120 FERC ¶ 61,027
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

NSTAR Electric Company

Docket Nos. ER07-549-000
ER07-549-001
EC06-126-002
EC06-126-003
EL07-71-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES AND CONSOLIDATING DOCKETS

(Issued July 9, 2007)

1. In this order, the Commission accepts for filing NSTAR Electric Company's (NSTAR)[1] revised electric Schedule 21-NSTAR pursuant to section II of the ISO New England Inc. (ISO-NE) Transmission, Markets and Services Tariff [2] and suspends it for a nominal period, to become effective January 1, 2007, subject to refund. The Commission also establishes hearing and settlement judge procedures for certain specified provisions of Schedule 21. Finally, because a further decrease in rates may be warranted, we will institute a proceeding under section 206 of the Federal Power Act.[3]

---

[1] Formerly known as Boston Edison Company (Boston Edison). *See* NSTAR's Filing at 1.

[2] ISO New England Inc., FERC Electric Tariff No. 3.

[3] 16 U.S.C. §824e (2000).

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

I. **Background**

2. On February 14, 2007, NSTAR filed revisions to its Local Transmission Service, Schedule 21-NSTAR, to reflect the approved and consummated merger of Cambridge Electric Light Company (Cambridge), Commonwealth Electric Company (Commonwealth), and Canal Electric Company (Canal) into Boston Edison. NSTAR explains that it made this filing pursuant to the Commission's orders[4] approving the merger of its subsidiaries into NSTAR.[5] NSTAR requests waiver of the Commission's notice requirements to allow Schedule 21-NSTAR to become effective January 1, 2007, which is the date the merger was consummated.

3. NSTAR states that the Commission's October 20 Order authorized the consolidation of the NSTAR electric companies subject to certain conditions, including a requirement that NSTAR conform its Schedule 21-NSTAR to the Commission's rulings adopted in the Cambridge Settlement in which Cambridge and Commonwealth agreed to revise their respective Local Transmission Service Schedules.[6] NSTAR states that the Commission's November 28 Order clarified that any rulings in the Cambridge Settlement regarding issues that are specific to individual companies that merged into Boston Edison, now named NSTAR, would not necessarily be applied to Boston Edison.[7] NSTAR states that, in accordance with the Merger Orders, the proposed Schedule 21-NSTAR incorporates the provisions of the Cambridge Settlement except for the capital structure and independent audit provisions that are not applicable to NSTAR.

---

[4] *Boston Edison Co.*, 117 FERC ¶ 61,083, at P 32 (2006) (October 20 Order); *order on reh'g*, 117 FERC ¶ 61,240, at P 9 (2006) (November 28 Order) (jointly, Merger Orders).

[5] Effective January 1, 2007, Cambridge, Commonwealth and Canal merged with and into Boston Edison and Boston Edison changed its name to NSTAR Electric Company.

[6] October 20 Order at P 32; *see also Cambridge Electric Light Co.*, 111 FERC ¶ 61,246 (2005), *Certification of Uncontested Settlement*, 117 FERC ¶ 63,053 (2006), *Order Approving Uncontested Settlement*, 118 FERC ¶ 61,166 (2007) (herein, Cambridge Settlement).

[7] November 28 Order at P 5, 9.

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

4. NSTAR states that it has adopted the negotiated provisions of the Cambridge Settlement, including the agreed-upon formula rate, consumer protection provisions,[8] the "higher of" test,[9] the requirement for annual information filings, and other miscellaneous provisions.[10]

5. NSTAR states that it has adopted a modified capital structure calculation from the *pro forma* debt/equity split that was agreed to in the Cambridge Settlement (Cambridge Settlement capital structure). While the modified structure preserves the value of the Cambridge Settlement capital structure, it also reflects NSTAR's actual capital structure.

6. NSTAR proposes to carry forward the Construction Work In Progress (CWIP) and Depreciation rate from Boston Edison's Local Network transmission Service Schedule.

7. NSTAR submits that Cambridge and Commonwealth had each agreed to arrange for an independent audit to verify that certain allocations for their rate formulae that were not taken from their FERC Form 1, were correctly performed. NSTAR states that this provision is no longer necessary because all data for the rate formula will be taken from either Form 1 or NSTAR's Regional Network Service revenue requirement calculated in accordance with Schedule 9 of the ISO-NE Open Access Transmission Tariff. NSTAR also states that the independent audit provision that was included in the Cambridge Settlement to account for Cambridge's recovery of costs related to certain 13.8 kV facilities is no longer needed. The recovery for those facility costs has been transferred

---

[8] NSTAR proposes to incorporate a prohibition against the recovery of any costs under Schedule 21-NSTAR that are already recovered under any other tariff, rate, or contract. A procedure has been created for the informal provision of supplementary information by NSTAR and for formal disputes concerning the true-up in the event that parties disagree over any items in the true-up. NSTAR's formula rate bills customers during the rate year based upon estimated costs. On or before May 31 of the following year, NSTAR reconciles the estimated costs billed and adjusts customers' bills accordingly with its actual costs. This true-up informational filing is submitted to FERC and posted on NSTAR's website. *See* Schedule 21-NSTAR, section 4.1(i)-(ii).

[9] NSTAR states that it had adopted the Cambridge Settlement provision for network customers to pay the higher of the tariff-defined "Embedded Cost Charge" or the "Incremental Cost Charge." *See* Schedule 21-NSTAR, section 16.1.

[10] For example, NSTAR continues the termination of Schedule 1 concerning scheduling, system control and dispatch service and transfers of the relevant charges into the basic rate formula. *See* NSTAR Filing at 3.

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

from the jurisdiction of the Commission to the jurisdiction of the Massachusetts Department of Telecommunications and Energy beginning January 1, 2007, making the independent audit provision unnecessary.

