

124 FERC ¶ 61,044  
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. ER08-966-000

ORDER ON TRANSMISSION INCENTIVES

(Issued July 17, 2008)

1. On May 16, 2008, Northeast Utilities Service Company, on behalf of Northeast Utilities' transmission owning subsidiaries<sup>1</sup>(collectively, Northeast Utilities), filed an application pursuant to sections 205 and 219 of the Federal Power Act (FPA),<sup>2</sup> Part 35 of the Federal Energy Regulatory Commission's regulations, Rules 207 and 212 of the Commission's regulations,<sup>3</sup> and pursuant to Order Nos. 679 and 679-A,<sup>4</sup> requesting a limited waiver of the December 31, 2008 termination date for the 100 basis point return on equity (ROE) adder that the Commission granted in Opinion No. 489<sup>5</sup> for the Middletown-to-Norwalk Project, a transmission project in Southwest Connecticut. In the alternative, Northeast Utilities requests approval pursuant to Order No. 679 of the 100 basis point adder. Northeast Utilities also requests an additional 50 basis point adder for the use of advanced transmission technologies pursuant to Order Nos. 679 and 679-A.

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<sup>1</sup> The transmission-owning subsidiaries are: The Connecticut Light & Power Company (CL&P), Western Massachusetts Electric Company (WMECO), Holyoke Power & Electric Company (HP&E), Holyoke Water Power Company (HWP), and Public Service Company of New Hampshire (PSNH).

<sup>2</sup> 16 U.S.C. §§ 824d, 824s (2006).

<sup>3</sup> 18 C.F.R. §§ 385.207, 385.212 (2008).

<sup>4</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

<sup>5</sup> *Bangor Hydro-Elec. Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006), *order on rehearing*, 122 FERC ¶ 61,265 (2008) (March 24 Rehearing Order), *reh'g pending*.

As discussed below, the Commission grants the request for a waiver of the December 31, 2008 termination date for the 100 basis point ROE incentive, and it conditionally grants the 50 basis point advanced transmission technology incentive and directs a compliance filing.

## **I. Background**

2. Northeast Utilities' transmission-owning subsidiaries own and operate transmission facilities in the states of Connecticut, Massachusetts, and New Hampshire. Northeast Utilities makes this filing on behalf of its subsidiary CL&P. This filing stems from the proceedings in Opinion No. 489, and the subsequent rehearing of Opinion No. 489. In Opinion No. 489, the Commission affirmed in part and reversed in part an Initial Decision issued May 27, 2005,<sup>6</sup> regarding an ROE rate component sought by New England transmission owners<sup>7</sup> in conjunction with their proposed establishment of the ISO New England, Inc. (ISO New England) regional transmission organization (RTO). Opinion No. 489 adopted a base-level ROE of 10.2 percent, the midpoint ROE indicated by the range of reasonable returns for a proxy group made up of 10 northeast utility companies.<sup>8</sup>

3. In addition, the Commission also found that two ROE adjustments were warranted: (i) a 100 basis point incentive for all new transmission investment; and (ii) a 74 basis point adjustment reflecting updated bond data, as applicable to the period commencing as of the issuance date of Opinion No. 489. These returns, and the projects to which they applied, were later modified on rehearing by the March 24 Rehearing Order.

4. The March 24 Rehearing Order addressed several requests for rehearing of Opinion No. 489, including challenges to the updated input values used by the Commission in calculating the base-level ROE of 10.2 percent, the 74 basis point adjustment for the going-forward ROE, whether the 100 basis point ROE adjustment for new transmission investment should have been granted in the first instance, and finally,

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<sup>6</sup>*Bangor Hydro-Elec. Co.*, 111 FERC ¶ 63,048 (2005) (Initial Decision).

<sup>7</sup> The New England transmission owners are: Bangor Hydro Electric Company; Central Maine Power Company; NSTAR Electric & Gas Corporation; New England Power Company; Northeast Utilities; The United Illuminating Company; and Vermont Electric Power Company.

<sup>8</sup> The 10 proxy group companies are: PPL Corporation, Consolidated Edison, Inc., Northeast Utilities, Public Service Enterprise Group, Exelon Corporation, Constellation Energy, FirstEnergy Corporation, Pepco Holdings, Inc., Energy East Corporation, and NSTAR Electric & Gas Corporation.

the application of this 100 basis point adjustment to all projects approved in the ISO New England regional transmission expansion plan (RTEP), rather than a discrete set of projects.

5. In the March 24 Rehearing Order, the Commission found that the appropriate base level ROE should be upwardly adjusted to 10.4 percent,<sup>9</sup> and reaffirmed its approval of the 100 basis point ROE incentive “for existing RTEP-approved projects, provided that these projects are completed and come into service as of December 31, 2008. However, [the Commission] will not extend a pre-approved authorization of any future projects without a specific showing justifying the incentive on a project-by-project basis, consistent with the requirements of Order No. 679.”<sup>10</sup> The Commission found that, “A project owner required to make such filing will not be prejudiced provided that its project satisfies the requirements of Order No. 679,”<sup>11</sup> further stating that “projects that have not come on line, or have not been proposed or even envisioned, should not be exempt from our new policy. In fact, such a result would cause transmission investment in New England to be treated differently than transmission investment in the remainder of the country.”<sup>12</sup>

6. The Commission explained the choice of the December 31, 2008 cut-off date, stating “[w]e note that while ISO New England’s 2008 annual rate filing is made in July of each year, it is based on calendar-year cost projections, reflecting both anticipated and actual transmission project additions over the 12 month calendar year. Given the project owners’ reasonable reliance on these filed rates and the lead time needed to prepare this year’s filing, a December 31, 2008 cut-off date is appropriate.”<sup>13</sup>

7. With these modifications, the ROEs that would apply to existing RTEP-approved projects completed and in service as of December 31, 2008, including the 100 basis point adjustment, are 11.9 percent for the locked-in period (i.e., the rate effective date through the issuance date of Opinion No. 489) and 12.64 percent for the going-forward period (i.e., the period commencing with the issuance of Opinion No. 489).

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<sup>9</sup> March 24 Rehearing Order, 122 FERC ¶ 61,265 at P 22.

<sup>10</sup> *Id.* P 51.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* P 63.

<sup>13</sup> *Id.* P 64.

## II. Proposal

8. On May 16, 2008, and in response to the March 24 Rehearing Order, Northeast Utilities filed a request pursuant to section 205 of the FPA to ensure that it receives the 100 basis point ROE incentive for the Middletown-to-Norwalk Project, even though certain portions of the project may not be in-service until early 2009.<sup>14</sup> Northeast Utilities notes that, as of May 12, 2008, the Middletown-to-Norwalk Project is 83 percent complete and, assuming the current pace of construction, will be physically completed by December 31, 2008. However, Northeast Utilities believes that the 24-mile section of underground cable may not be fully tested by December 31, 2008 and thus will not be placed into service by that date. It expects to complete testing by early 2009. Northeast Utilities explains that it is not able to predict a final in-service date, but it anticipates that the last segments of the project (the underground portions) will be placed into service in early 2009.

9. Based on these facts and as explained further below, Northeast Utilities requests that the Commission: (1) clarify that the 100 basis point adder under Opinion No. 489 will apply to all portions of the Middletown-to-Norwalk Project that will be placed into service by December 31, 2008; and (2) grant Northeast Utilities a limited waiver of the December 31, 2008 cut-off date to allow for Northeast Utilities to complete testing of the 24 miles of underground cable. In the alternative, Northeast Utilities requests a 100 basis point ROE incentive under Order No. 679 for the entire Middletown-to-Norwalk Project. Northeast Utilities also requests an additional 50 basis point advanced technology ROE adder under Order No. 679 to be capped at the high end of the zone of reasonableness for the 24 miles of undergrounded cross-linked polyethylene cable (XLPE), fiber optic cable, and supporting facilities.

### A. Project Description

10. The Middletown-to-Norwalk Project is a joint undertaking between Northeast Utilities' subsidiary, CL&P, and United Illuminating Company. It is the largest of four projects comprising the Southwest Connecticut (SWCT) Reliability Project and has an estimated cost of \$1.4 billion.<sup>15</sup> CL&P's share of this cost is \$1.05 billion.<sup>16</sup>

11. The Middletown-to-Norwalk Project itself will complete a 345-kV loop into SWCT to integrate the SWCT load center with New England's 345-kV backbone

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<sup>14</sup> Northeast Utilities Filing at 3.

<sup>15</sup> The three other projects include the Bethel to Norwalk Project, the Glenbrook Cables Project, and the Long Island Replacement Cables Project.

