

127 FERC ¶ 61,052
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

NSTAR Electric Company

Docket Nos. ER09-14-002

ORDER ON REHEARING

(Issued April 16, 2009)

1. NSTAR Electric Company (NSTAR) and Public Party Intervenors¹ request rehearing of the Commission's December 18, 2008 order² granting NSTAR a limited waiver of the December 31, 2008 deadline for receiving transmission incentives under Opinion No. 489³ and denying the remainder of NSTAR's requests for return on equity (ROE) incentives. For the reasons discussed below, we grant rehearing to correct a statement in the December 18 Order, but deny the remainder of NSTAR's and Public Party Intervenors' requests for rehearing.

I. Background

2. On October 2, 2008,⁴ NSTAR filed an application seeking two ROE incentives for its 345 kV Transmission Reliability Project (345 kV Project) and for three separate transmission projects, the Brook Street, the Carver and the Barnstable Projects,

¹ Public Party Intervenors are: the New England Conference of Public Utilities Commissioners, the New Hampshire Public Utilities Commission, the Maine Public Utilities Commission, the Connecticut Department of Utility Control, the Attorney General for the Commonwealth of Massachusetts, the Attorney General for the State of Connecticut, the Connecticut Office of Consumer Counsel and Massachusetts Municipal Wholesale Electric Company.

² *NSTAR Electric Co.*, 125 FERC ¶ 61,313 (2008) (December 18 Order).

³ *Bangor Hydro-Electric Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006), *order on reh'g*, 122 FERC ¶ 61,265 (2008) (Opinion No. 489 Rehearing Order), *order on clarification*, 124 FERC ¶ 61,136 (2008), *appeal pending sub nom Connecticut Dept. of Public Utility Control, et al. v. FERC*, No. 08-1199 (D.C. Cir. filed May 23, 2008).

⁴ NSTAR filed an errata on October 6, 2008 to correct the requested effective date from December 1, 2008 to December 2, 2008, which was docketed ER09-14-001.

collectively referred to as the Southeastern Massachusetts Upgrade Projects (the SEMA Upgrade Projects). Specifically, NSTAR requested: (1) for Phase II of its 345 kV Project, a limited waiver of the December 31, 2008 deadline for completion that serves as a condition for the 100 basis point ROE adder established in Opinion No. 489 or, alternatively, a 100 basis point ROE adder pursuant to Order No. 679⁵; (2) a 100 basis point ROE incentive for the Carver and Barnstable Projects under Order No. 679; and (3) a 50 basis point ROE incentive⁶ for use of advanced transmission technologies for the entirety of its 345 kV and Barnstable Projects, and for portions of its Brook Street and Carver Projects.

3. On December 18, 2008, the Commission issued an order addressing NSTAR's application. In the December 18 Order, the Commission granted no new incentive rate treatment. The Commission, however, approved NSTAR's request for a waiver of the December 31, 2008 deadline for project completion under Opinion No. 489, to the extent waiver proved to be necessary.⁷ The Commission rejected all other incentives requested by NSTAR, including: (1) NSTAR's request for a 100 basis point ROE incentive adder for the Carver and Barnstable Projects, finding that the Projects failed the Commission's nexus test established in Order No. 679; (2) NSTAR's request for an advanced technology ROE incentive adder for the 345 kV Project and the Brook Street Project because the Projects were completed or nearly completed; and (3) NSTAR's request for an advanced technology ROE incentive adder for the Carver and Barnstable Projects, finding that NSTAR had failed to provide sufficient evidence to support an advanced technology incentive adder for these two projects.

II. Requests for Rehearing

4. NSTAR and Public Party Intervenors filed requests for rehearing on January 21, 2009. NSTAR requests rehearing of the December 18 Order to the extent that the order denied incentives including: (1) NSTAR's request for a 100 basis point ROE incentive for the Carver and Barnstable Projects; and (2) NSTAR's request for a 50 basis point

⁵ *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).

⁶ NSTAR requested a 50 basis point advanced technology adder, but stated that if the Commission awarded all other incentives requested, a 46 point adder would result in an ROE at the high end of the zone of reasonableness.