II. Notice of Filing and Responsive Pleadings

8. Notice of NSTAR's February 14, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 8,373 (2007), with interventions and protests due on or before March 7, 2007. The Attorney General of the Commonwealth of Massachusetts (MA Attorney General) filed a timely motion to intervene and protest. Concord Municipal Light Plant (Concord) filed an out-of-time motion to intervene and comments. NSTAR filed an answer to the protest of MA Attorney General and the comments of Concord.

9. The MA Attorney General states that the Commission specifically required that NSTAR "submit an informational filing to the Commission that will allow customers to scrutinize costs before they are included in the formula rate."[11] The MA Attorney General states that NSTAR has failed to make the required informational filing. The MA Attorney General argues that the lack of the informational filing precludes customers from scrutinizing the costs before they are included in the formula rate, and also prevents the Commission from determining the reasonableness of the proposed Schedule 21-NSTAR.

10. The MA Attorney General states that the averaging of charges will increase the rates for customers of one former subsidiary while decreasing them for another. While previously a number of costs were assigned to only one affiliate, under the proposed Schedule 21-NSTAR, the costs will now be recovered from Cambridge and Commonwealth customers in addition to the original Boston Edison customers.

11. The MA Attorney General states that certain specified costs should be examined further to determine whether it is just and reasonable to allocate them to the Commonwealth and Cambridge customers. Such costs include: CWIP, Boston Edison's depreciation rate, new capital structure, HQ lease costs, determination of allowable intangible costs, allocation of deferred taxes, and allocation of regulatory assets and liabilities.

12. The MA Attorney General cautions that because NSTAR is an integrated transmission and distribution company, the majority of transactions under the proposed Schedule 21 formula rate consist of self-dealing transactions, which raise the potential for cost assignment and allocation problems. The MA Attorney General states that the assignment and allocation of costs between wholesale customers requires careful review

[11] October 20 Order at P 31.

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

to assure that customers, particularly NSTAR's own retail customers, are not being overcharged.

13. The MA Attorney General further states that NSTAR's filing is not in compliance with the November 28 Order because NSTAR failed to include the independent audit provision agreed to in the Cambridge Settlement. The MA Attorney General notes, however, that the November 28 Order clarified that "company-specific" rulings in the Cambridge proceeding would not necessarily be applied to Boston Edison.[12] The independent audit provisions were designed to ensure that there is no double recovery of costs at both the federal and state levels. The MA Attorney General requests that the Commission reject NSTAR's February 14, 2007 Compliance Filing (February Filing), order NSTAR to make the informational filing required by the October 20 Order, or, alternatively suspend the filing and set the matter for hearing and settlement judge procedures.

14. Concord states that Schedule 21-NSTAR appears to attempt to impose incremental cost or "higher of" pricing on local network service transmission service customers previously served under Boston Edison's Schedule 21. Specifically, Concord states that Schedule 21-NSTAR, section 16.1(ii) imposes "higher of" pricing as follows:

> "(ii) The Incremental Cost Charge shall be determined from the total costs of all Local Network Upgrades plus other incremental costs incurred as provided for in the Service Agreement as applied to a particular transaction.
>
> If the Incremental Cost Charge is higher, the Transmission Customer shall pay for the facilities necessary to provide it with service during an amortization period, with the Transmission Customer paying the Embedded Cost Charge upon completion of the amortization. Such amortization period shall be coterminous with the Service Agreement."[13]

15. Concord states that NSTAR's proposed "higher of" pricing provision for network service is neither required nor authorized by the Commission in the November 28 Order. Concord states that the tariff language in section 16.1 of the proposed Schedule 21-NSTAR is vague, and appears to permit NSTAR to charge a network service customer an Incremental Cost Charge for network facilities, and then charge the same customer an Embedded Cost Charge following amortization of the costs of whatever network facilities

---

[12] *See supra* note 7.

[13] Schedule 21-NSTAR, Section 16.1(ii).

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

NSTAR had assigned to the network customer under section 16.1. Concord states that this violates the Commission's prohibition against "and" pricing.[14] Concord also comments that the proposed Schedule 21-NSTAR fails to provide either an appropriate test for determining whether incremental costs pricing should apply, or any meaningful definitional content for the term "Incremental Cost Charge."

16. Concord states that the scope of the dispensation that the Commission granted NSTAR in the November 28 Order does not encompass NSTAR's proposed section 16.1 and that NSTAR's attempt to apply the Cambridge Settlement terms of section 16.1 to customers previously served by Boston Edison cannot be accomplished in this proceeding.[15] Concord requests that the Commission reject the Cambridge Settlement terms of section 16.1 and leave in place the current language of section 16.1 of Boston Edison's Schedule 21.

17. NSTAR answers, asking the Commission to deny the MA Attorney General's request for rejection of the February Filing and Concord's request for summary judgment regarding the February Filing's incremental cost provision. NSTAR argues that the informational filing requested by the MA Attorney General is logistically impossible because the requisite Boston Edison/Cambridge/ Commonwealth data is not available now and will not be available until May. NSTAR argues that rejecting the February Filing and thus delaying the compliance filing until the availability of the combined company data needed would effectively postpone the effective date of the NSTAR electric tariff for several months. NSTAR notes that, in that circumstance, the old Boston Edison tariff would then have to serve as the transmission tariff for the merged transmission system for an extensive interim period. Alternatively, NSTAR says that the Commission would have to make the Schedule 21-NSTAR retroactively effective over a period of several months to a year. NSTAR argues that each of those alternatives is unsatisfactory, not required by the Merger Orders, and easily avoidable by allowing the Schedule 21-NSTAR to become effective pending preparation and submission of the Boston Edison/Cambridge/ Commonwealth data needed to satisfy the informational filing requirement.

