UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Priority Rights For New Participant-Funded Transmission	**)** **)** **)**	**Docket No. AD11-11-000**

COMMENTS OF NORTHEAST UTILITIES AND NSTAR ELECTRIC COMPANY REGARDING MARCH 15, 2011 TECHNICAL CONFERENCE AND SUPPLEMENTAL NOTICE

Northeast Utilities Service Company ("NUSCO"), on behalf of Northeast Utilities' ("NU") transmission-owning subsidiaries[1] and its transmission business ventures[2], and NSTAR Electric Company ("NSTAR Electric," and together with NUSCO, the "Commenting Parties") respectfully submit the following comments regarding the March 15, 2011 technical conference ("Technical Conference") hosted by the Federal Energy Regulatory Commission ("Commission" or "FERC") and the Supplemental Notice Requesting Comments issued on March 18, 2011 ("Supplemental Notice"), in the above-captioned proceeding. The Commenting Parties thank the Commission for holding the Technical Conference and for its recognition of the

[1] The Connecticut Light and Power Company (CL&P"), Public Service Company of New Hampshire ("PSNH"), Western Massachusetts Electric Company ("WMECO") (the "NU Companies").

[2] NU and NSTAR formed Northern Pass Transmission LLC, a single purpose, limited liability company organized in New Hampshire to develop, design, construct, own and maintain the Northern Pass Transmission Line project in New Hampshire.

challenges being faced by developers and transmission owners with regard to participant funded transmission projects.

In support hereof, the Commenting Parties respectfully states as follows:

I. Introduction

The NU Companies are public utility subsidiaries of NU, a registered holding company. These transmission-owning affiliates own and operate transmission facilities in the states of Connecticut, Massachusetts and New Hampshire, and their facilities are used to provide Regional Network Service under Section II of the ISO New England Inc. ("ISO-NE") Transmission, Markets and Services Tariff ("ISO-NE OATT"), and Local Network Service and point-to-point service under Schedule 21-NU of the ISO-NE OATT.

NSTAR Electric is a public utility subsidiary of NSTAR, a registered holding company, and owns and operates transmission facilities in the Commonwealth of Massachusetts. Its facilities are used to provide Regional Network Service under Section II of the ISO-NE OATT, and Local Network Service and point-to-point service under Schedule 21-NSTAR of the ISO-NE OATT.

The NU Companies and NSTAR Electric are Participating Transmission Owners ("PTOs") in the New England Regional Transmission Organization ("RTO") under the terms of the ISO-NE Transmission Operating Agreement ("TOA") by and among the New England PTOs and ISO-NE. Effective February 1, 2005, the NU Companies and NSTAR Electric transferred operational control over their transmission facilities to ISO-NE under the TOA, and ISO-NE provides regional services over such facilities as set

forth in the ISO-NE OATT and the TOA.

The Commenting Parties are presently working to develop new participant funded projects. One of these projects, referenced in the Commission's Supplemental Notice, is the Northern Pass Transmission Line project, a joint venture between subsidiaries of NU and NSTAR. The Northern Pass Line project will link the Hydro-Québec TransÉnergie system in Québec to New England's 345 kV transmission system via a 1,200 MW high voltage direct current transmission line from the United States-Canadian border to a converter station in New Hampshire and a radial 345 kV alternating current transmission line from the converter station to a PSNH substation. Under the terms of a Commission-approved transmission service agreement, this project will be participant-funded by a subsidiary of Hydro-Québec, and will provide that subsidiary with firm transmission rights over a forty year term. The transmission rights would enable the Hydro-Québec subsidiary to deliver substantial quantities of hydro-power to New England customers.[3]

The Commenting Parties are also exploring the potential of other participant funded transmission projects that would act as a collector system for renewable resources such as wind or biomass. The area where large scale development of these resources is feasible is disparate from load, and would require significant transmission infrastructure to deliver the resources to the bulk transmission system.

Participant funded transmission projects are fundamentally different than regionally planned transmission projects intended to keep the lights on. Unlike regionally planned projects that are designed to address NERC and ISO operational

[3] *See Northern Pass Transmission LLC, FERC Docket No. ER11-2377,* Order Accepting Transmission Agreement, February 11, 2011, 134 FERC ¶ 61,095 (2011).

criteria, participant funded projects typically intend to respond to either social policy goals, such as state-mandated renewable portfolio standards and reduced carbon emissions, or underlying economic conditions beneficial to the participants, or both. As such, participant funded projects may not impact a region's transmission grid, reliability requirements or rates and therefore should be eligible for more flexible regulatory treatment because they meet different goals than regionally planned transmission projects.

