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.

Boston Edison Company
Cambridge Electric Light Company
Commonwealth Electric Company
Canal Electric Company

Docket No. EC06-126-000

ORDER CONDITIONALLY AUTHORIZING DISPOSITION AND ACQUISITION OF JURISDICTIONAL FACILITIES

(Issued October 20, 2006)

1. On May 26, 2006, Boston Edison Company (Boston Edison), Cambridge Electric Light Company (Cambridge), Commonwealth Electric Company (Commonwealth), and Canal Electric Company (Canal) (collectively, the NSTAR Operating Companies or Applicants) filed an application under section 203 of the Federal Power Act (FPA)[1] for Boston Edison to acquire the jurisdictional facilities of its affiliates, Cambridge, Commonwealth and Canal.[2] The Commission has reviewed the proposed transaction under the Commission's Merger Policy Statement[3] and orders implementing EPAct

[1] 16 U.S.C. § 824b (2000), amended by Energy Policy Act of 2005 § 1289, Pub. L. No. 109-58, 119 Stat. 594, 982-93 (2005) (EPAct 2005).

[2] Applicants, except for Canal, also filed applications under section 204 of the FPA in Docket No. ES06-33-000, ES06-32-000 and ES06-34-000 for an increase in their authorizations to issue short-term debt. The Commission will act by separate order on these filings.

[3] *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. & Regs., Regulations and Preambles July 1996-December 2000 ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); *see also Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 Fed. Reg. 70,984 (2000), FERC Stats. & Regs., Regulations Preambles, July 1996-December 2000 ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001) (Merger Filings Requirements Rule).

2005's amendments to section 203.[4] We will authorize the transaction, subject to condition, as discussed below. We find that the merger will not have an adverse effect on competition, rates or regulation and thus is consistent with the public interest. We also find that the merger will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.

I. Background

2. Each Applicant is a wholly-owned public utility subsidiary of NSTAR, a Massachusetts business trust which owns all the common stock of each of the Applicants. Other than Canal, each Applicant provides transmission and distribution services and default electric service for retail customers in eastern Massachusetts.[5] Collectively, other than Canal, Applicants own approximately 579 miles of transmission lines, ranging from 115 kV to 345 kV. NSTAR also engages in non-utility activities, including local energy operations, telecommunications, and liquefied natural gas operations.

3. Canal has a 3.4 percent equity ownership share of New England Hydro-Transmission Electric Company and New England Hydro Transmission Electric Corporation (HQ Companies). As a result of that ownership, Canal is entitled to enter into a capital lease under which it still owed (at the end of 2005) approximately $7.0 million, in connection with the Hydro-Quebec transmission facilities owned by the HQ Companies. Canal has an agreement for the use of HQ Companies' transmission lines for the benefit of Cambridge and Commonwealth.

II. The Proposed Transaction

4. Applicants say that the proposed transaction is a merger in which Cambridge, Commonwealth, and Canal will merge with and into Boston Edison. As a result of the merger, and by operation of law, the facilities, properties and other rights, assets, franchises, and liabilities will become Boston Edison's. The Cambridge and Commonwealth debt will be retired. Shares of Cambridge, Commonwealth, and Canal will be converted into shares of Boston Edison, all of which will be held by NSTAR, and those three companies will cease to exist as separate companies. Boston Edison will be the sole surviving corporate entity. Boston Edison's name will be changed to NSTAR Electric Company.

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[4] *Transactions Subject to FPA Section 203*, Order No. 669, 71 *Fed. Reg*. 1348 (2006), FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, 71 *Fed. Reg*. ¶ 28,422 (2006), FERC Stats. & Regs. ¶ 31,214 (2006), *order on reh'g*, Order No. 669-B, 71 *Fed. Reg*. 42,579 (2006), FERC Stats. & Regs. (2006).

[5] None of the Applicants own any generation facilities.

5. Cambridge, Commonwealth, and Canal provide service under several FPA-jurisdictional contracts. According to Applicants, as the result of the proposed transaction, Boston Edison under Massachusetts law will succeed to those three companies' obligations under those contracts, by operation of law and without the need for formal "assignment and assumption" agreements. Applicants' request for approval of the proposed transaction under section 203 includes the transfer of these contracts from Cambridge, Commonwealth, and Canal to Boston Edison.

