

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 No. ER06-1065-001

ORDER DENYING REHEARING

(Issued December 26, 2006)

1. This order denies a request for rehearing filed by United Illuminating Company (United Illuminating) of an order accepting revisions to ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (ISO-NE OATT).<sup>1</sup> In that filing, the Northeast Utilities Service Company (NU), on behalf of its affiliated operating companies,<sup>2</sup> proposed to allocate costs associated with the Bethel-Norwalk transmission project (B-N Project) that are determined to be Localized Costs under the ISO-NE OATT to all load serving entities in Connecticut.<sup>3</sup> In the July Order, the Commission found that NU's proposed allocation was just and reasonable over the objections of United Illuminating.

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<sup>1</sup> *Northeast Utilities Service Co.*, 116 FERC ¶ 61,094 (2006) (July Order).

<sup>2</sup> The Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company, Holyoke Power and Electric Company, Holyoke Water Power Company, and Public Service Company of New Hampshire (collectively, NU Companies).

<sup>3</sup> Localized Costs are costs of certain upgrades that ISO-NE determines should not be treated as Pool Transmission Facilities (PTF) costs because these costs exceed those requirements that ISO-NE deems reasonable and consistent with Good Utility Practice and the current engineering design and construction practices in the area in which the upgrade is built.

## **I. Background**

2. The facts of their case are described in detail in the July Order. Briefly, the NU Companies are public utility subsidiaries of NU that own and operate transmission facilities in Connecticut, Massachusetts and New Hampshire. Their facilities are used to provide Regional Network Service under the ISO-NE OATT and Local Network Service under Schedule 21-NU of the ISO-NE OATT.<sup>4</sup>

3. The B-N Project is the first phase of the proposal to extend New England's 345 kV transmission system into the Southwest Connecticut (SWCT) load pocket. It includes the construction of a new 20.4 mile, 345 kV transmission circuit between NU's Plumtree Substation in Bethel, Connecticut and NU's Norwalk Substation in Norwalk, Connecticut. Almost 12 miles of those cables were placed underground.<sup>5</sup> The B-N Project also involves reconstruction of certain sections of the existing 115 kV transmission lines between the two substations and two 115 kV lines near NU's Norwalk Substation. NU originally estimated that the B-N Project would cost \$357 million. NU requested that a projected \$78 million of that amount be treated as Localized Costs, allocated on a load-ratio share basis to all load-serving entities in Connecticut (including United Illuminating), and trued-up when ISO-NE made a final determination as to which costs were Localized Costs.

4. NU filed agreements with the three load serving entities in Connecticut: an executed agreement with its affiliate, CL&P; an unexecuted service agreement with the United Illuminating; and an amendment to its Comprehensive Transmission Service Agreement between NU and the Connecticut Municipal Electric Cooperative, Inc. United Illuminating protested the filing. United Illuminating noted that NU had originally proposed to have the lines constructed overhead. However, five Connecticut towns had asserted that if a new 345 kV line were needed, it should be constructed underground.<sup>6</sup> NU, four of those towns and the Connecticut Siting Council (Siting Council) had come to a compromise requiring construction of the B-N Project with both overhead and underground segments. United Illuminated noted that ISO-NE had

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<sup>4</sup> See July Order at P 3.

<sup>5</sup> The B-N Project is one of four major transmission projects in Southwest Connecticut designed to remove operating constraints on generation in this subregion by extending the New England 345 kV transmission system into the Southwest Connecticut load pocket. *Id.* at P 4.

<sup>6</sup> *Id.* at PP 15-16.

preliminarily found that \$119.9 million of the B-N Project costs were Localized Costs; that amount was the difference between the compromise B-N Project and the overhead plan, which ISO-NE deemed “practical and feasible.”<sup>7</sup> United Illuminating argued that the B-N Project’s Localized Costs are not necessary to achieve reliability benefits and will be incurred only to address the aesthetic concerns of the four towns in NU’s service territory.