18. NSTAR also argues that Concord's argument that the section 16.1 incremental pricing provision does not fall within the scope of the Merger Orders' Compliance Filing ruling is specious. NSTAR says that section 16.1 was taken verbatim from the Cambridge Settlement tariff. Therefore, NSTAR argues that the November 28 Order

---

[14] *See Wisconsin Electric Power Co.*, 72 FERC ¶ 61,033, at 61,229 (1995).

[15] *See Midwest Independent Transmission System Operator, Inc.*, 99 FERC ¶ 61,302, at 62,264 (2002) ("Compliance filings must be limited to the specific directives ordered by the Commission….").

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

applies, restricting Concord to challenging section 16.1 only through a section 206 complaint.

19. While NSTAR argues that the November 28 Order compliance filing requirements obviate any response on the merits to Concord's contentions, it does offer these limited comments. Specifically, NSTAR notes that, contrary to Concord's claim, section 16.1 does not authorize charging a customer on both an incremental and embedded cost basis but instead authorizes NSTAR to charge the higher of either incremental or embedded cost charges. Section 16.1 fully conforms to relevant Commission policy as originally stated in *Pennsylvania Electric Company*,[16] affirmed in the Transmission Pricing Policy Statement,[17] and reaffirmed in Order No. 888.[18] NSTAR argues that, consistent with that policy and contrary to Concord's assertions, section 16.1 has clear standards that would apply in the event NSTAR determines that a customer should be charged on an incremental cost basis. In the latter regard, NSTAR argues also that Concord's section 16.1 objections should be rejected as premature because there is no present dispute between Concord and NSTAR regarding this provision. Concord now pays NSTAR an average-cost rate for its use of the relevant NSTAR transmission facilities and there is no imminent change planned in that aspect of the rate NSTAR charges Concord.

III. <u>Deficiency Letter and NSTAR's Response</u>

20. On April 10, 2007, the Commission issued a deficiency letter to NSTAR which required NSTAR: (1) to submit the informational filing required by the October 20

---

[16] *Pennsylvania Electric Co.*, 58 FERC ¶ 61,278 at 61,873 (1992), *reh'g denied*, 60 FERC ¶ 61,034 (1992), *aff'd sub nom*. *Pennsylvania Electric Co. v. FERC*, 11 F.3d 207 (D.C. Cir. 1993).

[17] *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act*; Policy Statement, FERC Stats. & Regs. ¶ 31,005, at 31,138 (1994).

[18] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC*, 535 U.S. 1 (2002).

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

Order[19] to allow customers to scrutinize costs before they are included in the formula rate, (2) to explain any proposed changes to NSTAR Schedule 21 that were not necessitated by the October 20 or November 28 Orders, particularly, the application of certain rate treatments (construction work in progress, depreciation rates, treatment of capital structure, stranded costs, etc.) to all subsidiaries through cost averaging or otherwise, when the rate treatments were approved for only one subsidiary; and (3) to state whether NSTAR's submittal meets the abbreviated filing requirements of 18 C.F.R. § 35.13(a)(2) (2006).

21. On May 10, 2007, NSTAR submitted its response (deficiency response) to the deficiency letter. To satisfy the merger-related transparency requirement and hold-harmless commitments, NSTAR identified the external costs of the merger. NSTAR states that merger-related costs that were to be borne by shareholders were initially recorded in different FERC accounts depending on the nature of the services provided. However, at year-end 2006 an accounting entry was made to transfer all of the 2006 merger-related costs to FERC Account 426.5 - Other Deductions. The 2007 amounts are also recorded in Account 426.5. Account 426.5 is not included in the determination of any of NSTAR's rates, and therefore is not recovered under the Boston Edison, Cambridge, or Commonwealth tariffs. NSTAR also submitted the true-up of 2006 costs and the exclusion of Account 426.5 costs from the formula rate under Schedule 21-NSTAR to demonstrate that ratepayers were not charged any merger-related costs.[20]

22. NSTAR further affirms that transmission rates charged to Belmont Municipal Light Company (Belmont) post-merger will be the same rates going forward. NSTAR states that the billings to Belmont for 2007 and for January 2008 through April 2008 are based upon pre-merger data.

23. Additionally, NSTAR states that the only rate-related change to Schedule 21-NSTAR that was not derived from either the Cambridge Settlement or the prior Boston Edison tariff is to capital structure. Specifically, NSTAR proposes to use a combined capital structure based upon the capital structure approved in the Cambridge Settlement, and based upon the actual (per book) NSTAR capital structure. First, NSTAR proposes to calculate the capital structure approved in the Cambridge Settlement, which restricts the common equity ratio to not exceed 50 percent. At the same time, NSTAR proposes to calculate an overall return based upon NSTAR's actual capital structure. After NSTAR

---

[19] October 20 Order at P 31 states, "We find that Applicants' First Commitment (that shareholders will bear the merger-related transaction and transition costs) and Second Commitment (regarding Belmont), if accompanied by a transparency requirement as described herein, will provide adequate ratepayer protection…."

[20] Deficiency Response, Attachment A-2.

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

has calculated these two capital structures separately, NSTAR proposes to combine the two, by using 70 percent of the actual (per book) capital structure, and 30 percent of the Cambridge Settlement capital structure (which caps the common equity ratio at 50 percent).

24. NSTAR submits that Schedule 21-NSTAR utilizes an adjusted rather than a per-book capital structure provision that reduces the common equity ratio below its actual level and thereby results in lower charges than would apply if the formula rate utilized an actual capital structure. Currently, NSTAR's actual capital structure results in a common equity ratio that exceeds 50 percent.[21] NSTAR states that it made this adjustment to voluntarily apply to itself a Cambridge and Commonwealth retail settlement commitment[22] to adjust their capital structures which had a very low debt ratio, in part due to their anticipated merger into Boston Edison and the desirability of reducing and eliminating their pre-merger debt.