III. Notice of Filing and Responsive Pleadings

6. Notice of Applicants' filing was published in the *Federal Register*, 71 Fed. Reg. 34,910 (2006), with comments, protests or interventions due on or before June 16, 2006. ISO New England Inc. (ISO-NE) filed a motion to intervene. Boston Generating, LLC (Boston Generating) filed a motion to intervene and protest. Belmont Municipal Light Department (Belmont) filed a motion to intervene and comments. The Massachusetts Attorney General (Attorney General) filed a motion to intervene out-of-time. Northeast Energy Associates (NEA) filed a motion to intervene out-of-time and comments. Applicants and Boston Generating filed answers or answers to answers.

7. On August 25, 2006, Commission staff issued a deficiency letter requesting that Applicants explain how the proposed merger will provide ratepayer protection in light of the fact that Applicants concede in their application that costs could increase for some customers. On September 14, 2006, Applicants filed a timely response to the deficiency letter (Response to Deficiency Letter). Notice of this filing was published in the *Federal Register*, 71 Fed. Reg. 57,492 (2006), with protests or interventions due on or before September 29, 2006. The Attorney General filed comments.

IV. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Applicants argue that NEA motion to intervene out-of-time should be denied because NEA raises only contract issues that should be heard in a section 205 or 206 proceeding, and that the NEA's creditworthiness issues are groundless. Given the early stage of this proceeding, the lack of undue prejudice or delay and the parties' interest, we find good cause to grant, under Rule 214, the untimely motion to intervene of NEA. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a), prohibits answers to answers, unless otherwise permitted by the decisional authority. We are not persuaded to accept the answers filed in the instant proceeding and will, therefore, reject them.

B. Standard of Review

9. Section 203(a) of the FPA provides that the Commission must approve a transaction if it finds that the transaction "will be consistent with the public interest." The Commission's analysis of whether a transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.[6] In addition, EPAct 2005 amended section 203 to specifically require that the Commission also determine that the transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest.[7] As discussed below, we will approve the proposed transaction because it meets these statutory standards.

C. Effect on Competition

1. Applicants' Analysis

10. Applicants state that the proposed transaction will not adversely affect competition because it is internal to the NSTAR corporate family, will not affect the relative market shares of any market participant, and will have no effect on market concentration or competitive conditions, which will be exactly the same before and after the proposed transaction is consummated. Applicants state that the Commission has concluded that internal transfers or corporate restructuring have no adverse effect on competition.[8]

2. Protest and Applicants' Response

11. Boston Generating contends that the transaction is part of a larger commercial arrangement between Applicants and the Massachusetts Department of Telecommunications and Energy (MDTE). It argues that Applicants' settlement with the MDTE creates financial incentives for Applicants to oppose market reforms in New England and to oppose requests for reliability-must-run (RMR) treatment filed by generators, so long as their efforts result in short-term lower energy and capacity costs for their own customers, even if long-term costs will exceed any short-term benefit.

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[6] *See* Merger Policy Statement at 30,111.

[7] EPAct 2005 § 1289, 119 Stat. 982-83, to be codified at 16 U.S.C. § 824b(a)(4).

[8] Application at 10 (citing Order No. 642 at 31,902).

12. Boston Generating argues that any benefits to customers in the form of reduced costs of energy, capacity reserves, and operating reserves resulting from such opposition will be shared by NSTAR Electric's shareholders and its customers on a 25/75 percent basis. It contends that under the settlement, Applicants' ratepayers bear 75 percent of the costs of litigation regardless of whether NSTAR is able to obtain any long-term benefits for them, and that they will bear all of the long term detriments of Applicants' actions undermining efficiently functioning markets. Boston Generating argues that this benefits sharing provision may have significant anti-competitive effects because it creates an incentive for Applicants to undermine the development of an effective capacity market in New England and to frustrate any attempts by generators to obtain RMR agreements in the period before implementation of the locational installed capacity (LICAP) mechanism. Boston Generating therefore requests that the Commission deny the Application or set the Application for hearing.

