

110 FERC ¶ 61,261
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Boston Edison Company

Docket Nos. EL02-123-005 and ER02-170-005

ORDER GRANTING IN PART AND DENYING IN PART REHEARING

(Issued March 8, 2005)

1. The Commission issued an order¹ on September 21, 2004 (September 21 Order) denying rehearing of an order issued on June 2, 2004 (June 2 Order)² that affirmed an initial decision's conclusions that:

- Boston Edison Company's (Boston Edison) filed, unexecuted service agreements for local network service (LNS) to the Towns of Wellesley (Wellesley) and Concord (Concord), Massachusetts (jointly, Towns) at full rolled-in LNS charges on a Town's entire load were not authorized by prior agreements;³ and
- the service agreements thus were unjust and unreasonable under section 206 of the Federal Power Act.⁴

¹ *Boston Edison Co.*, 108 FERC ¶ 61,276 (2004).

² *Boston Edison Co.*, 107 FERC ¶ 61,248 (2004) (*affirming Boston Edison Co.*, 104 FERC ¶ 63,031 (2003)).

³ These prior agreements are the Towns' 1980 Settlement Agreement (Settlement or Settlement Agreement), Wellesley's 1992 All Requirements Agreement with Boston Edison (ARA), Concord's 1993 Interconnection Agreement (IA), the 1997 Restated NEPOOL Agreement (RNA), and Wellesley's 1998 Transmission Services Agreement (TSA).

⁴ 16 U.S.C. § 824e (2000).

2. On October 21, 2004, Boston Edison filed a request for rehearing or clarification of the September 21 Order, asserting that the Commission erred in: (1) prohibiting collection of certain amounts for about three months following the end of the statutory refund period under section 206 as well as full LNS charges for load in excess of use rights, and (2) incorporating the ARA's definition of delivery point in LNS service agreements. (On the same date, Boston Edison also filed a second revised compliance filing, in compliance with the September 21 Order, which is addressed in a separate order in Docket No. EL02-123-006.⁵)

3. This order benefits customers because it will provide additional specifications for LNS service commencing on August 20, 2002. As discussed below, this order: (1) grants rehearing to permit Boston Edison to recover full LNS charges for load in excess of use rights and (2) denies rehearing to preclude Boston Edison from collecting certain amounts from February 15, 2004 through June 1, 2004 and to require incorporation of the ARA's definition of delivery point in the LNS service agreement.⁶

I. The September 21 Order

4. The September 21 Order affirmed the conclusion of the June 2 Order in this proceeding that each Town has the right to a direct contract connection to PTF up to its subtransmission use rights (over intervening 115 kV, non-PTF (LNS) facilities that make

⁵ *Boston Edison Co.*, 110 FERC ¶ 61,262 (2005).

⁶ There is no need to further address this delivery point issue, which the Commission rejected in the June 2 order at P 22-24, and summarily rejected again in the September 21 Order at P 3, footnote 8.

In a related matter, on November 22, 2002, the Commission issued an order in Docket No. ER02-170-002, *et al.*, on Boston Edison's Order No. 614 compliance filing. *See Boston Edison Co.*, 101 FERC ¶ 61,218 (2002). Wellesley's request for rehearing (filed December 23, 2002) stated that the Town and Boston Edison had been unable to agree on a definition of delivery point to include in its currently-effective Transmission Services Agreement (Rate Schedule No. 167). In the meantime, however, on November 9, 2004, Boston Edison filed a revised agreement in Docket No. ER02-170-006, with Wellesley's concurrence, that included in Appendix D the same definition of delivery point which our orders in Docket No. ER02-123-000 required. On December 22, 2004, as revised on January 5, 2005, in Docket No. ER02-170-002, *et al.*, the Director, Division of Tariffs and Market Development-East, pursuant to delegated authority, accepted Boston Edison's revised filing as in compliance with Order No. 614. Accordingly, we will dismiss as moot Wellesley's request for rehearing in Docket No. ER02-170-005.

the actual physical connection to PTF).⁷ The September 21 Order affirmed that the Towns' reading of their agreements with Boston Edison was more reasonable than Boston Edison's which required a direct physical connection from subtransmission use rights to PTF in order for the Settlement's exemption from full LNS charges to apply. As a consequence of a Town's direct contract connection to PTF up to its subtransmission use rights, the September 21 Order affirmed that each Town was not subject to LNS charges above RNA section 16.3 (iii)'s rolled-in 20 percent transitional phase-down allocation for directly connected load,⁸ as limited by Boston Edison's Open Access Transmission Tariff cap, and was entitled to the phase-out of LNS charges on February 28, 2003. The September 21 Order stated that Boston Edison had not demonstrated that it delivered or was entitled to charge for LNS on load above use rights.⁹ The September 21 Order also accepted, subject to revisions, Boston Edison's July 2, 2004 compliance filing (July 2 filing).