25. NSTAR submits that the proposed Schedule 21-NSTAR carries over the depreciation and CWIP provisions from the Boston Edison tariff, which were specifically permitted by the November 28 Order.[23]

26. In response to the deficiency letter's requirement to state whether the Compliance Tariff meets the abbreviated filing requirements of subsection (1) or (2) of section 35.13 of the Commission's regulations, NSTAR submits that neither subsection (1) or (2) applies to Schedule 21-NSTAR on the grounds that Schedule 21-NSTAR is not a voluntary filing made pursuant to section 205 of the Federal Power Act (FPA), but instead a compliance filing made in accordance with the Merger Orders.

27. NSTAR submits that the depreciation and CWIP provisions are not Cambridge Settlement legacy provisions, but are carry-over provisions from the Boston Edison tariff. These CWIP provisions do not represent a rate change from the Boston Edison tariff and thus are not subject to section 35.13.[24] If section 35.13 is applicable, NSTAR submits

---

[21] NSTAR represents in Attachment C-3, Line 4, that its current actual common equity ratio is 56.04 percent.

[22] The settlement was approved by the Massachusetts Department of Telecommunication and Energy in Docket No. D.T.E. 05-85 on December 30, 2005.

[23] November 28 Order at P 8-9.

[24] *See Public Service Commission of New York v. FERC*, 642 F.2d 1335 at 1345 (D.C. Cir. 1980) (establishing that upon a rate filing a utility does not have the burden of demonstrating the justness and reasonableness of unchanged tariff provisions).

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

that the controlling provision is section 35.13(2)(iii), which applies to rate schedule changes other than rate increases. NSTAR submits that assuming section 35.13 applies to the non-legacy provisions (the depreciation and CWIP provisions that are not derived from the Cambridge Settlement), these non-legacy provisions produce a net rate decrease. NSTAR shows a depreciation-related reduction of $1.6 million and a CWIP-related increase of $1 million, for a net rate decrease of $600,000. NSTAR states that if capital structure is considered in evaluating the Compliance Filing's rate impact, the rate reduction is approximately $1.6 million.

28. NSTAR requests waiver of the filing requirements of section 35.13 to the extent that Schedule 21-NSTAR becomes effective January 1, 2007, which is the effective date of the merger of Cambridge and Commonwealth into Boston Edison.

29. NSTAR submits that neither the Cambridge Settlement nor the November 28 Order required NSTAR to include an outside auditor provision from the Cambridge Settlement tariff.[25] NSTAR states that Schedule 21-NSTAR formula rate includes detailed audit provisions and protections consistent with Commission precedent on formula rates that are designed to ensure a thorough examination of costs. Such provisions include an annual true-up based on actual cost and load information using Form 1 data, an informational filing of the true-up with the Commission, the posting of the true-up on NSTAR's website, a requirement to specifically show the "PBOP" component[26] of Administrative and General Expense and allocation of that expense, a requirement to provide supplementary information to show the development of any true-up data not taken directly from the Form 1 as well as identify any account used to record expenses to a customer during a Service Year, rules for conducting an annual audit of NSTAR's costs and inspection of its records as well as any additional information that a party may request in connection with the audit, and dispute resolution for components of the audit, subject to refund.

IV. Notice of Amended Filing and Responsive Pleadings

30. Notice of NSTAR's amendment was published in the *Federal Register*, 72 Fed. Reg. 20,485 (2007), with interventions and protests due on or before May 31, 2007. The MA Attorney General, Concord, and Belmont filed timely motions to intervene and protests.

31. The MA Attorney General states that NSTAR narrowly defined the merger-related costs as only external costs to achieve the merger and the additional costs that might be charged to Belmont after the merger is consummated. The MA Attorney General states

---

[25] November 28 Order at P 8.

[26] Post-retirement benefits other than pensions.

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

that this narrow definition does not include other merger-related costs that will be included in transmission rates charged to customers and that NSTAR does not fully explain these costs. The MA Attorney General submits that the Commission cannot determine whether the wholesale rates will be adversely affected or whether customers will be adequately protected by examining only the external costs of the merger and the satisfaction of Belmont. The MA Attorney General notes that since NSTAR is an integrated transmission and distribution company, the majority of transactions under the proposed Schedule 21-NSTAR formula rate consist of self-dealing transactions which can lead to the potential for cost assignment and allocation problems. The MA Attorney General argues that NSTAR's retail customers have the potential to be overcharged. The MA Attorney General states that the informational filing needs to include sufficient information to truly provide transparency of all costs.

32. The MA Attorney General states that NSTAR does not adequately explain the proposed capital structure for the Commission to determine that the resulting rates are just and reasonable. The MA Attorney General submits that NSTAR did not consider using the capital structure approved in the Cambridge Settlement, nor offer any justification for this failure to conform its tariff to the specific rulings stemming from the Cambridge Settlement. The MA Attorney General stresses that the appropriate capital structure is especially important in this case where NSTAR seeks to apply the provisions of CWIP to the investments of the former Cambridge and Commonwealth Companies which had not received Commission approval of CWIP accounting.

33. The MA Attorney General states that the deficiency response should include the 2006 informational filings for each of the merged companies in the detail approved and with the terms specified in the Cambridge Settlement. The MA Attorney General states that without sufficient, comparable information for each company and opportunity to review and challenge items and calculations, customers will not be able to determine the accuracy of current or future charges, nor determine whether there are grounds for protesting charges under section 206 of the Federal Power Act. The MA Attorney General states that transmission costs are escalating due to aggressive transmission expansion programs such as the NSTAR 345 kV lines recently energized and the customers that pay the bills are entitled to the maximum transparency and disclosure.