13. Applicants respond that the retail settlement has nothing to do with the merger. They contend that the retail settlement did not give rise to the transaction and has not altered the transaction in any way. Applicants contend that Boston Generating's intervention is retributive, motivated by Applicants' opposition to Boston Generating's filing of RMR rates.

14. Applicants dispute Boston Generating's claim that Applicants oppose market reform in New England. They argue that they support legitimate market reforms that equitably balance generator and consumer interests, but oppose initiatives that impose huge payments on consumers without providing corresponding benefits.

3. Commission Determination

15. We find that the proposed transaction will not adversely affect competition. We note that Boston Generating appears concerned that the settlement discussed in its protest will create incentives for Applicants to take certain policy positions opposing market reform in New England. However, such concerns are not a reason to reject the Application. Applicants under section 203 are entitled to take any position they wish on policy matters; doing so does not mean that the proposed transaction will adversely affect competition.

16. We agree with Applicants' analysis of the market power effects of the proposed transaction. The transaction is an internal restructuring of several companies in the NSTAR corporate family. As we have previously found, such an internal corporate restructuring is unlikely to harm competition.[9] Accordingly, we find that the proposed transaction will not adversely affect competition.

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[9] *See* Order No. 642 at 31,872.

D. Effect on Rates

1. Applicants' Original Analysis

17. Applicants state that the transaction will have no adverse effect on rates. They state that the consolidation of transmission facilities could increase transmission costs to some customers, but that any such increases would be offset by decreases to other customers, so that the effect on rates essentially would be zero. Applicants opine that the proposed transaction will produce some savings and efficiencies, which will more than offset the limited transaction costs likely to be incurred in achieving the consolidation of Applicants' businesses. Applicants also state that no material post-transaction transition costs are anticipated.

2. Protests and Applicants' Response

18. Belmont is a wholesale transmission customer of Cambridge. It states that, because an increase in costs could occur for some transmission customers, Applicants have not met their burden to show that the transaction will not adversely affect rates. Belmont argues that a cost shift such as the one Applicants admit may occur is not consistent with the public interest under section 203. It also asserts that the filing does not provide sufficient information to determine if the proposed merger would adversely affect any customer's rates.

19. Belmont also notes that its Transmission Service Agreement involves, among other things, "rights of use" in 13.8 kV facilities. Boston Edison states in its Application that it intends to file with MDTE asking to transfer cost recovery for the Cambridge 13.8 kV system to MDTE-jurisdictional rates.[10] Belmont states that it is unclear how this could be accomplished without prejudice to Belmont's rights in some sense, inasmuch as what Belmont currently pays for those facilities is the subject of a Commission-jurisdictional rate schedule.

20. In answer to Belmont's protest, Applicants say that the transaction will not affect either the rate formula or the facilities for the Transmission Service Agreement under which Belmont is served. Applicants state that the Commission will continue to have full jurisdiction over the Transmission Service Agreement, which can be terminated only if three years' advance notice is given by either party to the other. Applicants contend that the rate formula may produce different results for some customers due to the allocation of certain company-wide costs, but that the change is not expected to be significant.

[10] Belmont Comments at 4.

21. With regard to the 13.8 kV facilities, Applicants argue that the proposed merger is not the cause of the contemplated jurisdictional shift. Instead, Applicants argue that the transfer is the result of additional Cambridge investment that changes the character of the 13.8 kV system, which had performed a transmission system and which now performs a distribution system function. Applicants argue that accordingly, the character of the Cambridge system would have changed without the merger.

3. Deficiency Letter and Responses

22. In its deficiency letter, Staff stated that Applicants have neither offered any ratepayer protection mechanism nor explained how the proposed merger will provide ratepayer protection, since Applicants concede that that the merger could increase costs to some customers. Staff directed Applicants to either offer adequate ratepayer protection or provide evidence to demonstrate their claim that the proposed transaction will have no adverse effect on rates.

23. In Applicants' Response to Deficiency Letter, Applicants offer two commitments and state that "even independent of those commitments, the benefits of the Transaction, including quantified savings, more than offset any costs."[11]

24. Applicants' first commitment is that, with respect to jurisdictional rates, transaction and transition costs directly arising from the transaction (consisting of one-time legal and administrative costs of approximately $650,000) will be borne solely by shareholders, rather than ratepayers. Applicants have made a similar commitment to the MDTE at the retail level.