<sup>16</sup> Northeast Utilities Filing at 9.

transmission system. The Middletown-to-Norwalk Project's route extends approximately 69 miles from CL&P's existing substations in Middletown, Connecticut, through a densely populated area of 18 municipalities, to a new 345-kV substation being constructed in Norwalk, Connecticut. Given the urban nature of the Middletown-to-Norwalk Project, nearly 24 miles of the 69-mile line is being built underground. Northeast Utilities states that the Middletown-to-Norwalk project will provide a second transmission link into the City of Norwalk from central Connecticut and from points in Milford and Bridgeport. Several components of the Middletown-to-Norwalk Project will use advanced transmission technologies, including the use of underground 345-kV XLPE cable and supporting facilities.

12. Northeast Utilities states that the transmission system in SWCT is one of the most congested in the country and faces grave reliability concerns because of transmission deficiencies. Northeast Utilities states that the Commission has recognized SWCT as an area facing significant reliability concerns and in need of reinforcement.<sup>17</sup> Northeast Utilities states further that the Middletown-to-Norwalk Project is included in ISO-New England's Regional System Plan (RSP)<sup>18</sup> and has been granted siting approval by the State of Connecticut. Northeast Utilities states that ISO-New England, the Connecticut Department of Public Utility Control (CT DPUC), and the Connecticut Siting Council (CSC) have recognized the weakness of SWCT's transmission system and its failure to meet national and regional reliability standards.

13. Northeast Utilities submits further that the CSC's review process took into account a number of other factors, such as route alternatives, electric and magnetic field issues, and engineering costs. Northeast Utilities has included with its application a summary of the RSP for 2005, together with excerpts of the CSC application, and the CSC's Findings of Fact with regard to each project. Northeast Utilities submits that the Middletown-to-Norwalk Project is needed to satisfy North American Electric Reliability Corporation and Northeast Power Coordinating Council reliability standards and to provide greater access to competitively priced generation.

#### **B. 100 Basis Point Adder**

14. Northeast Utilities provides five reasons to support its request for a limited waiver of the December 31, 2008, cut-off date for receiving a 100 basis point ROE adder under Opinion No. 489.

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<sup>17</sup> See *Northeast Utils. Serv. Co.*, 114 FERC ¶ 61,089, at P 19 (2006); *Devon Power LLC*, 107 FERC ¶ 61,240, at P 43, 49 (2004).

<sup>18</sup> The RSP is a planning report that identifies system improvements needed over the next 10 years.

15. First, Northeast Utilities states that the construction of the Middletown-to-Norwalk Project will be completed by December 31, 2008 and, after final testing of the project, in service by early 2009. Northeast Utilities believes that it is in substantial compliance with the December 31, 2008 cut-off date and, thus, qualifies for waiver of that deadline.<sup>19</sup>

16. Second, Northeast Utilities submits that the Commission has already reviewed substantial evidence in a number of proceedings in support of incentive rate treatment for the project, and therefore, it should be unnecessary to subject the project to Order No. 679 filing requirements. Northeast Utilities states that this was the largest project identified in the ISO-NE RTEP (RTEP-04), representing approximately one-third of the total cost of all transmission projects in the RTEP-04, and that it is more than three times larger than the next largest transmission project in the RTEP-04.

17. Third, the Commission already made findings under Order No. 679 for the Middletown-to-Norwalk Project when United Illuminating Company filed a request for an advanced technology adder.<sup>20</sup> Northeast Utilities further notes that the Commission considered the merits of the Middletown-to-Norwalk Project when it granted Northeast Utilities' request for 50 percent Construction Work in Progress (CWIP) in rate base.<sup>21</sup> The Commission specifically determined that the project was necessary "to improve regional reliability, . . . help resolve a number of electrical problems in SWCT, and improve compliance with national and regional reliability standards."<sup>22</sup>

18. Fourth, Northeast Utilities states that there are equity considerations for granting the waiver.<sup>23</sup> Northeast Utilities states that it has reasonably and in good faith relied upon the Commission's earlier approval of the 100 basis point adder, and committed substantial capital based upon the Commission's approvals. Northeast Utilities further provides substantial evidence from multiple ratings agencies demonstrating their continued reliance on the 100 basis point adder in evaluating the utility's financial condition and investment-grade rating.

19. Finally, Northeast Utilities states that no other transmission project in New England has the combination of (i) investment size and regional importance; (ii) prior

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<sup>19</sup> Northeast Utilities Filing at 4.

<sup>20</sup> *The United Illuminating Co.*, 119 FERC ¶ 61,182 (2007), *reh'g pending*, (*United Illuminating*).

<sup>21</sup> *Northeast Utils. Serv. Co.*, 114 FERC ¶ 61,089 at P 19.

<sup>22</sup> *Id.*

<sup>23</sup> Northeast Utilities Filing at 5.

Commission approval of incentives for the project; (iii) numerous prior Commission statements endorsing the need for the project; and (iv) imminence of completion shortly after the deadline.

20. Northeast Utilities asserts that the Commission's choice of the December 31, 2008 date appears to be intended to coordinate with the ISO-New England 2008 annual rate filing, but does not appear to have any link from a reliability, planning, cost causation, or cost recovery standpoint, and therefore, no public policy interests would be adversely affected if the Commission were to grant an extension.

21. If the Commission does not grant an extension, Northeast Utilities interprets the March 24 Rehearing Order to hold that any portion of a project that is placed into service by December 31, 2008 automatically qualifies for the 100 basis point incentive under Opinion No. 489 and that the Order No. 679 filing requirement is applicable only to those portions in-service after December 31, 2008.<sup>24</sup>

22. Northeast Utilities also provides substantial evidence to support its request for the 100 basis point adder under Order No. 679 for the entire project. Northeast Utilities argues that the Middletown-to-Norwalk Project satisfies the first prong under Order No. 679—that is, the project will ensure reliability or reduce the cost of delivered power by reducing congestion. It emphasizes that the Middletown-to-Norwalk Project is entitled to a rebuttable presumption under this prong because the project resulted from a fair and open regional planning process that evaluates reliability and congestion and received construction approval from the appropriate siting authority.<sup>25</sup> In particular, the Middletown-to-Norwalk Project was approved under the ISO-New England regional planning process and received siting authority from CSC.<sup>26</sup> The CSC specifically found that the Middletown-to-Norwalk Project will serve “the State of Connecticut and its people and interconnected utility systems and will serve the interests of the electric system economy and reliability.”<sup>27</sup>

23. In demonstrating a nexus for the requested 100 basis point adder, Northeast Utilities filed evidence showing that the company, including its subsidiaries, suffered a credit rating downgrade in 2005 because of the substantial debt undertaken by Northeast Utilities to finance the Middletown-to-Norwalk Project.<sup>28</sup> Northeast Utilities filed

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<sup>24</sup> *Id.* at 12.

<sup>25</sup> *Id.* at 14.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* Ex. NU-6.

<sup>28</sup> *Id.* Ex. NU-11.

numerous credit ratings reports dated from May 2005 through November 2007, detailing the investment industry's dependence on the 100 basis point adder in establishing Northeast Utilities' credit, and the need for adequate regulatory relief beyond the project in-service date to ensure Northeast Utilities' financial integrity.<sup>29</sup>

24. Moreover, Northeast Utilities filed evidence showing that the failure to grant the 100 basis point adder could result in a downgrade of its credit ratings. For example, one ratings report by Fitch stated, "[t]here are mechanisms in place that provide for the timely recovery of [CL&P's] FERC regulated transmission investments. Cash flow could be further positively affected by additional incentives for transmission investment being considered by FERC."<sup>30</sup> Fitch continued, "Inadequate equity funding of its [CL&P] capital build-out or significant delays in the regulatory recovery of these costs could lead to a negative rating action."<sup>31</sup>

25. Finally, Northeast Utilities filed testimony and other evidence showing that the Middletown-to-Norwalk Project is not routine under the Commission's precedent in *Baltimore Gas & Electric Co.*<sup>32</sup> This testimony and evidence covered the scope of the Middletown-to-Norwalk Project (e.g., CL&P's cost is \$1.05 billion, or 125 percent of CL&P's net transmission plant), the effect of the project (e.g., it increases transfer limits by 1,630 MW), and the risks and challenges of the project.

### C. 50 Basis Point Advanced Transmission Technology Adder

26. Independent of the 100 basis point ROE incentive request, Northeast Utilities seeks in the instant filing an incentive ROE adder for the use of advanced transmission technologies in the construction of the Middletown-to-Norwalk Project. Consistent with the Commission's granting of this incentive in *United Illuminating*, Northeast Utilities seeks a 50 basis point ROE adder for the costs associated with CL&P's portion of the underground 345-kV XLPE cables and supporting facilities, capped at the high end of the zone of reasonableness established in Docket No. ER04-157. Northeast Utilities states that the underground XLPE cable used in the construction of the Middletown-to-Norwalk

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<sup>29</sup> *Id.* (Standard & Poor's Rating Services, "November 13, 2007 Rating Report," dated November 13, 2007, noting the "expectation that NU will recover the costs of its construction program as the projects reach completion and that NU's financial measures will gradually improve. Factored into the stable outlook is the expectation of timely and adequate regulatory relief throughout the 2007-2011 period.")

