project’s overall risk. The Commission concluded that, while CWIP and abandonment did reduce the NEEWS Project’s overall risk, the incentives did not completely mitigate the need for an ROE incentive. Consequently, the Commission authorized an ROE incentive that reflected, in its judgment, the remaining risks and challenges associated with the NEEWS Project.<sup>46</sup>

29. We reject Public Parties’ claim that the Commission ignored evidence offered by the State Parties to show that CWIP and abandonment would be sufficient to insulate Applicants and potential lenders and investors from the NEEWS Project’s risk. The evidence that Public Parties point to is a one-sentence opinion by the Joint Protesters’ witness that CWIP and abandonment “would be” sufficient to insulate Applicants, its lenders, and its equity investors from the investment risks associated with the NEEWS Project.<sup>47</sup> Even if this sentence is read in the manner suggested by Public Parties, it demonstrates that the witness considered only investment risks and not the additional

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<sup>45</sup> State Parties included the Maine PUC, NECPUC, the Rhode Island AG, and the Connecticut DPUC.

<sup>46</sup> See November 2008 Order, 125 FERC ¶ 61,183 at P 81.

<sup>47</sup> See Joint Protesters October 14 Protest, Kivela Aff. ¶ 58.

significant siting, construction, regulatory, and environmental risks and challenges faced by the NEEWS Project.

30. Public Parties also argue that the Commission ignored the Joint Protesters' claim that Applicants' witnesses testified that CWIP and an ROE incentive would address the same risks and that these risks could be adequately addressed by CWIP alone. We reject this characterization of the testimony. Applicants' witnesses testified about the benefits of CWIP but did not testify that the benefits of CWIP negated the need for an ROE incentive, or that CWIP alone would mitigate all of the investment, siting, construction, regulatory, and environmental risks and challenges faced by the NEEWS Project. In fact, the witnesses specifically cited these risks and challenges as reasons why the Commission should grant an ROE incentive.<sup>48</sup>

**D. Formula Rates and Up-front ROE**

**1. November 2008 Order**

31. In the November 2008 Order, the Commission explained that it was not persuaded by Joint Protesters' argument that having a formula rate and/or receiving an up-front ROE determination necessarily warrants a lower ROE in this case. The Commission further explained that it believed that the scope, effects, risks and challenges of the NEEWS Project are commensurate with a 125 basis point ROE adder.<sup>49</sup>

**2. Rehearing Request**

32. On rehearing, Public Parties contend that the Commission did not articulate a reasoned basis why awarding Applicants a 125 basis point ROE adder – as opposed to any other number – is just and reasonable for the NEEWS Project. They assert that the determination is arbitrary and capricious.

33. Public Parties also argue that the Commission failed to explain its conclusions that a lower ROE adder was not warranted by either the formula transmission rates or an up-front ROE determination even though both factors tend to reduce risk and, according to Public Parties' arguments, should eliminate the need for, or limit, an ROE adder. Public Parties assert that Applicants face little or no risk that they will be unable to recover prudently incurred costs under a formula rate. Finally, Public Parties argue that the Commission failed to provide a reasoned basis for refusing to make a further downward revision to the 125 basis point ROE adder due to the granting of the up-front ROE.

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<sup>48</sup> See Eckenroth Direct Testimony at 23-24; Bonar Direct Testimony at 13-15.

<sup>49</sup> *Id.* P 100.

### 3. Commission Determination

34. We deny rehearing. In addition to the considerations articulated in the November 2008 Order and discussed above, we note that while formula rates can provide a greater certainty of rate recovery,<sup>50</sup> they do not necessarily mitigate all of the risks and challenges faced by a project. Moreover, the Commission has previously found that the greater certainty of rate recovery provided by formula rates does not disqualify a project from receiving an ROE incentive under Order No. 679.<sup>51</sup>

35. Additionally, we reject Public Parties' assertion that the Commission failed to address Applicants' argument. The Commission did consider the existence of Applicants' formula rates and receiving an up-front ROE and still found that an ROE incentive is warranted.<sup>52</sup> Notwithstanding the existence of formula rates, the NEEWS Project faces significant siting, construction, regulatory, environmental, and financial risks and challenges.

