

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Northeast Utilities Service Company

Docket No. ER06-1065-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued July 28, 2006)

1. In this order, we accept Northeast Utilities Service Company's (NU) May 31, 2006 filing (Filing) made on behalf of its affiliated operating companies.¹ The Filing revises Schedule 21-NU of section II of ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (which is the ISO-NE OATT) and the Comprehensive Transmission Service Agreement between NU and the Connecticut Municipal Electric Cooperative, Inc. (CMEEC). NU proposes to allocate costs associated with the Bethel-Norwalk transmission project (B-N Project) that are determined to be Localized Costs under Schedule 12C of the ISO-NE OATT to all load serving entities in Connecticut.² A partial undergrounding of lines, which adds to the cost of the B-N Project, is included in the Localized Costs.

2. The rates adopt a return on equity (ROE) of 13.3 percent, which includes a 50 basis point incentive adder for Regional Transmission Organization (RTO) participation. In addition, the Filing proposes amendments to, and service agreements under, Schedule 21-NU. NU requests an effective date of June 1, 2006, which we will grant.

¹ 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).

² Localized Costs are costs of certain regionally supported 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 Transmission upgrade is built. *See also* note 7.

I. Background

3. The NU Companies are public utility subsidiaries of NU, a registered public utility holding company. They 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.

4. As identified in ISO-NE's Regional System Plan, the B-N Project is one of four major transmission projects in Southwest Connecticut designed to remove operating constraints on generation in this subregion.³ The B-N Project is the first phase of the proposal to extend the New England 345 kV transmission system into the Southwest Connecticut load pocket (the Southwest Connecticut Reliability Project). It involves 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. The B-N Project includes 11.8 miles of underground cables.⁴ 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.⁵

5. According to the Filing, the entire B-N Project is scheduled to be completed and placed in service by the fourth quarter of 2006. Some facilities associated with the B-N Project were placed in service on December 27, 2005 and additional facilities were placed in service in April 2006. NU states that the total cost of the B-N Project is estimated to be \$357 million, including ancillary work.

6. NU explains that consistent with Commission policy, costs associated with new PTF facilities will be placed into regional rates unless ISO-NE determines that they should be treated as Localized Costs.⁶ NU further explains that to have the costs treated as Pool-Supported PTF, the transmission owner must submit a transmission cost allocation application to ISO-NE and the NEPOOL Reliability Committee for stakeholder

³ For a full description of the Southwest Connecticut project, *see Northeast Utilities Service Co.*, 105 FERC ¶ 61,089 (2003).

⁴ Filing at 6.

⁵ *Id.*

⁶ *Id.* (citing *New England Power Pool*, 105 FERC ¶ 61,030 (2003), *order denying reh'g and granting clarification*, 109 FERC ¶ 61,252 (2004), *order on clarification*, 110 FERC ¶ 61,003 (2005)).

review. The application includes a technical analysis of the project, an assessment of the effect of the project on the bulk power system, alternative feasible transmission designs considered and a discussion of why the project was selected over other feasible and practical transmission alternatives from an operational, timing of implementation, cost, and reliability perspective. The NEPOOL Reliability Committee reviews the application and provides advice to ISO-NE. ISO-NE independently reviews the application, considers the input of the NEPOOL Reliability Committee, and decides whether any of the costs associated with the upgrade should be treated as Localized Costs.⁷

7. CL&P submitted a transmission cost allocation application to ISO-NE and the NEPOOL Reliability Committee.⁸ NU states that the application provided, along with other detailed information, specifics regarding the components of the B-N Project, the need for the project, and the alternatives considered, as well as information concerning Localized Costs.⁹ NU states that 61 percent of the NEPOOL Reliability Committee members voted to recommend that \$279.2 million of the B-N Project's costs be regionalized and the remaining \$78 million be localized. Part of the B-N Project is being constructed underground, and those costs would be treated as Localized Costs.