<sup>30</sup> Northeast Utilities Filing, Ex. NU-11 (Fitch's March 2, 2006 Report).

<sup>31</sup> *Id.*

<sup>32</sup> 120 FERC ¶ 61,084 (2007) (*BG&E*).



Project is included as one of the 18 advanced technologies that Congress sought to encourage under section 1223 of the Energy Policy Act of 2005 (EPAct 2005)<sup>33</sup> and that this technology meets the standard of Order No. 679 since it will mitigate congestion and enhance grid reliability by increasing capacity, efficiency or reliability of a new or existing transmission facility.

27. Northeast Utilities states that the Middletown-to-Norwalk Project will have approximately 24 miles of double circuit underground cable and will use XLPE cable operating at the 345-kV voltage level, which is rarely used for lengths of over 1000 meters. The use of this technology, Northeast Utilities states, has reduced the time and costs associated with both installation and maintenance of the transmission facilities.

28. Northeast Utilities also requests the application of this incentive adder to certain other facilities and equipment necessary to support the XLPE cables. In particular, Northeast Utilities seeks the incentive for the 345-kV variable shunt reactors at the Norwalk substation and the innovative automation packages installed at several substations. In total, Northeast Utilities estimates that the total cost associated with the Middletown-to-Norwalk Project for which it seeks the advanced technology adder is \$467 million.

### **III. Notice, Interventions, and Protests**

29. Notice of Northeast Utilities' filing was published in the *Federal Register*, 73 Fed. Reg. 31,085 (2008), with interventions and protests due on or before June 6, 2008. A timely motion to intervene and motion for extension of time to file comments, was filed by the CT DPUC.

30. On June 2, 2008, Northeast Utilities filed an answer. Also on June 2, 2008, several parties filed timely motions to intervene and comments in support of the motion for extension of time. These intervenors included the New England Conference of Public Utility Commissioners, the Vermont Department of Public Service (VDPS), the Connecticut Office of the Attorney General (CTAG), the Maine Public Utilities Commission (MPUC), and the Office of Consumer Counsel of the State of Connecticut (CT OCC).

31. On June 4, 2008, the Commission granted an extension of time to file comments with interventions and protests due on or before June 13, 2008. Timely motions to intervene were filed by The United Illuminating Company (United Illuminating) and the Connecticut Municipal Electric Energy Cooperative (CMEEC). Timely motions to intervene and comments were filed by the Massachusetts Department of Public Utilities (Mass DPU), the Mass AG, and the VDPS. The CT DPUC, the MPUC, the

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<sup>33</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594, 953 (2005).

Massachusetts Department of Public Utilities, the Vermont Public Service Board, the New England Conference of Public Utilities Commissioners, Inc., the CT OCC, and the CTAG (collectively, Public Parties), filed a joint protest.

32. On June 23, 2008, Northeast Utilities filed an answer to the comments and protests. Northeast Utilities filed a corrected version of the answer on June 24, 2008. On June 30, 2008, United Illuminating filed an answer to the protests in which it expresses support for Northeast Utilities' filing. Northeast Utilities filed a supplemental answer on July 9, 2008.

#### **IV. Discussion**

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

33. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>34</sup> the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

34. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>35</sup> prohibits an answer to an answer or protest unless otherwise permitted by the decisional authority. In this case, we find that Northeast Utilities' and United Illuminating's answers have assisted the Commission in its decision-making process. Therefore, we will accept them. However, we are not persuaded to accept Northeast Utilities' supplemental answer and we deny it.

##### **B. The 100 Basis Point ROE Adder**

###### **1. Comments**

35. The protestors raise several challenges to Northeast Utilities' request for waiver of the December 31, 2008, cut-off date. First, several protestors assert that the delay in bringing the Middletown-to-Norwalk Project into service has diminished the benefits of the project and likewise diminishes the basis for giving Northeast Utilities an incentive. For example, the Public Parties assert that the basis for providing the 100 point adder was to ensure the timely completion of these projects. They point to evidence from the record in Opinion No. 489, including testimony from transmission owners, which discusses the importance of timely implementation of RTEP-04 projects, and the purported value of the ROE incentive to induce timely completions.<sup>36</sup> The Public Parties state that it was for

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<sup>34</sup> 18 C.F.R. § 385.214 (2008).

<sup>35</sup> *Id.* § 385.213(a)(2) (2008).

<sup>36</sup> Public Parties Filing at 11 & Attachment A.

this reason that the Commission established the December 31, 2008 cut-off date, where it would no longer presume that the incentive produces customer benefits and therefore, the transmission owner must make the project-by-project showing required by Order No. 679.<sup>37</sup>

36. Additionally, several parties argue that the request for a waiver is an impermissible request for rehearing. The Public Parties argue that if Northeast Utilities wanted to challenge the cut-off date, it should have requested clarification or rehearing of the Commission's March 24 Rehearing Order. They argue that Northeast Utilities' request for a waiver is an impermissible collateral attack, which are routinely denied by the Commission.<sup>38</sup>

37. Nor do the Public Parties believe that fairness or equity requires the Commission to waive the December 31, 2008 cut-off date. They assert that Northeast Utilities has never been assured a 100 basis point adder. The Public Parties note that they have filed a petition for appellate review of Opinion No. 489 and, as such, and there will be no definitive answer regarding this incentive until the appeal is final.<sup>39</sup> Public Parties assert that therefore, there is no merit to Northeast Utilities' assertion that it will be penalized by the Commission's subsequent change which it could not have anticipated.

38. Further, the Public Parties state that even if the Commission were to consider granting waiver, Northeast Utilities does not fulfill any of the following requisite circumstances for Commission to consider granting waiver: "(1) the underlying error was made in good faith; (2) the waiver was of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties."<sup>40</sup>

39. Moreover, the Public Parties state that even if Northeast Utilities' request for waiver were legally cognizable under FPA section 313, granting limited waiver of the cut-off date would be impermissible preferential treatment.<sup>41</sup> The Public Parties state that this preferential treatment arises because the Commission would be granting a waiver of Order No. 679 that is not available to other applicants seeking FPA section 219

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<sup>37</sup> *Id.* at 10-12.

<sup>38</sup> *Id.* at 8 (citations omitted).

<sup>39</sup> *Id.* at 19 (citing *Connecticut Dept. Pub. Util. Control v. FERC*, No. 08-1199 (D.C. Cir., Appeal filed May 23, 2008)).

<sup>40</sup> *Id.* at 9 (citing *Waterbury Generation LLC*, 120 FERC ¶ 61,007, at P 31 (2007)).

<sup>41</sup> *Id.* at 7-8, 12.

transmission rate incentives. Further, the Public Parties stated that this waiver would require the Commission to find that “the largest transmission infrastructure project in New England over the past 25 years”<sup>42</sup> is just and reasonable without “any further factual showing of any kind.”<sup>43</sup>

40. If the Commission does grant a waiver, the Mass AG argues that Northeast Utilities should receive the 100 basis point adder only for those portions of the Middletown-to-Norwalk Project that are placed into service by December 31, 2008. The Mass AG asserts with regard to the remaining portions of the Middletown-to-Norwalk Project, the risks and challenges inherent in this project, which were mainly related to siting issues and environmental concerns, have already been met. Therefore, the Mass AG states that customers should not have to continue to pay a higher ROE on the remaining costs than is necessary, as Northeast Utilities no longer needs an incentive to complete the project and has and will benefit from the portions of the project that are already in-service.

41. Several parties also raise challenges regarding Northeast Utilities’ request, in the alternative, to provide a 100 basis point adder under Order No. 679. For example, VDPS notes that the cost support Northeast Utilities proposes to use in support of the 100 basis point adder under Order No. 679 can no longer be presumed to be just and reasonable because the costs of the Middletown-to-Norwalk Project have increased dramatically from the costs that were estimated at the time the record was developed in Opinion No. 489, thereby increasing the “cost of the ROE incentive.” Therefore, if the adder is not rejected outright, the reasonableness of the adder can no longer be presumed to have been established because the Commission’s earlier determination of benefits may well have been different had it known the actual costs of the project. VDPS states that at a minimum, there would be no sound policy reason to allow application of the adder to project costs that exceed the cost estimates upon which the original request for the adder were based, as such action would simply reward the project owner for cost overruns.

42. The Public Parties argue that the Commission should not grant Northeast Utilities the rebuttable presumption because the new information that Northeast Utilities provides raises substantial questions about the project’s actual reliability value that cannot be assessed without analysis from ISO-New England.<sup>44</sup> The Public Parties state that the

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<sup>42</sup> *Id.* at 8.