34. The MA Attorney General submits that the Commission should order NSTAR to comply with section 35.13, since NSTAR admits a rate increase of approximately $1 million for the CWIP provision.[27] The MA Attorney General further states that the Commission should not allow NSTAR to shirk its filing obligations just because NSTAR

[27] 18 C.F.R. § 35.13 (2006).

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

decided to calculate a rate impact based on a net amount.[28] The MA Attorney General asserts that, by using this method to selectively apply the Commission's filing regulations, NSTAR does not provide information that the Commission needs in order to determine if the resulting rates are just and reasonable.

35. Concord submits that NSTAR's response to the Staff's deficiency letter failed to provide the information required with respect to NSTAR's attempt to engraft incremental cost of pricing of transmission service for network service customers onto its Schedule 21-NSTAR. Concord states that NSTAR offered no justification for this change in its February 14, 2007 filing or in its deficiency response. Concord requests that the Commission reject section 16.1 of the proposed Schedule 21-NSTAR and leave in place the current language of section 16.1 of the Boston Edison Schedule 21.

36. Belmont states that NSTAR's deficiency response includes a discussion of NSTAR's proposed charges to Belmont under a Transmission Service Agreement (TSA)[29] for the period of January 2007 through March 31, 2008. Belmont states that it is presently involved in negotiations with NSTAR concerning this TSA in light of the merger in Docket No. EC06-126-000; Belmont believes that those discussions have already reached a resolution that would render portions of NSTAR's deficiency response moot.[30] Belmont states that its protest is intended to correct a number of misstatements in NSTAR's response and avoid any future contention that it somehow acquiesced in those assertions. Belmont states that, for example, NSTAR proposes to incorporate in the TSA the support costs that Cambridge would have paid to Boston Edison for the use of Boston Edison's Station No. 509, for which Belmont would have been responsible. Belmont states that, because Cambridge and Boston Edison are now one entity, these support costs will not be incurred. Belmont states that it is inappropriate for NSTAR to continue to charge Belmont for "costs" that will not actually be incurred. Belmont states that the Commission has previously rejected efforts by NSTAR's predecessor to charge rates based on fictitious costs, and requests that the same result apply here.[31] Belmont requests that the Commission clarify that no order entered on NSTAR's compliance filing will

---

[28] NSTAR uses a net decrease ($1.6 million depreciation related decrease and $1 million CWIP related increase) to show that the filing requirements do not apply.

[29] Cambridge Electric Light Company, FERC Electric Rate Schedule No. 36, accepted in Docket No. ER94-1409-000.

[30] Belmont references the deficiency response at 4-5.

[31] Belmont cites *Boston Edison Co.*, 87 FERC ¶ 61,034, at 61,127-61,128, *modified on other grounds*, 87 FERC ¶ 61,053(1999); *reh'g denied*, 95 FERC 61,079 (2001).

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

entitle NSTAR, under either TSA or the Belmont-related condition to the merger,[32] to charge Belmont for costs that are not actually incurred by the transmission provider under the TSA.

37. Similarly, Belmont asserts that the 83 percent equity/17 percent debt capital structure which NSTAR proposes to use in its rates to Belmont under the TSA is fictitious and patently unreasonable.

38. In response, NSTAR answers that the MA Attorney General confuses true-ups with the transparency filings required by the Merger Orders. NSTAR argues that the two are similar, though not identical, and that NSTAR's deficiency response fully satisfies the transparency requirement. NSTAR argues that the filing demonstrates in detail NSTAR's fulfillment of its ratepayer protection obligations[33] and that the filing also quantifies the exact impacts of the Schedule 21-NSTAR CWIP and depreciation provisions on the former customers of Cambridge and Commonwealth.[34]

39. NSTAR also argues that the deficiency response also quantifies the impact of the Schedule 21-NSTAR capital structure provision showing that it would reduce customer charges by $1.3 million below NSTAR's actual capital costs.[35] In other words, NSTAR argues that the May 10 Submission not only fulfills the transparency requirement as to hold harmless costs but also quantifies the financial impacts of the three tariff provisions not taken directly from the Cambridge Settlement.

40. NSTAR also states that its construction projects, before they are begun, are subject to detailed scrutiny, transparency, disclosure, and analysis of all costs and benefits aimed at assuring those projects will promote reliability and/or provide for more economic service. According to NSTAR, the Schedule 21-NSTAR true-up provisions, taken directly from the Cambridge Settlement, provide full opportunity for disclosure, investigation, and analysis of all NSTAR costs including but not limited to its construction program costs. Moreover, NSTAR notes that the NSTAR construction programs are undertaken pursuant to ISO-NE planning procedures, are subject to intensive review at the ISO-NE planning level, and are also subject to detailed review and

---

[32] October 20 Order at P 25, 28.

[33] *See* May 10 Filing Letter at 2-5, Vaughan and Farrell Affidavits, and Attachments A-2 through A-5.

[34] Vaughn Affidavit at P 5.

[35] *Id.* at P 6.

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

approval by the Massachusetts Energy Facilities Siting Board, thus suggesting further proof of transparency.

41. Further, NSTAR argues that none of MA Attorney General's objections are justified. NSTAR argues it has demonstrated fulfillment of its merger commitments. It states that the Schedule 21-NSTAR consists of legacy provisions from the Cambridge Settlement, as required by the Merger Orders, two provisions retained from the pre-merger tariff, and a capital structure provision that does not fully recover costs, also as permitted by the Merger Orders. NSTAR argues that its tariff retained unchanged depreciation and CWIP provisions from its prior rate as permitted by the Merger Orders and that it reduces customer charges, and is clearly just and reasonable.