⁷ The waiver of the completion deadline in fact proved not to be necessary. On December 24, 2008, NSTAR filed a letter notifying the Commission that Phase II of the 345 kV Project had been placed into service on December 18, 2008, thereby satisfying the Opinion No. 489 criteria for a 100 basis point incentive without the waiver that the Commission granted in the December 18 Order.

technology incentive for the 345 kV and Barnstable Projects and for portions of its investment in the Brook Street and Carver Projects. Public Party Intervenors request rehearing of the December 18 Order because the order authorized a 100 basis point adder for Phase II of the 345 kV Project pursuant to Opinion No. 489, while dismissing as moot the argument that Phase II did not qualify for incentives under Order No. 679.

III. Discussion

A. Rehearing

1. 100 Basis Point Incentive under Order No. 679 for the Carver and Barnstable Projects

a. Request for Rehearing

5. NSTAR argues that in rejecting its request for a 100 basis point incentive adder for the Carver and Barnstable Projects the Commission misinterpreted section 219 of the Federal Power Act. According to NSTAR, the December 18 Order impermissibly substitutes the Commission's judgment for the Congressional judgment that eligibility for incentives should depend on "ensuring reliability and reducing the cost of delivered power."⁸ NSTAR states that the Commission has replaced the Congressionally-mandated standard with a new standard devised in *Commonwealth Edison*, which it refers to as the "*Commonwealth Edison* preconditions." According to NSTAR, applying these new, impermissible preconditions will approve an incentive only for projects of the "highest-voltage transmission lines" using "new rights-of-way" and "travers[ing] multiple jurisdictions."⁹ NSTAR continues that the Commission's new interpretation of section 219 is contrary to the expressed intent of Congress, differs from the Commission's prior interpretation, and was not accompanied by a reasoned explanation for the change.¹⁰ NSTAR argues that the scope, challenges, risks and benefits of the Carver and Barnstable Projects are at least as great, if not greater, than the scope, challenges, risks and benefits of many projects that have been granted incentives; therefore, the denial of incentives for the Carver and Barnstable Projects is inconsistent with Commission precedent. NSTAR cites recent orders in which "the Commission approved incentives for projects that did not involve significant financial burdens, that were constructed by a single entity, that

⁸ NSTAR at 6 (citing 16 U.S.C. § 824s(a) (2006)).

⁹ *Id.* P 5 (quoting *Commonwealth Edison Co.*, 125 FERC ¶ 61,250 (2008) (*Commonwealth Edison*), Moeller Dissent at 1).

¹⁰ *Id.* P 13.

were located entirely in one state, and that did not face long lead times or internal competition for financing,” including *VEPCO*, *Pepco*, *BG&E I* and *BG&E II*.¹¹

6. Finally, NSTAR argues that if the Commission wishes to change the standard for judging requests for transmission incentives, it must do so either through rulemaking or in an order adopting a new standard to be applied prospectively. NSTAR argues that applying the “new policy” adopted in *Commonwealth Edison* and the December 18 Order to the Carver and Barnstable Projects is fundamentally unfair; had the Commission applied the *BG&E I* standards to NSTAR’s application, as it should have, the Carver and Barnstable Projects would have been granted incentives.¹²

b. Commission Determination

7. NSTAR claims that the Commission, in rejecting a 100 basis point incentive adder for the Carver and Barnstable Projects, misinterpreted section 219 of the FPA. NSTAR claims that instead of applying the Congressionally-mandated standard of “ensuring reliability and reducing the cost of delivered power,” the Commission impermissibly applied a new standard developed in *Commonwealth Edison*. We disagree.