<sup>43</sup> *Id.* (citing March 24 Rehearing Order, 122 FERC ¶ 61,265 at P 63).

<sup>44</sup> *Id.* at 15 & n.54.

Commission generally requires intervenors to raise a serious doubt, after which the applicant may establish a preponderance of evidence, in order to ‘rebut’ a rebuttable presumption, noting that its concerns are sufficient to rebut the presumption here.<sup>45</sup>

43. The Public Parties further state that the Commission should not grant incentives under section 219 until there is a complete evidentiary basis to establish the reliability of the project. The Public Parties cite to Northeast Utilities’ application in which it cautions that “extensive sequencing of testing and coordination with ISO-New England” is necessary to bring the facilities into service, and “testing and commissioning is a very technical and complex phase of the project that requires the development of a detailed, precise, coordinated energization plan to ensure the reliability of the SWCT transmission system.” The Public Parties assert that these statements, and others, bring the project reliability benefits into sufficient question for the Commission to deny the incentives, or at minimum, delay them until the line is placed into service and the ISO-New England has verified its reliability.<sup>46</sup>

44. The Public Parties state that Northeast Utilities has not been able to overcome the most conspicuous deficiency in its proposal—i.e., demonstrating a nexus between its completed project and its requested ROE incentives in this case. Particularly, the Public Parties assert that Northeast Utilities has not shown that the incentives requested are “tailored to address [the applicant’s] demonstrable risks and challenges.” Nor has Northeast Utilities shown that “the incentives are not provided in circumstances where they do not materially affect investment decisions.”<sup>47</sup>

45. The Public Parties state that the vast majority of the investment in the Middletown-to-Norwalk Project has been made, and no incentive is necessary in order to bring the Middletown-to-Norwalk Project to completion. Thus, these incentives do not “materially affect” investment decisions.

46. The Public Parties state that Northeast Utilities’ assertions of financial risk are flawed because these past cash flow concerns associated with the project have now been alleviated by the passage of time and the anticipated completion of the project.<sup>48</sup> Further, the Public Parties argue that Northeast Utilities’ alleged financial risks could have been alleviated if it had only sought alternative risk-reducing FPA section 219 treatments such

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 14 (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P21, 25, 27; 18 C.F.R. § 35.35(d)).

<sup>48</sup> *Id.* at 16, n.57.

as 100 percent of CWIP in rate base, but it did not. The Public Parties argue that therefore, Northeast Utilities may not rely on financial risks that could have been mitigated by alternative FPA section 219 rate treatments.

47. Likewise, the Public Parties argue that Northeast Utilities cannot rely on past regulatory uncertainties associated with a project that is largely completed to justify “historical risks that are no longer present.”<sup>49</sup> The Public Parties state that the siting proceedings for this project closed in April 2005, four months before the passage of EAct 2005. Moreover, the Public Parties argue that Northeast Utilities’ conduct largely created the regulatory risk because the original proposal radically deviated from ISO-New England’s RTEP-04 plan, and that deficiencies in Northeast Utilities’ original proposal necessitated extensive consultations and additional studies.<sup>50</sup> The Public Parties filed, as Attachment B to their protest, supplemental pre-filed testimony of ISO New England’s Chief Operating Officer, Stephen G. Whitley, detailing several reliability concerns of the Middletown-to-Norwalk Project.<sup>51</sup>

## 2. Answer

48. Northeast Utilities replies that the Public Parties’ assertion of untimely completion of the project reflects a basic misunderstanding of the purpose of the December 31, 2008 cut-off date. Northeast Utilities argues that it will complete the Middletown-to-Norwalk Project ahead of schedule<sup>52</sup> and under budget, despite considerable obstacles. Furthermore, Northeast Utilities states that the inconsistent in-service dates that Public Parties cite to are out-of-date estimates that have been superseded by more current information. For example, Northeast Utilities answers that the primary reason the Middletown-to-Norwalk Project did not meet the Public Parties’ “2007 projected in-service” date is because of the long and difficult siting process for the Middletown-to-

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<sup>49</sup> *Id.* at 17 (citing *Commonwealth Edison Co.*, 122 FERC ¶ 61,037, at P 36 (2008)).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*, Attachment B.

<sup>52</sup> Northeast Utilities Answer at 10-11. Northeast Utilities notes that in its May 9, 2008 10-Q filed with the Securities and Exchange Commission, it indicated that while the Middletown-to-Norwalk Project was not due to be in-service until the end of 2009, the construction is currently ahead of schedule. Further, the total cost of this project will be reduced by approximately \$4 million for every month the project is completed before the original completion date at the end of 2009.

Norwalk Project in the face of substantial opposition. Northeast Utilities notes that the Commission held special technical conferences in Connecticut to garner local support for the SWCT projects due to the delay.<sup>53</sup>

49. Northeast Utilities states that there is no logical or evidentiary basis for the Commission to find that projects completed after the deadline are automatically “untimely” as the status of completion of each individual project depends on the particular facts related to such project.

50. Northeast Utilities state that the Middletown-to-Norwalk Project has advanced rapidly and is ahead of the original schedule, at 88 percent completed as of June 16, 2008, with 90 percent completion expected at the end of June 2008. Northeast Utilities state that neither the Mass AG nor the Public Parties present any evidence to contradict the demonstrations made in its application.<sup>54</sup> Northeast Utilities reiterates its request for a limited waiver of the December 31, 2008 cut-off date, because a strict application of the cut-off date would be inequitable and contrary to the public interest.

51. Northeast Utilities states that under this circumstance, its waiver request is not a request for rehearing as Public Parties argue. Northeast Utilities asserts that in the three cases<sup>55</sup> cited by the Public Parties in which under similar circumstances the Commission denied a request to waive or modify a prior Commission order as a collateral attack on that order, the party was either seeking a reversal of the ruling in a prior case that it did not seek rehearing of, or a waiver that would effectively negate the prior order.

52. In contrast, Northeast Utilities states that it is not seeking to modify the deadline applicable to all the New England transmission owners created by the March 24 Rehearing Order. Northeast Utilities states that the Public Parties’ assertion that it does not meet the Commission’s four-part test<sup>56</sup> is irrelevant, since Northeast Utilities is not seeking waiver of a filed rate, but rather, a deadline established by a Commission order. Further, there was no “error” here that required waiver of a filed rate, and courts have held that granting waiver “has an appropriate place in the discharge by an administrative agency of its assigned responsibilities. The agency’s discretion to proceed in difficult

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<sup>53</sup> *Id.* at 6 & n. 8.

<sup>54</sup> *Id.* at 11.

<sup>55</sup> *Xcel Energy Service, Inc.*, 118 FERC ¶ 61,071 (2007); *Montana Power Co.*, 80 FERC ¶ 61,234 (1997); *Liberty County, Montana*, 53 FERC ¶ 61,104 (1990).

<sup>56</sup> Northeast Utilities Answer at 8-9.

areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.”<sup>57</sup>

53. Northeast Utilities answers that it had no reason to believe that an Order No. 679 filing was required prior to the March 24 Rehearing Order because the Middletown-to-Norwalk Project already had the 100 basis point adder in accordance with Opinion No. 489. As such, Northeast Utilities states that it relied upon the continued availability of this incentive in moving forward with the project and notes that when the March 24 Rehearing Order was issued, the physical construction of the Middletown-to-Norwalk Project was already 76 percent complete.<sup>58</sup>

54. Northeast Utilities states that it will address VDPS’s argument concerning the costs of the project in the complaint proceeding in Docket No. EL08-69-000. According to Northeast Utilities, VDPS’s argument is entirely dependent upon the arguments and issues raised in Docket No. EL08-69-000.<sup>59</sup>

55. Northeast Utilities reiterates its earlier demonstrations that the Middletown-to-Norwalk Project meets the requirements of Order No. 679 and is the type of large-scale transmission project that Congress and the Commission wish to encourage. Northeast Utilities states that the Public Parties’ assertion that the project should not get incentives because it was in the regional system plan in 2002, well before the passage of the EPAct 2005, is contrary to the Commission’s ruling in Order No. 679 that costs incurred after August 8, 2005 are eligible for incentives.<sup>60</sup>

56. In response to Public Parties’ assertion that its application is premature because this issue is pending on appeal, Northeast Utilities states that the Commission has

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<sup>57</sup> *Id.* at 9 (citations omitted).

<sup>58</sup> *Id.* at 14.

