

124 FERC ¶ 61,098
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northeast Utilities Service Company

Docket Nos. ER08-149-001
ER08-149-004

ORDER ACCEPTING COMPLIANCE FILING

(Issued July 29, 2008)

1. On February 12, 2008, as amended on April 1, 2008, the Northeast Utilities Service Company (NUSCO) filed information in compliance with the Commission's order conditionally accepting NUSCO's accounting treatment and delayed rate recovery of regional transmission organization (RTO) formation costs.¹ In this order, we accept NUSCO's compliance filing, as amended.

I. Background

2. On December 31, 2007, the Commission conditionally accepted and suspended NUSCO's proposed accounting treatment and cost recovery of the NU Companies'² deferred RTO formation costs, and directed NUSCO to file supplemental information.³ First, with respect to the proposed accounting treatment, the Commission directed NUSCO to provide additional details about the nature and purpose of the deferred costs, including a description of the relationship between those costs and NUSCO's RTO formation efforts. Second, the Commission directed NUSCO to illustrate the rate impacts of its proposed accounting treatment, including an analysis demonstrating that its proposal will not cause any greater economic harm than if NUSCO had filed earlier to

¹ *Northeast Utilities Serv. Co.*, 121 FERC ¶ 61,308 (2007) (Accounting Order).

² The NU Companies are: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, Holyoke Water Power Company and Holyoke Power and Electric Company.

³ Accounting Order, 121 FERC ¶ 61,308 at P 19-21.

seek rate recovery of RTO formation costs. Accordingly, the Commission directed NUSCO to demonstrate what the rate impact would have been had NUSCO transferred the balance of its RTO formation costs to account 182.3 when ISO-NE became operational. For purposes of this demonstration, the Commission asked NUSCO to assume that the Commission approved rate base treatment for the deferred regulatory costs, including any deferred income taxes.

II. NUSCO's Compliance Filing

3. In its compliance filing, NUSCO explains that it divided the RTO formation costs into four categories: legal, consulting, miscellaneous fees and carrying costs. NUSCO states that the largest portions of these costs fell into the legal and consulting categories and that the majority of the miscellaneous fees were also related to consulting services. In further support of these costs, NUSCO offers an affidavit describing the nature of these legal and consulting costs and miscellaneous fees, as well as their relationship to the NU Companies' efforts to form an RTO. The affidavit describes the role that consultants and outside counsel played in the NU Companies' efforts throughout the RTO formation process. NUSCO states that this role spanned the entire period of the NU Companies' RTO formation efforts, including initial efforts in 2001 to form a binary RTO with other New England transmission owners, subsequent efforts to form a broader northeastern RTO, the process of developing a proposal to turn ISO-NE into an RTO, and participation in the proceedings that enabled that proposal to succeed.

4. To provide a quantitative supplement on its deferred costs, NUSCO offers an additional categorical breakdown of its legal and consulting costs. NUSCO claims that almost all of its deferred costs fall primarily into a single category articulated in its November 20, 2001 request for approval to defer costs – utilization of legal and other professionals. To provide greater transparency and description of these costs, NUSCO states that it separated the legal and consulting costs into three sub-categories: participating in the collaborative process and settlement offers; participating in regulatory proceedings; and developing tariffs, agreements and other organizational business documents. NUSCO states that, in preparing the exhibit, NUSCO determined that certain legal work included in its original filing, totaling \$5,367, could have been classified as a below-the-line expense recordable in account 426.4.⁴ NUSCO also states that it determined that \$226,423 in transmission-related legal bills could have been charged to customers as current transmission operation and management expenses rather than deferred. To avoid dispute, NUSCO states that it has adjusted its proposed cost recovery to exclude these costs and has redone its carrying charge calculation, as shown in Attachment E.

⁴ Account 426.4 includes expenditures for certain civic, political and related activities.

