

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Northern Pass Transmission, LLC)
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ER11-2377-000

**REQUEST FOR REHEARING OF THE
THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

Pursuant to Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ the New Hampshire Public Utilities Commission (“NHPUC”) respectfully requests that the Commission grant rehearing of certain aspects of its February 11, 2011 Order Accepting Transmission Service Agreement (“February 11 Order”) concerning requests by Northern Pass Transmission, LLC (Northern Pass) for approval of a bilateral, cost-based transmission service agreement (TSA), including incentive rate treatment for its proposed Northern Pass Transmission Line (“NPT Line”).

More specifically, the NHPUC seeks rehearing with respect to the portion of the February 11, 2011 Order that authorized a 166-basis point ROE adder for investment in new transmission facilities prior to and during construction, a 92-basis point ROE adder for investment in transmission facilities upon commercial operation, and a 50-basis point ROE adder for participation in a Regional Transmission Organization (RTO). The NHPUC request for rehearing is supported by the following.

I. BACKGROUND

On December 15, 2010, Northern Pass submitted for FERC approval a bilateral, cost-based TSA executed on October 4, 2010, by Northern Pass and H.Q. Hydro

¹ 18 C.F.R. § 385.713.

Renewable Energy, Inc. (HQ Hydro) for transmission service over the proposed NPT Line. Northern Pass requested an effective date for the TSA of February 14, 2011, and certain rate incentives, including return on equity (ROE) adder incentives to be applicable prior to and during construction and upon commercial operation.² Specifically, Northern Pass requested, pursuant to Order No. 679: (1) a 166-point ROE adder applicable prior to and during construction of the NPT Line, and (2) a 92-basis point ROE adder for the post-construction commercial operation of the NPT Line.³ Although it does not appear in its filing to request it, Northern Pass assumes an additional 50-basis point ROE incentive for membership in an RTO.⁴

The Commission granted Northern Pass's request for the 166 basis point incentive ROE adder "during pre-commercial operation,"⁵ the 92 basis points incentive ROE adder "upon commercial operation,"⁶ and a 50 basis point adder "to reflect its participation in ISO-NE"⁷ to arrive at an overall ROE of 12.56 percent applicable prior to and during construction, as well as upon commercial operation.

In granting the incentive ROE adders, the Commission concluded that Northern Pass's base ROE for pre-commercial operation should be 10.4 percent, which is the median of the proxy group adopted in the order.⁸ The Commission also found, "as Northern

² *Northern Pass Transmission LLC*, Docket No. ER11-2377-000 (December 15, 2010) Northern Pass Petition for TSA Approval and Incentives Pursuant to Sections 205 of the Federal Power Act (16 U.S.C. § 824d (2006); Part 35 of the Commission's Regulations (18 C.F.R. Pt. 35 (2010); and the Commission's orders in *Northeast Utilities Service Co. and NSTAR Electric Col.*, 127 FERC ¶ 61,179, *reh'g denied*, 129 FERC ¶ 61,279 (2009) ("December 15 Petition").

³ December 15 Petition at 41-5.

⁴ December 15 Petition at 6 and 37.

⁵ February 11 Order at ¶ 56.

⁶ *Id.* at ¶ 58.

⁷ *Id.* at ¶ 55.

⁸ *Id.* at ¶ 54.

Pass requests,” that Northern Pass would be entitled to the base ROE under the ISO-NE OATT (currently 11.14 percent) upon commercial operation of the NPT Line and transfer of operational control of the line to ISO-NE.⁹

II. SPECIFICATION OF ERRORS

Pursuant to Rule 713(c)(1),¹⁰ the NHPUC respectfully submits that the Commission abused its discretion and acted arbitrarily and without reasonable basis when it authorized ROE adders of 92 basis points and 166 basis points and an additional adder of 50 basis points for participation in an RTO without substantial evidence supporting the need for such incentives under Order No. 679.

III. STATEMENT OF ISSUES

In accordance with Order No. 663¹¹ and Rule 713(c)(2),¹² the NHPUC submits the following statement of issues:

(1) Whether the Commission abused its discretion or acted in an arbitrary manner without reasonable basis by awarding Northern Pass ROE adders of 166-basis points applicable prior to and during construction of the NPT Line and 92-basis points applicable upon commercial operation, without substantial evidence supporting the need for the incentives under Order No. 679.¹³

⁹ *Ibid.*

¹⁰ 18 C.F.R. § 385.713(c)(1) (2008).

¹¹ Revision of Rules of Practice and Procedure Regarding Issue Identification, 71 Fed. Reg. 14,640 (Mar. 23, 2008) (codified at 18 C.F.R. §§ 385.203, 385.713).

¹² 18 C.F.R. § 385.713(c)(2) (2008).

¹³ *See* Promoting Transmission Investment Through Pricing Reform, Order No. 679, Docket No. RM06-4-000, 116 FERC ¶ 61,057 (2006); and 5 U.S.C. § 706(1)(A).

