

126 FERC ¶ 61,052  
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. ER08-966-001

ORDER DENYING REHEARING

(Issued January 16, 2009)

1. On August 18, 2008, the Connecticut Department of Public Utility Control, the Maine Public Utility Commission, the Massachusetts Department of Public Utilities, the Vermont Department of Public Service, the New England Conference of Public Utility Commissioners, Inc., the Connecticut Office of Consumer Counsel, and Richard Blumenthal, Attorney General for the State of Connecticut (collectively, Public Parties) filed a request for rehearing of our July 17 order.<sup>1</sup> In that order, the Commission granted Northeast Utilities Service Company's (Northeast Utilities) request for a waiver of the December 31, 2008 deadline for receiving transmission incentives under Opinion No. 489<sup>2</sup> and an additional 50 basis point return on equity incentive<sup>3</sup> for using advanced transmission technologies under Order Nos. 679 and 679-A.<sup>4</sup> We will deny the request for rehearing as set forth herein.

**I. Background**

2. In Opinion No. 489, the Commission approved a 100 basis point return on equity incentive for all transmission projects that were approved as part of the ISO New

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<sup>1</sup> *Northeast Utils. Serv. Co.*, 124 FERC ¶ 61,044 (2008) (July 17 Order).

<sup>2</sup> *Bangor Hydro-Elec. Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006), *order on rehearing*, 122 FERC ¶ 61,265 (2008) (March 24 Order on Rehearing), *order granting clarification*, 124 FERC ¶ 61,136 (2008) (August 4 Clarification Order).

<sup>3</sup> The resulting ROE was capped at the high end of the zone of reasonable returns established in Opinion No. 489.

<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).

England, Inc.'s regional transmission expansion plan (RTEP), including those specifically approved in the 2004 RTEP.<sup>5</sup> We emphasized that the 100 basis point incentive would help project developers receive more favorable financing and would help bring these projects into service in a timely manner.<sup>6</sup> We also believed that the RTEP-approved projects would greatly improve reliability in the region and benefit ratepayers by reducing congestion-related costs on the system.<sup>7</sup>

3. The Commission did not modify these findings in the March 24 Order on Rehearing. We specifically reaffirmed our approval of the 100 basis point incentive for RTEP-approved projects.<sup>8</sup> However, we found that the standard for providing incentives under Opinion No. 489, which only applied to the New England region, was different than the standard under Order No. 679, which applied to the rest of the United States. For the sake of uniformity and consistency, the Commission determined that “the New England region should, over time, be held to the same standards for incentive rates as each other region”—that is, the criteria under Order No. 679.<sup>9</sup> Thus, we held that the program for providing incentives under Opinion No. 489 should be sunset and should only apply to “existing RTEP-approved projects if completed and placed into service by December 31, 2008, i.e., the cut-off date applicable to ISO New England’s annual formula rate filing.”<sup>10</sup> Future projects would need to meet the standard under Order No. 679 to qualify for incentives.<sup>11</sup>

4. On May 16, 2008, Northeast Utilities filed a limited request to waive the December 31, 2008 deadline to complete its Middletown-to-Norwalk project (Project). The Project, which was planned and approved as part of the 2004 RTEP, was the centerpiece of a multi-billion dollar transmission expansion project in southwest Connecticut, one of the most congested transmission regions in the United States. Northeast Utilities asserted that while it had diligently pursued the Project and expected to complete construction before the deadline, a small portion of the Project (approximately 24 miles of underground cable) would not be fully tested or placed into

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<sup>5</sup> Opinion No. 489, 117 FERC ¶ 61,129 at P 103-113.

<sup>6</sup> *Id.* P 109-110.

<sup>7</sup> *Id.* P 111.

<sup>8</sup> March 24 Order on Rehearing, 122 FERC ¶ 61,265 at P 51.

<sup>9</sup> *Id.* P 54.

<sup>10</sup> *Id.* P 55.

