

126 FERC ¶ 61,063
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

The United Illuminating Company

Docket No. ER09-345-000

ORDER ACCEPTING COST ALLOCATION PROPOSAL, SUBJECT TO REVISION

(Issued January 23, 2009)

1. On November 26, 2008, The United Illuminating Company (UI or United Illuminating) submitted a proposal to allocate certain “Localized Costs” associated with three transmission projects in Southwest Connecticut.¹ These projects include the New Haven Harbor Crossing Corridor Project (New Haven Project), the Trumbull Substation Project, and the Middletown to Norwalk (M-N) Project. In its filing, United Illuminating proposes modifications to Schedule 21-UI of the ISO-NE Transmission, Markets, and Services Tariff (OATT) and submits six Localized Costs Sharing Agreements (Agreements) to allocate the cost of localized facilities associated with the three transmission projects. For the reasons discussed below, this order accepts the cost allocation proposal, effective January 1, 2009, and requires compliance and informational filings.

I. Background

2. Under the New England transmission cost allocation process, ISO-NE, with the advice of stakeholders,² is responsible for determining the level of costs of regional transmission projects that are recoverable through regional rates, and the level of

¹ Localized Costs are costs associated with a pool transmission facility (PTF) determined by ISO New England Inc. (ISO-NE) to be incurred as a result of local requirements and therefore not qualifying for regional cost support.

² The New England Power Pool Reliability Committee provides advice to ISO-NE on such matters.

Localized Costs that should be recovered on a state or local area basis.³ Before charging customers for any Localized Costs, United Illuminating is required to submit a cost allocation proposal for the Commission's approval.⁴

3. United Illuminating is engaged principally in the business of transmitting and distributing electricity in the southwestern part of Connecticut, and provides regional network service under the ISO-NE OATT and local network service under Schedule 21-UI of the ISO-NE OATT.⁵ Schedule 21-UI provides for the recovery of Localized Costs from customers taking regional network service under the ISO-NE OATT in the area or state in which United Illuminating's localized facilities are located and which are not otherwise subject to the charges for local network service under Schedule 21-UI.⁶ According to United Illuminating, these customers include United Illuminating, The Connecticut Light & Power Company (CL&P), Connecticut Municipal Electrical Energy Cooperative, Milford Power Company, LLC, NRG Power Marketing LLC, Dominion Energy Marketing, Inc., and PSEG Energy Resources & Trading LLC.⁷ United Illuminating refers to these customers as "Category B Network Load."⁸

4. As previously noted, the Southwest Connecticut transmission projects include the New Haven Project, the Trumbull Substation Project, and the M-N Project.⁹

5. The New Haven Project consisted of the relocation of seven 345 kV and 115 kV overhead and underground transmission lines in New Haven, Connecticut to accommodate the State of Connecticut's I-95 New Haven Harbor Crossing Corridor Improvement Program. United Illuminating filed a transmission cost allocation application for the New Haven Project with ISO-NE in June 2005. In May 2006, ISO-NE determined that \$1,124,788 of the costs of the New Haven Project should be collected

³ Schedule 12C of the ISO-NE OATT describes the process that ISO-NE undertakes to determine whether costs should be characterized as Localized Costs.

⁴ ISO-NE, FERC Electric Tariff No. 3, Original Sheet No. 3417A.

⁵ United Illuminating Filing at 1.

⁶ *Id.* at 3.

⁷ *Id.* at 7-8.

⁸ Category B Network Load is defined in Schedule 21-UI as "the Regional Network Load for an area or state in which Localized Facilities are located, excluding the Native Load Customers of UI."

⁹ *Id.* at 10.

regionally because this portion of the project does not exceed the reasonable requirements described in Schedule 12C of the ISO-NE OATT. ISO-NE also found that \$9,072,876 of the New Haven Project costs, \$8,466,575 of which the Connecticut Department of Transportation proposes to reimburse, are not needed to address regional reliability needs and should be collected locally as Localized Costs. United Illuminating completed the New Haven Project in February 2005, and the project facilities are operational. United Illuminating's actual project costs were \$10,087,245.