36. Further, the Commission has made clear that a request for an incentive ROE is not subject to an automatic reduction on the ground that an applicant seeks an up-front ROE determination; an up-front ROE "will be taken into account" but is not determinative.<sup>53</sup> As we have said before, the total package of incentives requested must be tailored to address the demonstrable risks or challenges faced by the applicant.<sup>54</sup> This examination is fact-specific and requires the Commission to review each application on a case-by-case basis. In this case, Applicants have shown that the total package of incentives is tailored to address the demonstrable risks and challenges faced by the Project.<sup>55</sup>

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<sup>50</sup> See Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 386.

<sup>51</sup> *E.g. Duquesne Light Co.*, 118 FERC ¶ 61,087 at P 54-56 (2007).

<sup>52</sup> November 2008 Order, 125 FERC ¶ 61,183 at P 100.

<sup>53</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 27.

<sup>54</sup> November 2008 Order, 125 FERC ¶ 61,183 at P 97.

<sup>55</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21, 27.

## **E. Change in Bond Yields**

### **1. November 2008 Order**

37. In the November 2008 Order, the Commission rejected the Joint Protesters' argument<sup>56</sup> that the 74-basis point ROE adder (to reflect the change in bond prices approved in the Opinion No. 489 Rehearing Order) was no longer justified because of falling bond yields.<sup>57</sup> The Joint Protesters contended that Applicants' requested 13.14 percent ROE was equivalent to a 260 to 274 basis point adder, due to the effects of the moves in the bond and equity markets since the issuance of Opinion No. 489. The Commission found that the 74 basis point upwards bond adjustment applies to the midpoint of the zone of reasonableness. The Commission further found that the Joint Protesters had not demonstrated that this decline in Treasury bond rates correlates to a reduction in corporate borrowing costs or the cost of capital, based on current market conditions.<sup>58</sup>

38. In *Virginia Electric and Power Co.*, the Commission noted that it recently performed a similar analysis based on the Opinion No. 489 methodology.<sup>59</sup> There, the Commission stated that Virginia Electric Power Company (VEPCO) began with a similar group of 15 northeast transmission owners for its proxy group before additional screens were applied that reduced the proxy group. The Commission observed that National Grid's parent and VEPCO are both rated BBB+ by Standard & Poor's, which results in companies rated below BBB or above A- being screened out of the proxy group. The

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<sup>56</sup> Chicopee and South Hadley joined Joint Protesters for the purposes of this argument.

<sup>57</sup> In the Opinion No. 489 Rehearing Order, the Commission established for New England Transmission Owners, a zone of reasonableness from a low-end ROE of 7.3 percent to a high-end ROE of 13.5 percent, with a midpoint and base-level ROE of 10.4 percent. In addition to the 50-basis point ROE incentive for membership in a RTO, the Commission authorized a 74-basis point ROE adder to reflect updated bond data, applicable as of November 1, 2006. Consequently, out of the Opinion No. 489 Rehearing Order, the "going-forward" ROE for New England Transmission Owners was 11.64 percent ( $10.4 + 0.5 + 0.74$ ). By granting a 125 basis point ROE adder for the NEEWS Project, Applicants' ROEs increased to 12.89 percent ( $10.4 + 0.5 + 0.74 + 1.25$ ), which remains within the zone of reasonableness established in the Opinion No. 489 Rehearing Order.

<sup>58</sup> November 2008 Order, 125 FERC ¶ 61,183 at P 83.

<sup>59</sup> *Virginia Electric and Power Co.*, 124 FERC ¶ 61,207 (2008) (*VEPCO*).