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

service by December 31, 2008. Accordingly, Northeast Utilities asked the Commission to either waive the deadline under Opinion No. 489 or, in the alternative, approve a 100 basis point incentive under Order No. 679. In addition, Northeast Utilities requested that the Commission approve a 50 basis point return on equity incentive under Order No. 679 for the costs associated with its use of new transmission technology in the Project. This new technology included 24 miles of underground cross-linked polyethylene (XLPE) cable, fiber optic cable, and supporting facilities for this 24-mile stretch of cable.

5. On July 17, 2008, the Commission approved Northeast Utilities' request for a waiver of the December 31, 2008 deadline under Opinion No. 489.<sup>12</sup> We found that Northeast Utilities showed good cause for waiving the deadline and that the benefits associated with the Project (i.e., the basis for granting the 100 basis point incentive in the first instance) would not be diminished by a short delay to complete testing of the Project.<sup>13</sup> In addition, we noted that the Project would also have been eligible for incentives under Order No. 679.<sup>14</sup> Finally, we found that Northeast Utilities was entitled to a 50 basis point return on equity incentive, to be capped by the high end of Northeast Utilities' range of reasonable returns, for the Project's use of advance transmission technologies under Order No. 679.<sup>15</sup>

## **II. Request for Rehearing**

6. The Public Parties request rehearing of the July 17 Order because the order: (1) waived the December 31, 2008 deadline for completing projects under the March 24 Order on Rehearing; (2) found that the Project was eligible for incentives under Order No. 679; and (3) granted Northeast Utilities' request for a 50 basis point return on equity incentive for its use of new transmission technology.

7. With regard to the waiver of the December 31 deadline, the Public Parties argue that the Commission acted arbitrarily, capriciously, and exceeded its authority under the Federal Power Act by permanently and substantially modifying the March 24 Order on Rehearing.<sup>16</sup> The Public Parties claim that the waiver is nothing more than a grant of an untimely request for rehearing of that order and, thus, the Commission erred by applying

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<sup>12</sup> July 17 Order, 124 FERC ¶ 61,044 at P 58-65.

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

<sup>14</sup> *Id.* P 66-72.

<sup>15</sup> *Id.* P 82-98.

<sup>16</sup> Public Parties at 13-14.

a good cause standard to modify the deadline.<sup>17</sup> They claim that section 313(a) of the Federal Power Act only allows the Commission to modify an order upon consideration of a rehearing request filed by an aggrieved party.<sup>18</sup> The Public Parties also argue that the Commission eschewed its traditional practice of denying untimely requests for rehearing without explanation.<sup>19</sup>

8. Additionally, the Public Parties challenge whether good cause existed to waive the December 31 deadline. The Public Parties assert that the core purpose of the 100 basis point incentive was to bring new transmission projects “on line in a timely fashion.”<sup>20</sup> They claim that Northeast Utilities is being unjustly rewarded notwithstanding its failure to complete the Project in a timely manner. The Public Parties also argue that the Commission erred by stating that the benefits from the Project would not be diminished by a waiver of the deadline. They claim that the delay associated with the Project has greatly diminished its total benefits to the region.<sup>21</sup> The Public Parties disagree with the Commission’s finding that Northeast Utilities has relied upon the incentive in pursuing the Project and, to deny it now, would create regulatory uncertainty and may impact the development of future projects.<sup>22</sup> Finally, the Public Parties assert that the Commission erred by not establishing a new cut-off date for the Project.<sup>23</sup>

9. The Public Parties also request rehearing of our findings related to whether the Project would have qualified for a 100 basis point adder under Order No. 679. They assert that the Commission lacked the necessary factual predicate to make these findings and failed to respond meaningfully to their arguments.<sup>24</sup> In this context, the Public Parties assert that the Commission has acted in an arbitrary and capricious manner.

10. Finally, the Public Parties challenge the Commission’s decision to award a 50 basis point return on equity incentive for Northeast Utilities’ use of advanced

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<sup>17</sup> *Id.* at 14.

<sup>18</sup> *Id.* at 14 (citing 16 U.S.C. § 825l(a) (2000 & Supp. V 2005)).

<sup>19</sup> *Id.* at 15.