25. Applicants' second commitment is that the transaction will not change the prices charged to Belmont under the Transmission Services Agreement between Belmont and Cambridge. Applicants point out that section 17(a) of the Transmission Services Agreement provides that "no such assignment or legal succession shall operate to change the prices or terms of this Agreement from those that would have existed if no such assignment or legal succession had taken place."

26. The Attorney General filed a response, arguing that deficiencies and differences among the tariffs of the individual Applicants make it impossible for the Commission to make an independent assessment of ratepayer impacts.[12] The Attorney General contends

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[11] Response to Deficiency Letter at 1.

[12] Applicants refer to decisions in two proceedings. *See Cambridge Electric Light Company and Commonwealth Electric Company*, 111 FERC ¶ 61,246 (2005) (*Cambridge*) and *Boston Edison Company v. Federal energy Regulatory Commission,* 441 F.3d 10, p. 17 (2006) (*Boston Edison*).

that the Commission should order Applicants to file the new rates and tariffs under section 205 as a ratepayer protection mechanism, so that the Commission can determine the reasonableness of the rates and ensure that the proposed merger would not have an adverse effect on rates.

4. Commission Determination

27. The Merger Policy Statement states that applicants should propose ratepayer protection mechanisms to ensure that a merger will not adversely affect wholesale rates. The applicant bears the burden of proof to demonstrate that the customer will be protected. The Merger Policy Statement advises that the most promising and expeditious means of addressing ratepayer protection is for the parties to negotiate an agreement on ratepayer protection mechanisms. The Merger Policy Statement recommends four possible ratepayer protection mechanisms: (1) an open season; (2) a hold-harmless provision; (3) a rate freeze; and (4) a rate reduction.[13] The Merger Policy Statement further advises that if no agreement can be reached, the Commission may decide the issue on the written record or set the issue for hearing.[14]

28. Applicants commit specifically that the proposed transaction will not change the prices charged to Belmont under the Transmission Services Agreement (Second Commitment). Further, the Transmission Services Agreement's formula rate is based on the costs of service incurred by Cambridge for its transmission system. Thus, so long as the current Transmission Service Agreement remains in effect (at least 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.

29. Applicants acknowledge that after the merger, costs to some customers may increase because of cost shifts due to the consolidation of facilities within one company. Currently, each Applicant assesses the costs of its non-pool transmission facilities through its Schedule 21 to the ISO-NE tariff.[15] After the proposed transaction, there will be one charge covering all Applicants' non-pool facilities, instead of three. The averaging of these costs, unless they are exactly the same for all Applicants before the merger, will inevitably result, after the merger, in an increase in costs for at least the customers of one Applicant and a decrease in costs for customers of another Applicant.

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[13] FERC Stats. & Regs. ¶ 31,044 at 30,124.

[14] *Id.*

[15] Schedule 21 is essentially a non-pool tariff that applies to transmission customers that are not otherwise served by a separate transmission service agreement.

30. Applicants argue that the ratepayer protection policy reflected in the Commission's Merger Policy Statement applies primarily to the transaction and transition costs specifically related to a section 203 transaction. Applicants have committed that these costs will be borne by shareholders. They also assert that the cost-averaging effect will be quite limited because: (1) Applicants' costs are already very similar; and (2) such costs account for only 14 percent of Applicants' transmission costs. Further, Applicants contend that merger will produce administrative savings and benefits, such as fewer regulatory filings, elimination of separate accounting requirements and more efficient oversight by regulatory agencies. Applicants argue that these benefits, which they estimate to be $800,000 annually, will offset the effects of cost averaging.

31. 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 and, accordingly, that the proposed transaction will not adversely affect transmission rates.[16] Specifically, we will require Applicants to submit an informational filing to the Commission that will allow customers to scrutinize costs before they are included in the formula rate, thereby allowing them to alert the Commission to costs that, contrary to Applicants' commitments, might be merger-related. This additional requirement will not require changes to Applicants' formula rate, but will protect against adverse effects on wholesale rates.