<sup>59</sup> *Id.* at 22 (citing *New England Conference of Pub. Util. Comm’r, Inc. v. Bangor Hydro-Elec. Co.*, Docket No. EL08-69-000 (filed June 12, 2008)). In Docket No. EL08-69-000, the New England Conference of Public Utilities Commissioners, Inc. (NECPUC) filed a complaint under section 206 of the FPA seeking to limit application of the ROE adder approved for the projects in Opinion No. 489 to no more than the costs of those projects as they were estimated at hearing in that proceeding. NECPUC’s complaint claims, *inter alia*, that the Commission’s decision to grant the ROE adder was predicated on record evidence of the estimated costs and benefits of the projects, which have changed as a result of the increasing costs of the projects.

<sup>60</sup> *Id.* at 26 (citations omitted).



emphasized that it will accommodate parties' reasonable expectations when it changes its policy, stating in the March 24 Rehearing Order that it did not intend to disrupt parties' expectations and create "unnecessary confusion and uncertainty concerning the availability of an ROE incentive for a number of important projects included in the RTEP-04, many of which were required to move forward while this case was pending before the Commission."<sup>61</sup>

57. Northeast Utilities states that it is not requesting the Commission give it a preference as compared to other applicants seeking FPA section 219 review, but rather that the Commission recognize the unique situation created for Northeast Utilities as a result of the Commission's March 24 Rehearing Order, and fashion a remedy appropriate for that unique situation.<sup>62</sup> Granting the waiver request does not require the Commission to find that the Middletown-to-Norwalk Project was "inadvertently" excluded from the transition period, but rather it requires the Commission to determine that, notwithstanding its general rule, the circumstances presented by the waiver applicant warrant an exception to that general rule.

### **3. Commission Determination**

58. We grant the request for waiver of the deadline established by our March 24 Rehearing Order to allow Northeast Utilities to collect the 100 basis point adder for the Middletown-to-Norwalk Project, even though the entire project may not be placed into service until after the December 31, 2008 cut-off date. Northeast Utilities has shown good cause for us to grant the waiver.<sup>63</sup>

59. There is no doubt regarding the importance of the Middletown-to-Norwalk Project to SWCT. As the ISO-New England recognized in its RTEP-04 Summary Report, "the load pocket of Southwestern Connecticut is at a critical stage and requires ISO New England to take emergency measures to maintain reliable electric supply during periods of high demand."<sup>64</sup> The report further stated, "[t]imely completion of transmission

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<sup>61</sup> *Id.* at 24 (citing March 24 Rehearing Order, 122 FERC ¶ 61,265 at P 70).

<sup>62</sup> *Id.* at 8.

<sup>63</sup> The Commission applies a good cause standard in determining whether it should grant a waiver of its rules and regulations. *See New York Indep. Sys. Operator, Inc.*, 120 FERC ¶ 61,283, at P 12 (2007) (applying a good cause standard for granting a waiver of a deadline under Order No. 890); *see also Pacific Gas & Elec. Co.*, 99 FERC ¶ 61,045, at P 5 & n.8 (2002) ("It is however well established that, with or without explicit provision to that effect, an agency may waive its regulation in appropriate cases.").

<sup>64</sup> Northeast Utilities Filing, Ex. 4 at 5.

projects is critical to preserving and improving reliability region-wide and is key to solving reliability problems.”<sup>65</sup> The Middletown-to-Norwalk Project was a key component of the ISO-New England’s plan to resolve these reliability concerns in SWCT. In fact, it was the largest project listed in the RTEP-04 and represented nearly one-third of the total transmission investment in that plan.<sup>66</sup> The project will increase transfer limits in SWCT by 1,630 MW.<sup>67</sup>

60. Based on these facts, as well as others, the Commission decided in Opinion No. 489 to provide a 100 basis point ROE adder to transmission projects in the RTEP-04.<sup>68</sup> As the Commission recognized, there was “an undisputed need for the projects to which the proposed adjustment will apply, as evidenced by ISO New England’s regional planning process and the analyses made pursuant to this process.”<sup>69</sup>

61. These regional benefits resulting from the reliability enhancements and reduced congestion costs will not be diminished if the Middletown-to-Norwalk Project comes into service after December 31, 2008. Contrary to the arguments of several protestors, the December 31, 2008 cut-off date did not provide a line of demarcation regarding the benefits of the Middletown-to-Norwalk Project. Nor did we establish the cut-off date to induce the timely or quicker completion of projects, like the Middletown-to-Norwalk Project. We selected the date as a reasonable approximation of when we thought that RTEP-04 projects would be completed and in-service. SWCT and ISO-New England have benefitted greatly from the portion of the Middletown-to-Norwalk Project that is currently in-service.<sup>70</sup> Moreover, they will continue to benefit when the last segment of the project (approximately 17 percent of the total project) comes into service in early 2009. The Middletown-to-Norwalk Project is very near completion. In fact, Northeast Utilities expects all of the physical construction of the Middletown-to-Norwalk Project to

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<sup>65</sup> *Id.*

<sup>66</sup> Opinion No. 489, 117 FERC ¶ 61,129 at P 108.

<sup>67</sup> Northeast Utilities Filing, Ex. 1 at 8.

<sup>68</sup> Opinion No. 489, 117 FERC ¶ 61,129 at P 108.

<sup>69</sup> *Id.* P 107.

<sup>70</sup> Indeed, in its assessment of the Middletown-to-Norwalk Project, the CSC found an inefficiency cost of \$308 million per year if the project was not built. The CSC further acknowledged, “Failing to conform to reliability standards exposes [SWCT] to system failure and potentially jeopardizes adjacent electrical interfaces with New York and New England by increasing the risk of blackouts and load shedding leading to a potential collapse of the transmission grid.” *See* Northeast Utilities Filing, Ex. NU-6 at 5.

be completed by December 31, 2008. The only remaining task that will need to be completed after that date is the final testing and commissioning of the 24-mile underground portion of the project, which is expected to be completed by early 2009.<sup>71</sup> We grant the requested waiver here, giving full consideration to the record in its totality, and not simply the issue of timeliness. The regional benefits supported our decision to grant incentives for the Middletown-to-Norwalk Project in the first instance and provide good cause to extend the cut-off date.

62. The Commission further finds that waiver is reasonable given Northeast Utilities' reliance on the 100 basis point ROE adder in pursuing the project. Northeast Utilities has provided substantial evidence that it, as well as numerous financial firms, have relied upon the 100 basis point ROE adder in pursuing the project.<sup>72</sup> If we were to deny the incentive at this late stage, when Northeast Utilities has substantially completed construction of the project, such a denial could create regulatory uncertainty with project developers and may deter the development of future projects. We believe that our well established policy for encouraging transmission investment, reflected in Opinion No. 489, requires us to extend the deadline for a reasonable period of time to ensure that Northeast Utilities receives the 100 basis point ROE adder for the entire project.<sup>73</sup>

63. We will not limit the 100 basis point adder to part of the Middletown-to-Norwalk Project that is in-service by December 31, 2008.<sup>74</sup> We granted the 100 basis point adder because the project in its entirety provided significant reliability and congestion benefits to SWCT and ISO-New England. There is no reasonable basis for limiting the incentive to part of the project when the whole project benefits SWCT and ISO-New England.

64. We agree with Northeast Utilities that the argument raised by VDPS is similar to NECPUC's argument in Docket No. EL08-69-000. Given our decision in this order, we will evaluate VDPS' argument as part of the comprehensive complaint proceedings in Docket No. EL08-69-000.

65. We also reject the contention that Northeast Utilities' request for waiver is an unlawful request for rehearing of the March 24 Rehearing Order. The request in this

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<sup>71</sup> Northeast Utilities Filing at 3 and Ex. NU-1.

<sup>72</sup> *Id.*

<sup>73</sup> We cannot disregard our fundamental obligation to ensure a return that is "sufficient to assure confidence in the financial integrity of the enterprise, *so as to maintain its credit* and to attract capital." *See FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (emphasis added).

<sup>74</sup> Mass AG protest at 8.

proceeding does not challenge or request a permanent modification of the March 24 Rehearing Order, but merely asks for a waiver to enable Northeast Utilities to comply with the order's requirements. Our authority to grant waivers of our rules and regulations is well established, and Northeast Utilities' request falls within that authority.

66. Finally, we deny Public Parties' contention that granting waiver of the cut-off date would be unduly preferential to Northeast Utilities. We are granting waiver of the cut-off date established by the March 24 Rehearing Order, and not Order No. 679. In any event, as noted below, Northeast Utilities has clearly demonstrated that this project would still be consistent with the Commission's policies outlined in Order No. 679, and therefore would be eligible for incentives under Order No. 679.

67. Contrary to Public Parties' assertions that the Commission would be granting waiver of the cut-off date "without any further factual showing of any kind,"<sup>75</sup> substantial factual showings have been made in this record. First, the Middletown-to-Norwalk Project satisfies the section 219 requirements because the project ensures reliability and/or reduces congestion costs.<sup>76</sup> Northeast Utilities is entitled to a rebuttable presumption regarding this fact based on the review and approval of the Middletown-to-Norwalk Project by ISO-New England and the CSC.