5. The September 21 Order concluded that Settlement article IV gives the Towns use rights in 115 kV, non-PTF facilities at certain locations where there is a transmission gap bridged by LNS facilities, because that use is necessary to implement the Towns' contract right to a PTF connection as stated in the same Settlement article IV and subsequent agreements.¹⁰ Further, the September 21 Order concluded that Settlement article IV's exemption from LNS charges does not amount to "free transmission" over LNS facilities, since that exemption was part of a broad resolution of many Commission dockets and a federal anti-trust lawsuit and the Towns also were subject to the RNA's transitional LNS charges.¹¹

⁷ Settlement article IV, IA article 9.2, and TSA articles 3.1 and 3.2. September 21 Order at P 6-8.

⁸ Under RNA section 16.3(iii), the 20 percent is applied to the LNS tariff charge, *i.e.*, monthly LNS revenue requirement. This revenue requirement is based on a Town's *maximum* hourly load (RNA section 16.3(i)), its load ratio share (Boston OATT Schedule 9), and estimated costs subject to an annual true-up (Boston Edison's OATT section 7 and NEPOOL OATT Attachment F).

⁹ September 21 Order at P 28 and 29.

¹⁰ *Id.* at P 9 and 10.

¹¹ *Id.* at P 12.

II. Boston Edison's Request for Rehearing or Clarification

6. Boston Edison first asserts that the Commission's determination prohibiting the collection of filed rates from February 15, 2004 (the day after the 15-month refund period ended) through June 1, 2004 (the day before the Commission's order affirming the initial decision in this proceeding) effectively granted refunds for roughly three months after the end of the 15-month refund period. Boston Edison argues that the September 21 Order ignores the fact that the Commission has no authority under section 206 to require refunds attributable to the RNA's phase-out after the end of the 15-month refund period and before issuance of the June 2 Order. Thus, for the period February 15, 2004 through June 1, 2004, Boston Edison asserts that it is entitled to collect its full LNS rates.¹²

7. Boston Edison next notes that Concord has taken LNS service greater than its subtransmission use rights. For Concord's load in excess of use rights, Boston Edison argues that the September 21 Order erroneously denied Boston Edison recovery from August 20, 2002 (the effective date of the filed rates) of full LNS charges.¹³ Boston Edison asserts that since August 20, 2002, Concord has been taking, calculating, and, without dispute, paying for LNS service at a peak of 30 MVA (its use rights are 26 MVA).¹⁴ Boston Edison states that while to date Wellesley has not taken load above use rights, in the future Wellesley's delivered peak at Station 148 (Needham), now 20 MVA, may exceed Wellesley's 20.4 MVA of use rights and that Wellesley's delivered peak, now 40 MVA at Station 292 (Newton), may exceed its use rights of 56 MVA.

III. Discussion

8. This order addresses issues of refunds and LNS rates for load greater than use rights. The determinations made in this order will require Boston Edison to make conforming revisions in its service agreements pursuant to a separate order in Docket No. EL02-123-006 addressing Boston Edison's October 21 compliance filing.

¹² *Id.* at P 25-27.

¹³ *Id.* at P 28-29.

¹⁴ Boston Edison relies on Exhibit No. CMLP-4 at 16 (Concord's witness).

A. Rates From February 15, 2004 Through June 1, 2004

9. The September 21 Order denied Boston Edison the right to charge full LNS rates from February 15, 2004 through June 1, 2004.¹⁵ Boston Edison asserts that the Commission does not have the authority under section 206 to, effectively, require refunds after the refund period ended and before the issuance of the June 2 Order, *i.e.*, from February 15, 2004 through June 1, 2004.