5. United Illuminating argued that allocation of any of the costs to it is contrary to the Commission’s principle of cost causation, under which costs are allocated to those who cause or benefit from them. It also argued that none of the Localized Costs should be allocated to it because its load is not directly connected to the NU transmission system.<sup>8</sup> According to United Illuminating, these Localized Costs should be allocated only to load in the five towns or, consistent with Schedule 21-NU, should be collected from all customers connected to NU’s system that are in NU’s service area.<sup>9</sup>

6. In the July Order, the Commission found that the lines at issue benefit the entire state and that allocation on a state-wide basis to all load serving entities was consistent with the ISO-NE OATT. The Commission also noted that the Siting Council had examined numerous factors before it authorized underground construction of some portions of the B-N Project, thereby necessitating incurrence of the Localized Costs. We determined that it was not appropriate to concentrate those costs on the four towns that settled in the state siting proceeding, as advocated by United Illuminating for several other reasons, as well as the fact that allocation of Localized Costs across the state would avoid a rate shock to the four towns, who otherwise would see their transmission rates increase by \$12.9 million per year. In addition, the Commission noted that the Connecticut Department of Public Utility Commission (Connecticut Commission), the state agency that is charged with acting in the best interests of electric consumers in Connecticut, supported a state-wide allocation of Localized Costs.

## **II. Request for Rehearing**

7. United Illuminating argues that the July Order is contrary to the Commission’s cost causation principles and that the Commission did not engage in a cost causation

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<sup>7</sup> *Id.* at P 20.

<sup>8</sup> *Id.* at P 18.

<sup>9</sup> *See* United Illuminating’s protest at 15 and answer at 10, respectively.

analysis. It states that the Commission's cost causation policy is that the costs should be allocated to those who either cause the cost or benefit from the expenditure of those costs.<sup>10</sup>

8. United Illuminating agrees that the B-N Project brings increased reliability to the entire state of Connecticut, as it does to the whole of New England,<sup>11</sup> and that the costs of achieving these region-wide reliability benefits are properly recovered throughout the region.<sup>12</sup> United Illuminating complains that nowhere in the July Order does the Commission provide support that the "345kV and 115kV transmission lines benefit the entire state." According to United Illuminating, there is a critical distinction between the wide-spread *reliability benefits* of the B-N Project and the *benefits provided* by undergrounding portions of that project. The undergrounding was "driven in this case by local, aesthetic concerns ...."<sup>13</sup> United Illuminating argues that the Commission did not analyze who caused the Localized Costs of the B-N Project and/or who would benefit from their expenditure.

9. United Illuminating contends that there is no substantial evidence in the record that its customers benefit from the Localized Costs. The Localized Costs were incurred to address the aesthetic concerns of the four towns, who are beneficiaries of the Settlement. United Illuminating's customers neither caused nor will benefit from the

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<sup>10</sup> Request for Rehearing at 6 (*citing ISO New England Inc., et al.*, 115 FERC ¶ 61,145 at P 13 (2006) and *Florida Power & Light Co.*, 98 FERC ¶ 61,326 at P 79 (2002)). The Commission has said that "[t]he overwhelming weight of the Commission authority indicates that an entity may be deemed to have caused costs *either* if it is directly responsible for imposing the cost burden at issue *or* if the entity benefits from the cost occurrence. *California Independent System Operator Corp., et al. v. California Independent System Operator Corp.*, 113 FERC ¶ 63,017 at P 39 (2005) (emphasis supplied).

<sup>11</sup> Request for Rehearing at 8 (*citing* Draft Determination at 10-11; Direct Testimony of Mr. Richard A. Soderman, May 31 Filing, Exhibit No. NU-5, at 4:2-4).

<sup>12</sup> *See* Draft Determination at 48.

<sup>13</sup> Request for Rehearing at 8 (*citing* Steven G. Whitley, DRAFT TCA Application #NU-04-TCA-04, Dated: January 12, 2005 (2006), [http://www.iso-ne.com/trans/pp\\_tca/req/pl\\_swct/iso\\_nu\\_pl\\_draft\\_tca\\_dtrmntn.pdf](http://www.iso-ne.com/trans/pp_tca/req/pl_swct/iso_nu_pl_draft_tca_dtrmntn.pdf) at 2) (Draft Determination)).

