

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

Before Commissioners: Norman C. Bay, Chairman;  
Philip D. Moeller, Cheryl A. LaFleur,  
Tony Clark, and Colette D. Honorable.

ISO New England Inc. Participating Transmission  
Owners Administrative Committee

Docket Nos. RT04-2-000 and  
ER09-1532-000

New Hampshire Transmission, LLC

EL15-85-000

ORDER ACCEPTING INFORMATIONAL FILING AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued August 12, 2015)

1. On July 31, 2014, ISO-NE Participating Transmission Owners (PTOs) made an informational filing, pursuant to Section II of the ISO-New England Inc. (ISO-NE) Transmission, Markets, and Services Tariff (OATT), providing updated rates for its Regional Network Service formula rate. On April 28, 2015, New England State Agencies (State Agencies)<sup>1</sup> filed a joint motion to intervene and protest with regard to that filing, asking that the Commission find that New Hampshire Transmission, LLC (NHT) is not authorized to recover the costs of studying and developing its proposed SeaLink project through the Regional Network Service (RNS) formula rate. State Agencies also request that the Commission order a recalculation of the RNS formula rate and refund any unauthorized amounts collected by NHT to date. In this order, the Commission accepts the PTOs' filing as an informational filing only. Separately, as discussed below, we are instituting a proceeding pursuant to section 206 of the Federal Power Act (FPA)<sup>2</sup> in Docket No. EL15-85-000 to examine whether NHT's recovery of

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<sup>1</sup> Collectively, State Agencies include: the Attorney General of the Commonwealth of Massachusetts, the Connecticut Public Utilities Regulatory Authority, the Connecticut Office of Consumer Counsel, the Rhode Island Division of Public Utilities and Carriers, the Rhode Island Attorney General, the Maine Office of the Public Advocate, and the Vermont Department of Public Service.

<sup>2</sup> 16 U.S.C. § 824e (2006).

costs related to the development of its SeaLink project through the RNS formula rate is just and reasonable, and establishing hearing and settlement judge procedures.

## **I. Background**

2. ISO-NE's PTOs, including NHT, provide transmission service over their high voltage lines (Pool Transmission Facilities or PTF)<sup>3</sup> under the ISO-NE OATT. They recover their transmission revenue requirements through formula rates, including the RNS formula rate.<sup>4</sup> The rates for RNS are calculated annually using a formula rate for all Pool Transmission Facilities in New England. NHT also maintains a Local Network Service rate in Schedule 21 of the ISO-NE OATT to recover all of the costs of providing transmission service to NHT's customers that are not recovered through the RNS rates, particularly non-PTF and the costs of lower voltage facilities or radial lines.<sup>5</sup>

3. The RNS formula rate was established by settlement and accepted by the Commission in 1999.<sup>6</sup> The formula rate defines the inputs and allocation factors to be used by every transmission owner for calculating its annual revenue requirement. Attachment F requires all ISO-NE PTOs to jointly submit to the Commission by July 31 of each year an annual informational filing that updates the RNS rates under ISO-NE's OATT. For this purpose, each PTO must use the expenses recorded in its FERC Form 1 from the prior calendar year (as applicable here, 2013) to calculate its respective transmission revenue requirement.<sup>7</sup> In addition, Attachment F requires each PTO to calculate an annual true-up by comparing the updated transmission revenue requirement provided in the filing to that from the previous year. The cumulative total of the PTOs' revenue requirements (as adjusted by the annual true-up) is used to establish the rates for RNS; through or out service; and scheduling, system control, and dispatch services in effect from June 1 through May 31 of each year.

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<sup>3</sup> Transmission facilities that meet the criteria contained in section II.49 of the ISO-NE OATT are designated as Pool Transmission Facilities.

<sup>4</sup> ISO-NE, Transmission, Markets and Services Tariff, § II.11 (Nature of Regional Network Service) (1.0.0).

<sup>5</sup> NHT does not file an annual informational update to its Local Network Service rate with the Commission.

<sup>6</sup> *New England Power Pool*, 88 FERC ¶ 61,140 (1999).

<sup>7</sup> For purposes of the RNS rate, a PTO's transmission revenue requirement only reflects a PTO's costs with respect to Pool-Supported Pool Transmission Facilities.