5. NUSCO advises that Attachments F through K of its compliance filing provide a comparison of NUSCO's proposed accounting treatment versus what the rate impact would have been had NUSCO begun recovery of its RTO formation costs in 2005. According to NUSCO's comparison, on both a nominal dollar and present worth basis, NUSCO's proposed treatment benefits costumers more than if NUSCO had filed earlier. NUSCO states that under its proposed accounting treatment, total charges to the NU Companies' customers will be approximately \$6.15 million in nominal dollars, as shown in Attachment F. NUSCO contends that had it commenced amortization and recovery of its deferred RTO start-up expenses on February 1, 2005, total charges to the NU Companies' customers would have been \$6.40 million, or approximately \$250,000 higher. NUSCO states that this analysis assumes that the RTO start-up expenses after February 2005 were added to the amortized balance included in rate base and recovered over the remainder of the amortization period. By comparison, NUSCO contends that had the RTO start-up deferral ended February 1, 2005, and post-February 1, 2005 RTO start-up costs were expensed as incurred rather than deferred, the charges to the NU Companies' customers would still have been higher than under NUSCO's proposed cost recovery, as shown in Attachment H.

6. NUSCO states that the comparisons shown in Attachments F, G and H are shown on a nominal dollar basis, even though the lower charges under NUSCO's filing are being recovered from customers almost three years later than had amortization and recovery commenced February 1, 2005. NUSCO contends that the NU Companies' customers gained a time value benefit to their money as a result of NUSCO's delay in seeking recovery of its RTO start-up costs. In order to perform an apples-to-apples comparison, NUSCO argues that its comparisons need to be presented on the same present worth basis.⁵ NUSCO therefore offers additional calculations and models showing that had NUSCO commenced amortization and recovery of their deferred RTO start-up costs on February 1, 2005, and included the unamortized balance of such expenses through the amortization period in rate base, the total charges to the NU Companies' customers for deferred RTO start-up expenses would have been \$5,671,662 on a February 1, 2005 present worth basis, compared to \$4,212,477 under NUSCO's filing. NUSCO argues that even under the more conservative assumption that the NU Companies' expensed their post-February 1, 2005 expenses as incurred, the total charges to the NU Companies' customers for deferred RTO start-up expenses would have been \$5,622,532 on a February 1, 2005 present worth basis, compared to \$4,212,474 under NUSCO's filing.

⁵ NUSCO states that it performed its present worth analysis using the NU Companies' overall costs of capital, as shown in attachment M of the February 12 compliance filing.

III. Notice of Filing and Responsive Pleadings

7. Notice of NUSCO's compliance filing was published in the *Federal Register*, 73 Fed. Reg. 12,971 (2008), with interventions and protests due on or before March 14, 2008. The Massachusetts Municipal Wholesale Electric Company, Chicopee Municipal Lighting Plant, and South Hadley Electric Light Department (collectively, Joint Protestors) filed a protest.

8. On April 1, 2008, NUSCO made two additional filings in this docket. The first NUSCO describes as a supplemental compliance filing that addresses the concerns raised by the Joint Protestors. The second NUSCO describes as an answer to the Joint Protestors' protest. Notice of NUSCO's supplemental compliance filing was published in the *Federal Register*, 73 Fed. Reg. 19,201 (2008), with interventions and protests due on or before April 22, 2008. None were filed.

a. Joint Protest

9. The Joint Protestors complain that NUSCO's estimate of customer costs under the timely-filing scenario appears to overstate the rate of return that would be applied to any deferred RTO-formation costs included in rate base, and fails to explain the origin of or basis for the "weighted return & taxes" component of the analysis. The Joint Protestors also contend that NUSCO's compliance filing skews the comparison by including the return-on-rate base amounts in the timely-filing scenario, while omitting such amounts from the delayed filing case.