68. Second, we find that there is a nexus between the Middletown-to-Norwalk Project and the incentives being sought in this proceeding. This conclusion is based on the substantial evidence filed by Northeast Utilities regarding the importance of the 100 basis point adder to Northeast Utilities to its credit rating and its ability to finance the project. Moreover, we find that the Middletown-to-Norwalk Project is not routine and, thus, is eligible for an incentive.<sup>77</sup>

69. This determination is supported by the extensive testimony regarding the scope of the project inasmuch as CL&P's share of the project cost is \$1.05 billion, or 125 percent of CL&P's net transmission plant. Further, the testimony reports that the average annual expenditures for the Middletown-to-Norwalk Project are 2.7 times greater than CL&P's historic annual capital expenditure budget for all transmission and that this project is part of the largest transmission investment in New England in 25 years.<sup>78</sup>

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<sup>75</sup> Public Parties Filing at 7-8, 12 (citing the March 24 Rehearing Order at P 63).

<sup>76</sup> Order No. 679, FERC Stats & Regs. ¶ 31,222 at P 10.

<sup>77</sup> *BG&E*, 120 FERC ¶ 61,084 at P 48-55.

<sup>78</sup> See Northeast Utilities' Filing, Ex. NU-2 & Ex. NU-4.

70. Northeast Utilities describes the effect of the project,<sup>79</sup> stating that the Middletown-to-Norwalk Project will complete a 345 kV loop in one of the most congested systems in the nation, increasing transfer limits for imports to SWCT from 1,790 MW to 3,420 MW. Northeast Utilities also states that the Middletown to Norwalk Project will address short-circuit over-duty safety margins in the Bridgeport and Milford areas.

71. Also, Northeast Utilities describes the risks and challenges of the project,<sup>80</sup> stating that the magnitude of the Middletown-to-Norwalk Project has created significant financial risks for CL&P because it has required such large capital expenditures, referencing reports by Moody's, Standard and Poor's, and Fitch. Northeast Utilities has also demonstrated that the total package of incentives is tailored to address the demonstrable risks and challenges, as further explained below. Finally, the combined package of incentives will be capped at the high end of the zone of reasonableness and, therefore, is just and reasonable.

72. We therefore conclude that Northeast Utilities has demonstrated good cause to grant the requested waiver, particularly given that the project meets the Order No. 679 criteria.

### **C. 50 Basis Point Advanced Transmission Technology Adder**

#### **1. Comments**

73. The Public Parties state that the Commission should, at the least, withhold judgment on whether to award the advanced transmission technology adder until it can determine whether the relevant technology will actually increase reliability. They note that Northeast Utilities mentions in its transmittal letter that its novel transmission technologies could have reliability effects such as equipment failures and transmission line outages. The Public Parties note that this conflicts with the stated intention of Order No. 679, which aimed to direct transmission incentives to projects that increase, not decrease, reliability.

74. The Public Parties state that the CT DPUC opposed the United Illuminating application for a separate 50 basis point adder for advanced technologies, and for the same reasons, the Public Parties oppose Northeast Utilities' application in this proceeding.

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<sup>79</sup> *Id.*, Ex. NU-1. The most significant effect is the fact that the transfer limits in SWCT will be increased by 1,630 MW.

<sup>80</sup> *See id.*, Exs. NU-2, NU-5, & NU-11.

75. They argue that the Commission must examine the total package of incentive rate treatments to determine whether this additional adder was necessary to induce investment, and further, the Public Parties request that the Commission rehear its policy established in *United Illuminating* that the advanced technology adder serves a different purpose than other incentives.<sup>81</sup> The Public Parties state that Northeast Utilities has not shown how the advanced technology adder operates any differently from other adders in the package.

76. Further, the Public Parties assert that the advanced technology adder is not justified for several reasons. They state that Northeast Utilities uses the same basis for both the 100 basis point adder and the advanced technology adder. In addition, the Public Parties contend that Northeast Utilities is obligated to build projects like the Middletown-to-Norwalk Project and is required to build portions of the project underground, consistent with its RTO membership. They further argue that Northeast Utilities had no choice but to employ the “advanced technologies” if it were to obtain regulatory approval to site the line. Finally, the Public Parties state that there is nothing unique about the XLPE cable, and therefore, any incentive for it would constitute a windfall for an existing obligation.<sup>82</sup> The Public Parties state that when certain companies are required to take action as a condition for regulatory approval, the Commission has declined to approve additional incentive payments for compliance with that regulatory compliance requirement.<sup>83</sup>

77. The Public Parties argue that Northeast Utilities does not provide sufficient detail to determine which portions of transmission plant properly belong in the alleged advanced technology rate base, which Northeast Utilities breaks down in only four line items: (1) use of Extra High Voltage (EHV) XLPE cables in Segment 3 of the Middletown-to-Norwalk Project: \$54 million; (2) use of EHV XLPE cables in Segment 4 of the Middletown-to-Norwalk Project: \$404 million; (3) variable shunt reactors at Norwalk substation: \$8 million; and (4) Condition Monitoring: \$1 million.<sup>84</sup> The Public

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<sup>81</sup> Public Parties Filing at 21.

<sup>82</sup> The Public Parties offer for an example the costs for activities like digging or tunneling the trench to bury the cable. They state that these costs would have been incurred even if Northeast Utilities had used HPFF cable instead of the advanced technology XLPE cable. The Public Parties argue that there is no basis for applying an ROE adder to the same work that will be necessary to lay XLPE cable simply because the cable to be installed represents advanced technology. *Id.* at n. 83.

<sup>83</sup> *Id.* at 22 (citing *Westar Energy Inc.*, 122 FERC ¶ 61,268, at P 52 (2008) (*Westar*)).

<sup>84</sup> *Id.* at 23.

Parties request that the Commission hold a hearing on the requested advanced technologies incentive to assure that the very substantial rate base associated with this adder is appropriate. Public Parties contend that Northeast Utilities likely incurred a significant portion of the expenses included in “Advanced Technology Plant” prior to August 8, 2005, the enactment date of EAct 2005.

78. Finally, the Public Parties state that the Commission’s rules for advanced technologies are forward-looking, noting that an applicant’s technology statement must describe “what advanced technologies have been considered, and if those technologies are not to be employed or have not been employed, and explanation of why they were not deployed.”<sup>85</sup> The Public Parties argue that because Northeast Utilities’ decision to employ the advanced technologies here occurred prior to the enactment of EAct 2005, the adder is not justified.<sup>86</sup>

## 2. Answer

79. Northeast Utilities state that the Commission has already addressed many of the Public Parties’ arguments in *United Illuminating*.<sup>87</sup> Therefore, it argues that the Public Parties’ arguments raised in this proceeding must be rejected.

80. In response to the Public Parties’ assertion that the XLPE cable was required under the ISO-New England planning process, Northeast Utilities argues that the fact that the design for the Middletown-to-Norwalk Project was modified during the siting process has no bearing as to whether the advanced technology incentive should be granted. In response to the Public Parties’ assertions that Northeast Utilities did not supply the Commission with enough information to grant the advanced technology incentive request, Northeast Utilities answers that it provided detailed information regarding the Middletown-to-Norwalk Project for which the advanced technology adder is requested: the 345-kV XLPE cables, the 345-kV variable shunt reactors at the Norwalk substation, and the innovative automation packages.<sup>88</sup> Northeast Utilities states that these are the same facilities that the Commission granted the technology adder to UI for its portion of the project.<sup>89</sup> Therefore, based on the information provided in its application, Northeast

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<sup>85</sup> *Id.* at 24 (citations omitted).

<sup>86</sup> *Id.* at 24-25 & n. 89.

<sup>87</sup> Northeast Utilities Answer at 23 (citing *United Illuminating*, 119 FERC ¶ 61,182 at P 71).

<sup>88</sup> *Id.* at 25.

<sup>89</sup> *United Illuminating*, 119 FERC ¶ 61,182 at P 73.