<sup>20</sup> *Id.* at 17 (citing Opinion No. 489, 117 FERC ¶ 61,129 at P 109).

<sup>21</sup> *Id.* at 19 (internal citations omitted).

<sup>22</sup> *Id.* at 20-21.

<sup>23</sup> *Id.* at 22.

<sup>24</sup> *Id.* at 23-25.

transmission technologies under Order No. 679. The Public Parties raise three arguments with regard to this adder. First, they claim that the Commission erred by treating the advanced technology incentive “independent of, and incremental to, other incentives that a company may receive.”<sup>25</sup> They assert that had both the 100 basis point and 50 basis point incentive been granted under Order No. 679, the two incentives would have relied on the same facts and, thus, would have created a double payment for the same risks and challenges. Second, the Public Parties assert that the Commission erred by granting an advanced technology incentive for a project that was nearly complete. They claim that the incentive was intended to “encourage deployment” of new technologies—not to provide an after-the-fact windfall. They also argue that incentives must be granted on a prospective basis because “[a] ‘reward’ for past behavior does not induce future efficiency and benefit consumers.”<sup>26</sup> Third, the Public Parties assert that Northeast Utilities did not demonstrate how these new technologies will mitigate congestion or enhance grid reliability by increasing the capacity, efficiency or reliability of an existing or new transmission facility.”<sup>27</sup>

### **III. Discussion**

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

11. Northeast Utilities filed a motion for leave to answer and answer to the Public Parties’ request for rehearing. Rule 713(d)(1) of the Commission’s Rules of Practice and Procedure<sup>28</sup> generally prohibits an answer to a request for rehearing. Accordingly, we deny Northeast Utilities’ motion to answer.

#### **B. Rehearing**

##### **1. Waiver of Deadline**

12. It is well settled that the Commission has the authority to waive its rules or regulations upon a showing of good cause.<sup>29</sup> Indeed, the Commission has frequently

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<sup>25</sup> *Id.* at 27 (citing July 17 Order, 124 FERC ¶ 61,044 at P87-91).

<sup>26</sup> *Id.* at 28 (citations omitted).

<sup>27</sup> *Id.* at 30-31.

<sup>28</sup> 18 C.F.R. § 385.713(d)(1) (2008).

<sup>29</sup> *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.”) (citing *PALA Employees Profit Sharing Plan and Trust Agreement v. United States*, 234 F.3d 873, 879 n.34 (5th Cir. 2000); *Dickson v.*

granted extensions of time or waivers of deadlines to provide parties with additional time to comply with requirements in our orders or filing deadlines. For example, we granted numerous waivers or extensions of time to allow parties to comply with various requirements under Order No. 890.<sup>30</sup> The waiver granted by the July 17 Order is no different. Northeast Utilities argued, and we found, that good cause existed to waive the December 31, 2008 deadline so that Northeast Utilities could complete testing on the Project and continue to qualify for a 100 basis point incentive under Opinion No. 489. Such a decision was well within our authority.

13. We do not believe that Northeast Utilities' filing was an untimely request for rehearing. Clearly, Northeast Utilities could have filed a request for rehearing or clarification of the March 24 Order on Rehearing. The Project's co-sponsor, United Illuminating Company, selected this alternative approach and we granted it relief similar to that granted in this case.<sup>31</sup> These two procedural approaches, however, are not mutually exclusive and do not limit our authority to grant relief in both cases. Contrary to the Public Parties' assertion, the question in this case was not whether Northeast Utilities *could have* filed a request for rehearing or clarification. The question was whether Northeast Utilities demonstrated good cause for waiving the deadline under the March 24 Order on Rehearing. Finding in the affirmative, we granted the requested relief. This decision does not transform Northeast Utilities' request for a waiver of our order into a request for rehearing.

14. Nor do we agree with the Public Parties' claim that we permanently and substantially modified the March 24 Order on Rehearing. The general holding of that order—i.e., to sunset the incentives program under Opinion No. 489 and provide future incentives under Order No. 679—remains unchanged and unaffected by the July 17 Order. The order merely granted a limited waiver of the December 31, 2008 deadline, as set forth in the March 24 Order on Rehearing, so that a particular company (Northeast Utilities) and a specific project could receive the incentives granted in Opinion No. 489. In this context, the July 17 Order was limited in both scope and applicability.