8. In the December 18 Order, the Commission pointed out that in addition to satisfying the section 219 requirement of ensuring reliability or reducing the cost of delivered power by reducing congestion, an applicant must show that there is a nexus between the incentive sought and the investment being made. The nexus test was established in Order No. 679.¹³ In Order No. 679-A,¹⁴ the Commission explained that incentives must be “tailored to the risks and challenges faced” by the project. We explained that this meant that the incentive(s) sought must be tailored to address the demonstrable risks and challenges faced by the applicant in undertaking the project. The required nexus test therefore assures that there is a relationship between the rate treatments sought and new facilities being constructed. We stated that the test would not necessarily be satisfied in every case. We pointed out that in the Final Rule, we had explained “[n]ot every incentive will be available for every new investment. Rather, each

¹¹ *Id.* P 15-18 (citing *Virginia Electric & Power Co.* 124 FERC ¶ 61,207 (2008) (*VEPCO*), *reh’g pending*; *Pepco Holdings, Inc.*, 124 FERC ¶ 61,176 (2008) (*Pepco*), *reh’g pending*; *Baltimore Gas & Elec. Co.*, 120 FERC ¶ 61,084 (2007) (*BG&E I*); *Baltimore Gas & Elec. Co.*, 121 FERC ¶ 61,167 (2007) (*BG&E II*), *reh’g denied*, 122 FERC ¶ 61,037 (2008)).

¹² *Id.* P 28-30.

¹³ Order No. 679, FERC Stats. & Regs. ¶31,222 at P 2, 26.

¹⁴ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21.

applicant must demonstrate that there is a nexus between the incentive sought and the investment being made." ¹⁵ In evaluating whether the applicant has satisfied the required nexus test, the Commission will examine the total package of incentives being sought, the inter-relationship between any incentives, and how any requested incentives address the risks and challenges faced by the project.

9. The nexus test thus was established as part of the Commission's analysis of whether incentives are warranted under section 219 of the FPA; the nexus test was designed by the Commission to evaluate each project based on its individual characteristics. Accordingly, the Commission did not evaluate the Carver and Barnstable projects based on a new standard established in *Commonwealth Edison*, but applied the existing standards that the Commission established in implementing section 219 of the FPA in Order No. 679 and applied them using the case-by-case analysis which the Commission designed in Order No. 679.¹⁶

10. In the December 18 Order, the Commission explained that it would consider "all relevant factors presented by the applicant."¹⁷ Based on its analysis of those factors, the Commission agreed with the protestors that these projects are routine in nature and do not involve the kind of scope, effects, and risks or challenges that merit incentive rate treatment.¹⁸ The Commission found that these projects should be undertaken in the normal course of business in keeping with good utility management practices.¹⁹ The Commission further found that NSTAR had not presented sufficient evidence regarding the financial impact or burden that NSTAR faces in financing these two projects, or of significant siting challenges, internal competition for financing with other projects, long lead times, regulatory or political risks, specific financing challenges or other compelling

¹⁵ *Id.*

¹⁶ NSTAR recognizes that the Commission, in Order No. 679, stated that it would evaluate incentive rate filings on a case-by-case basis under the project's own unique circumstances and would consider all relevant factors in making the nexus finding. NSTAR rehearing 18.

¹⁷ December 18 Order, 125 FERC ¶ 61,313 at P 66.

¹⁸ *Id.* P 68. NSTAR argues that this finding is inconsistent with prior Commission determinations in *BG&E I*, *BG&E II*, *VEPCO* and *Pepco*. As we explained in our December 18 Order and reiterate here, our examination is case-by-case and is based on "all relevant factors presented by the applicant." For reasons explained in *BG&E I*, *BG&E II*, *VEPCO* and *Pepco*, that examination led the Commission to conclude that incentives were warranted in those cases; in this case, our examination leads us to the opposite conclusion.

¹⁹ December 18 Order, 125 FERC ¶ 61,313 at P 68.

impediments warranting incentives.²⁰ The Commission also noted that these projects are being developed and constructed entirely by NSTAR, and are located in Massachusetts and thus have limited regional impacts.²¹ The Commission concluded that the projects failed the nexus test.²²

11. We conclude that the Commission properly analyzed the project using the nexus test established in Order No. 679, and, balancing all the relevant factors, properly found that these projects do not satisfy that test.