Localized Costs of the B-N Project; so therefore, no Localized Costs should be allocated to them.<sup>14</sup>

10. United Illuminating also argues that the allocation of the B-N Localized Costs to United Illuminating's customers is unduly discriminatory because customers in other parts of New England also share in any benefits of timely siting and construction of the B-N Project that may have been realized from the Settlement. According to United Illuminating, NU does not explain how United Illuminating and its customers will benefit in any unique way from the timely siting and construction of the B-N Project. Additionally, the Commission failed to address United Illuminating's claim that NU's proposed allocation was unduly discriminatory and whether United Illuminating's customers were situated differently with respect to the B-N Project than other customers in New England.

11. United Illuminating further argues that the Commission improperly abdicated its responsibility for determining the justness and reasonableness of NU's proposal by deferring to the Connecticut Commission. United Illuminating argues that the Connecticut Commission made no serious attempt to justify its recommendation under the principle of cost causation.

12. Similarly, United Illuminating maintains that while the Commission drew no express conclusion regarding cost allocation from the fact that construction of the transmission lines underground was approved by the Siting Council, the July Order suggests that, where a project is authorized by a state agency, it is *per se* appropriate to allocate Localized Costs on a state-wide basis. According to United Illuminating, even assuming the Commission reached this conclusion, it does not reflect an appropriate cost causation analysis, particularly since the Siting Council expressed reservations about constructing portions of the B-N Project underground and acknowledged that the undergrounding was driven by the aesthetic concerns of the towns.<sup>15</sup>

13. United Illuminating also contends that the Commission erred in determining that allocation of the B-N Project to all load in Connecticut is consistent with Schedule 21-NU. Under Schedule 21-NU, NU can recover such costs *only* from load connected to

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<sup>14</sup> Request for Rehearing at 11-12.

<sup>15</sup> *Id.* (citing *Northeast Utilities Service Co.*, Revised Opinion at 5, issued Sept. 9, 2003, CSC Docket No. 217; *Northeast Utilities Service Co.*, Findings of Fact ¶ 54, issued July 14, 2003, CSC Docket No. 217).

the NU system.<sup>16</sup> United Illuminating asserts that the Commission made no finding regarding whether any of United Illuminating's load is connected to the NU transmission system and there is no evidence that any portion of United Illuminating's load is connected to NU's system. While United Illuminating admits that six substations are connected to NU's portion of Pool Transmission Facilities, the Commission must first examine the facts and the existing rate treatment of the connections with United Illuminating's customers to NU's portion of the PTF system before it can approve the allocation of any Localized Costs to its load at those substations.

14. Accordingly, United Illuminating requests that the Commission grant rehearing of the July Order and find that that NU cannot allocate any portion of the Localized Costs of the B-N Project to United Illuminating or its customers. In the alternative, United Illuminating requests that the Commission order an evidentiary hearing to develop substantial evidence on which to base a finding regarding customer connection and cost causation.

### **III. Commission Determination**

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

15. NU filed an answer to the request for rehearing and United Illuminating filed a motion in opposition to NU's answer and an answer. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2006), prohibits answers to requests for rehearing. Accordingly, we will reject these answers and motions.

#### **B. Analysis**

16. We remain unconvinced by United Illuminating's arguments. Accordingly, we will deny United Illuminating's request for rehearing and will not order an evidentiary hearing before an administrative law judge, for the reasons stated below.

17. We find no merit in United Illuminating's argument that the July Order was devoid of reasoning or that the determination reached was in some way unjust or unreasonable. Although United Illuminating asserts that there is no support for the conclusion that the "345kV and 115kV transmission lines benefit the entire state,"<sup>17</sup> we note that ISO-NE performed numerous studies on reliability, the costs and the benefits of

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<sup>16</sup> Request for Rehearing at 18-19.