Commission thus found that VEPCO's proxy group provides a reasonable comparison for determining the zone of reasonable returns for National Grid. The Commission stated that, in *VEPCO*, the zone of reasonableness was determined to be 9.46 percent to 14.4 percent,<sup>60</sup> and that the 12.89 percent ROE authorized for National Grid fell within this range. Consequently, the Commission determined that the zone of reasonableness approved in *VEPCO* demonstrated that it was appropriate to continue to use a zone of reasonableness of 7.3 percent to 13.5 percent for the New England Transmission Owners.

39. The Commission further noted that previously it had performed a similar analysis based on the Opinion No. 489 methodology for a utility rated BBB by Standard & Poor's, similar to Northeast Utilities, in *PHI*.<sup>61</sup> In *PHI*, using updated data for the six month period ending January 2008, the zone of reasonableness was determined to be 7.0 to 15.9 percent.<sup>62</sup>

40. Further, the Commission noted that Applicants had submitted a similar discounted cash flow (DCF) analysis based on the Opinion No. 489 methodology, using updated data for the six month period ending July 2008. The zone of reasonableness was determined to be 8.3 percent to 15.7 percent whether or not the corporate credit ratings screen was applied, so this result applied equally to both Northeast Utilities and National Grid.

41. Based upon all three of these analyses, the Commission concluded that a 13.5 percent high end ROE remained reasonable and that the 12.89 percent ROE granted to Applicants remains within the zone of reasonableness.<sup>63</sup>

## 2. Rehearing Request

42. On rehearing, Public Parties assert that the Commission abused its discretion by failing to take into account the change in bond yields when it determined whether any additional ROE adder was appropriate. Public Parties argue that the Commission failed to recognize that the 74 basis point adjustment was an upward adjustment to the midpoint and thus should have been removed to account for current conditions. Public Parties contend that the issue is not whether the 74 basis point adjustment affected the zone of reasonableness, but that it inflated the base level ROE upon which the 125 basis point ROE adder was added. Public Parties argue that the Commission should have at least removed the 74 basis point adjustment to reflect change in bond yields.

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<sup>60</sup> *Id.* P 120.

<sup>61</sup> *Pepco Holdings, Inc.*, 124 FERC ¶ 61,176 (2008) (*PHI*).

<sup>62</sup> *Id.*, 124 FERC ¶ 61,176 at P 114-16.

<sup>63</sup> November 2008 Order, 125 FERC ¶ 61,183 at P 85.

43. Public Parties further assert that the Commission erred in conducting a cost of capital analysis without holding an evidentiary hearing. Public Parties claim that the Commission's decision to import the findings of two unrelated cases failed to provide parties in this case with the opportunity to contest the basis of the Commission's determination. Public Parties also argue that where issues of material fact have been raised, establishing an ROE without a hearing is an inadequate substitute for an evidentiary hearing.

### **3. Commission Determination**

44. We deny rehearing. Applicants did not request a change in the base ROE that all New England Transmission Owners were awarded in the Opinion No. 489 Rehearing Order.<sup>64</sup> Instead, Applicants requested several incentives pursuant to Order No. 679, including an ROE adder to its "going-forward" ROE of 11.64 percent (which includes a 50 basis point ROE incentive for RTO participation). Thus, the base ROE established in the Opinion No. 489 Rehearing Order is not open for review in this case, but is instead subject to review only in a separate proceeding initiated under section 205 or 206 of the FPA.

45. The Commission also reaffirms its reference to the DCF analyses performed in *PHI* and *VEPCO* as a reasonable comparison for determining the zone of reasonable returns for Northeast Utilities and National Grid, respectively. For the reasons detailed in the November 2008 Order, the *PHI* and *VEPCO* results verify that an ROE of 12.89 percent remains within the zone of reasonableness. Further, Applicants submitted their own DCF analysis with updated data, based upon more recent market conditions, that supported the continued use of 13.5 percent as the high end ROE for New England Transmission Owners.