42. In response to Concord, NSTAR states that section 16.1 is a legacy provision taken from the Cambridge Settlement. NSTAR argues that the November 28 Order allows Concord to challenge such legacy provisions only through a complaint filed under FPA section 206, thus requiring rejection of Concord's objection. NSTAR also notes two other concerns with Concord's section 16.1 objection. First, NSTAR argues that section 16.1 is consistent with Commission policy allowing utilities to charge rates based on either incremental or average costs.[36] NSTAR argues that, hence, any future Concord section 16.1 complaint would fail. Second, NSTAR states that Concord does not disclose that it is now charged under an average cost rate which NSTAR could change only by a filing under FPA section 205 or 206. Thus, NSTAR argues that Concord seeks a declaratory order that would serve no useful purpose since the facts and circumstances that might prompt an NSTAR filing of a new Concord rate are not set forth in this record, which is restricted to NSTAR's compliance with the Merger Orders.

43. Finally, NSTAR argues that Belmont's paramount concern is not that its post-merger costs will increase but that NSTAR will use the deficiency response to justify not decreasing Belmont's TSA charges to reflect merger-related cost reductions. NSTAR states that the deficiency response will not have such a prejudicial effect on Belmont, and thus there should be no dispute between Belmont and NSTAR with respect to that deficiency response. NSTAR states that the May 10 filing is exclusively intended to

---

[36] *Pennsylvania Electric Co.*, 58 FERC ¶ 61,278 at 61,873 (1992), *reh'g denied*, 60 FERC ¶ 61,034 (1992), *aff'd sub nom*. *Pennsylvania Electric Co. v. FERC*, 11 F.3d 207 (D.C. Cir. 1993); *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act; Policy Statement*, FERC Stats. & Regs, ¶ 31,005, at 31,138 (October 26, 1994) ("Transmission Pricing Policy Statement"); *see* Order No. 888, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,036, at 31,739-40 (1996); Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, at 30,265-66 (1997).

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

demonstrate fulfillment of NSTAR's commitment not to increase Belmont's TSA charges. Thus, NSTAR argues that Belmont's concerns about rate decreases are outside the scope of the deficiency response and also outside the scope of this proceeding, which concerns NSTAR's commitment to protect Belmont from merger related cost increases. Accordingly, NSTAR states that Commission acceptance of the deficiency response will not in any way foreclose or prejudice any Belmont claim that TSA charges should be decreased to reflect merger related savings.

44. NSTAR also responds to Belmont's argument that NSTAR allows itself too much leeway for 2008 billings. NSTAR notes that it does not have 2008 billing data and thus could not include it in the deficiency response. Finally, NSTAR is optimistic that the negotiations referred to by Belmont will be successful and will resolve any section 17(a) dispute between the parties.

V. Discussion

A. Procedural Matters

45. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the timely, unopposed motions to intervene serve to make the entities who filed them parties to this proceeding. Given the early stage of this proceeding, the absence of any undue prejudice or delay, and their interest in this proceeding, the Commission finds good cause to grant the untimely, unopposed motion to intervene and comments of Concord Municipal Light Plant.

46. 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 unless otherwise ordered by the decisional authority. We will accept NSTAR's answers because they have provided information that assisted us in our decision-making process.

B. Hearing and Settlement Judge Procedures

47. The proposed Schedule 21-NSTAR raises issues of material fact that cannot be resolved based on record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordering below. Specifically, as explained further below, we set for hearing provisions related to CWIP,[37] capital structure, "higher of"

[37] As approved in *Boston Edison Co.*, 109 FERC ¶ 61,300 at P 30-31 (2004), *order on reh'g*, 111 FERC ¶ 61,266 (2005) (*Boston Edison Company)*.

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

charges,[38] self dealing and any other rate, term, or condition other than what was approved for each subsidiary of NSTAR.

48. The MA Attorney General notes that NSTAR seeks to apply the provisions of CWIP to the investments of the former Cambridge and Commonwealth Companies which had not received Commission approval of CWIP accounting. NSTAR argues that its tariff retained CWIP provisions from its prior rate as permitted by the Merger Orders and that it reduces customer charges, and is clearly just and reasonable.

49. In *Boston Edison Company*, the Commission approved the inclusion of 50 percent CWIP in rate base only for specified projects.[39] We clarify here that the Commission did not grant blanket CWIP treatment for all Boston Edison upgrades in perpetuity, nor did the Commission make any findings on projects that were not listed in Exhibit BE-10 as filed in Docket No. ER05-69-000.

50. We note that NSTAR has outlined several projects in its updated CWIP construction forecast filed in Attachment B-8 of Docket No. ER07-549-001 for which CWIP treatment has not been granted. For example, the following projects were not included in Boston Edison Company's initial CWIP request and are therefore not eligible for CWIP treatment without a formal request for such treatment: Line #325, Line #336, Line # 389,[40] Line #191,[41] Line # 115,[42] and low voltage conditions at Wellfleet are among some of the upgrades not approved in the prior request.

51. We will treat these new projects as an initial request for CWIP treatment. NSTAR has the option of establishing a record in the hearing proceeding, consistent with the Commission's regulations on 50 percent CWIP in rate base for the new projects.[43] For example, NSTAR should include an assessment of the relative costs of adopting

---

[38] *See* Schedule 21-NSTAR section 16.1(ii).

[39] *Supra* note 37 at P 33, in which the Commission granted CWIP treatment for the 345 kV project, and for the projects listed in Exhibit BE-10 of the initial filing in Docket No. ER05-69-000.

[40] Docket No. ER07-549-001, Attachment B-8 at 7.

[41] *Id*. at 22.

[42] *Id*. at 24

[43] 18 § C.F.R. 35.13(h)38, 18 § C.F.R. 35.25, and Part 101, *Electric Plant Instructions*.