The Commenting Parties believe that it is possible for the Commission to consider different approaches to the regulatory requirements for participant funded transmission projects without impact or jeopardy to the reliability of the bulk power grid, competitive markets, or the existing requirements for regionally planned transmission projects. The comments below address the considerations that the Commenting Parties have determined are important to advance the development of participant funded transmission projects, which furthers the Commission's goal of greater access to more renewable energy resources.

The Commenting Parties recognize that the development of policy with regard to participant funded projects is in a nascent stage. With the ultimate goal being the construction of more transmission infrastructure, particularly transmission that can attract or connect low carbon and/or renewable energy resources, it is critical at this point in the process that the Commission remain flexible in entertaining varied project proposals.

There are many different project models that have viability, and creating prescriptive rules early in this process could thwart creativity and limit the potential of building more transmission infrastructure. FERC should be open to many different ideas at this point, and review the projects on a case by case basis. While acknowledging the importance of the Commission's existing regulations concerning open access, undue discrimination, and affiliate abuse, certain exceptions may be justified based on the attributes of a participant funded project and the Commission should adopt a flexible approach through a case by case review.

II. COMMENTS

a. Participants Who Fund Projects Should Have Priority Access To Transmission Capacity.

The Commission should give the maximum flexibility to proponents of new transmission in order to incent the planning and construction of participant funded projects. Where a party or group of investors takes on the risk of financing transmission, they should be allowed the opportunity to structure the project as their financing permits. The Commission's role in reviewing such projects is necessary to ensure that the reliability of the bulk transmission network is not jeopardized, and to ensure that undue discrimination is not permitted. However, it should not be considered unduly discriminatory for the funding entities to have priority access to such transmission, rather it should be accepted as a necessity based on the risk of conducting the underlying

business transaction.

Participant funded projects are based on completely different fundamental tenets than those of regionally planned transmission projects. The transmission facility costs are not eligible to be socialized by current regional transmission tariffs. The revenues to recover such transmission investment are subject to recovery from a limited pool of participants, thus the credit profile of such projects becomes the ultimate issue as to whether financing can be accomplished or not. The willingness of an individual or group of participants to fund a project is in large part dependent upon the value of the project to them. If they do not have priority rights to use the line, what is the project value?

The Commission should be cautious about adopting prescriptive rules or regulations which prohibit securing preferred terms and conditions for transmission rights as this will limit the pool of those willing to fund new transmission and may complicate the ability to secure project funding.

To advance economic or social policy-based transmission projects it is critical to allow priority access rights to those entities that are willing and able to fund the costs of transmission capacity. The anchor tenant model may be particularly useful in this regard; however, for financing and cost recovery purposes the parties need to be able to negotiate the terms and conditions concerning transmission use rights. The ability to negotiate dedicated transmission use rights on a facility with limited capacity is essential due to the reality that under such model only one party is responsible for the project costs.

An anchor tenant model should be permitted to be used in certain participant funded transactions[4] where the terms of transmission use are negotiated between the parties. Without the ability to negotiate guaranteed use rights of transmission capacity, the anchor tenant would essentially fund a project for the benefit of others with no assurance of the ability to recoup the cost of transmission from the marketplace.

b. Project Size and Scope Should Be Determined By Those Entities That Fund The Transmission. Stakeholder Reviews Should Be Limited To The Region's "No Impact" Test.

In regions that jointly plan for transmission needed for reliability or economics, appropriate size and scope are a natural outcome of the planning and review process. Until social policy-based transmission project costs are permitted to be recovered through regional rate recovery, such projects are likely to be funded solely by their participants. Rules or regulations that would require participant funded projects to be "upsized" to accommodate non-participants, without a concrete commitment for funding, may diminish the prospects for participant funded transmission projects.

Allowing the participants of a participant funded project to determine the optimum size and proposed location is more likely to result in economic optimality and thus the lowest total delivered product cost. The parties to such a project have the incentive to optimize the total delivered product quantity and the unit cost on a per kW

[4] The anchor tenant model has particular value in projects for transmission facilities that have no loop flows, such as radial lines or DC lines.

unit basis.