6. United Illuminating undertook the Trumbull Substation Project to upgrade its ability to reliably deliver electricity to customers. Without the addition of the new substation, the Trumbull area was at high risk of experiencing delivery problems during periods of peak demand. Construction commenced on the Trumbull Substation in June 2008. On August 15, 2008, United Illuminating submitted a transmission cost allocation application to ISO-NE. The total cost of the Trumbull Substation is listed at approximately \$11,933,000, of which United Illuminating identified \$2,743,000 for potential treatment as Localized Costs. As of the date of this filing, ISO-NE has not made a determination with regard to the transmission cost allocation application and determined whether any of the approximately \$2.7 million of UI's costs will be Localized Costs.

7. The M-N Project is a joint undertaking of United Illuminating and CL&P. It is one of several major transmission projects identified by ISO-NE to improve reliability within Southwest Connecticut. The M-N Project will complete a 345 kV loop into Southwest Connecticut and thereby integrate the Southwest Connecticut load center with the 345 kV transmission system within New England. United Illuminating and CL&P are building a new 345 kV transmission line from Middletown to Norwalk, Connecticut, and rebuilding and modifying portions of the existing 115 kV transmission system. United Illuminating anticipates that the entire M-N Project will be placed in operation by the first quarter of 2009. On April 11, 2008, United Illuminating and CL&P jointly submitted a transmission cost allocation application to ISO-NE for the M-N Project. The application identified a total cost of approximately \$1.4 billion. United Illuminating's portion of that amount is approximately \$320 million. As of the date of this filing, ISO-NE has not determined whether any of the approximately \$320 million of United Illuminating's costs will be Localized Costs.

II. United Illuminating's Proposal

A. Description

8. United Illuminating proposes to recover the cost of the Localized Facilities¹⁰ of the New Haven, Trumbull Substation and M-N Projects from all customers taking regional network service in the State of Connecticut, which is where the facilities are located.¹¹ To implement this recovery proposal, United Illuminating has submitted modifications to Schedule 21-UI to identify portions of the New Haven, Trumbull Substation and M-N Projects as Localized Facilities. United Illuminating has also submitted Agreements to recover the Category B Load Ratio Share of the revenue requirement for these facilities from the Category B Network Load customers.

9. United Illuminating contends that its proposal to allocate costs is just and reasonable and consistent with Commission precedent.¹² United Illuminating states that the Commission has found it appropriate to allocate the Localized Cost of PTF transmission projects to all load within the State of Connecticut because of the reliability benefits that these PTF projects provide and that the same principles are equally applicable here.¹³ Because all load in the State of Connecticut will benefit from these transmission projects, United Illuminating requests, consistent with Commission precedent, that the localized cost portion of the transmission projects be spread more broadly to the entire state. United Illuminating also contends that this approach is consistent with the ISO-NE OATT and Schedule 21-UI.

10. The New Haven and Trumbull Substation Projects are operational and in service. The regional cost portion of the New Haven and Trumbull Substation Projects currently are being collected in regional network service rates. United Illuminating proposes to begin collecting the Localized Costs of the New Haven and Trumbull Substation Projects on January 1, 2009, which is the date as of which United Illuminating's New Year Rate Calculation is determined and assessed.¹⁴ United Illuminating has actual cost data for the

¹⁰ Localized Facilities are PTF, the cost of which ISO-NE has determined pursuant to Schedule 12 of the OATT shall not be included in the Pool-Supported PTF costs recoverable under the OATT.

¹¹ United Illuminating Filing at 6.

¹² *Id.* at 8.

¹³ *Id.* (citing *Northeast Utils. Serv. Co.*, 116 FERC ¶ 61,094 (2006) and *Northeast Utils. Serv. Co.*, 123 FERC ¶ 61,324 (2008)).

¹⁴ *Id.* at 10.