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

alternative strategies, and provide an explanation of why the program adopted is prudent and consistent with a least-cost energy supply program. Requiring this information is consistent with Commission policy. Alternatively, NSTAR may choose to withdraw its request for CWIP treatment of these new facilities.

52. NSTAR has proposed a capital structure which combines the capital structure approved in the Cambridge Settlement, weighted at 30 percent, with NSTAR's actual capital structure, which is weighted at 70 percent. The MA Attorney General states that NSTAR does not adequately explain the proposed capital structure for the Commission to determine that the resulting rates are just and reasonable. The MA Attorney General submits that NSTAR did not consider using the capital structure approved in the Cambridge Settlement, and offered no justification for this failure to conform its tariff to the specific rulings stemming from the Cambridge Settlement. The Commission finds there are questions of material fact that cannot be resolved based on the current record and directs that these issues be resolved through hearing procedures.

53. Concord states in its protest that NSTAR's proposed "higher of" pricing provision in section 16.1 violates the Commission's prohibition against "and" pricing.[44] Concord submits that the proposed Schedule 21-NSTAR fails to provide either an appropriate test for determining whether incremental costs pricing should apply, or any meaningful definitional content for the term "Incremental Cost Charge." Concord states that the scope of the dispensation that the Commission granted NSTAR in the November 28 Order does not encompass NSTAR's proposed section 16.1 and that NSTAR's attempt to apply the Cambridge Settlement terms of section 16.1 to customers previously served by Boston Edison cannot be accomplished in this proceeding.[45] NSTAR argues that section 16.1 was taken verbatim from the Cambridge Settlement, therefore, the November 28 Order applies, restricting Concord to challenging section 16.1 only through a section 206 complaint. The Commission finds that there is a lack of evidence to rule on the "higher of" pricing and that the disputed fact cannot be resolved on the pleadings. Therefore, we find that to the extent these costs are included in the averaged cost, to be paid by customers of NSTAR who were not party to the Cambridge Settlement proceedings, for example customers of Boston Edison, such parties may challenge the

---

[44] *See Wisconsin Electric Power Co.*, 72 FERC ¶ 61,033, at 61,229 (1995).

[45] *See Midwest Independent Transmission System Operator*, 99 FERC ¶ 61,302, at 62,264 (2002) ("Compliance filings must be limited to the specific directives ordered by the Commission….").

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

applicability of such costs in the hearing because such costs are part of the company-specific issues mentioned as excepted in our November 28 Order.[46]

54. NSTAR proposes to apply company-specific provisions from the Cambridge Settlement to all customers in a generally applicable service. Therefore, NSTAR's proposed inclusion becomes an excepted "company-specific" issue through which customers are *not* limited to a section 206 complaint, contrary to NSTAR's assertion in its answer.

55. The MA Attorney General notes that because NSTAR is an integrated transmission and distribution company, the majority of transactions under the proposed Schedule 21 formula rate consist of self-dealing transactions, which raise the potential for cost assignment and allocation problems. The MA Attorney General states that the assignment and allocation of costs between wholesale customers requires careful review to assure that customers, particularly NSTAR's own retail customers, are not being overcharged. The Commission cannot determine from the information provided whether there are cost assignment or allocation problems taking place and sets this matter for hearing. The Commission also finds that the informational filing is not adequate to scrutinize the merger-related costs.[47] Therefore, we set the merger-related costs for hearing.

56. In the October 20 Order,[48] we found that "[i]n the event that the outcome of the on-going proceeding requires changes to Cambridge's tariff [Cambridge Settlement], Applicants are directed to reflect such changes in Boston Edison's revised Schedule 21 [Schedule 21-NSTAR]. Customers will have the opportunity in a 205 proceeding to

---

[46] *See* November 28 Order at P 8-9. Specifically, we stated in the November 28 Order that "any rulings in the *Cambridge* proceeding [Cambridge Settlement] regarding issues that are company-specific in nature, including the treatment of capital structure, construction work in progress, depreciation rates, or stranded costs affecting Cambridge and/or Commonwealth *will not necessarily be applied to Boston Edison*." *Id.* P 8 (emphasis added). As for the rights of parties to contest company-specific issues, the Commission stated that, "With the exception of [these] company specific issues, we agree that a compliance filing is the most efficient way of conforming to any rulings stemming from the Cambridge proceeding. Any party that wishes to dispute the justness and reasonableness of Boston Edison's tariff would still have the right to file a section 206 complaint."

[47] *See* October 20 Order at P 31.

[48] October 20 Order at P 29.

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

review and contest any change." The MA Attorney General is exercising its prescribed opportunity to contest changes to the Cambridge Settlement. Therefore, in addition to the issues stated above, we set for hearing HQ lease costs, determination of allowable intangible costs, allocation of deferred taxes, and allocation of regulatory assets and liabilities.

57. Our preliminary analysis indicates that NSTAR's filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept NSTAR's proposed Schedule 21-NSTAR for filing, suspend it for a nominal period, make it effective January 1, 2007,[49] and set the provisions specified above for hearing and settlement judge procedures.

58. Ordinarily, the Commission does not suspend rate decreases. Here, however, given that the parties dispute the effect of the proposed changes on the rates charged, it is not possible at this time to determine whether the proposed rates will, in fact, be a rate decrease or increase. We will therefore suspend the proposed rates and attach a refund obligation.[50] In order to give customers the immediate benefit of the proposed lower rates and based on our preliminary analysis of the proposed revenue requirement, we will impose a nominal suspension in this proceeding.