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*secretary of Defense*, 68 F.3d 1396, 1408 (D.C. Cir. 1396, 1408 (D.C. Cir. 1995) (Silberman, J., concurring in part and dissenting in part)).

<sup>30</sup> See, e.g., *Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007) (order granting requests to extend deadlines to comply with Open Access Same-Time Information System functionality requirements, the “strawman” proposal deadline, and other software upgrades needed to comply with the new requirements); see also *Kansas City Power & Light Co.*, 122 FERC ¶ 61,281 (2008) (finding good cause to waive the deadline for revising the company's Open Access Transmission Tariff under Order No. 890).

<sup>31</sup> August 4 Clarification Order, 124 FERC ¶ 61,136 at P 20.

15. We also do not agree with the Public Parties' assessment of good cause in this case. As set forth in the July 17 Order, we analyzed the whole factual record in determining whether good cause existed to grant a waiver of the December 31, 2008 deadline, including but not limited to the Project's benefits to the region, whether a short delay in completing the Project would diminish those benefits, and whether a denial of the request would negatively affect future project development. We expressly found that good cause existed to waive the deadline and continue to support that finding here.

16. The Public Parties, however, challenge the July 17 Order arguing, in large part, that the Project was not completed in a timely manner and should not receive incentives. They suggest that the December 31, 2008 deadline created a line of demarcation for determining whether a project met this requirement and those completed after the deadline should be denied any incentive. The Public Parties further disagree with our finding that Northeast Utilities relied on the 100 basis point incentive in pursuing the Project, as well as our conclusion that a denial of this incentive could create regulatory uncertainty. Finally, the Public Parties argue that the Commission erred in not establishing a new deadline to complete the Project. We find no merit in these claims.

17. Contrary to the Public Parties' assertions, we did not impose the December 31, 2008 deadline so that parties could re-examine whether transmission incentives, which had been granted by Opinion No. 489, should be denied because a project was not pursued in a timely manner. As we made clear in the July 17 Order, the deadline was not selected "to induce the timely or quicker completion of projects."<sup>32</sup> We simply established the deadline as a means to sunset Opinion No. 489 and transition to Order No. 679.<sup>33</sup> The Public Parties' arguments to the contrary are unsupported by the record.

18. While Opinion No. 489 noted that a 100 basis point incentive would "assist ISO New England in bringing these projects on line in a timely fashion,"<sup>34</sup> this does not mean that a project had to be completed by a date certain to receive incentives. Nor did it create a condition precedent to receiving the 100 basis point incentive. Rather, we approved a 100 basis point return on equity incentive in Opinion No. 489 for all RTEP-approved projects regardless of when those projects were completed.<sup>35</sup> Had the Public

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<sup>32</sup> July 17 Order, 124 FERC ¶ 61,044 at P 61.

<sup>33</sup> March 24 Order on Rehearing, 122 FERC ¶ 61,265 at P 54 (stating that the Commission imposed the deadline because it "believe[d] that the New England region should, over time, be held to the same standards for incentive rates as each other region that is subject to Order No. 679.>").

<sup>34</sup> Opinion No. 489, 117 FERC ¶ 61,129 at P 109.

<sup>35</sup> *Id.* P 108.

Parties wanted such a condition precedent to granting incentives, they should have raised that issue on rehearing of Opinion No. 489.