32. With regard to the Attorney General's contention that the Commission should order the companies to file new rate tariffs under section 205, we note that Applicants state at page 15 of their application that Boston Edison will submit to the Commission any revisions to Schedule 21 that may be necessary as a result of the acquisition of the other Applicants' facilities.[17] The Attorney General has referred to other proceedings dealing with tariffs of the individual Applicants. The proceeding in *Cambridge* is still ongoing and the judicial decision in the other proceeding addresses issues that do not appear to be germane here. In the event that the outcome of the on-going proceeding requires changes to Cambridge's tariff, Applicants are directed to reflect such changes in Boston Edison's revised Schedule 21. Customers will have the opportunity in a 205 proceeding to review and contest any change. This requirement, in combination with the informational requirement above, adequately addresses the Attorney General's concerns.

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[16] *See ITC Holdings Corp., et al.*, 116 FERC ¶ 61,271 at P 48 (September 21, 2006).

[17] As noted earlier, Schedule 21s are now filed individually by each Applicant as schedules to the ISO-NE tariff and are used for transmission service over non-pool facilities. After the merger, Boston Edison will file one Schedule 21 for transmission service reflecting the combined non-pool facilities of all Applicants.

33. Any cost increases to some customers that result from the averaging of costs of Applicants' transmission systems are likely to be limited. The merger should result in an overall cost reduction due to the elimination of administrative expenses resulting from the four companies merging into one. The transaction will likely result in a reduction in rate proceedings and the elimination of separate accounting requirements. We find that the ratepayer commitments, together with the transparency requirement and the likely benefits of the transaction and consequent limited effect of the cost averaging, demonstrate that the transaction is consistent with the public interest.

34. Lastly, Belmont expressed concern that the Application states that Applicants intend to file with MDTE seeking to transfer cost recovery for the Cambridge 13.8 kV system to MDTE-jurisdictional rates. However, as Applicants explain in their answer, the contemplated shift of the system to MDTE is a not the product of the merger, but rather of transmission construction carried out on the Cambridge system. Accordingly, because there does not appear to be a direct connection between the merger and the shift of the system to MDTE, we find that the possible shift is not relevant to an analysis under section 203.

E. Effect on Regulation

35. Applicants state that the proposed transaction will have no effect on either wholesale or retail regulation. They argue that their operations will still be subject to the same regulation and oversight by the Commission and MDTE after the consolidation as they were before. Further, Applicants state that MDTE has approval authority over the proposed transaction. Applicants argue that the consolidation of the four companies into a single company is likely to improve the regulatory process with respect to the Applicants' operations.

36. We find that neither state nor federal regulation will be impaired by the proposed transaction. We note that no party alleges that regulation would be impaired by the proposed transaction.

F. Cross-subsidization

37. As required by Order No. 669, Applicants confirm that the transaction will not result in: (1) transfers of facilities between a traditional utility associate company with wholesale or retail customers served under cost-based regulation and an associate company; (2) new issuances of securities by a traditional utility associate company with wholesale or retail customers served under cost-based regulation for the benefit of an associate company; (3) new pledges or encumbrances of assets of a traditional utility associate company with wholesale or retail customers served under cost-based regulation for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company with

wholesale or retail customers served under cost-based regulation, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.[18]

38. In particular, Applicants argue that Boston Edison's acquisition of its affiliates' assets does not involve any cross-subsidization between regulated and non-regulated affiliates because Boston Edison will not be acquiring assets that are owned by any non-regulated company. In addition, the transmission and distribution-related assets are being acquired by Boston Edison at book value, and these assets will be commingled with Boston Edison's assets to continue to serve the Commonwealth, Cambridge, and Boston Edison customers.

39. Applicants also argue that the proposed transaction does not involve a pledge or encumbrance by Boston Edison, the surviving company, of its assets for the benefit of any associate company because Boston Edison is not pledging its assets to the three companies, which will cease to exist after the proposed transaction. In addition, Boston Edison is not assuming the long-term debt of Cambridge and Commonwealth, which is being canceled. Finally, Applicants assert, Boston Edison's assumption of Canal's obligations under Canal's capital lease with the HQ Companies does not appear to constitute a pledge or encumbrance of utility assets as contemplated by FPA section 203(4), and, in any event, Boston Edison is also acquiring Canal's rights under the lease and Canal's corresponding equity ownership share in the HQ Companies.