46. We also reject the claim that this proceeding involves disputed issues of material fact appropriate for an evidentiary hearing and settlement judge procedures. A formal trial-type evidentiary hearing is unnecessary where there are no material facts in dispute.<sup>65</sup> Public Parties' arguments in favor of a hearing are based solely on unsupported allegations, and "mere allegations of disputed facts are insufficient to

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<sup>64</sup> In the Opinion No. 489 Rehearing Order, the awarded 10.4 percent base ROE was adjusted (upwards, in this instance, by 74 basis points to 11.14 percent) to account for the change in capital market conditions that took place between the time of the ALJ's initial decision and the Commission's decision.

<sup>65</sup> See, e.g., *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124, 128-29 (D.C. Cir. 1982); *Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988); *Consolidated Oil & Gas, Inc. v. FERC*, 806 F.2d 275, 280 (D.C. Cir. 1986).

mandate a hearing; petitioners must make an adequate proffer of evidence to support them.”<sup>66</sup>

**F. Rate Impact of 125 Basis Point ROE Adder**

**1. Rehearing Request**

47. On rehearing, Public Parties argue that the Commission should have considered the impact on consumers when determining whether Applicants’ proposal was just and reasonable. Public Parties contend that the 11.64 percent ROE along with the 150 basis point adder originally requested by Applicants would raise the NEEWS Project’s incremental costs by \$700-800 million over a 30-year project lifetime,<sup>67</sup> and that the 150 basis point adder alone would raise the incremental costs by \$370-400 million. Public Parties argue that the Commission made no effort to factor this cost impact into its decision to grant a 125 basis point ROE adder.

**2. Commission Determination**

48. We deny rehearing. We note that the Commission reduced the ROE incentive to 125 basis points because it found that Applicants’ requested 150 basis point adder was not warranted given the decision to authorize CWIP and an abandonment incentive. As discussed above, the Commission thus authorized an ROE incentive that reflected, in its judgment, the remaining risks and challenges associated with the NEEWS Project.

**G. Motion to Condition the ROE Adder to Ensure Customer Benefits**

**1. November 2008 Order**

49. Prior to the November 2008 Order, several intervenors asked the Commission to set all or portions of Applicants’ request for incentive transmission rates for evidentiary hearing. Additionally, MMWEC moved that, if the Commission did not reject an ROE adder summarily, it should suspend the filing for a nominal period, set the ROE adder for hearing, and condition any relief that is granted to ensure customer benefits. MMWEC requested that the Commission consider conditioning any approved ROE adder upon completion of the NEEWS Project within the time frame set forth in the application or at the estimated investment level. Specifically, MMWEC proposed that any approved ROE

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<sup>66</sup> *Cerro Wire & Cable Co. v. FERC*, 677 F.2d at 129.

<sup>67</sup> Public Parties argued that the requested 13.14 percent ROE was equivalent to a 260 to 274 basis point adder due to changes in the capital markets since Opinion No. 489.

adder could be reduced by 50 basis points for each year the NEEWS Project is delayed and that the ROE adder be applied to the budgeted rather than the actual rate base amounts. MMWEC further proposed that Applicants be permitted to seek a rate increase under section 206 of the FPA to reinstate a higher ROE incentive or apply the incentive to a greater rate base amount if they believed the causes of the delay or of budget overruns are outside their control. MMWEC recognized that the Commission rejected the proposed application of similar limitations on an after-the-fact basis in *NECPUC*.<sup>68</sup> In this instance however, MMWEC argued that the ROE condition would be imposed at the outset and thereby provide a forward-looking incentive for favorable performance.