10. The Joint Protestors state that NUSCO's calculation of customer costs under each timely-filing scenario includes an amount for return and taxes on costs included in rate base but without any support for these calculations.⁶ The Joint Protestors also contend that NUSCO has not provided any derivation or support for the rates of return set forth in Attachment M. The Joint Protestors contend that it is unclear whether those percentages are intended to reflect return on equity, return on rate base, or return on rate base plus taxes. They also contend that even with the addition of a 50-basis point adder for RTO participation, the ROEs that NUSCO have used in deriving the Attachment M percentages are significantly higher than those established in another docket. According to the Joint Protestors, if the Attachment M percentages correspond to return on rate base, then the implicit returns on equity (which already range from 10.92 percent to 12.48

⁶ The Joint Protestors point to attachment G, which amortizes RTO-formation costs incurred between February 1, 2005, and December 31, 2005, and to attachment H, which expenses those costs as incurred. In nominal dollars, the return and taxes included in Attachment G total \$918,000. The return and taxes included in attachment K total \$720,000. The Joint Protestors complain that NUSCO fails to support its calculation of those amounts.

percent) would be even higher. In contrast, the base ROE established in Docket No. ER04-157-000 for the period between June 3, 2005, and October 31, 2006, was 10.20 percent and the base ROE for the period following October 31, 2006 was 10.94 percent.⁷ The Joint Protestors ask the Commission to direct NUSCO to provide support for its derivation of the Attachment M percentages.

11. The Joint Protestors also contend that NUSCO's claim that its proposed rate treatment was better for consumers than a timely request for rate recovery is based on a potentially faulty premise. The Joint Protestors contend that NUSCO is arguing that return and deferred taxes associated with unamortized amounts that are included in rate base in the timely filing scenarios outweigh the 2005 and 2006 carrying charges incurred because of NUSCO's delay in filing. The Joint Protestors state that NUSCO's compliance filing skews the comparison by including return-on-rate base amounts in the timely-filing scenario, while omitting such amounts from the delayed-filing case. The Joint Protestors are concerned that NUSCO intends not only to amortize the deferred RTO-formation costs and the 2005/2006 carrying charges but also to collect a return on the unamortized portions of those costs. Accordingly, the Joint Protestors ask the Commission to require NUSCO to clarify whether it seeks rate base treatment of the unamortized portions of deferred costs under its as-filed rates.

b. NUSCO's Supplemental Filing and Answer

12. NUSCO responded to the Joint Protestors in two ways. NUSCO first filed a supplement to its February 12, 2008 compliance filing providing the information that the Joint Protestors requested the Commission direct NUSCO to provide. The supplemental filing also includes an alternative analysis that uses the ROE rates suggested by the Joint Protestors in order to determine whether NUSCO's customers were harmed by the delay in seeking rate recovery of RTO formation costs. NUSCO also filed an answer responding to the Joint Protestors' concerns.

13. In its supplemental compliance filing, NUSCO provides calculations supporting the rates of return (weighted return and taxes) set forth in Attachment M, which were used in Attachments G, H, J, and K to the filing. NUSCO also offers a revised analysis of the rate impact on its customers for its delay in filing for recovery of these deferred RTO formation costs using the ROEs suggested by the Joint Protestors. NUSCO reiterates that the only way in which to make a valid comparison between the timely filing scenario and the delayed filing scenario is to perform a present worth analysis of the two streams of payments, since a present worth analysis takes into account the fact that customers would make their payments to NUSCO later under delayed filing scenarios than they would under the timely filing scenario. Using the ROEs suggested by the Joint Protestors, NUSCO shows that the delayed filing scenario is still more favorable

⁷ Citing *Bangor Hydro-Elec. Co.*, 122 FERC ¶ 61,038, at P 4 (2008).

to its customers than the timely filing scenario under both a present worth analysis and a nominal dollar basis.

14. In its answer, NUSCO defends its argument that customers were not harmed by NUSCO's delay or inclusion of two years of carrying charges, stating that it offered detailed support for this argument in Attachments F-K of its compliance filing. NUSCO claims that these Attachments show that, on a present worth basis, the NU Companies' customers would have been worse off had NUSCO commenced recovery of deferred RTO formation costs on February 1, 2005, and included the unamortized balance in rate base. Even if the NU Companies' customers place no time value on their money, NUSCO contends that they would still have been worse off had NUSCO commenced recovery of the deferred RTO formation costs on February 1, 2005.