19. Nevertheless, we did consider the issue of timeliness as part of our good cause analysis, especially as it relates to Northeast Utilities' diligence in complying with the deadline. While we found some delay associated with the Project, especially before the Connecticut Siting Council, that delay did not seem extraordinary given the size, scope and location of the Project. We found no basis to suggest that Northeast Utilities acted less than diligently. Nor did the Public Parties present any evidence to the contrary. Had they been concerned about this issue, the Public Parties should have raised the issue in their protest.<sup>36</sup>

20. We also disagree with the Public Parties' assessment regarding the diminished benefits of the Project. While the Public Parties argue that an extension of the December 31 deadline will harm ratepayers because they will continue to pay higher inefficiency costs, the continued payment of inefficiency costs does not substantially diminish the overall benefits of the Project to the region or our original basis for providing incentives under Opinion No. 489—that is, to bring new transmission projects on line in a region that desperately needed such projects. Southwest Connecticut and ISO New England will still benefit from the completion of the Project even if it takes several months to complete final testing of the Project. Nor does the payment of these inefficiency costs undermine our finding that Northeast Utilities provided good cause to waive the deadline so that it could continue to receive the 100 basis point adder under Opinion No. 489.

21. Moreover, as we emphasized in the July 17 Order, a denial of the 100 basis point incentive at this late stage may create regulatory uncertainty and deter future project development in the United States.<sup>37</sup> By granting incentives under Opinion No. 489, the Commission indicated its policy of encouraging new transmission investment in the ISO New England region.<sup>38</sup> If we were to deny the 100 basis point incentive under Opinion No. 489, even though Northeast Utilities undertook substantial effort and investment in the Project and the Project is nearly complete, we believe that a denial of the incentive would negatively impact future transmission developers and investors. This provides additional support for our good cause analysis.

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<sup>36</sup> *Woolen Mill Assoc. v. FERC*, 917 F.2d 589, 592 (D.C. Cir. 1990) (citations omitted).

<sup>37</sup> July 17 Order, 124 FERC ¶ 61,044 at P 62.

<sup>38</sup> Similarly, through the regulations adopted in Order No. 679, the Commission intended to encourage new transmission investment throughout the United States.

22. Finally, we are not persuaded by the Public Parties' request to establish a new deadline. As Northeast Utilities indicated in its initial filing, it anticipates that the Project will be fully tested and on line by early 2009. Because the Project's final testing and commissioning will need to be coordinated with ISO New England and the testing will involve advanced technologies, Northeast Utilities could not provide an exact timetable for completion.<sup>39</sup> No showing has been made to lead us to believe that Northeast Utilities and ISO New England will not complete testing in a diligent manner. We do not believe that it is necessary to impose a new deadline on the Project, especially given the fact that it is nearly complete.

## 2. 100 Basis Point Incentive under Order No. 679

23. We will deny the Public Parties' request for rehearing regarding our discussion of Order No. 679. Although the July 17 Order mentioned that the Project would have been eligible for a 100 basis point incentive under Order No. 679, we did not grant Northeast Utilities the 100 basis point incentive under that order. Rather, as we made clear in our ordering paragraphs, we only granted Northeast Utilities' request for a waiver of the December 31, 2008 deadline so that it could receive a 100 basis point incentive under Opinion No. 489. Given these facts, we do not believe that Public Parties have been aggrieved by our discussion and find no need to discuss it further.

## 3. Advanced Technology Adder

24. We also will deny the Public Parties' request for rehearing regarding our decision to grant Northeast Utilities' request for an advanced transmission technology adder. As noted above, the Public Parties raise three arguments: (1) the Commission should not have granted both the 100 basis point incentive under Opinion No. 489 and the advanced technology incentive under Order No. 679 when these incentives allegedly rely upon the same facts; (2) the Commission should not have awarded the advanced transmission technology incentive because that incentive was intended to encourage the use of advanced transmission technology and Northeast Utilities did not rely upon this incentive to use advanced transmission technology; and (3) there was insufficient evidence to show how these new technologies would mitigate congestion or enhance grid reliability by increasing the capacity, efficiency or reliability of an existing or new transmission facility. We are not persuaded to grant rehearing.

25. We extensively discussed (and rejected) the Public Parties' first claim in the July 17 Order. We continue to believe that Order No. 679 allows us to grant advanced technology incentives independent of other incentives that a company may receive.<sup>40</sup>

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<sup>39</sup> Northeast Utilities' Filing, Ex. NU-1 at 17.

<sup>40</sup> July 17 Order, 124 FERC ¶ 61,044 at P 87.