(2) Whether the Commission abused its discretion or acted in an arbitrary manner without reasonable basis by awarding Northern Pass an additional incentive adder of 50 basis points for participation in an RTO.

IV. REQUEST FOR REHEARING

The Commission should grant rehearing in the above-captioned matter with respect to the portion of its February 11 Order that granted Northern Pass ROE adders of 166 basis points and 92 basis points, and an RTO adder of 50 basis points under Opinion No. 489 for the proposed NPT Line without substantial evidence supporting a finding that the project qualified for incentives under Order No. 679. Although the NHPUC takes no position on the merits of the NPT Line project or with respect to the economic benefits of the project cited by Northern Pass, for the reasons more fully explained below, NHPUC requests that the Commission grant rehearing of its February 11, 2011 Order with respect to its grant of the rate incentives for Northern Pass's proposed transmission line.

A. ROE Adders Are Not Justified.

In granting ROE adders of 166 and 92 basis points to Northern Pass for the proposed NPT transmission line, the Commission stated the following:

Northern pass faces the difficult task of securing several permits (including a Presidential Permit from DOE), certificates, and rights-of-way. The NPT Line also presents significant financial risks and challenges. The Commission recognizes that this project is a major undertaking by both NU and NSTAR. Specifically, the \$1.1 billion capital commitment will significantly add to both companies' average transmission project investment.¹⁴

The Commission further stated the following:

Northern Pass's commitment to having none of the costs of the NPT Line or any ISO-NE required or HQ Hydro-requested

¹⁴ February 11 Order at ¶ 56 (citations omitted).

upgrades associated with the TSA included in any rates charged under the ISO-NE OATT to regional and local customers also weighs in our decision to grant the ROE adder. The TSA obligates HQ Hydro to pay 100 percent of the capital and operating costs of the NPT Line and of any upgrades under the TSA. Therefore, no New England customers will be compelled to purchase Hydro-Quebec power delivered over the NPT Line at an above-market price.¹⁵

In basing its decision on the line of reasoning cited above, the Commission sets a very low bar for granting incentives to new transmission projects. As the Commission stated in Order No. 679, “In many instances, an incentive-based ROE is appropriate because our traditional policies are not sufficient to encourage new investment.”¹⁶ Here, Northern Pass has not demonstrated that the median returns of the applicable proxy group and the ISO-NE OATT standard return are not sufficient to encourage investment in the proposed NPT Line. When the Commission promulgated transmission incentive standards, it “[did] not intend to grant incentive returns ‘routinely’ or that, when granted, they will always be at the ‘top’ of the zone of reasonableness.”¹⁷ As former Commissioner Kelly warned, it appears that the granting of ROE adders has become routine.¹⁸

1. *The NPT Line is a Voluntary Project Not Required for Reliability.*

The NPT Line project has not been identified by ISO-NE as one required to meet a reliability need. No ISO-NE stakeholder process has been conducted to date with respect to this project, either to assess potential impact on the regional grid or to identify specific reliability needs or specific congestion concerns,

¹⁵ *Id.* at ¶ 57 (citations omitted).

¹⁶ Order No. 679 at ¶ 94.

¹⁷ Order No. 679-A, *order on reh’g*, 119 FERC ¶ 61,062 (2007) at ¶ 7.

¹⁸ *Southern California Edison Company*, 121 FERC ¶ 61,168 (2007), Commissioner Kelly Dissent, Docket No. EL07-62-000.

and the parties to the TSA are not required to build the proposed new transmission capacity to meet their obligation to serve.

2. *NU and NSTAR bear no real financial risk.*

The NPT Line is entirely participant funded. As a result, NU and NSTAR bear no real financial risk because all construction and upgrade costs will be paid by HQ by the terms of the TSA.

3. *Proxy Data Indicate No Need for Investment Incentives.*

The cost-of-equity data of the proxy group companies indicate that the additional financial incentives to attract new investment are not required. Specifically, the market-to-book ratios associated with the companies included in the proxy groups indicate that the cost of equity produced by the discounted cash flow analysis Northern Pass uses is more than sufficient to attract investment in transmission companies.

B. RTO Adder is Not Justified.

The Commission has stated that it will approve, “when justified, requests for ROE-based incentives for public utilities that join and/or continue to be a member of an ISO, RTO, or other Commission-approved Transmission Organization.”¹⁹ It clarified, however, that it would not create a generic adder for such membership, but instead will consider the appropriate ROE incentive when public utilities request this incentive.”²⁰

Here the Commission appears to have granted the RTO adder automatically, without even a specific request from the petitioning companies. The petitioners, in fact, appear to assume an entitlement to this adder. Furthermore, there

¹⁹ Order No. 679 at ¶ 326.

²⁰ *Ibid.*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding either by U.S. Mail or electronic service, as appropriate. Dated at Concord, N.H., this 14th day of March 2011.

_____/s/ Lynn Fabrizio

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