II. The Filing

8. NU seeks to recover a projected \$78 million of Localized Costs under ISO-NE's OATT from all load serving entities in Connecticut, but not from its customers in other states. 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 Company (United Illuminating); and an amendment to its Comprehensive Transmission Service Agreement (CMEEC Agreement) with CMEEC. NU proposes to assign Localized Costs among these three on a load ratio share basis. It argues that the proposed allocation of Localized Costs to all Connecticut load serving

⁷ Filing at 6-7, where NU explains that in deciding whether Localized Costs exist, ISO-NE's Planning Procedure 4 requires it to take into account the following factors: (i) Good Utility Practices; (ii) current engineering design and construction practices in the area in which the project is being built; (iii) feasible and practical transmission alternatives; (iv) relative costs, operation, efficiency, reliability and timing of the implementation of the project.

⁸ *Id.* at 7.

⁹ *Id.*

entities (as opposed to a subset of such entities) is consistent with the desire of Connecticut regulatory authorities not to balkanize Connecticut retail rates.¹⁰

9. NU proposes to use the same 13.3 percent return on equity (ROE) for its Category B rates as is proposed for use for PTF facilities in New England in the pending Docket No. ER04-157. NU has reflected the fact that this ROE is subject to the outcome of Docket No. ER04-157 on First Revised Sheet No. 3286 of Schedule 21-NU. NU states that use of the same ROE is just and reasonable because, among other things, all of the facilities in the B-N Project are PTF and ISO-NE will have full operational control over those facilities to the same extent as all other PTF in New England.¹¹

10. NU requests that its Localized Cost allocation proposal be made effective as of June 1, 2006 to coincide with the date on which changes in regional rates under the ISO-NE OATT take effect. NU requests that the Commission waive the sixty-day notice requirement to permit the requested effective date. NU states that it delayed filing in the hope that ISO-NE would make a final determination of Localized Costs. It also states that beginning on June 1, 2006, NU's projected Regional Network Service revenue requirements will exclude an amount of Localized Costs, consistent with the figure suggested by 61 percent of the NEPOOL Reliability Committee. Therefore, NU states, NU must begin charging its customers Category B costs in order to have a localized rate recovery mechanism. NU also states that in the absence of this filing, all of NU's customers taking service under Schedule 21-NU and the CMEEC Agreement, including customers in New Hampshire and Massachusetts, would begin to pay for the B-N Localized Costs, beginning on June 1, 2006.

¹⁰ *Id.* at 11 and Ex. NU-5, Soderman Test. at 4-5.

¹¹ Under the Schedule 21-NU rate design, Local Network Service costs are divided into two categories: (1) NU's total transmission revenue requirement not recovered through other sources (referred to as Category A costs), which is recovered from all customers receiving Local Network Services; and (2) Category B costs, which include the revenue requirements for PTF investment that the ISO-NE determines should be treated as Localized Costs (PTF costs determined by ISO-NE to be incurred as a result of local requirement and are therefore, recoverable on a local basis); these are excluded from the transmission revenue requirement associated with Regional Network Service. In *Northeast Utilities Service Co.*, 105 FERC ¶ 61,089 (2003), the Commission required NU to file a Service Agreement with the Commission in order to recover Category B costs under Schedule 21-NU.

III. Notice of Filing and Responsive Pleadings

11. Notice of NU's filing was published in the *Federal Register*, 71 Fed. Reg. 34,911 (2006), with interventions and protests due on or before June 21, 2006.

12. Timely motions to intervene were filed by: (1) National Grid USA, on behalf of itself and its New England operating subsidiaries;¹² (2) NSTAR Electric & Gas Corporation, on behalf of its affiliates;¹³ (3) Unitil Energy Systems, Inc.; and (4) ISO-NE. On June 21, 2006, as amended on June 22, 2006, United Illuminating filed a timely motion to intervene and protest. On June 30, 2006, CMEEC filed an untimely motion to intervene. NU filed an answer to the protest of United Illuminating on July 6, 2006. On July 7, 2006, the Connecticut Department of Public Utility Control (CT DPUC) filed an untimely motion to intervene with comments. On July 20, 2006, United Illuminating filed a motion for leave to answer and answer.