<sup>17</sup> *Id.* at 8.

integrating the SWCT load pocket with the 345 kV system. For example, the Regional Transmission Expansion Plan 02, September 11, 2002, section 7, noted that the SWCT upgrades would reduce energy costs in Connecticut by \$125 to \$375 million dollars per year.<sup>18</sup> Further, the Commission has recognized that a needed reliability or economic upgrade on one part of New England's grid provides network benefits to all other parts of the grid, both immediately and to changing beneficiaries over time.<sup>19</sup> As one part of a larger effort to address the issues in SWCT, the B-N Project provides those network benefits to other parts of the grid, including that portion involving United Illuminating.

18. United Illuminating sees a critical distinction between the wide-spread reliability benefits of the B-N Project, which it acknowledges are appropriately recovered throughout the New England region, and the benefits provided by undergrounding portions of that Project, which it argues should be allocated only to the towns that were responsible for causing the costs to be incurred. If the Commission were to strictly apply a narrow cost causation approach, we would allocate the Localized Costs to the towns. However, it would be impractical to try to identify exactly which customers "cause" or "benefit" from which facilities, and to what degree, and the courts recognize the need for administrative feasibility.<sup>20</sup> The Commission must exercise its judgment in setting rates and must decide whether a proposed rate is fair, after balancing all considerations. That is what we have done here. Such a decision does not require a formal hearing before an administrative law judge, as it is based in large part upon considerations of fairness and other policy matters, rather than on a precise calculation of exact costs and benefits to particular customers.

19. In the circumstances present in this case, we determined that it was more appropriate to allocate the Localized Costs state-wide. We based our decision on three considerations. First, state-wide allocation would avoid significant rate shock that United

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<sup>18</sup> See *New England Power Pool, et al.*, 105 FERC ¶ 61,300 at n.29 (2003).

<sup>19</sup> See *id.* at 105 FERC ¶61,300 at P 25.

<sup>20</sup> *Alabama Electric Coop. v. FERC*, 684 F.2d 20, 27 n.30 (D.C. Cir. 1982) ("No cost of service study -- a compilation endeavoring to allocate to the various categories of service the costs of supplying such service -- can be precise and factual. Rather than demonstrating with precision the revenue requirements to be assigned to each class of service, it simply reflects the opinion and approach of the individual making it. Thus, it can never be more than an aid to judgment in the design of a structure that will be fair and reasonable to all categories of customers").

Illuminating does not deny would occur if the \$12.9 million initial revenue requirement was allocated to the towns alone. Second, the Connecticut Commission supported state-wide allocation, and the Connecticut Commission is the state agency charged with the responsibility of representing the interests of all of Connecticut's energy consumers. Our third reason was that state-wide allocation was consistent with the filed rate; Schedule 21-NU of ISO-NE's OATT specifically allows state-wide allocation. In light of these factors, and after considering the effect on United Illuminating and all concerned, the Commission determined that a state-wide allocation was the fairest approach.<sup>21</sup>

20. United Illuminating also argues that it was somehow inappropriate for the Commission to consider the Siting Council siting process or the position of the Connecticut Commission.<sup>22</sup> United Illuminating ignores the fact that these are part of the record that assisted us in reaching our determination. We considered the results of the Siting Council siting process and the view of the Connecticut Commission along with other factors.<sup>23</sup> The Connecticut Commission is closely attuned to the regional economic consequences that result from allocating Localized Costs, and its position should be considered.<sup>24</sup> Further, both the Siting Council and Connecticut Commission were

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<sup>21</sup> See, e.g., *Colorado Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945); see also *Midwest ISO Transmission Owners, et al. v. FERC*, 373 F.3d 1361, 1369 (D.C. Cir. 2004) ("It is enough, given the standard of review under the [Administrative Procedure Act], that the cost allocation mechanism not be "arbitrary or capricious" in light of the burdens imposed or benefits received"); *Transcontinental Gas Pipeline Corp.*, 106 FERC ¶ 61,299, 62,135 (2004) ("Cost allocation is not an exact science and no one method may be said to fit all situations. In deciding which cost allocation methodology to apply the Commission must sometimes conclude which is the more reasonable of the several alternatives").