Utilities contends that the Commission does not require any additional information in order to grant the request.<sup>90</sup> Additionally, Northeast Utilities states that if the Commission grants the advance technology adder request, but holds that it is inappropriate to apply it to pre-August 8, 2005 costs, Northeast Utilities will take steps to ensure that the requested ROE adder applies only to costs that were incurred after August 8, 2005, consistent with the Commission's ruling in *United Illuminating*.<sup>91</sup>

81. Finally, in regard to the Public Parties' claim that Northeast Utilities' filing "raises new concerns for the Commission about the reliability of the underground portions of the line,"<sup>92</sup> Northeast Utilities states that there is no merit to this allegation. Northeast Utilities contends that the Public Parties' argument undermines the purpose for the incentive, because new technology inherently presents risks that are not present in using older technologies. Also, Northeast Utilities states that the Public Parties' statement contradicts their own admission that the CSC only approved the use of XLPE cable because "it met the definition of 'technologically feasible'" and was a "proven" technology.<sup>93</sup> Northeast Utilities states that the Commission should rely on the findings it made in *United Illuminating*, where, after evaluating the findings of the CSC and ISO-New England, the Commission found that use of XLPE technology warrants an advanced technology adder.<sup>94</sup> Northeast Utilities contends that if there were any reliability concerns with the project, the CSC and ISO-New England would not have approved the Middletown-to-Norwalk Project. ISO-New England stated in its approval of the Middletown-to-Norwalk Project that it "will not have a significant adverse effect on the stability, reliability or operating characteristics of...the transmission facilities of another Transmission Owner, or the system of a Market Participant."<sup>95</sup>

### **3. Commission Determination**

82. As discussed below, the underground XLPE cable technology and the supporting 345-kV shunt reactors and substation automation package meet the standard set forth in

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<sup>90</sup> Northeast Utilities Answer at 26 & n. 35.

<sup>91</sup> *Id.* at 26 (citations omitted).

<sup>92</sup> *Id.* at 26.

<sup>93</sup> *Id.* at 28.

<sup>94</sup> *Id.* at 29 (citing *United Illuminating*, 119 FERC ¶ 61,182 at P 71).

<sup>95</sup> ISO-New England granted technical approval under Section I.3.9 of the ISO-New England Open Access Transmission Tariff for the Middletown-to-Norwalk Project on January 20, 2006. See *United Illuminating*, 119 FERC ¶ 61,182 at P 56.



Order No. 679 and in section 1223 of EPAct 2005 in that they mitigate congestion and enhance grid reliability by increasing the capacity, efficiency or reliability of an existing or new transmission facility.<sup>96</sup>

83. We will conditionally grant Northeast Utilities' request for a 50 basis point ROE advanced transmission technologies adder for the costs associated with the underground XLPE cable (including the costs associated with "undergrounding" the cable) and any other facilities electrically necessary to support the underground portion of the Project.<sup>97</sup> We will also order a compliance filing as discussed further below. The resulting ROE will be capped at the high end of the zone of reasonable returns established in Opinion No. 489.

84. Further, any costs incurred prior to August 8, 2005, the date of EPAct 2005, shall not be eligible to receive this incentive treatment. These costs are not eligible for incentive rate treatment under Order No. 679.<sup>98</sup>

85. We reject the Public Parties' assertion that the costs associated with undergrounding should not be eligible for incentives. Section 1223 of EPAct 2005 lists underground cables as one of the 18 advanced technologies that Congress sought to encourage.<sup>99</sup> We find that both the underground portion of the upgrade and its innovative use of the 345-kV XLPE underground cable helped make the Project siting possible and practical; facilitated acceptance of the Project in highly concentrated urban and suburban portions of the route; helped avoid substantial, costly, and time-consuming condemnations; and reduced the time and costs associated with both installation and maintenance of the transmission facilities.

86. We find that the Middletown-to-Norwalk Project also includes installation of related equipment in substations that will use an innovative combination of design elements that are electrically necessary to support the underground portion of the Project. Specifically, the variable shunt reactors, a technology rarely used with 345-kV

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<sup>96</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 290-91.

<sup>97</sup> Such facilities or equipment may include the 345-kV variable shunt reactors and its innovative substation automation package.

<sup>98</sup> See Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 34.

<sup>99</sup> We also note that XLPE technology is not widely used within the United States, let alone at such a high voltage application, or at such a distance. While the XLPE underground cable design is not new, it has only recently been used at 345-kV and higher voltage levels.

transmission lines, will allow system operators to maximize power transfer capabilities at different load levels. Further, we find this substation will use an innovative automation package for monitoring of circuit breakers, transformers and reactors, which will provide early warning of abnormal conditions to minimize unnecessary maintenance outages for the underground portion of the Project.

87. We are not persuaded by the Public Parties' argument that Northeast Utilities has already been granted an advanced technology ROE adder through the previously-granted 100 basis point adder by virtue of the Commission not explicitly stating that the 100 basis point adder excluded consideration for advanced transmission technologies. While the Public Parties cite to the proceedings in Opinion No. 489 in which the Commission alluded to "innovative technologies" in its consideration of the 100 basis point adder, in the end, we declined to consider such a narrow application in that proceeding. In that proceeding, we granted the ROE incentive adder for new transmission investment to projects approved in the 2004 and subsequent ISO New England regional transmission expansion plans. We did not grant an advanced transmission technology adder to be applicable to these advanced technologies pursuant to section 219 in that proceeding. Congress directed the Commission to provide incentive-based rate treatment explicitly for transmission technologies that increase the capacity and efficiency of existing transmission facilities and improve the operation of the facilities.<sup>100</sup> Congress also stated in EAct section 1223 that the Commission should encourage the deployment of technology that increases the capacity, efficiency, or reliability of an existing or new transmission facility.<sup>101</sup> For this reason, in Order No. 679, the Commission indicated that it would provide incentives to technologies that increase the capacity, efficiency or reliability of an existing or new transmission facility.<sup>102</sup> As the Commission held in *United Illuminating*, we examine the Order No. 679 incentive ROE adder for advanced transmission technologies independent of, and incremental to, other incentives that a company may receive.<sup>103</sup>

88. Importantly, we found in Order No. 679 that, "[t]o the extent applicants believe *additional* incentives for their advanced transmission technology applications are needed, they can make a case for advanced technology incentives in their individual proceedings and the Commission will make a case-by-case determination."<sup>104</sup> This language makes

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<sup>100</sup> 16 U.S.C. § 824s(b)(3).

<sup>101</sup> See EAct 2005, Pub. L. No. 109-58, 119 Stat. 953-54.

<sup>102</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 298.

<sup>103</sup> *United Illuminating*, 119 FERC ¶ 61,182 at P 78.

<sup>104</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 299 (emphasis added).

clear that the advanced transmission technology incentives listed in section 1223 are distinguished from—and should be considered incremental to—other incentives, rather than an implied component already represented within existing incentives.

89. We reject Public Parties’ assertion that the Middletown-to-Norwalk Project should not receive the advanced transmission technology adder because there is an obligation to build the project as part of the RTEP in New England, and because, by state statute, a portion of the transmission line must be placed underground. This “obligation to build” does not preclude the Commission from granting incentives. First, Public Parties’ reference to *Westar* is not comparable, since the findings made in that case were based upon the utility’s obligation to comply with a Commission order that made construction of the facilities an express condition of another Commission approval, which is not the case here. Further, Order No. 679-A explicitly states that an obligation to build *does not preclude* eligibility for incentives, although such obligations “may have a bearing on our nexus evaluation of individual applications.”<sup>105</sup> The Public Parties’ narrow interpretation of Order No. 679 would deny the Commission the authority to grant an ROE transmission investment incentive under *any* circumstances – an authority that Congress expressly granted the Commission in FPA section 219.

90. We note that Northeast Utilities has included a listing of project costs,<sup>106</sup> and a summary of costs associated with the advanced transmission technologies. However, we will require Northeast Utilities to submit a compliance filing within 30 days providing sufficient detail, in order to ensure that parties have the ability to thoroughly examine the assignment of project costs for which Northeast Utilities proposes to apply the advanced transmission technology incentive ROE adder. This compliance filing must enable parties to determine which advanced transmission technology facilities are included in the line items for all segments of the Middletown-to-Norwalk Project, the advanced technology utilized, and the dates such costs were incurred.

91. When assessing the total package of incentives, we examine the advanced technology incentive independent of other incentives for risks and challenges associated with the project. We find that it is appropriate for the total package of incentives to include the 50 basis point ROE for the use of advanced transmission technologies, to be capped at the high end of the range of reasonable returns, for those facilities using advanced transmission technologies. Since we are conditioning this incentive on the ultimate ROE remaining within the upper end of the zone of reasonable returns established in Opinion No. 489, we find that the total package of incentives meets the Commission’s nexus test and is just and reasonable.

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<sup>105</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 122.

<sup>106</sup> Northeast Utilities Filing, Ex. NU-5, at 73-84.

92. Lastly, Northeast Utilities has satisfied Order No. 679's technology statement requirement in providing a description of the advanced technologies that were considered, and the explanation as to why the XLPE cable was chosen over other alternatives.

The Commission orders:

(A) Northeast Utilities' request for a waiver of the December 31, 2008 termination date for the 100 basis point return on equity incentive that the Commission granted in Opinion No. 489 is hereby granted, as discussed in the body of this order.

(B) Northeast Utilities' request for a 50 basis point return on equity incentive for advanced transmission technology is conditionally granted, subject to Ordering Paragraph (C), as discussed in the body of this order.

(C) Northeast Utilities is hereby directed to submit a compliance filing concerning its proposed advanced technology incentive, as discussed in the body of this order.