2. 100 Basis Point Incentive under Opinion No. 489 for the 345 kV and Brook Street Projects

a. Request for Rehearing

12. Public Party Intervenors seek rehearing with respect to the portion of the December 18, 2008 Order that authorized a 100 basis point adder for Phase II of NSTAR's 345 kV Project pursuant to Opinion No. 489 and dismissed as moot the arguments that Phase II did not qualify for incentives under Order No. 679.²³

13. Public Party Intervenors argue that the Commission abused its discretion and acted arbitrarily and without reasonable basis when it authorized a 100 basis point ROE adder in reliance on the Commission's order in Opinion No. 489 without the benefit of a project-specific review of substantial evidence supporting the need for the incentive under Order No. 679. Furthermore, Public Party Intervenors note that because Phase II of the 345 kV Project entered into service before the December 31, 2008 deadline, no waiver of the Opinion No. 489 was necessary. Therefore, Public Party Intervenors request that the Commission vacate its order granting a waiver of the deadline and hold that the issue of whether NSTAR is entitled to a 100 basis point ROE adder was not properly before the Commission in this docket.²⁴

b. Commission Determination

14. As the Commission stated in its December 18 Order, the Opinion No. 489

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Public Party Intervenors 2.

²⁴ *Id.* 4-7.

Rehearing Order affirmed the approval of a 100 basis point ROE incentive for all Regional Transmission Expansion Plan-approved projects, “provided that these projects are completed and come on line as of December 31, 2008.”²⁵ Because Phase I of the 345 kV Project and the Brook Street Project meet both the RTEP and the in-service date criteria, the December 18 Order found that the Projects “are entitled to, without further Commission action, the 100 basis point ROE incentive under Opinion No. 489.”²⁶ Therefore, as stated above, the Commission granted no new incentives for these projects in the December 18 Order. As to Phase II of the 345 kV Project, the Commission granted limited waiver of the December 31, 2008 construction deadline “to the extent that waiver is necessary.”²⁷ The fact that the waiver proved not to be necessary because the Project came on line before the December 31, 2008 deadline does not warrant vacating the December 18 Order.²⁸ For these reasons, Public Party Intervenors’ request for rehearing is denied.²⁹

3. Advanced Technology Incentive Requests for the 345 kV and Brook Street Projects

a. Request for Rehearing

15. According to NSTAR, the Commission’s denial of an advanced technology adder for the 345 kV and Brook Street Projects on the grounds that the projects were complete or nearly complete misconstrues Congressional intent in authorizing advanced technology incentives.³⁰ NSTAR argues that Congress directed the Commission to

²⁵ December 18 Order, 125 FERC ¶ 61,313 at P 44 (quoting Opinion No. 489 Rehearing Order, 122 FERC ¶ 61,265 at P 51).

²⁶ December 18 Order, 125 FERC ¶ 61,313 at P 44.

²⁷ *Id.* P 52.

²⁸ The determination to vacate orders is an equitable one, requiring exceptional circumstances. *Vermont Yankee Nuclear Power Corporation*, 96 FERC ¶ 61,286 (2001); *Town of Neligh, et al.*, 94 FERC ¶ 61,075, at p. 61,348 (2001), citing *Edwards Manufacturing Company, Inc. and City of Augusta, Maine*, 84 FERC ¶ 61,228 (1998) and *U.S. Bancorp*, 513 U.S. 18, 26 (1994). We are not persuaded that there are exceptional circumstances present requiring vacatur of the relevant part of the December 18 Order.

²⁹ We note that Opinion No. 489 is on appeal. *Connecticut Dept. of Public Utility Control, et al. v. FERC*, No. 08-1199 (D.C. Cir. filed May 23, 2008). That appeal is the appropriate forum to address whether Phase II of the 345 kV Project (as well as all other projects granted incentives in Opinion No. 489) was properly granted an incentive.

³⁰ NSTAR at 30.

encourage and provide incentive-rate treatment for transmission technologies that increase the capacity, efficiency, or reliability of existing or new transmission facilities,³¹ something that can be done during or after the construction period. NSTAR argues that the Commission recognized in *United Illuminating* that “an incentive ROE for advanced technologies serves a different purpose than . . . an enhanced ROE,” and that the denial of the advanced technology incentive for the 345 kV and Brook Street Projects on the grounds that they were complete or nearly so defeats this Congressional purpose.³²