IV. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will also grant the untimely motions to intervene filed by CMEEC and CT DPUC, given the early stage of this proceeding, their interests, and the absence of any undue burden or delay.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest and answers to answers unless otherwise ordered by the decisional authority. We will accept NU's answer because it has provided information that assisted us in our decision-making process. We are not persuaded to allow United Illuminating's answer to NU's answer and will, therefore, reject it.

¹² National Grid USA's New England subsidiaries are: New England Power Company, Massachusetts Electric Company, The Narragansett Electric Company, Granite State Electric Company and Nantucket Electric Company.

¹³ NSTAR Electric & Gas Corporation's affiliates are: Boston Edison Company, Cambridge Electric Light Company, and Commonwealth Electric Company.

V. Discussion

A. How Localized Costs Should Be Allocated

1. Arguments

15. United Illuminating explains that NU filed an application with the Connecticut Siting Council (Siting Council) for a Certificate of Environmental Compatibility and Public Need authorizing the construction, maintenance and operation of the B-N Project. According to United Illuminating, NU's original application proposed to have the lines constructed overhead. Five Connecticut towns – Norwalk, Wilton, Redding, Weston, and Bethel¹⁴ – asserted that if a new 345 kV line were needed, it should be constructed underground.¹⁵

16. According to United Illuminating, “NU and four of the towns. . . filed a compromise proposal requiring the construction of both overhead and underground segments.”¹⁶ United Illuminating argues that the partial undergrounding is more costly and less reliable than an all overhead project.¹⁷ United Illuminating states that the Siting Council characterized this hybrid “porpoising” plan as “unorthodox.”¹⁸ United Illuminating states that it does not serve any load in any of the towns that objected to NU's original proposal, nor was it party to any of the discussions among NU and the four towns through which the compromise proposal was developed.¹⁹

17. United Illuminating states that the Siting Council approved a compromise proposal requiring that additional portions of the B-N Project be constructed underground.²⁰

¹⁴ United Illuminating Protest at 5 (citing *Northeast Utilities Service Co.*, Findings of Fact ¶ 9).

¹⁵ *Id.*

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 10.

¹⁸ *Id.* (citing *Northeast Utilities Service Co.*, Revised Opinion at 6, issued Sept. 9, 2003, CSC Docket No. 217).

¹⁹ Hrabchak Affidavit ¶¶ 6 and 8.

²⁰ United Illuminating Protest at 6 (citing *Northeast Utilities Service Co.*, Decision and Order, issued July 14, 2003, CSC Docket No. 217).

ISO-NE issued a Draft Determination finding that \$119.9 million of the costs of the B-N Project are Localized Costs because these costs were determined to be Non-PTF costs, as defined in Schedule 12C of the ISO-NE OATT and ISO-NE Planning Procedure No. 4, and they are therefore recoverable on a localized basis.²¹

18. United Illuminating argues that the allocation of any Localized Costs to it is unjust, unreasonable, and unduly discriminatory or preferential and that the Commission should not allow NU to allocate any portion of those costs to United Illuminating's load that is not directly connected to the NU transmission system.²² United Illuminating argues that if the Commission does not reject the Filing outright, the Commission should suspend it for the maximum period allowed under section 205 of the Federal Power Act (FPA)²³ and set this matter for a full evidentiary hearing.²⁴

19. United Illuminating argues that allocation of any of the Localized Costs of the B-N Project to United Illuminating is contrary to the Commission's well-established principle of cost causation, which says that costs should be allocated to those who cause or benefit from them.²⁵ United Illuminating recognizes that the reliability enhancements resulting from the B-N Project will "benefit all customers in Connecticut, as well as New England." However, it contends that United Illuminating and its customers are bearing their fair share of the costs through their payment of the Regional Network Service rate.²⁶ It further argues that, as determined by ISO-NE, the B-N Project's Localized Costs are not necessary to achieve these reliability benefits and will be incurred to address the aesthetic concerns of the four towns in NU's service territory.²⁷ United Illuminating

²¹ See generally United Illuminating Protest, Ex. A.