15. With respect to the Joint Protestors' claims that NUSCO has not adequately supported the rate of return that it applied to the unamortized RTO development costs included in rate base, NUSCO states that these claims lack merit. First, NUSCO points out that, contrary to arguments raised by the Joint Protestors, Attachments G, H, J and K of NUSCO's compliance filing indicate that the Attachment M percentages represent the NU Companies' weighted return and taxes. NUSCO also states that it did use the ROEs established in Docket No. ER04-157 (10.2 percent for 2005 and 10.9 percent for 2006 and 2007) in calculating its overall rate of return. Responding to the Joint Protestors' request that NUSCO provide support for the derivation of the Attachment M percentages, NUSCO states that it is including this cost support in its supplemental compliance filing.

16. As to the Joint Protestors' second point, NUSCO states that it should go without saying that the basis for taxes included in the "weighted return and taxes" are the statutory federal and state income tax rates to which the NU Companies are subject. NUSCO states that this is shown in the additional cost support provided in its supplemental compliance filing. NUSCO states that, with one exception, Attachment N used the same numbers the Joint Protestors assert NUSCO should have used. The exception, NUSCO states, is that NUSCO used the year-ending ROEs in its analysis, since the ROEs were applied at year end. To allay any concerns, NUSCO states that it recalculated the Attachments G, H, J, K, L, M and N using the Joint Protestors' suggested ROEs and included the recalculations as attachments to its supplemental compliance filing. NUSCO states that its delayed filing accounting treatment is much more favorable to the NU Companies' customers than the timely filing scenario even when it uses the Joint Protestors' suggested ROEs in a present worth analysis. NUSCO further contends that, even on a nominal basis, its proposal is more favorable to its customers than the timely filing scenario, as show in Attachment L of its compliance filing and Attachment S of its supplemental compliance filing.

17. Finally, NUSCO addresses the Joint Protestors' concern that NUSCO's analysis may be built on a false premise because the NU Companies might include unamortized RTO formation costs in rate base in their charges to customers. NUSCO states no

clarification is needed on this point. NUSCO contends that a review of its original compliance filing will show that NUSCO did not include carrying charges on deferred RTO formation costs after December 31, 2006, and did not seek to include unamortized RTO formation costs in rate base.

IV. Discussion

a. Procedural Matters

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept NUSCO's answer because it has provided information that assisted us in our decision-making process.

b. Commission Determination

19. In accordance with the Accounting Order, NUSCO has provided the Commission with sufficient support for the nature of its RTO formation costs and additional details about the nature and purpose of its costs as they relate to RTO formation efforts. With respect to the concerns of the Joint Protestors, the Commission believes that NUSCO has adequately addressed such concerns. The Joint Protestors questioned the percentages in NUSCO's Attachment M, which sets forth the rates of return (weighted return and taxes) that NUSCO used in determining whether NUSCO's customers were harmed from the delay in seeking rate recovery of the RTO formation costs. In Attachment N of its supplemental compliance filing, NUSCO provides the derivations for the percentages set forth in Attachment M. Based on our review, the Commission finds that NUSCO has sufficiently supported its percentages in Attachment M. NUSCO has also demonstrated that, whether analyzed on a nominal dollar or present worth value, whether it uses its original return percentages or those put forth by Joint Protestors, NU Companies' customers have not been harmed by NUSCO's delay in seeking rate recovery of its RTO formation costs. Therefore, the Commission finds that NUSCO has satisfactorily complied with the Accounting Order and may amortize its deferred RTO costs over a three year period beginning January 1, 2008, and include these costs in its local and regional transmission rates as proposed.

The Commission orders:

NUSCO's compliance filing, as supplemented, is hereby accepted for filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.