New Haven Project and states that the localized cost portion of this project is \$410,494.¹⁵ Since ISO-NE has not yet determined the amount of Localized Costs for the Trumbull Substation Project, United Illuminating proposes to use its estimate of \$2,743,000 as the basis for determining charges to be assessed as of January 1, 2009. Once ISO-NE makes its final determination regarding the Localized Facilities portion of the Trumbull Substation Project, United Illuminating states that it will true-up any difference consistent with the formula rate process in Attachment F to Schedule 21-UI.¹⁶ United Illuminating did not identify any costs for Localized Costs for its portion of the M-N Project in its joint transmission cost allocation application. Nonetheless, United Illuminating seeks Commission authorization to collect any of its costs for the M-N Project that ISO-NE determines are Localized Costs.¹⁷

11. United Illuminating requests that the filing be made effective January 1, 2009. United Illuminating requests waiver of the sixty-day notice requirement set forth in the Commission's rules and regulations.¹⁸ United Illuminating states that this effective date will coincide with the date that United Illuminating's New Year Rate Calculation is determined and assessed under Schedule 21-UI. United Illuminating contends that this is good cause for granting the requested waiver.

B. Notice

12. Notice of United Illuminating's filing was published in the *Federal Register*, 73 Fed. Reg. 75,425 (2008), with interventions and protests due on or before December 17, 2008. On December 17, 2008, the Northeast Utilities Companies,¹⁹ by their agent Northeast Utilities Service Company (Northeast Utilities) filed a motion to intervene and

¹⁵ *Id.*

¹⁶ Under Schedule 21-UI, United Illuminating calculates the estimated annual revenue requirement twice a year (the New Year Rate Calculation and the Mid-Year Rate Calculation). During the Mid-Year Rate Calculation, United Illuminating also calculates actual transmission rates. Then for each bill rendered to a customer during the previous calendar year, the difference between the total charge based on actual rates and the total charge based on estimated rates shall be calculated.

¹⁷ *Id.* at 11.

¹⁸ *See* 16 U.S.C. § 824(d) (2000); 18 C.F.R. §§ 35.3(a), 35.11 (2008).

¹⁹ The Northeast Utilities Companies are: CL&P, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire.

comments. On January 2, 2009, United Illuminating filed an answer to Northeast Utilities' comments.

III. Pleadings

A. Comments

13. Northeast Utilities contends that United Illuminating's proposed Agreement with CL&P is unclear as to which projects CL&P is responsible. According to Northeast Utilities, the CL&P Agreement references section III.1 of Schedule 21-UI, which only refers to cost responsibility. Northeast Utilities believes that the CL&P Agreement should more closely link the payment obligation referenced therein to the specific section in the Schedule 21-UI tariff that sets forth the projects for which the Commission has accepted Localized Cost allocations (i.e., Section III.2). Therefore, either the Agreement should reference both Sections III.1 and III.2 of Schedule 21-UI, or the Agreement should specifically reference the project names.

14. Northeast Utilities is also concerned about the allocation of certain of United Illuminating's Localized Costs to regional network customers with regard to the Trumbull Substation Project. Northeast Utilities argues, as United Illuminating acknowledges, that Localized Costs are costs that are associated only with transmission upgrades to the ISO-NE transmission system. But it appears from United Illuminating's description in the transmission cost allocation application to ISO-NE that the Trumbull Substation "steps-down" voltages from a transmission voltage of 115 kV to a distribution voltage of 13.8 kV, and that these costs are appropriately assigned to distribution functions.

15. Northeast Utilities states that costs that are not properly associated with PTF are not charged to regional network customers under the regional network service provisions of the ISO-NE Tariff. Thus, Northeast Utilities reasons, there may be some distribution costs associated with the Trumbull Substation that are properly allocable to United Illuminating's distribution customers, regardless of whether those costs were required by state or local concerns. Northeast Utilities argues that distribution costs do not become "non-PTF localized costs" merely because they were required by the state; only transmission costs that are not allowed to be regionalized by ISO-NE under the Schedule 12C process can be categorized as Localized Costs. Northeast Utilities requests that the Commission require United Illuminating to provide assurance that only Localized Costs associated with the PTF functions of the Trumbull Substation Project are charged to customers like CL&P under the Agreements.

B. Answer

16. Regarding Northeast Utilities' concern about the lack of clarity over which projects CL&P is responsible for under its Agreement, United Illuminating states that the

Agreements submitted in this proceeding conform to the Commission-accepted *pro forma* agreement in Attachment G to Schedule 21-UI that United Illuminating uses to recover the cost of Localized Facilities from Category B Network Load. The *pro forma* agreement does not require a listing of Localized Costs. Rather, section III.2 of Schedule 21-UI lists the Localized Facilities. However, United Illuminating states that it is willing to amend the Agreement with CL&P to list the Localized Facilities that are the subject of this filing should the Commission so order.