4. Attachment F states that “[ISO-NE] shall have the discretion to conduct audits of such charges, with advisory Stakeholder input on the scope of audit, including on any agreed-upon procedures to be used by the auditor.”<sup>8</sup> Additionally, Attachment F states that “[a]t least forty-five days before an informational filing is made with the Commission, the PTOs shall make available to Transmission Customers and any other interested parties a draft of the proposed filing for review and comment prior to the filing by posting such draft on the [ISO-NE] website.”<sup>9</sup>

## **II. Protest and Responsive Pleadings**

### **A. Procedural History**

5. On July 31, 2014, the PTOs submitted their 2014 Annual Update, which they proposed to make effective as of June 1, 2014. On January 5, 2015, the PTOs submitted a supplement to the 2014 Annual Update. On April 28, 2015, State Agencies submitted a joint motion to intervene and partial protest to the 2014 Annual Update.

6. National Grid,<sup>10</sup> Eversource Energy Service Company, The United Illuminating Company, and the New England States Committee on Electricity (NESCOE) submitted motions to intervene. On May 12, 2015, Central Maine Power Company (CMP) submitted a motion to intervene out of time. On May 8, 2015, NESCOE submitted comments. On May 15, 2015, NHT submitted an answer to State Agencies’ protest.

### **B. State Agencies’ Protest**

7. State Agencies state that, on August 11, 2014, the PTOs gave a presentation to the NEPOOL Reliability and Transmission Committees on significant changes to the revenue requirements contained in the 2014 Annual Update. At that meeting, according to State Agencies, NHT’s representative explained that roughly \$5.4 million, of the approximate \$7.1 million total in reliability study costs, in NHT’s revenue requirement included in the RNS rate consisted of SeaLink transmission project development costs. State Agencies explain that SeaLink was a proposed hybrid transmission project consisting of AC components as well as a high-voltage direct current (HVDC) submarine cable to be

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<sup>8</sup> ISO-NE, Transmission, Markets and Services Tariff, Section II, Attachment F (8.0.0), Implementation Rule.

<sup>9</sup> *Id.*

<sup>10</sup> In its motion to intervene, National Grid states that on February 12, 2015, ISO-NE selected the joint National Grid and Eversource “AC Solution” as the preferred transmission solution for reliability challenges in the Greater Boston area.

constructed from Seabrook, New Hampshire to the Boston area. State Agencies state that NHT proposed SeaLink on its own initiative and that the project was evaluated by ISO-NE at NHT's request as part of the Greater Boston 2023 Needs Assessment and Solutions Study. They also state that SeaLink was an unsolicited competing proposal to the planned transmission line upgrade referred to as the "AC Solution" put forward by National Grid and Eversource Energy (formerly Northeast Utilities), the two PTOs whose existing electric systems and transmission service territories include the Greater Boston reliability area. Further, State Agencies state that SeaLink was ultimately not selected by ISO-NE as the preferred solution for Greater Boston.

8. State Agencies argue that there is no basis in either the Transmission Operating Agreement (TOA) or the OATT to recover through RNS rates any study, planning, or development costs that NHT voluntarily incurred related to the SeaLink project. State Agencies claim that, under Schedule 3.09(a) of the TOA, a PTO has both the obligation and the right to build certain new transmission facilities and upgrades located within or connected to its existing electric system. Further, State Agencies point out that the Greater Boston area is contained within the franchise territories of National Grid and NSTAR Electric (an affiliate of Eversource), not NHT. State Agencies contend that because NHT is trying to recover those costs in a pre-Order No. 1000 environment, there is no provision in the TOA that allows a PTO to recover costs for study or development of a voluntarily initiated competing reliability proposal aimed at relieving a constraint in another PTO's service area.<sup>11</sup>

9. Additionally, State Agencies argue that the annual RNS informational filing is deficient because it does not contain sufficient information to reconcile the planning costs associated with the Sealink project within NHT's worksheets. State Agencies also claim that it was inappropriate for NHT to include the expenses in a sub-account designed for Reliability Planning Expenses because they were not associated with reliability efforts in NHT's service territory. Lastly, State Agencies argue that to the extent the Commission elects to treat this Protest as a complaint under Rule 206 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.206), the contents of the Protest satisfy the directives of Rule 206 (b). State Agencies request that the Commission order NHT to