16. Furthermore, NSTAR argues that the Commission’s denial of its request for advanced technology adders on the grounds that the 345 kV and Brook Street Projects were complete or nearly complete is contrary to the Commission’s treatment of Northeast Utilities’ Middletown-to-Norwalk Project.³³ NSTAR states that Northeast Utilities submitted its application for an advanced technology incentive in May 2008, stating in its application that certain facilities for which it was seeking an advanced technology adder had entered service in stages beginning in 2006.³⁴ According to NSTAR, the Commission granted the requested 50 basis point incentive for all project costs incurred after the effective date of EAct 2005, regardless of whether portions of the project were complete and in service, and reaffirmed the incentive on rehearing.³⁵ Furthermore, NSTAR asserts that its filing was timely; filing the request at an earlier stage in the planning and construction process would have necessitated multiple filings, each dealing with closely related issues and each far less robust than the record created by NSTAR’s comprehensive October 2 initial filing.³⁶

17. NSTAR analogizes to Commission treatment of general ROE incentive adders (as opposed to advanced technology incentive adders), arguing that while the Commission

³¹ *Id.* P 31 (citing 16 U.S.C. § 824s(b)(3); EAct 2005, Pub. L. No. 109-58, 119 Stat. 953-54).

³² *Id.* P 31 (quoting *The United Illuminating Co.*, 119 FERC ¶ 61,182, at P 78 (2007) (*United Illuminating*), *reh’g denied*, 126 FERC ¶ 61,043 (2009) (*United Illuminating Rehearing Order*)).

³³ *See Northeast Utilities Service Co.*, 124 FERC ¶ 61,044, at P 84 (2008) (*Northeast Utilities*), *reh’g denied*, 126 FERC ¶ 61,052 (2009) (*Northeast Utilities Rehearing Order*).

³⁴ NSTAR at 32 (citing Northeast Utilities’ transmittal letter filed May 16, 2008 in Docket No. ER08-966 at 3 & n.8, Exh. NU-3 at 6-7).

³⁵ NSTAR at 32-33 (citing *Northeast Utilities*, 124 FERC ¶ 61,044 at P 84 and *Northeast Utilities Rehearing Order*, 126 FERC ¶ 61,052 at P 24).

³⁶ *Id.* P 33-34.

has consistently denied incentive adders for projects that are already complete, it has in the past granted incentives for projects that were nearing completion.³⁷ NSTAR argues that even if the Commission has decided to reverse course to find that the timing of advanced technology requests is relevant, Phase II of the 345 kV Project was “still under construction” when NSTAR filed its application and thus should not have been disqualified under applicable precedent.³⁸

b. Commission Determination

18. We deny NSTAR’s request for rehearing on this issue. The Commission has explicitly addressed the timing of a request for an advanced technology incentive. In the *Northeast Utilities Rehearing Order*, the Commission contrasted Northeast Utilities’ request for an advanced technology incentive, made “while the [Middletown-to-Norwalk] Project was still under construction,” with situations in which the Commission “declined to grant incentive treatment when an applicant sought incentives after the project was in service or when the project was in final testing.”³⁹ That a portion of the Middletown-to-Norwalk Project was placed into service before Northeast Utilities submitted its request for advanced technology incentives does not diminish the Commission’s finding in that case 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.”⁴⁰ In the instant case, NSTAR filed its request for an advanced technology adder several months after the Brook Street Project was in service, more than a year after Phase I of the 345 kV Project was in service, and when Phase II of the 345 kV Project was complete but for final testing. Rejecting these incentive requests was therefore fully consistent with the Commission’s determination in *Northeast Utilities*.

³⁷ *Id.* P 34-35. NSTAR cites as examples *BG&E II*, 121 FERC ¶ 61,167 at P 33 (Commission granted incentive adder to project containing two segments expected to enter service just over three months after request was filed) and *Pepco*, 124 FERC ¶ 61,176 at P 76 (expected in-service date less than six months from the date Pepco filed request).

³⁸ *Id.* P 35 (citing *BG&E II* (ROE adder granted for project with two segments expected to enter service just over three months after filing of request); *Pepco Holdings, Inc.* (adder granted for project with expected in-service date less than six months from date of filing); (also citing *Northeast Utilities Rehearing Order*, 126 FERC ¶ 61,052 at P 26 and *United Illuminating Rehearing Order*, 126 FERC ¶ 61,043 at P 32 for the proposition that an applicant is required to file “while it [is] facing challenges relating to the installation the advanced technology, i.e., during the construction phase of the Project’s development.”).