17. United Illuminating agrees with Northeast Utilities' statement that only transmission costs that are not allowed to be regionalized by ISO-NE under the Schedule 12C process can be categorized as Localized Costs. United Illuminating states that it will recover from Northeast Utilities and the other Category B Network Load only costs that ISO-NE determines are Non-Pool Supported PTF or Localized Costs. However, United Illuminating states that it has not classified items required by the Connecticut Siting Council as Non-Pool Supported PTF merely because such costs were required by the Connecticut Siting Council. United Illuminating contends that this classification is consistent with ISO-NE Planning Procedure No. 4: Procedure For Pool-Supported PTF Cost Review (PP-4), United Illuminating's historical cost allocation policies (as stated in its "seven-factor test filing")²⁰ and Commission precedent.

18. Specifically, United Illuminating's seven-factor test filing provided that land and structures predominantly used for transmission purposes are assigned 100 percent to transmission. Further, United Illuminating's seven-factor test filing provided for the assignment of "shared assets" at a substation that support both transmission and distribution to transmission or distribution based on their predominant uses. Therefore, United Illuminating states, the items at issue are properly allocated as transmission costs. United Illuminating explains that it historically has determined the predominate use for land based on the square footage that the respective transmission and distribution facilities occupy at the site. United Illuminating asserts that the transmission facilities of the Trumbull Substation Project occupy a significantly larger portion of the land than the distribution facilities. Thus, consistent with United Illuminating's seven-factor test filing, United Illuminating assigned the land to transmission. This includes the Connecticut Siting Council items, which either are structures on the land or related to the land.

19. United Illuminating continues that just because the Connecticut Siting Council required United Illuminating to incur these costs does not undermine their allocation to transmission. United Illuminating states that the Commission agreed with this contention in a previous filing. The Commission found that certain other potentially Localized Costs

²⁰ United Illuminating's seven-factor test filing was approved by the Connecticut Department of Public Utility Control and accepted by the Commission. *See The United Illuminating Co.*, 115 FERC ¶ 61,244 (2006).

were “no different from any other cost of the project and ... more appropriately assigned to all ratepayers in the State of Connecticut.”²¹ United Illuminating states that, for the same reason, the Connecticut Siting Council items appropriately are recoverable as Localized Costs, and are necessary costs United Illuminating was required to incur to obtain authorization to site, construct, and operate the Trumbull Substation Project. United Illuminating concludes that the costs are no different from any other cost of the Trumbull Substation Project that should be assigned to all ratepayers in the State of Connecticut.

20. To conclude, United Illuminating states that consistent with Schedule 21-UI, it will recover from Northeast Utilities and the other Category B Network Load the cost of the Connecticut Siting Council items only if and to the extent ISO-NE determines they are Non-Pool Supported PTF.

IV. Commission Determination

A. Procedural Issues

21. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,²² the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure prohibit an answer to a protest and answer unless otherwise ordered by the decisional authority.²³ We will accept United Illuminating’s answer because it has provided information that assisted us in our decision-making process.

B. United Illuminating’s Proposal

22. We approve United Illuminating’s proposal to recover Localized Costs for the New Haven Project and the Trumbull Substation Project, subject to United Illuminating submitting a compliance filing, as discussed below. We find that United Illuminating’s proposal to recover Localized Costs for the New Haven Project and the Trumbull Substation Project is just and reasonable, not unduly discriminatory or preferential, and not otherwise unlawful. These projects will bring significant reliability benefits to all customers in Connecticut, and therefore, the Localized Costs are appropriately allocated to all load within the State of Connecticut. Further, allocating Localized Costs as proposed will avoid an unjust allocation to a subclass of customers.

²¹ *Northeast Utils. Serv. Co.*, 123 FERC ¶ 61,324, at P 31 (2008).

²² 18 C.F.R. § 385.214 (2008).

²³ *Id.* § 385.213(a)(2) (2008).