<sup>22</sup> We also note that it is the longstanding policy of the Commission to encourage settlement among the parties. Settlements by nature involve compromises. The proceedings before the Siting Council provided such an opportunity and resulted in the undergrounding of a portion of the B-N Project. The settlement reached before the Siting Council created long-term benefits for the New England region, SWCT and, in particular, Connecticut consumers, by expediting the siting of these badly needed facilities.

<sup>23</sup> See Request for Rehearing at P 10 n.39 (citing Revisions of Fuel Cost Adjustment Clause Regulation Relating to Fuel Purchases from Company-Owned or Controlled Sources, Order. No. 600, 85 FERC ¶ 61,267, at n.13 (1998); *Southern Cal. Edison. Co.*, 55 FERC ¶ 61,074, at 61,223 (1991)).

<sup>24</sup> See *Transcript*, Docket No. PL04-14-000 (January 6, 2005).



important participants in the process of obtaining approval for siting of the transmission lines. We also note that upon our initial acceptance of the Transmission Cost Allocation amendments, we made it clear that we would give deference to a regional state committee, including state commissions, to determine the appropriate regional approach for allocating the costs of new transmission.<sup>25</sup> Accordingly, it was reasonable for us to consider the information and positions from these agencies in reaching our determination about how the Localized Costs should be allocated.

21. United Illuminating also argues that the Commission failed to address whether the proposed allocation of Localized Costs was consistent with the tariff requirement that NU can recover such costs only from load that is connected to the NU system. It asserts that the proposed allocation is not consistent with that requirement. We disagree. As we held in the July Order,<sup>26</sup> recovery of the B-N Project's Localized Costs is consistent with Schedule NU-21 of the Tariff. Section 34.2 of Schedule NU-21 provides in relevant part:

Any Eligible Customer taking Regional Network Service under the ISO Tariff in a state or area in which Localized Facilities are located...shall pay to the NU Companies the customer's Category B Load Ratio Share of the Formula Requirements as calculated in Schedule NU-4, Appendix B for such state or area.

22. In accordance with this provision, NU intends to charge United Illuminating, and all other customers within Connecticut, their Load Ratio Share<sup>27</sup> of the Localized Costs (*i.e.*, Category B costs). Contrary to the assertion by United Illuminating, there is no provision in Schedule NU-21 that limits the allocation of Localized Costs to the towns where the Localized Costs were incurred. Instead, the tariff clearly provides that any Eligible Customer<sup>28</sup> taking Regional Network Service can also be located in the state

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<sup>25</sup> See *New England Power Pool, et al.*, 105 FERC ¶ 61,300 at P22 (2003), *citing* White Paper on Wholesale Energy Market Platform at 6 (April 28, 2003).

<sup>26</sup> July Order at P 27.

<sup>27</sup> Definition 1.6 of Schedule 21-NU provides that "Category B Load Ratio share will be calculated for each state or area where Localized Facilities are located. For the Bethel to Norwalk transmission project, such state or area shall be the State of Connecticut."

<sup>28</sup> Eligible Customer is defined in ISO-NE's OATT at II.1.21. It includes any entity that is engaged in the wholesale or retail electric power business.

(*e.g.*, Connecticut) in which Localized Facilities are located. Therefore, we affirm our determination in the July Order that allocation of the cost of the Localized Facilities to Eligible Customers in the state of Connecticut, including United Illuminating, is permitted by the Tariff.

23. For the reasons given above, we continue to find that NU's proposed allocation of the B-N Project's Localized Costs and the unexecuted Service Agreement with United Illuminating that we accepted in the July Order are just and reasonable. Accordingly, we will deny United Illuminating's request for rehearing.

The Commission orders:

United Illuminating's request for rehearing is hereby denied as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.