By the Commission. Commissioner Kelly dissenting with a separate statement attached.  
Commissioner Wellinghoff dissenting with a separate statement attached.

( S E A L )

Kimberly D. Bose,  
Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Northeast Utilities Service Company

Docket No. ER08-966-000

(Issued July 17, 2008)

KELLY, Commissioner, *dissenting*:

In this case, Northeast Utilities, the co-owner with United Illuminating Company (UI) of the Middletown-to-Norwalk Project (Project), requests a waiver of the December 31, 2008 cutoff date for a 100 basis point ROE incentive that was established in our March 24, 2008 order in *Bangor Hydro-Elect. Co.*<sup>107</sup> That cutoff date is applicable to this Project as well as other projects in New England. Northeast Utilities also requests an additional 50 basis point adder for the use of advanced transmission technologies pursuant to Order Nos. 679 and 679-A. The majority grants these requests in today's order. I dissent because I believe that Northeast Utilities' requests are premature in light of pending rehearing requests and, thus, should have been rejected.

First, the Commission's March 24, 2008 order establishing a December 31, 2008 cutoff date is currently on rehearing. If rehearing is granted, the waiver requested by Northeast Utilities in this case is unnecessary. Second, in a separate proceeding concerning the Project, several parties have filed for rehearing of our May 2007 order, which approved, among other things, UI's request for a 50 basis point advanced transmission technology adder for the costs associated with the Project's underground XLPE cable<sup>108</sup>. This is the same cable for which the majority here approves a 50 basis point advanced transmission technology adder. I believe that today's order inappropriately prejudices the outcome of this pending rehearing request.

In my view, we should have rejected Northeast Utilities' filing as premature, without prejudice to a future filing upon disposition of the two

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<sup>107</sup> *Bangor Hydro-Elec. Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006) (Com'r Kelly, dissenting), *order on rehearing*, 122 FERC ¶ 61,265 (2008) (Com'r Kelly, dissenting), *reh'g pending*.

<sup>108</sup> *The United Illuminating Co.*, 119 FERC ¶ 61,182 (2007) (Com'rs Kelly and Wellinghoff, dissenting), *reh'g pending*.

pending rehearing requests. I believe this would have been the fair and appropriate course for all parties concerned.<sup>109</sup> For these reasons, I decline to address the merits of Northeast Utilities' application, and respectfully dissent from today's order.

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Suedeem G. Kelly

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<sup>109</sup> Indeed, in all three proceedings, comments and/or protests were filed by virtually the same parties.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Northeast Utilities Service Company

Docket No. ER08-966-000

(Issued July 17, 2008)

WELLINGHOFF, Commissioner, dissenting:

In Opinion No. 489, the Commission approved the ROE Filing Parties' request for a 100 basis point incentive ROE adder for all new transmission investment in New England. One project covered by that action is the Middletown-to-Norwalk Project being constructed as a joint undertaking by Northeast Utilities and The United Illuminating Company (United Illuminating). In today's order, the majority finds that Northeast Utilities has now shown good cause to justify a waiver of the December 31, 2008 in-service cut-off date that the Commission established in its order on rehearing of Opinion No. 489.

I dissented from Opinion No. 489 based on a lack of record evidence demonstrating any nexus between the requested incentive ROE adder and the construction of new transmission facilities.<sup>110</sup> I stated that the ROE Filing Parties, including Northeast Utilities and United Illuminating, had already committed to build the projects approved by ISO New England, and that their own witness conceded that the projects would be built without the adder. In addition, I stated that the ROE Filing Parties are already obligated to use every effort to push transmission projects forward, and that the Presiding Judge found that there was "no evidence" that the adder would induce them "to spend 'political capital' to overcome resistance to building projects."

I dissent from today's order for several reasons. First, I continue to believe that the Commission erred in Opinion No. 489 by granting the requested incentive ROE adder for the Middletown-to-Norwalk Project and other projects. Because I conclude that the Middletown-to-Norwalk Project is not entitled to that 100 basis point incentive ROE adder, I need not reach the question of whether it is appropriate to grant Northeast Utilities a waiver of the December 31, 2008 in-service cut-off date that the Commission established in its order on rehearing of Opinion No. 489.

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<sup>110</sup> See *Bangor Hydro-Electric Co.*, 117 FERC ¶ 61,129 (2006) (dissent in part of Commissioner Wellinghoff). I also wrote separately, concurring in part and dissenting in part, when the Commission issued its order on rehearing of Opinion No. 489. See *Bangor Hydro-Electric Co.*, 122 FERC ¶ 61,265 (2008).

The majority also conditionally grants Northeast Utilities' request for a 50 basis point ROE advanced transmission technologies adder for the costs associated with the underground XLPE cable and any other facilities electrically necessary to support the underground portion of the Middletown-to-Norwalk Project, such as 345 kV variable shunt reactors and a substation automation package. Today's order notes that the Commission previously granted a similar adder to United Illuminating in connection with its investment in the Middletown-to-Norwalk Project.

I dissented from the *United Illuminating* order.<sup>111</sup> I stated at that time that United Illuminating would have made an adequate demonstration that its use of advanced technologies warranted a 50 basis point ROE adder, if not for the fact that the Commission – without adequate support – had already granted United Illuminating the incentive ROE adder discussed above for all new transmission that it may construct. I further stated that in light of the unsupported ROE incentive already approved for United Illuminating, I could not support burdening consumers with additional costs associated with a further incentive ROE adder. A second reason why I dissent from today's order is that these same considerations also apply to Northeast Utilities' request for an incentive ROE adder based on its use of advanced technologies.

Finally, I dissent from today's order because I believe that the majority has misinterpreted Order No. 679 with respect to consideration of advanced technologies. The majority accurately quotes Order No. 679 as stating that, “[t]o the extent applicants believe additional incentives for their advanced transmission technology applications are needed, they can make a case for advanced technology incentives in their individual proceedings and the Commission will make a case-by-case determination.”<sup>112</sup> However, the majority goes on to state, “This language makes clear that the advanced transmission technology incentives listed in [EPA] section 1223 are distinguished from – and should be considered incremental to – other incentives, rather than an implied component already represented within existing incentives.”

I disagree with the majority's implication that the Congress intended to isolate the Commission's efforts to encourage the deployment of advanced technologies pursuant to EPA section 1223. Pursuant to the Congressional directives in EPA section 1241, which created section 219 of the FPA, Order No. 679 established procedures by which the Commission would consider applications for incentives for transmission investment.<sup>113</sup> In Order No. 679, the Commission recognized that in enacting EPA

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<sup>111</sup> See *The United Illuminating Co.*, 119 FERC ¶ 61,182 (2007) (dissent in part of Commissioner Wellinghoff).

<sup>112</sup> Order No. 679 at P 299.

<sup>113</sup> *Id.* P 1.



section 1241, the Congress envisioned a connection to EPAAct section 1223.<sup>114</sup> In addition, the Commission stated that it would consider incentives for advanced technologies on a case-by-case basis “through the same evaluation process as other technologies.”<sup>115</sup>

Moreover, the above-noted language that the majority quotes from Order No. 679 does not require the isolation of the Commission’s efforts to encourage the deployment of advanced technologies pursuant to EPAAct section 1223 from the Commission’s consideration of other incentives for transmission investment. While that language in Order No. 679 does give applicants the option of applying for an incremental incentive based on their use of advanced technologies, it in no way precludes the Commission from considering an applicant’s use of advanced technologies in relation to other requested transmission incentives. Indeed, Order No. 679 explicitly requires all applicants for incentive rate treatment to provide “a technology statement that describes what advanced technologies have been considered and, if those technologies are not to be employed or have not been employed, an explanation of why they were not deployed.”<sup>116</sup> The fact that Order No. 679 requires all applicants for incentive rate treatment to provide a technology statement strongly suggests that the Commission did not intend to consider an applicant’s use of advanced technologies only where an applicant happened to request an incremental incentive based on those technologies. As I have discussed previously, I believe that consideration of advanced technologies and their associated risks and challenges is an appropriate component of the nexus analysis that the Commission conducts in evaluating applications for incentives under Order No. 679.<sup>117</sup>

For these reasons, I respectfully dissent.

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Jon Wellinghoff  
Commissioner

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<sup>114</sup> *Id.* P 290, 302. I have previously discussed my view of the relationship between EPAAct section 1223 and EPAAct section 1241. *See, e.g., Commonwealth Edison Co.*, 122 FERC ¶ 61,037 (2008) (dissent in part of Commissioner Wellinghoff at 1-3).

<sup>115</sup> Order No. 679 at P 288-89.

<sup>116</sup> *Id.* P 302.

<sup>117</sup> *See, e.g., Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 (2008) (dissent in part of Commissioner Wellinghoff at 1-4).