40. We find that Applicants have provided adequate assurance that the proposed transaction will not result in cross-subsidization. We note that there are already agreements under which, in exchange for Canal's agreement to assign certain rights from Canal's capital lease with the HQ Companies, Cambridge and Commonwealth have agreed to reimburse Canal for any payments Canal is obligated to make with respect to the project.[19] Thus, with respect to Canal's capital lease with the HQ Companies, the proposed transaction does not result in changes that could entail cross-subsidization. We also note that no party alleges that the proposed transaction results in cross-subsidization.

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[18] The application was filed May 26, 2006, before the effective date of Order No. 669-A. Order No. 669-A replaced the "with wholesale or retail customers served under cost-based regulation" language in the cross-subsidization regulations adopted in Order No. 669 with " that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities" language. Order No. 669-B made additional changes to the regulations dealing with cross-subsidization.

[19] *See* Canal Electric Company Rate Schedule No. 25 and Rate Schedule No. 35.

G. Other Issues

1. NEA Protest and Applicants' Response

41. NEA is party to four power purchase agreements, two of which are with Boston Edison and two of which are with Commonwealth. Under the power purchase agreements, NEA sells a fixed amount of power (approximately 220 MWs per hour) to the utilities in exchange for the market price of the power, plus a fixed amount per MWh for a remaining term of 10 years. NEA states that the fixed payments total approximately $750 million over the remaining term of the agreements.

42. NEA argues that because the fixed payment obligation under the agreements is, in many respects, identical to debt payments, the long-term condition of each of the utilities is important to NEA. It argues that to preserve the strong credit quality of the buyers under the agreements, the agreements have provisions addressing any proposed merger of Boston Edison and Commonwealth. NEA states that the entity resulting from such a merger will be an assignee of Boston Edison and Commonwealth under the agreements. That assignee must serve load in NEPOOL, have a credit rating as established by Moody's or S&P that is not on watch for downgrading and equal to or better than that of the relevant purchaser under the PPA at the time of the proposed assignment, and execute and deliver to NEA an assumption agreement that is reasonably satisfactory to NEA.

43. NEA contends that the application does not specify how Boston Edison and Commonwealth will comply with these provisions. It states that while Boston Edison and Commonwealth have told NEA that they will comply with the agreements and that the surviving entity will satisfy the agreements' requirements, the merger transaction as described in the application does not appear to require such compliance. NEA argues that the Commission should require that Boston Edison and Commonwealth comply with the provisions of their wholesale contracts, including the purchase power agreements.

44. Applicants argue that NEA raises only contract issues that should be heard in a section 205 or section 206 proceeding, not in a section 203 proceeding. Applicants further argue that NEA's creditworthiness concerns are groundless, and that the application clearly states that the transaction at issue will not result in a "new" company. Applicants contend that instead, Cambridge and Commonwealth will be merged into Boston Edison, which will survive the merger, and by operation of law will assume its affiliates' contracts. Thus, it will be the same company, albeit larger, after the transaction as it was before.

2. Commission Determination

45. We see no reason to condition authorization of the merger to require that Boston Edison and Commonwealth comply with their wholesale contracts. After the merger

takes place, the remaining company will "step into the shoes" of Boston Edison and Commonwealth with regard to those contracts. NEA does not provide a sufficient basis to conclude that the transaction is not consistent with the public interest. We note that our authorization does not limit the ability of any customer of Boston Edison to file a complaint under section 206 of the FPA. If NEA is dissatisfied with the manner in which the consolidated company complies with its contracts, then NEA can initiate such a proceeding.

The Commission orders:

(A) The proposed transaction is hereby authorized, subject to Applicants making a filing within 10 days, accepting the conditions discussed in the body of this order.

(B) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(C) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(D) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(E) Applicants shall account for the transfer of the jurisdictional facilities in accordance with Electric Plant Instruction No. 5 of the Uniform System of Accounts. Applicants must submit their final accounting within six months of the date that the transfer is consummated, and the accounting submission should provide all the accounting entries related to the transaction along with narrative explanations describing the basis for the entries.

(F) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the proposed transaction.

(G) Applicants shall notify the Commission within 10 days of the date that the proposed transaction has been consummated.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.