²² United Illuminating Protest at 15.

²³ 16 U.S.C. § 824e(e) (2000).

²⁴ United Illuminating Protest at 18-19 (citing 18 C.F.R. §§ 385.501 to 510 (2006)).

²⁵ *Id.* at 9 (citing *New England Power Pool, et al.*, 100 FERC ¶ 61,344 (2002), *order on reh'g*, 103 FERC ¶ 61,304, *order on reh'g*, 105 FERC ¶ 61,211 (2003); *ISO New England, Inc., et al.*, 95 FERC ¶ 61,384 (2001); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004) (citing *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992))).

²⁶ United Illuminating Protest at 10 (citing Transmittal Letter at 10 and Ex. NU-5 at 4:2-4).

²⁷ United Illuminating Protest, Ex. A at 30.

reasons that therefore, “NU’s statement that ‘all customers in Connecticut will benefit[] from the enhancements created by the Localized Costs themselves’” is wrong.²⁸

According to United Illuminating, ISO-NE further found that the “Project’s use of more expensive underground cables was premised on the view that including these facilities would placate parties’ desire to further delay the siting process.”²⁹ Therefore, United Illuminating concludes that it is fundamentally unfair, unjust and unreasonable for United Illuminating or its customers to shoulder any portion of the Localized Costs and that NU’s allocation is unduly preferential toward CL&P’s customers.³⁰

20. United Illuminating also protests NU’s proposed allocation of any Localized Costs to it because such an allocation is inconsistent with Schedule 21-NU. It argues that NU proposes an allocation methodology quite different from the one that the Commission understood NU to be proposing when the Localized Cost provisions of the NU Tariff were originally approved.³¹ It explains that consistent with the ISO-NE OATT’s definition of Localized Costs, ISO-NE compared the plan for the B-N Project with an all-overhead plan that ISO-NE deemed “practical and feasible.”³² United Illuminating explains that Localized Costs are the cost difference between the two plans.³³ Quoting NU’s 2003 Tariff filing, United Illuminating says that NU told the Commission that it was proposing to collect Localized Costs from “all load connected to the transmission system of the NU Company located in the state or area requiring such expenditures.”³⁴ Therefore, United Illuminating argues that NU is not authorized under Schedule 21-NU to spread the Localized Costs of the B-N Project across all load in Connecticut.³⁵ It further points out that the Commission explained that categorizing the expenditures like this “would constitute a change from NU’s current practice of charging the same Local

²⁸ United Illuminating Protest at 10 (citing Transmittal Letter at 10).

²⁹ *Id.* at 9 (citing Ex. A at 30).

³⁰ *Id.* at 10-12.

³¹ *Id.* at 13-14 (citing *Northeast Utilities Service Co.*, 105 FERC ¶ 61,089 (2003) (October 22 Order)).

³² United Illuminating Protest, Ex. A at 29.

³³ *See Id.*

³⁴ *Id.* at 14 and n.58 (citing *Northeast Utilities Service Co.*, Section 205 Filing, Transmittal Letter at 9, filed Aug. 26, 2003, Docket No. ER03-1247-000).

³⁵ *Id.* at 12-15.

Network Service rate to all of its customers.”³⁶ United Illuminating states that, therefore, recovery of a portion of the Localized Costs from United Illuminating and all of its customers on a state-wide load ratio share basis would be inconsistent with the NU Tariff as accepted by the Commission.