23. ISO-NE has approved United Illuminating's transmission cost allocation application for the New Haven Project. ISO-NE determined that it was appropriate for \$9,072,876 of project costs to be collected as Localized Costs, \$8,466,575 of which the Connecticut Department of Transportation reimbursed. United Illuminating states that its actual cost for the remaining facilities designated as Localized Costs is \$410,494. In a compliance filing submitted within thirty days of the date of this order, United Illuminating must explain how it calculated \$410,494 of Localized Costs for recovery in this filing.

24. Regarding the Trumbull Substation Project, although ISO-NE has not made a final determination of the Localized Costs, we find that it is appropriate to begin the recovery of the Localized Costs now to coordinate with the recovery of the regional cost of these projects through regional network service rates. Additionally, Schedule 21-UI includes a true-up mechanism that will ensure that any difference between estimated and actual amounts of Localized Costs will be appropriately reconciled such that both regional network service customers and those paying the Localized Costs will ultimately pay only their finally determined shares of the costs of the Trumbull Substation Project. We direct United Illuminating to submit an information filing informing the Commission of the amount of costs that ISO-NE has determined are Localized Costs within thirty days of ISO-NE's determination.

25. Northeast Utilities raises the concern that certain costs that United Illuminating identifies for Localized Cost treatment in its transmission cost allocation application are actually distribution costs, and therefore should not be classified as Localized Costs. While United Illuminating asserts that such facilities are appropriately classified as transmission because the land on which the Trumbull Substation Project is located is predominantly used for transmission, United Illuminating has not provided sufficient information about the Trumbull Substation Project here for us to determine if its proposed classification is correct. However, this is a decision that will be made by ISO-NE through the Schedule 12C process. If ISO-NE determines that any estimated costs in the transmission cost allocation application are not Localized Costs, United Illuminating must true-up the difference.

26. United Illuminating, in its transmission cost allocation application, has not identified any of the costs of the M-N Project as Localized Costs. However, United Illuminating still requests that the Commission approve the collection of such Localized Costs from Category B Network Load, in case ISO-NE determines that there are in fact Localized Costs. While it may be reasonable for United Illuminating to collect any Localized Costs that are ultimately determined by ISO-NE, we will not make that finding at this time. Accordingly, within 30 days of the date of this order, we direct United Illuminating to submit a revised tariff sheet to remove the M-N Project from the list of Localized Facilities in section III.2 of Schedule 21-UI. This is done without prejudice to

United Illuminating filing to collect Localized Costs for the M-N Project if and when such costs are determined by ISO-NE.

27. Regarding the Agreements, Northeast Utilities requests that the CL&P Agreement be revised to clearly identify the projects for which CL&P is responsible for Localized Costs. In its answer, United Illuminating agreed to revise the CL&P Agreement to include a list of the Localized Facilities that are the subject of this filing if the Commission so orders. We agree with Northeast Utilities that the Agreements do not clearly specify the Localized Facilities for which costs are being recovered. We direct United Illuminating to revise the CL&P Agreement as agreed and to make the same change to the other five Agreements submitted in this proceeding, within 30 days of the date of this order.

28. Additionally, we note that every page of the Agreements is designated as Original Sheet No. 3460 under Schedule 21-UI. Since it is appropriate that these Agreements be included under Schedule 21-UI with separately designated sheet numbers, we direct United Illuminating to submit a compliance filing, within 30 days of the date of this order, properly designating each page of the Agreements with a unique designation consistent with Order No. 614.²⁴

29. The Commission finds that good cause exists for the Commission to grant the requested waivers and to permit the filing to become effective January 1, 2009, as requested and discussed above.

The Commission orders:

(A) United Illuminating's proposed Agreements and revisions to Schedule 21-UI are hereby accepted for filing effective January 1, 2009, as discussed in the body of this order.

²⁴ *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs., Regulations Preambles July 1996- December 2000 ¶ 31,096 (2000) and 18 C.F.R. § 35.9 (2008).

(B) United Illuminating is directed to submit compliance and informational filings, as discussed within the body of this order.

By the Commission. Commissioner Kelliher not participating.

(S E A L)

Kimberly D. Bose,
Secretary.