While the Public Parties assert that we granted both incentives (those under Opinion No. 489 and Order No. 679) using “the same factual justification,” they do not identify those “same” facts. Nor can they because the factual basis for granting incentives under Opinion No. 489 (to encourage the construction of new transmission projects in a highly constrained region) is different than the factual predicate that we used to justify the advanced transmission technology adder in the July 17 Order (to encourage the use of certain advanced technologies). Those facts are set forth in the order and we find no need to discuss them here.

26. We also deny the Public Parties’ claim that advanced transmission technology incentives cannot be granted since Northeast Utilities decided to use this technology nearly three years ago. Contrary to the Public Parties’ argument, the Commission does not deny incentives solely because certain construction decisions were made prior to an application for incentives. In previous orders, we have granted transmission incentives for projects that were completely planned, approved by a state siting authority or regional planning process, and under construction.<sup>41</sup> Indeed, under Order No. 679-A, an applicant is entitled to a rebuttable presumption that its project satisfies section 219 of the Federal Power Act if the project has been approved by the relevant state siting board or by a regional planning process.<sup>42</sup> This suggests that the Commission contemplates that parties will seek incentives after planning and equipment decisions have been made. While the Commission has declined to grant incentive treatment when an applicant sought incentives after the project was in service or when the project was in final testing,<sup>43</sup> in this case Northeast Utilities requested an advanced technology incentive while the Project was still under construction. As we noted in Order No. 679, “[e]ven where a project already has been planned or announced, the granting of incentives may help in securing financing for the project or may bring the project to completion sooner than originally anticipated.”<sup>44</sup> We expect applicants that request incentive rate treatment to do so in a timely fashion and find that Northeast Utilities requested the advanced technology incentive while it was facing challenges relating to the installation of the advanced technology, *i.e.*, during the construction phase of the Project’s development.

27. Finally, we disagree with the Public Parties’ claim regarding the efficiency and reliability benefits of the advanced transmission technology in this case. As we discussed

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<sup>41</sup> *Pepco Holdings, Inc.*, 124 FERC 61,176 (2008); *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007).

<sup>42</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86.

<sup>43</sup> *Commonwealth Edison Co.*, 122 FERC ¶ 61,037, at P 31 (2008); *NSTAR Elec. Co.*, 125 FERC ¶ 61,313, at P 72 (2008).

<sup>44</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P35.

in the July 17 Order, the use of 345-kV XLPE underground cable over such long distances is both innovative and provides substantial benefits to Northeast Utilities and the region's ratepayers, including efficiency and reliability benefits.<sup>45</sup> Northeast Utilities' filing provided a detailed study by the ISO New England's Reliability and Operability Committee, which outlined the benefits of using the XLPE cable versus traditional High Pressure Fluid Filled cable.<sup>46</sup> Of particular importance here, the study indicated that the use of a XLPE cable would provide greater reliability and efficiency because it can operate safely at higher temperatures and at a lower capacitance, which means that less reactive power needs to be introduced to maintain safe and efficient operation of the system.<sup>47</sup> We have previously found that the studies and analyses, combined with the new information gained through the construction phase and in service phase of the Project, will provide invaluable data for other utilities confronted with the challenges of siting high voltage transmission infrastructure in highly developed urban areas, and that the Project may serve as a prototype for solving transmission problems in other areas of the country.<sup>48</sup>

28. Consistent with the July 17 Order, we believe that Northeast Utilities' satisfied the requirements for the advanced transmission technology adder and will not disturb that finding here.

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<sup>45</sup> July 17 Order, 124 FERC ¶ 61,044 at P 85-86. It should be noted that not all uses of XLPE cables are "advanced" and, thus, eligible for advanced technology incentives. As we recently stated in *NSTAR Elec. Co.*, 125 FERC ¶ 61,313 at P 77, where we denied incentives for the use of XLPE cable, Northeast Utilities' use of XLPE cable was distinguishable because of its innovative use of XLPE cable at extra high voltages and long distances.

<sup>46</sup> Northeast Utilities' Filing, NU-7.

<sup>47</sup> *Id.*

<sup>48</sup> *The United Illuminating Co.*, 119 FERC ¶ 61,182, at P 74 (2007).