59. In addition, because a further rate decrease may be appropriate, we will institute a section 206 investigation in Docket No. EL07-71-000 with respect to the justness and reasonableness of NSTAR's proposed rate decrease. In cases where the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires the Commission to establish a refund effective date that is no earlier than the publication date of the notice of initiation of the investigation, but no later than five months subsequent to the expiration of the 60-day period. Consistent with *Canal Electric Company*,[51] we will establish the refund effective date at the earliest date possible in

---

[49] Here NSTAR has requested waiver of notice to make the rate changes effective January 1, 2007. We conclude that good cause exists to grant the waiver because NSTAR wishes to make these rates effective with the date of the merger. *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

[50] *See Southwestern Electric Power Co.*, 36 FERC ¶ 61,081, at 61,203, *reh'g denied*, 37 FERC ¶ 61,325, at 61,946 (1986).

[51] 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

order to provide maximum protection to customers, i.e., the date the notice of the initiation of the investigation in Docket No. EL07-71-000 is published in the *Federal Register*.

60. Section 206(b) also requires that if the Commission has not rendered a final decision by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206 of the FPA, the Commission shall state the reasons why it has failed to do so and shall make its best estimate as to when it reasonably expects to make such a decision. Based on our review of the record and in consideration of the nature of the issues set for hearing, and assuming that the parties are unable to reach a settlement, we expect that a presiding judge should be able to render a decision within approximately twelve months, or, if the parties were to proceed to trial-type evidentiary hearing procedures immediately, on or before July 9, 2008. If a presiding judge were to render an Initial Decision by that date, and assuming the case does not settle, we estimate that we will be able to issue our decision within approximately six months of the filing of briefs on and opposing exceptions or by March 9, 2009.

61. Finally, because there are common issues of law and fact, we will consolidate Docket Nos. ER07-549-000, ER07-549-001, EC06-126-002, EC06-126-003 and EL07-71-000 for the purposes of hearing and decision.

62. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[52] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[53] The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of the appointment of the settlement judge, 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.

---

[52] 18 C.F.R. § 385.603 (2006).

[53] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

C. Other Matters

(1) Independent Audit Provision

63. We will accept NSTAR's modified audit provisions as consistent with Commission precedent on formula rates.[54] NSTAR's proposed Schedule 21-NSTAR, section 4.1(v) provides for an audit period that runs from July 1 through September 30 of the year following the service year, in which the network customer has the right to conduct an audit or other inspection of the actual data used in the annual true-up and/or request additional information not included with the annual true-up. Further, NSTAR is permitted to make changes to the Cambridge Settlement pursuant to section 205 of the Federal Power Act, consistent with the terms of the Cambridge Settlement.[55] Therefore, Commission accepts the removal of the independent audit provision.

(2) Depreciation

64. Based on the materials provided by NSTAR in support of its filings, the Commission finds the proposed depreciation rate,[56] which results in an overall reduction of rates for all customers, to be just and reasonable.

(3) Belmont's Request for Relief

65. The Commission agrees with both Belmont and NSTAR[57] that any discussion of future charges under the TSA is beyond the scope of this proceeding. The Commission finds Belmont's request for clarification and relief to be a collateral attack on the October 20 Merger Order because the parties agreed to the terms of the merger and did not request rehearing: "Applicants commit specifically that the proposed transaction will not change the prices charged to Belmont under the Transmission Service Agreement…. Thus, so long as the current Transmission Service Agreement remains in effect (at least

---

[54] *Boston Edison Co.*, 91 FERC 61,198 (2000); *Northeast Utilities Services Co.*, 105 FERC ¶ 61, 089 (2003); *reh'g denied* 111 FERC ¶61,333 (2005).

[55] The Cambridge Settlement states in Article 6.10 that "[t]he Appendix A and B Schedule 21 revisions are subject to unilateral amendment by Cambridge and Commonwealth, respectively, pursuant to the provisions of Section 205 of the Federal Power Act."

[56] As approved in *Boston Edison Co.*, 107 FERC ¶ 61,298 (2004).

[57] *See* Belmont Motion to Intervene and Protest at 5; NSTAR Motion to Answer and Answer to Protests at 4-5.

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

three years), costs as reflected in the formula rate cannot be based on the merged cost of the combined transmission systems of all Applicants, except for those costs which have previously been incurred on a common basis by all Applicants, such as service company costs."[58] This condition, however, does not preclude Belmont from initiating a separate section 205 or 206 proceeding as provided for in the TSA, under Article VI, section 12(b).

The Commission orders:

(A) NSTAR's proposed Schedule 21-NSTAR is hereby accepted for filing, suspended for a nominal period, to become effective January 1, 2007, as requested, subject to refund, as discussed in the body of this order.

(B) 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 sections 205 and 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 concerning NSTAR's proposed Schedule 21-NSTAR. Specifically, the issues set for hearing include: CWIP, capital structure, "higher of" charges, self dealing, merger-related costs, and any other rate, term, or condition other than what was approved for each subsidiary of NSTAR. Also set for hearing are HQ lease costs, determination of allowable intangible costs, allocation of deferred taxes, allocation of regulatory assets and liabilities and the applicability of incremental pricing provisions under the Cambridge Settlement. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2006), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within sixty (60) days of the appointment of the settlement judge, the settlement judge shall file a report with 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 settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If

[58] October 20 Order at P 28.

20070709-3026 Issued by FERC OSEC 07/09/2007 in Docket#: ER07-549-000

settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) The Secretary shall promptly publish a notice of the Commission's initiation of the investigation under section 206 of the Federal Power Act in Docket No. EL07-71-000 in the *Federal Register*.

(G) The refund effective date in Docket No. EL07-71-000, established pursuant to section 206(b) of the Federal Power Act, will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (F) above.

(H) Docket Nos. ER07-549-000, ER07-549-001, EC06-126-002, EC06-126-003 and EL07-71-000 are hereby consolidated for purposes of hearing and decision.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.