³⁹ *Northeast Utilities Rehearing Order*, 126 FERC ¶ 61,052 at P 26.

⁴⁰ *Id.* P 26.

19. In the *United Illuminating Rehearing Order*, the Commission stated: “We expect applicants that request incentive rate treatment to do so in a timely fashion and find that United Illuminating 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.”⁴¹ Nothing in NSTAR’s request for rehearing persuades us to revisit the finding that timing is relevant to the Congressional mandate to promote capital investment in transmission facilities.

20. Moreover, NSTAR has not been consistent in how it has described the state of construction of Phase II. In its application, NSTAR argued that it was eligible for a waiver of the Opinion No. 489 deadline because “if Phase II [did] not enter service by December 31, 2008, the only remaining work would be final testing and any additional work the final testing shows to be necessary.”⁴² It was on those grounds that the Commission granted waiver of the Opinion No. 489 deadline.⁴³ Now, in its request for rehearing, NSTAR argues that Phase II should not have been disqualified for an advanced technology adder under general ROE precedent because at the time of NSTAR’s application, Phase II “was still under construction.”⁴⁴ The Commission finds it difficult to reconcile these conflicting statements.

4. Advanced Technology Incentive Requests for the Carver and Barnstable Projects

a. Request for Rehearing

21. NSTAR argues that both the Carver Project and the Barnstable Project meet the requirements of Order No. 679 and EAct 2005 and, therefore, warrant an incentive ROE adder based on the proposed use of advanced technologies. NSTAR states that both projects use technologies specifically identified in section 1223 of EAct 2005, and that both projects enhance grid reliability by increasing the reliability of an existing or new transmission facility. Therefore, according to NSTAR, the Commission’s denial of technology incentives for these projects was contrary to law.

22. NSTAR also argues that the Commission’s denial of an advanced technology adder for the Carver and Barnstable Projects based on an evaluation of “risks and challenges” is inconsistent with the Commission’s treatment of similar requests in

⁴¹ *United Illuminating Rehearing Order*, 126 FERC ¶ 61,043 at P 32; *accord Northeast Utilities Rehearing Order*, 126 FERC ¶ 61,052 at P 26.

⁴² NSTAR Transmittal Letter at 15.

⁴³ December 18 Order, 125 FERC ¶ 61,313 at P 49.

⁴⁴ NSTAR at 33.

Northeast Utilities and *United Illuminating*. According to NSTAR, in those cases the Commission described the standard for an advanced technology adder as being the one set forth in Order No. 679 and section 1223 of EPAct 2005, which requires that a technology “mitigate congestion and enhance grid reliability by increasing the capacity, efficiency or reliability of an existing or new transmission facility.”⁴⁵ NSTAR argues that in *United Illuminating* the Commission differentiates between a general ROE incentive and an advanced technology incentive, stating that the Congressional directive applies “regardless of whether such transmission technologies otherwise create demonstrable risks and challenges for the applicant or the project.”⁴⁶

23. Finally, NSTAR states that even if the Commission has changed its policy regarding the appropriate test to apply in evaluating requests for advanced technology adders, NSTAR has demonstrated that the Carver and Barnstable Projects faced significant risks and challenges. The Carver Project faced risks and challenges associated with a greatly accelerated construction schedule, the need to obtain numerous state and local agency approvals, and the need to acquire additional land and negotiate with landowners. The Barnstable Project faced risks and challenges involving the development of a custom-designed system to address the specific needs in the SEMA area. Determining the appropriate equipment and final design of the Project required extensive studies of the SEMA transmission system involving detailed modeling of electrical load performance in the period of time from the first few milliseconds to several seconds following a power system contingency.⁴⁷

b. Commission Determination

24. We grant rehearing for the limited purpose of correcting a statement in the December 18 Order highlighted by NSTAR; we, however, deny NSTAR’s request for rehearing to allow an incentive adder for advanced technology for the Carver and Barnstable Projects.