The Commission orders:

The request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission. Commissioners Kelly and Wellinghoff dissenting with separate statements attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Northeast Utilities Service Company

Docket No. ER08-966-001

(Issued January 16, 2008)

KELLY, Commissioner, *dissenting*:

This order addresses rehearing requests filed by a series of parties in response to a Commission order issued on July 17, 2008.<sup>1</sup> In the July 17 Order the Commission approved Northeast Utilities' request for a waiver of the December 31, 2008 deadline under Opinion No. 489,<sup>2</sup> found that the project would also have been eligible for incentives under Order No. 679, and found that Northeast Utilities was entitled to a 50 basis point return on equity (ROE) incentive for the Project's use of advance transmission technologies under Order No. 679. I dissented from the July 17 Order because I believed Northeast Utilities' requests were premature in light of pending rehearing requests and thus should have been rejected. The Commission acted on one of those rehearing requests<sup>3</sup> in August and is acting on the other on this month's agenda.<sup>4</sup>

I dissent from today's order for several reasons. First, I have been and continue to be troubled by the 100 basis point incentive ROE adder approved in Opinion No. 489. I do not agree that approval of that incentive ROE adder was consistent with our general policy on incentive rates, and indeed I continue to believe that approving the 100 basis point incentive ROE adder is arbitrary and capricious on both legal and policy grounds. Second, it is apparent from the record evidence that a primary driver of the project is resolution of a series of near-term reliability problems on the transmission system in southern Connecticut. As Northeast Utilities states, "the transmission system in [Southwest Connecticut]

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<sup>1</sup> *Northeast Utils. Serv. Co.*, 124 FERC ¶ 61,044 (2008) ("July 17 Order").

<sup>2</sup> *Bangor Hydro-Elec. Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006), *order on rehearing*, 122 FERC ¶ 61,265 (2008), *order granting clarification*, 124 FERC ¶ 61,136 (2008).

<sup>3</sup> *Bangor Hydro-Elec. Co.*, 124 FERC ¶ 61,136 (2008).

<sup>4</sup> *The United Illuminating Co.*, 126 FERC ¶ 61,043 (2009).

does not meet national and regional standards” and is “presently exposed to line overloads and voltage degradations under various system conditions.”<sup>5</sup> Moreover, I do not believe it appropriate to grant incentives in this instance, given that the project was approximately 83% complete as of the date of the application<sup>6</sup> and that Connecticut state statute required a portion of this transmission line to be built underground if technically feasible.<sup>7</sup> Finally, I do not believe that Northeast Utilities has adequately demonstrated the appropriateness of granting the 50 basis point incentive ROE adder for the use of advanced technologies over and above the 100 basis points that applies because of Opinion 489.

For these reasons, I respectfully dissent from this order.

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Suedeem G. Kelly

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<sup>5</sup> Northeast Utilities Service Company May 16, 2008 Request for Incentives, Docket No. ER08-966-000, at 8.

<sup>6</sup> Northeast Utilities Service Company May 16, 2008 Request for Incentives, Docket No. ER08-966-000, at 9.

<sup>7</sup> See Protest of the Connecticut Department of Public Utility Control, the Maine Public Utilities Commission, the New Hampshire Public Utilities Commission, the Massachusetts Department of Public Utilities, Vermont Public Service Board, the New England Conference of Public Utilities Commissioners, Inc., the Connecticut Office of Consumer Counsel, and Richard Blumenthal, Attorney General for the State of Connecticut at 21.

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Northeast Utilities Service Company

Docket No. ER08-966-001

(Issued January 16, 2009)

WELLINGHOFF, Commissioner, dissenting:

I dissented from the July 17 Order. Among other concerns, I stated in my dissent that because Northeast Utilities was already receiving what I consider to be an unsupported incentive ROE adder under Opinion No. 489, I could not support granting the further ROE incentive that Northeast Utilities sought in this proceeding. In light of my continuing concern about that issue, I respectfully dissent from today's order.

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Jon Wellinghoff  
Commissioner