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<sup>11</sup> Further, State Agencies argue that NHT would not be entitled to recover voluntarily incurred SeaLink-related planning costs in RNS rates in a post-Order No. 1000 context, because the project would not be considered a Phase Two project eligible for such cost recovery. Nevertheless, State Agencies note that, pursuant to Section 3.3 of the OATT, the post-Order 1000 provisions do not govern this dispute, as the SeaLink project was proposed in a regional system plan that precedes the effective date of the tariff changes that ISO-NE filed to comply with Order No. 1000.

account for and refund all SeaLink development costs that it is recovering through the RNS rate.

**C. Responsive Pleadings**

10. NESCOE states that it strongly supports the Commission's review of the SeaLink-related costs, and asks the Commission to take appropriate action to ensure that consumers are refunded any unauthorized charges. NESCOE states that it is critical that SeaLink-related costs reflected in the RNS rate are clearly disclosed, verifiable, and made available and obvious to the Commission and all interested parties.<sup>12</sup>

11. In its May 15, 2015 answer, NHT asserts that Attachment F of the ISO-NE OATT allows all ISO-NE PTOs to recover actual expenses recorded in specific FERC Form 1 accounts. NHT contends that SeaLink planning expenses were properly recorded in FERC accounts relating to reliability planning (Account Nos. 561.5 and 561.8), and, therefore, they are fully recoverable under Attachment F of the ISO-NE OATT.

12. With respect to State Agencies' argument that Schedule 3.09(a) of the TOA does not allow for PTOs to plan for, or at least recover planning expenses for, projects that are located outside their service territories where they have a right of first refusal, NHT argues that the language of that provision does not support State Agencies' position, nor do those provisions even address cost recovery.<sup>13</sup> NHT argues that Schedule 3.09(a) of the TOA requires PTOs to participate in ISO-NE's transmission planning process, and there is no limitation or requirement that a PTO's planning responsibilities are limited solely to the facilities located within its existing system. In addition, NHT asserts that it would have the right to construct and own the SeaLink project, or at least a portion of the project, because the project is connected to NHT's electric transmission system. NHT argues that State Agencies ignore the fact that approximately 75 percent of the length of the SeaLink project is offshore undersea HVDC cable not located within any PTO's franchise area.

13. Additionally, NHT argues that ISO-NE's pre-Order No. 1000 planning process expected that—and depended on—the PTOs voluntarily identifying and proposing solutions like SeaLink as part of "New England's tradition of cooperation in the planning

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<sup>12</sup> NESCOE Comments at 5 (citing FERC Staff, *Staff's Guidance on Formula Rate Updates*, July 17, 2014, at 1, (*available at* <http://www.ferc.gov/industries/electric/indus-act/oatt-reform/staff-guidance.pdf>)). *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149, at P 86 (2013)).

<sup>13</sup> NHT May 15, 2015 Answer at 19.

of transmission.”<sup>14</sup> NHT argues that because its development of the SeaLink proposal was “what the ISO New England planning process authorized, expected, and in fact, needed PTOs to do,” the related planning costs are legitimate expenses recoverable through the Regional Network Service rate.<sup>15</sup> NHT argues that, although ISO-NE did not select the SeaLink project, this should not affect NHT’s ability to recover expenses associated with proposing the project.

### **III. Commission Determination**

#### **A. Procedural Matters**

14. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene in Docket Nos. RT04-2-000 and ER09-1532-000 serve to make the entities that filed them parties to the proceedings in those dockets.

15. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), the Commission will grant CMP’s late-filed motion to intervene given the early stage of the proceeding, and the absence of undue prejudice or delay.

16. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept NHT’s answer because it has provided information that assisted us in our decision-making process.

#### **B. Substantive Matters**

17. The Commission hereby accepts the 2014 Annual Update as an informational filing only. Such acceptance is without prejudice to parties’ and the Commission’s rights to review and challenge the information and also in accordance with any statutory rights that parties and the Commission may have.<sup>16</sup>

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<sup>14</sup> NHT May 15, 2015 Answer at 14.