25. We disagree with NSTAR’s contention that the Carver and Barnstable Projects warrant an advanced technology incentive simply because those projects use technologies identified in section 1223 of EPAct 2005. That argument is inconsistent with Commission precedent, dating to well before NSTAR filed its incentives request in this proceeding. In *Nevada Hydro Co.*, the Commission explained that we are required under

⁴⁵ *Id.* P 36 (citing *Northeast Utilities*, 124 FERC ¶ 61,044 at P 82).

⁴⁶ *Id.* P 37 (citing *United Illuminating*, 119 FERC ¶ 61,182 at P 78).

⁴⁷ NSTAR at 39-40.

section 1223 of EAct 2005 to “encourage, as appropriate” the deployment of advanced transmission technologies, but that use of such technologies does not automatically warrant the granting of incentives.⁴⁸

26. We also disagree with NSTAR’s contention that *Northeast Utilities* and *United Illuminating* require the Commission to grant an advanced technology incentive ROE adder for the Carver and Barnstable Projects. In *Northeast Utilities* and *United Illuminating*, the Commission recognized that in section 1223 of EAct 2005, Congress stated that the Commission should encourage the deployment of advanced technology that “increases the capacity, efficiency, or reliability of an existing or new transmission facility.”⁴⁹ As NSTAR observes in its request for rehearing, the Commission also stated in *United Illuminating* that this Congressional directive applies “regardless of whether such transmission technologies otherwise create demonstrable risks and challenges for the applicant or the project.”⁵⁰

27. To the extent that NSTAR reads those statements from *Northeast Utilities* and *United Illuminating* as obligating the Commission to grant an advanced technology incentive to every project that “increases the capacity, efficiency, or reliability of an existing or new transmission facility,” we find that view to be contrary to section 1223 of EAct 2005. As noted above, section 1223 requires the Commission to “encourage, as appropriate” the deployment of advanced transmission technologies. That directive expressly calls for the Commission to exercise discretion in identifying where and how it is appropriate to incentivize technologies that satisfy the standard set forth in the statute. In fulfilling that responsibility, the Commission recognized in Order No. 679 that advanced technologies will continually evolve.⁵¹ Similarly, we have explained that in reviewing requests for separate incentive ROE adders for advanced technology, the Commission reviews record evidence to decide if the proposed technology warrants a separate adder because it reflects a new or innovative domestic use of the technology that will improve reliability, reduce congestion, or improve efficiency.⁵²

⁴⁸ 122 FERC ¶ 61,272 at P 84-85 (2008).

⁴⁹ *United Illuminating*, 119 FERC ¶ 61,182 at P 78 and *Northeast Utilities*, 124 FERC ¶ 61,044 at P 87, citing EAct 2005, Pub. L. No. 109-58, 119 Stat. 953-54.

⁵⁰ NSTAR at 37, citing *United Illuminating*, 119 FERC ¶ 61,182 at P 78.

⁵¹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 290.

⁵² *United Illuminating Rehearing Order*, 126 FERC ¶ 61,043 at P 14. The Commission has also explained how its consideration of requests for such separate advanced technology adders relates to its consideration of issues related to advanced technologies as part of the overall nexus analysis required by Order No. 679. *See, e.g., Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 54-55, 59-60 (2008).

28. However, to the extent that NSTAR argues only that a statement in the December 18 Order conflicts with *United Illuminating*, we grant rehearing for the limited purpose of correcting that misstatement. In the December 18 Order, the Commission referred to “risks, challenges, and benefits associated with the proposed use of advanced technologies” in the context of evaluating NSTAR’s request for a separate advanced technology incentive ROE adder for the Carver and Barnstable Projects.⁵³ We agree that this reference to risks and challenges is inconsistent with the above-noted statement from *United Illuminating* that NSTAR cites in its request for rehearing.