21. NU responds that it is likely that the siting approval process would have been delayed for years if it had continued to seek approval of an all-overhead design and therefore that all Connecticut customers, including United Illuminating’s, benefit from the resolution of the siting issue by the settlement. NU asserts that the allocation of some of the Localized Costs to United Illuminating is just and reasonable and consistent with the principle of cost causation. United Illuminating’s proposal that Localized Costs be paid entirely by the Connecticut towns that requested the undergrounding ignores the extensive state-wide review process, in which the Siting Council acted in the interests of all residents of Connecticut. NU says that United Illuminating was an active participant in the ISO-NE coordinated regional transmission planning process, but chose not to submit comments.

22. In response to United Illuminating’s arguments involving cost causation, NU says that United Illuminating serves a significant amount of load in Southwest Connecticut and that United Illuminating and its customers will benefit from the timely construction of the B-N Project.³⁷ NU explains that United Illuminating’s customers live in the same county as the B-N Project or in the immediately adjoining county.

23. NU also responds that the allocation proposal is consistent with Schedule 21-NU, which provides that NU must make a filing proposing an allocation methodology for recovery of Localized Costs before charging those costs.³⁸ NU emphasizes that United Illuminating admits that ISO-NE will provide transmission service to United Illuminating using the B-N Project and that United Illuminating will pay Regional Network Service charges for the non-Localized costs of the B-N Project. It argues that Schedule 21-NU specifically applies to a utility, like United Illuminating, that it is not taking Local

³⁶ *Id.* at 14 n.59 (citing *Northeast Utilities Service Co.*, 105 FERC ¶ 61,089 at P 3 (2003)).

³⁷ In addition, United Illuminating’s phase of the two-part Southwest Connecticut Reliability Project – the \$1 billion Middletown Norwalk 345 kV loop into Southwest Connecticut – depends on the completion of the B-N Project.

³⁸ *See* NU Answer at 14-15. NU also argues that neither section 34.3 of Schedule 21-NU nor the Commission’s October 22 Order limits NU’s ability to recovery Localized Costs to only load directly connected to the NU transmission system.

Network Service from NU. NU also indicates that Connecticut retail tariffs do not provide for billings to subsets of Connecticut loads. Traditionally, NU argues, the load pays for wholesale transmission service delivered to New England. Thus, if United Illuminating's two generating units serve Connecticut load, the load should have to help pay the B-N Project's Localized Costs. Further, allocating all of the B-N Project's Localized Costs to the five towns would result in a rate shock to consumers in those towns, who would see their transmission rates increase by \$12.9 million per year.

24. CT DPUC states that it is fair and just and reasonable that any Localized Costs of the B-N Project be allocated to all consumers in Connecticut. It states that is not agreeing in advance to accept all of the ISO-NE's findings regarding what portions of the B-N Project are Localized Costs. Rather, the CT DPUC's position is that whatever costs are finally determined to be Localized Costs should be shared by all load in Connecticut.

2. Commission Determination

25. The Commission finds that NU's proposal is just, reasonable, not unduly discriminatory or preferential, and not otherwise unlawful. It is also consistent with the ISO-NE OATT. Therefore, the Commission grants NU's request for the allocation of Localized Costs of the B-N Project as determined under ISO-NE's OATT³⁹ to all load serving entities in Connecticut. We find, as explained below, that the 345 kV and 115 kV transmission lines benefit the entire state and that allocation of the Localized Costs to all load in Connecticut is just and reasonable, for the following reasons.

26. We will not concentrate those costs on the four towns that settled in the state siting commission's proceeding, but will spread those costs more broadly to the entire state. Allocation of Localized Costs across the State will avoid the rate shock that would occur if the \$12.9 million initial annual revenue requirement were only allocated to the four towns. In these circumstances, we agree with the recommendation of the CT DPUC of a state-wide allocation instead of a narrower allocation. The CT DPUC is the retail utility

³⁹ Attachment A to PP-4 provides the following guidance regarding underground transmission lines:

Included in its non-exclusive list of examples illustrating the types of Projects containing Localized costs is an example where "[t]he Project includes underground transmission cable, which is selected (a) at the direction of a local or state siting board, or (b) or to address other local concerns, and the cost of overhead transmission lines is less expensive, taking into account all relevant costs. (ISO-NE's Draft Determination at 5, *see* Exhibit A to United Illuminating's Protest.)

regulatory agency that is charged with representing the interests of Connecticut's electricity consumers, and the interests of the State of Connecticut.⁴⁰ Further, the Siting Council, after an extensive review process that examined numerous factors (*i.e.*, effect on existing land use, the environment, and visibility) issued a Certificate of Environmental Compatibility and Public Need authorizing the B-N Project. This authorization required some portions of the B-N Project to be constructed underground, thereby necessitating the incurrence of additional construction costs by NU.

27. Finally, we reject United Illuminating's contention that NU's proposal to allocate some Localized Costs to United Illuminating is inconsistent with what we contemplated in the October 22 Order. In the October 22 Order, the Commission accepted NU's proposal to recover Localized Costs from all load connected to transmission system of the NU company located in the state or area requiring such expenditures. In that Order we recognized that "[the Commission] previously allowed the costs of a defined set of upgrades to be spread, in certain circumstances, among customers throughout New England. However, this assignment of costs may not extend to all project costs."⁴¹ The Commission contemplated that Localized Costs would not receive regional cost support. NU's filing here is consistent with the Commission's understanding in the October 22 Order that NU's proposal would provide for the recovery of Localized Costs through local or state-wide rates.⁴² Additionally, NU proposed, and the Commission accepted, a tariff provision requiring the NU Companies to make a filing before recovering any Localized Costs to include service agreements for all affected customers. The instant filing complies with this requirement as well. Therefore, contrary to United Illuminating's arguments, the Commission finds that the proposed recovery of Localized Costs from United Illuminating and all of its Connecticut customers on a state-wide load ratio share basis is consistent with the October 22 Order and NU's tariff.

⁴⁰ CT DPUC Comments at p. 3.

⁴¹ *Northeast Utilities Service Co.*, 105 FERC ¶ 61,089 at P 25 (2003).

⁴² Section 34.2 of Schedule 21-NU provides that "Any Eligible Customer taking Regional Network Service under the ISO Tariff in a state or area in which Localized Facilities are located, and which is not subject to the Monthly Demand Charges set forth in Section 34.3 of this Local Service Schedule, shall pay 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."

B. Notice to United Illuminating and the Filing of the Unexecuted Agreement

1. Arguments

28. United Illuminating maintains it had no prior notice of the Filing. It also says that NU was not entitled to file an unexecuted service agreement. United Illuminating states that NU sent a copy of the proposed service agreement to United Illuminating one day before filing it with the Commission.

29. United Illuminating also argues that other than having the opportunity to provide comments on the ISO-NE Draft Determination – a step in the process not contemplated by either Schedule 12C or ISO-NE Planning Procedure No. 4⁴³ – United Illuminating will not be permitted to dispute the final determination or participate in any negotiations between ISO-NE and CL&P.

30. In response to United Illuminating's claim that it had no notice of the proposal, NU states that it provided such notice in different forms prior to the filing.⁴⁴ It states that not only did it provide the proposed service agreement to United Illuminating prior the Filing, it provided written notice to all NEPOOL participants of its intention to modify Schedule NU-21 to implement the cost allocation a month prior to the Filing. NU states that on May 16, 2006 it sent a letter in which it notified United Illuminating that it planned to charge Localized Cost and on that same day, a NU representative made contact with United Illuminating. Also, the B-N cost allocation proposal was discussed during a May 16, 2006 meeting with the NEPOOL Transmission Committee, of which United Illuminating is a member.