If line sizing and scope is subject to subsequent alteration after the initial project structuring process or forced to include third parties that alter the initial project cost to delivered unit price relationship, suboptimal pricing results and increases the likelihood that the project will not go forward.

Where third parties desiring to participate in a given project are not incorporated into the project as initial participants, they should be able to interconnect to the project via standard interconnection rules and procedures pursuant to the relevant Large/Small Generator Interconnection Procedures in the applicable OATT. This preserves the economic optimality of the participant funded project, while permitting third parties to participate at the higher of incremental or embedded cost basis. Such parties are arguably still in a better position than they were prior to the associated participant funded project's construction.

From a cost allocation and planning perspective, participant funded projects should not be subject to the Attachment K Regional Planning Process because such participant funded projects are not cost socialized, and not based on a regional planning needs analysis. Subjecting such projects to a stakeholder review from third parties that have no direct cost responsibility for the project is not an effective review mechanism. Further, given that such projects are subject to market financing or end product delivery price, alteration based on a regional planning process review will impact timing and

pricing and affect the likelihood that such a project is built.

However, it is logical to subject participant funded projects to a "no impact"[5] technical review by the relevant regional planning authority or system planning body. Participant funded projects should not otherwise impact overall system stability or reliability, and should be designed in a manner that does not negatively impact the operation of the transmission system to which it interconnects.

c. The Commission Should Use Case By Case Analysis Of Project Proposals And Allow For Regional Flexibility.

The Commission should adopt a flexible case by case analysis of participant funded projects rather than adopting prescriptive rules favoring particular business models. The Commission's policies regarding undue discrimination and open access may have relevance to certain participant funded projects. However, the Commission may further enable participant-funded projects by relaxing some of its rules. The Commission should be cautious of rejecting a proposal for a participant funded project simply because of the possibility that a violation of a rule might occur at some point in the future.

The Commission should entertain exceptions to its basic rules on a case by case basis if justified by the petitioner given that the underlying business transactions behind a

[5] Pursuant to Section I.3.9. of the ISO New England Transmission, Markets and Services Tariff, proposed transmission projects are subject to analysis to determine whether it will have an adverse effect upon the reliability or operating characteristics of the transmission network to which it interconnects.

participant funded project are fundamentally different than that of regionally planned transmission. At present, the Commission's application of the rules regarding discrimination, open access, and affiliate abuse potentially eliminate the adoption of certain business models that otherwise may be viable for financing purposes.[6]

It is important at this stage of developing regulations regarding participant funded transmission to maintain flexibility. Review of project proposals on a case by case basis will result in more project development, and encourage creativity in business model development over time.

The Commission should allow for regional differences permitting various approaches to cost allocation, line operation and control, and tariff terms and conditions regarding transmission use rights. Due to the fact that participant funded projects may take on various forms of business models, and may be located within or outside of control areas designated as RTOs with real time energy markets, such differences may be justified.

Further, the realities of the requirements for financing such projects may require unique terms and conditions that vary by project. As the Commission has recognized in prior rulemakings and with the advent of RTOs, flexibility based on regional differences has been permitted and has allowed for the orderly maturation of transparent and competitive energy markets. Such flexibility should be permitted with regard to the

[6] See *Grasslands Renewable Energy LLC*, FERC Docket No. EL10-51-000, Order Denying Petition for Declaratory Order, December 16, 2010. 133 FERC ¶ 61,225 (2010).

nascent and growing number of proposed participant funded transmission projects. Flexibility at this stage of the evolution of participant funded transmission projects will likely result in more overall transmission construction, especially allowing access to new renewable and low carbon resources.

III. Conclusion

The requested flexibility regarding existing regulation and policy serve to meet the needs of developers of participant funded transmission projects, and meet the practical needs of the markets to fund such projects. Participant funded transmission projects are different than regionally planned transmission projects in almost all business aspects. The flexibility suggested in the application of existing rules would not undermine existing regional plan reliability-based policy, as the underlying reasons supporting the build out of participant funded transmission projects are inapposite to that of regionally planned transmission. Adoption of the principles set forth above serve to further the Commission's goal of interconnecting more renewables to the grid, as well as enable developers with flexibility of project structures that can be embraced by the financial markets for funding purposes. Further, the basic tenets of open access, prevention of affiliate abuse, and preventing undue discrimination can each be maintained and enforced. However, such regulation needs to account for the fact that the risks involved with participant funded projects are greater than regionally planned transmission projects, and that development of such projects is related to risk assumption.

Respectfully submitted,

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