29. Finally, we find that correcting this misstatement in the December 18 Order does not change the Commission’s conclusion that the Carver and Barnstable Projects do not warrant a separate advanced technology incentive ROE adder. In the December 18 Order, the Commission denied NSTAR’s request for an advanced technology incentive adder for the Barnstable Project’s use of a Static Var Compensator (SVC), in part because that technology was not advanced, i.e., it “has been used in various applications around the world for many years.”⁵⁴ The Commission also denied NSTAR’s request for an advanced technology incentive for the Carver Project, in part because the XLPE underground cable used by the Carver Project was used at lower voltage and shorter distances in less congested urban areas than underground technology that had received an advanced technology incentive adder in previous cases.⁵⁵ The Commission also recognized that fiber optics have been used in transmission design for many years, and that such utilization may not be, in and of itself, worthy of incentives.⁵⁶

30. On rehearing, we again find that NSTAR has failed to adequately support these requested incentives. As we stated in the December 18 Order, while the SVC unit technology used in the Barnstable Project is new to the SEMA area, SVC units of similar scope have been installed elsewhere, providing NSTAR with a wide knowledge base on which to rely.⁵⁷ NSTAR’s use of SVC technology is also relatively small in scope as compared to the TrAILCo unit for which the Commission granted an incentive ROE adder, which will ensure reliability of two 500 kV lines in the greater Washington, DC

⁵³ December 18 Order, 125 FERC ¶ 61,313 at P 74.

⁵⁴ *Id.* P 76. The Commission also stated that NSTAR has not identified any unusual characteristics of its proposed use of advanced technology that warrant incentive treatment. *Id.*

⁵⁵ *Id.* P 77.

⁵⁶ *Id.*

⁵⁷ *Id.* P 76.

area by providing a new source of reactive power.⁵⁸ Regarding the Carver Project, we again find, as we did in the December 18 Order, that NSTAR has not adequately supported its request for an advanced technology incentive ROE adder. The Commission thus concludes that NSTAR's arguments do not warrant granting rehearing on the denial of an advanced technology adder for the Carver and Barnstable projects.

The Commission orders:

The requests for rehearing are hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission. Commissioner Kelly concurring in part with a separate statement attached.

Commissioner Moeller dissenting in part with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

⁵⁸ *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219 (2007). The Commission discussed this order at greater length in the December 18 Order.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

NSTAR Electric Company

Docket Nos. ER09-14-002

(Issued April 16, 2009)

KELLY, Commissioner, *concurring in part*:

This order addresses requests for rehearing filed by NSTAR Electric Company (NSTAR) and Public Party Intervenors with respect to a December 2008 Commission order on transmission incentives.

I concur with the majority regarding its decision not to vacate the December 18 Order as the Public Party Intervenors request. As Public Party Intervenors acknowledge, NSTAR's request for a waiver of the in-service deadline is moot as Phase II of the 345 kV Project entered into service prior to the relevant deadline. However, as I have stated before, I do not believe that approval of the 100 basis point incentive ROE adder approved in Opinion No. 489 is consistent with our general policy on incentive rates. I support the Public Party Intervenors' general argument that all transmission projects presented for incentive treatment should be reviewed under Order No. 679.

NSTAR's request states that denial of the advanced technology adder is contrary to treatment of Northeast Utilities' Middletown-to-Norwalk Project. I dissented from the decision to grant incentive treatment to the Northeast Utilities' project, arguing that it was inappropriate to grant incentives for a project that was approximately 83% complete as of the date of the application.¹ Thus, I concur with the majority's decision to deny rehearing on an advanced technology adder for the 345 kV and Brook Street Projects.

For these reasons, I concur in part.

Suedeem G. Kelly

¹ *Northeast Utilities Service Company*, 126 FERC ¶ 61,052 (2009).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

NSTAR Electric Company

Docket Nos. ER09-14-002

(Issued April 16, 2009)

MOELLER, Commissioner, *dissenting in part*:

As explained in my partial dissent from the December 18 Order, I would have awarded the Carver and Barnstable Projects an incentive ROE adder pursuant to Order No. 679. Transmission projects like these should be encouraged since they not only increase the reliability of the transmission grid by minimizing congestion, but they also have directly associated environmental benefits, as discussed previously. Since today's order denies NSTAR's rehearing request for an incentive based on the same reasoning in the underlying order, I respectfully dissent in part.

Philip D. Moeller
Commissioner