50. Applicants answered that MMWEC's proposed conditions are directly contrary to Order No. 679 and the Commission's ruling in *NECPUC*. Specifically, Applicants argued that in Order No. 679, the Commission denied requests to limit recovery of incentives for both CWIP and abandoned plant cost recovery to the costs in the original budget estimate,<sup>69</sup> and that the Commission rejected requests to condition inclusion of CWIP and pre-operation costs on adherence to the construction schedule submitted with the application.<sup>70</sup> Applicants also asserted that in *NECPUC*, the Commission rejected the same limitations that MMWEC proposed here. Finally, Applicants argued that MMWEC's attempt to distinguish its proposed limitations from *NECPUC* as providing a "forward-looking" incentive for favorable performance lacks any merit and that project cost estimates are not a determinative factor in the Commission's Order No. 679 analysis. Applicants stated that the original cost estimates for the NEEWS Project are preliminary and may change as a result of factors beyond their control and asserted that if MMWEC's relief were granted, it would provide a utility with an incentive to overstate projected costs as part of the regional planning process.

51. In the November 2008 Order, the Commission denied protesters' request for an evidentiary hearing. The Commission found no material facts were in dispute and concluded it was unnecessary to set this matter for evidentiary hearing.

## 2. Rehearing Request

52. On rehearing, Municipals claim that the Commission failed to consider MMWEC's argument that any grant of an ROE adder be conditioned so as to encourage

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<sup>68</sup> *New England Conference of Public Utilities Commissioners, Inc. v. Bangor Hydro-Electric Co.*, 124 FERC ¶ 61,291 (2008) (*NECPUC*).

<sup>69</sup> Applicants' Answer at 48 (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at n.81).

<sup>70</sup> *Id.* at 48-49 (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 118).

Applicants' timely and cost-effective completion of the NEEWS Project, and therefore, the Commission failed to meet its obligations under FPA section 219 to establish performance-based rate treatments that are just and reasonable.

53. Municipals assert that there can be as much as a decade-long gap between Regional System Plan identification and project completion, so Commission approval of an ROE adder should encourage Applicants to complete the NEEWS Project as quickly as possible and near the estimated budget. Accordingly, Municipals reiterate their argument that the Commission should condition the ROE adder upon completion of the project: (1) within the timeframe set forth in the application; and (2) close to the estimated \$2.1 billion investment level. Finally, Municipals reiterate that if Applicants believe the causes of the delay or budget overruns are beyond their control, then Applicants could be permitted under section 206 of the FPA to reinstate a higher ROE incentive or apply the incentive to a greater rate base amount.

### **3. Commission Determination**

54. We deny rehearing. We will not, in this proceeding, condition the incentive ROE adder upon completion of the NEEWS Project within the timeframe set forth in the application or at the estimated \$2.1 billion investment level, as Municipals suggest. We have not imposed that requirement in the past, and Municipals have not persuaded us that it is appropriate to do so here. The Commission has an established procedure for ensuring that only prudently incurred costs are recovered under the Federal Power Act section 205.<sup>71</sup>

The Commission orders:

The rehearing requests are hereby denied, as discussed in the body of this order.

By the Commission. Chairman Wellinghoff is dissenting in part with a separate statement attached.

Commissioner LaFleur is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>71</sup> See *Atlantic Grid Operations, LLC, et al.*, 135 FERC ¶ 61,144 at P 79 (2011).

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Northeast Utilities Service Company and  
National Grid USA

Docket No. ER08-1548-001

( Issued June 28, 2011 )

WELLINGHOFF, Chairman, dissenting in part:

I write separately to dissent in part. Consistent with my partial dissent in the underlying order, I continue to believe that Northeast Utilities and National Grid have not satisfied the Commission's nexus requirement with regard to their request for an incentive return on equity (ROE) adder. As I stated in my partial dissent in the underlying order, when approving the ROE adder, the majority applied an insufficiently rigorous version of the nexus requirement that overemphasizes the reliability benefits of the New England East-West Solution transmission project and failed to give appropriate emphasis to consideration of advanced technologies and their associated risks and challenges.

For these reasons, I respectfully dissent in part.

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Jon Wellinghoff  
Chairman