31. NU states that filing the proposed unexecuted agreement is consistent with Schedule 21-NU, Commission precedent, and NU's rights under section 205 of the FPA.⁴⁵ NU quotes Section 34.2 of Schedule 21-NU, which provides: "The NU Companies shall file a Service Agreement under this Local Service Schedule, in the form set forth in Attachment NU-E, to recover [Localized Costs] from such customer. The NU

⁴³ ISO-NE, Planning Procedure No. 4 (Feb. 1, 2005), *available at* http://www.iso-ne.com/rules_proceeds/isone_plan/PP4-1_R1.doc. The purpose of this policy is to clarify how the cost allocation provisions of Schedules 11 and 12 of the ISO-NE Tariff will be administered when there is more than one need for a transmission upgrade. In its protest, United Illuminating says that ISO-NE must make its determination in accordance with the standards set forth in the ISO-NE OATT and in ISO-NE Planning Procedure No. 4.

⁴⁴ NU Answer at 17 n.22.

⁴⁵ *Id.* at 13-17.

Companies shall not charge any such customer any such costs until such Service Agreement has been accepted by the Commission.”⁴⁶ NU further argues that in accepting NU’s transmission rate formula, the Commission noted NU’s commitment to file service agreements with the Commission before recovering Category B costs under Schedule 21-NU.⁴⁷ NU states that there is no provision requiring NU to obtain the customer’s consent before filing the service agreement with the Commission.⁴⁸

32. Thus, NU requests that the Commission deny United Illuminating’s request that United Illuminating have the right to terminate the service agreement because this is an attempt on United Illuminating’s part to avoid cost responsibility for the Project. NU also states that there would be an improper cost shift to customers that it believes have no responsibility for the costs if the effective date of June 1 is not allowed.

2. Commission Determination

33. We will not reject the agreement because it was not executed. We will accept for filing the unsigned agreement, to be effective June 1, 2006, as NU requested. NU has acted in accordance with the provisions of Schedule 21-NU, which permits NU to file such an agreement to recover Category B charges. Schedule 21-NU provides for recovery of Localized Costs from customers receiving service in the state or area in which the Localized facilities are located, subject to the filing of the necessary service agreements. We find that NU has properly implemented Schedule 21-NU, as accepted by the Commission in its October 22 Order.

C. Waiver of 60-Day Notice

34. The Commission has the discretion to grant waiver of the sixty day prior notice requirement for good cause shown.⁴⁹ Waiver is appropriate where a strong showing of good cause has been provided.⁵⁰ NU states that it delayed filing because it hoped that ISO-NE would make a final determination as to Localized Costs. If it were on this basis alone that NU requested waiver, we would deny it; utilities are not entitled to delay

⁴⁶ *Id.* at 15-16.

⁴⁷ *Id.* at 16 & n.21 (citing Oct. 22 Order at PP 3, 25)

⁴⁸ *Id.* at 16.

⁴⁹ *See* 16 U.S.C. § 824(d) (2000); 18 C.F.R. §§ 35.3(a) and 35.11 (2005).

⁵⁰ *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,338, *reh’g denied*, 61 FERC ¶ 61,089 (1992).

filings in the hope that matters will become more settled before they file. However, NU has shown that that an effective date of June 1, 2006 coincides with the Regional Network Service rate change of the same date. NU has also shown that unless we allow that effective date, all of NU's customers taking service under Schedule 21-NU and under the CMEEC Agreement, including customers in New Hampshire and Massachusetts, would begin to pay for the B-N Project Localized Costs beginning on June 1, 2006. Not allowing the June 1 effective date would violate NU's Category B requirement that Localized Costs be collected locally or paid by specified load within the state in which Localized Costs are incurred. It is for these reasons that we find that good cause exists to grant NU's request for waiver and direct that the Filing be made effective as of June 1, 2006.

The Commission orders:

(A) NU's Filing is hereby accepted for filing effective June 1, 2006, as discussed in the body of the order.

(B) Waiver of the 60-day notice requirement is granted to permit a June 1, 2006, effective date, as discussed above.

(C) United Illuminating's request for rejection of the filing and requests for suspension and hearing are hereby denied, for the reasons discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.