10. The 15-month statutory refund period prescribed in section 206 ran from November 15, 2002 through February 14, 2004. But that was not the only relevant event. The RNA's LNS phase-out became effective on February 28, 2003 (during the refund period) and with the phase-out, no additional charge became the filed rate. Boston Edison and the Towns are parties to the RNA and are bound by its phase-out provisions. The fact that the 15-month refund period ended on February 14, 2004 did not reinstate the LNS rate; it had been phased out consistent with the parties' agreement in the RNA. Hence, the Commission could properly order refunds consistent with section 205; Boston Edison was charging a rate that had been phased out, and so was charging a rate other than the filed rate (*i.e.*, no LNS rate at all for amounts up to use rights). The September 21 Order thus properly recognized that the RNA's phase-out should and would result in refunds consistent with section 205 for about three months even after the end of section 206's refund period.¹⁶ In contrast, permitting the collection of the LNS rate during those three months would undercut the RNA and the Settlement. Boston Edison's request for rehearing is denied.

B. Full LNS Charges for Load Greater Than Use Rights

11. The September 21 Order denied Boston Edison the right to charge, from August 20, 2002, full LNS charges on a Town's "entire" load, *i.e.*, including load in excess of use rights."¹⁷ Boston Edison asserts that the September 21 Order erroneously denied Boston Edison recovery of full LNS charges for load in excess of use rights.

12. Our earlier orders concluded that the Settlement Agreement, IA, and TSA exempt from full LNS charges a Town's load up to contract use rights.¹⁸ The exemption from full LNS charges under the parties' prior agreements does not extend to load above

¹⁵ September 21 Order at P 27.

¹⁶ *Id.* at P 25-27.

¹⁷ *Id.* at P 28 and 29.

¹⁸ *Id.* at P 34.

contract use rights, and the Towns do not contend that it does. On the basis of the parties' prior agreements, Boston Edison's request for rehearing is granted to permit Boston Edison to charge for load above use rights. Specifically, the second sentence of Settlement article IV authorizes Boston Edison to recover its cost of service for PTF load transmitted in excess of use rights.¹⁹ Concord's IA even more clearly states that point in article 9.2, that the

wheeling of these purchases from Station 342 through Station 416 could be subject to a radial transmission charge when these purchases exceed 26 MVA, the level of transmission use rights purchased in the 1980 Settlement Agreement.

For Wellesley, TSA Article 3.2 similarly provides that Wellesley may use for PTF transactions and interconnection "its share of the capacity of the facilities set forth in Appendix B."

13. Boston Edison proposes to start charging full LNS charges for load in excess of use rights as of the date Wellesley's load at either Station 292 or 148 exceeds contract use rights at that individual station, 56 and 20.4 MVA, respectively.²⁰ Wellesley, on the other hand, contends that under both the first sentence in Settlement article IV ("total of the purchases") and TSA article 3.2 there can be no LNS charges for load in excess of use rights at either station until a Town's total purchases at both stations, now 60 MVA, exceed its total contract use rights at both stations, *i.e.*, 76.4 MVA. Boston Edison subsequently answered that unused use rights cannot be rotated between stations and that there is no potential for LNS service at Station 148 because Wellesley's subtransmission use rights directly connect to PTF without intervening LNS facilities.²¹ In light of Boston Edison's explanation that there is no potential for LNS service at Station 148, the parties' disagreement over methodology for computing LNS charges between Stations 292 and 148 is moot.

¹⁹ The second sentence of Settlement article IV provides

If PTF transactions for Concord or Wellesley exceed that amount [*e.g.*, its capacity in megavolt amperes of the facilities connected to PTF with respect to which the Town has made lump-sum payments], Edison may file with the Commission such rate schedules or changes in schedules as it deems appropriate to recover its cost of service for the portion of the PTF transactions which is in excess of the capacity of such facilities.

²⁰ Boston Edison's request (October 21, 2004); Wellesley's response (November 5, 2004); Boston Edison's answer (November 22, 2004).

²¹ Boston Edison's reply on compliance filing (November 29, 2004).

The Commission orders:

(A) Boston Edison's request for rehearing permitting the collection of LNS rates without a refund obligation from February 15, 2004 through June 1, 2004 is hereby denied, and its request for rehearing to permit LNS charges above contract use rights is hereby granted, as discussed in the body of this order.

(B) Boston Edison's request for rehearing on the issue of incorporation of the ARA definition of delivery point in the LNS agreement is hereby denied, as discussed in the body of this order.

(C) Wellesley's request for rehearing in Docket No. ER02-170-005 is hereby dismissed.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.