

UNITED STATES OF AMERICA 100 FERC ¶ 61,202
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Boston Edison Company

Docket No. EL02-123-000

ORDER INSTITUTING INVESTIGATION AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued August 22, 2002)

1. On June 20, 2002, in Docket No. ER02-2127-000, Boston Edison Company (Boston Edison) submitted for filing unexecuted Service Agreements for the Town of Concord, Massachusetts Municipal Light Department (Concord) and the Town of Wellesley Municipal Light Department (Wellesley) (collectively, Towns) to take local network transmission service (LNS) pursuant to Boston Edison's open access transmission tariff (OATT). These Service Agreements became effective on June 20, 2002.

2. As discussed below, we will institute an investigation of the reasonableness of these Service Agreements. We will establish hearing procedures but hold the hearing in abeyance pending settlement judge procedures. This order benefits customers because it allows the parties to participate in a hearing and/or settlement procedures to determine just and reasonable rates.

Background

3. Boston Edison previously has provided bundled requirements service, both generation and transmission services, to both Towns under all-requirements "S" rates, and since May 1993, such bundled service has been provided under individually negotiated agreements (Concord PPA and Wellesley PPA). These PPAs expired on May 31, 2002. Since June 1, 2002, a new supplier has provided generation service to both Towns, and they now take transmission separately from generation. Boston Edison's filing in Docket No. ER02-2127-000 proposed rates, terms and condition for LNS service to Concord and Wellesley; the Service Agreements became effective on June 20, 2002.

Discussion

4. Our preliminary analysis indicates that the Service Agreements for Concord and Wellesley may not be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, pursuant to section 206 of the Federal Power Act (FPA),¹ we will initiate an investigation of the reasonableness of these Service Agreements. Where, as here, the Commission initiates a section 206 investigation on its own motion, section 206(b) requires that the Commission establish a refund effective date anywhere from 60 days after publication in the Federal Register of notice of its intent to initiate a proceeding to 5 months after the expiration of the 60-day period. In order to give maximum protection to customers, and consistent with our precedent,² we will establish the refund date at the earliest date allowed. This date will be 60 days from the date on which notice of the initiation of the investigation is published in the Federal Register.

5. Section 206(b) also requires that if no final decision is rendered in the Commission's investigation by the refund effective date or by the conclusion of the 180-day period commencing upon the initiation of a proceeding pursuant to section 206, whichever is earliest, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonable expects to make such a decision. Therefore, we will direct the presiding judge or settlement judge, as appropriate, to provide a report to the Commission no later than 15 days in advance of the refund effective date in the event the presiding judge or settlement judge, as appropriate, has not by that date issued an initial decision or certified to the Commission a settlement which, if accepted would dispose of the proceeding. The judge's report, if required, shall advise the Commission of the status of the investigation and provide an estimate of the expected date of issuance of an initial decision or certification of a settlement. This, in turn, will allow the Commission, on or before the refund effective date, to estimate the date when it expects to render its decision.

6. In order to provide the parties an opportunity to resolve these matters amicably, we will hold the hearing in abeyance and direct settlement judge procedures pursuant to

¹16 U.S.C. § 824e (1994).

²See, e.g., Canal Electric Co., 46 FERC ¶ 61,153, reh'g denied, 47 FERC ¶ 61,275 (1989).

Rule 603 of the Commission's Rules of Practice and Procedures.³ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁴ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held in Docket No. EL02-123-000 concerning the reasonableness of the Service Agreements. However, the hearing will be held in abeyance while the parties attempt to settle, as provided in paragraphs (C) and (D) below.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2002), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. The designated settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable.

(C) Within 30 days of the date of this order, the settlement judge shall issue a report to the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their efforts or, if appropriate, provide for a formal hearing by assigning the case to a presiding judge. If settlement judge procedures are continued, the settlement

³18 C.F.R. § 385.603 (2002).

⁴If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 219-2500 within five days of this order. FERC's website contains a listing of the Commission's judges and a summary of their background and experience. (www.ferc.fed.us - click on Office of Administrative Law Judges).

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judge shall issue a report at least every 30 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(D) If settlement judge procedures fail and a formal hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within approximately fifteen (15) days of the date of the settlement judge's report to the Commission in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

(E) The Secretary shall promptly publish a notice of the Commission's initiation of the proceeding in Docket No. EL02-123-000 in the Federal Register.

(F) The refund effective date in Docket No. EL02-123-000, established pursuant to section 206(b) of the FPA, shall be 60 days following publication in the Federal Register of the notice discussed in Ordering Paragraph (E) above.

(G) The presiding judge or settlement judge, as appropriate, shall advise the Commission, no later than 15 days prior to the refund effective date established in Docket No. EL02-123-000, in the event that the presiding judge or settlement judge, as appropriate, has not by that date certified to the Commission a settlement, which, if accepted, would dispose of the proceeding or issued an initial decision, as to the status of the proceeding and a best estimate when the proceeding will be disposed of by the presiding judge.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.