<sup>15</sup> *Id.* at 16. NHT states that other PTOs propose or study solutions that do not resolve reliability issues on their systems and are not located within the confines of their systems, and that the recovery of the planning costs associated with these projects through the RNS rate are not disputed. *Id.* at 23.

<sup>16</sup> *See* Commission letter order accepting the PTOs’ 2010 annual update, Docket No. RT04-2-000, issued October 12, 2010.

18. With regard to NHT's proposal to account for and recover the costs of developing the SeaLink project as included in the 2014 Annual Update, our preliminary analysis indicates that allowing NHT to recover the costs of developing the SeaLink project, as included in the 2014 Annual Update, may not be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that NHT's recovery of these costs raises issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in a separate proceeding providing for hearing and settlement judge procedures, as ordered below.

19. The informational filing raises concerns that the expenses incurred by NHT may not have been properly recorded in Account Nos. 561.5, Reliability Planning and Standards Development and 561.8 Reliability Planning and Standards Development Services. Accordingly, pursuant to section 206, we will establish a separate proceeding and establish hearing and settlement judge procedures in Docket No. EL15-85-000 regarding NHT's recovery of its development costs for the SeaLink Project through the RNS rate, to the extent that these costs are recoverable. We further establish a refund effective date of the date that the notice of the initiation of the proceeding in Docket No. EL15-85-000 is published in the Federal Register.<sup>17</sup> The question of NHT's recovery of its SeaLink development costs will be considered only in Docket No. EL15-85-000. Therefore, parties seeking to participate in this separate proceeding must intervene in Docket No. EL15-85-000 within twenty-one (21) days of the date of the issuance of this order, as ordered below, and pleadings addressing this topic should be filed in Docket No. EL15-85-000 only.

20. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to

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<sup>17</sup> 16 U.S.C. § 824e(b) (2006) ("In the case of a proceeding instituted by the Commission on its own motion, the refund effective date shall not be earlier than the date of the publication by the Commission of notice of its intention to initiate such proceeding"). We note, however, that "[t]he Commission has held repeatedly that it may order refunds for past periods where a utility has either misapplied a formula rate or otherwise charged rates contrary to the filed rate." *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 112 n.100 (2009) (citing *DTE Energy Trading, Inc. v. Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,062, at P 28 (2005), *order on reh'g*, 113 FERC ¶ 61,214 (2005), *reh'g denied*, 119 FERC ¶ 61,109 (2007); *Quest Energy, L.L.C. v. Detroit Edison Co.*, 106 FERC ¶ 61,227, at P 21 (2004)). *See also Minnesota Power & Light Company*, 39 FERC ¶ 61,192, *reh'g denied*, 40 FERC ¶ 61,042 (1987).

Rule 603 of the Commission's Rules of Practice and Procedure.<sup>18</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding, otherwise the Chief Judge will select a judge for this purpose.<sup>19</sup> The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The Commission hereby accepts the 2014 Annual Update, as an informational filing only.<sup>20</sup>

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. EL15-85-000, concerning the justness and reasonableness of the inclusion of NHT's SeaLink project development costs in the RNS rate, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

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<sup>18</sup> 18 C.F.R. § 385.603 (2015).

<sup>19</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

<sup>20</sup> This acceptance for filing shall not be construed as constituting approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service contained in the 2014 Annual Update; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such action is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against ISO-NE.

(C) Any person desiring to intervene in the proceeding in Docket No. EL15-85-000 must file a notice of intervention or motion to intervene, as appropriate, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 (2015)) within twenty-one (21) days of the date of this order. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

(D) The Secretary shall promptly publish in the Federal Register a notice of the Commission's initiation of the proceeding in Docket No. EL15-85-000, including notification that parties must seek to intervene within twenty-one (21) days of the date of issuance of this order, as set forth above.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2015), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in Docket No. EL15-85-000 within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(F) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in Docket No. EL15-85-000 in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The refund effective date in Docket No. EL15-85-000, established pursuant to section 206(b) of the Federal Power Act, will be the date that the notice of the initiation of the proceeding in that docket is published in the Federal Register.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.