

119 FERC ¶ 61,148  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Town of Norwood, Massachusetts

Docket No. EL03-37-005

v.

National Grid USA  
New England Electric System,  
Massachusetts Electric Company,  
and Narragansett Electric Light Company

ORDER ON REMAND

(Issued May 17, 2007)

1. This proceeding is on remand from the United States Court of Appeals for the First Circuit,<sup>1</sup> which affirmed in part and remanded in part the Commission's order of March 1, 2006.<sup>2</sup> The court directed the Commission to determine whether the Town of Norwood, Massachusetts (Norwood) must pay an interest rate on late contract termination charge payments that is greater than the prime rate. As discussed below, the Commission finds that the use of the prime rate, as calculated in section 35.19a of its regulations,<sup>3</sup> is appropriate in these circumstances.

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<sup>1</sup> *Town of Norwood, Massachusetts v. FERC*, 476 F.3d 18 (1<sup>st</sup> Cir. 2007) (Remand Order).

<sup>2</sup> *Town of Norwood, Massachusetts v. National Grid USA*, 115 FERC ¶ 61,396 (2006).

<sup>3</sup> 18 C.F.R. § 35.19a (2006).

## I. Background

2. Previous orders contain detailed descriptions of the background and history of the parties' contractual relationship, the contract termination charges (CTC), and the lengthy procedural history of the dispute over the CTCs.<sup>4</sup>

3. In brief, New England Power Company (New England Power)<sup>5</sup> began providing wholesale full requirements electric service to Norwood in 1983. In 1989, the parties amended the contract to allow Norwood to extend the earliest date for giving notice of its intent to terminate the contract. Although Norwood extended the term of the contract through October 2008, it notified New England Power on March 4, 1998 that it intended to terminate the contract early -- effective April 1, 1998 -- so that it could obtain electric power from another supplier.

4. Shortly after receiving the notice of termination, New England Power filed an amendment to its Tariff No. 1 to allow customers to buy out their service agreements if they pay CTCs. The Commission accepted the amendment.<sup>6</sup> Since then, the parties have engaged in extensive litigation concerning the CTCs.

5. In a February 22, 2006 order, the Commission determined that late CTC payments by Norwood were subject to the provision of New England Power's tariff that establishes interest on late payments at an effective rate of 18 percent per year (one and one-half percent per month).<sup>7</sup> In a June 30 2006 order, the Commission denied Norwood's request for rehearing.<sup>8</sup> Norwood appealed on several grounds. As relevant to this order, Norwood argued that the 18 percent interest rate in section J of New England Power's

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<sup>4</sup> *E.g., Town of Norwood, Massachusetts v. National Grid USA*, 112 FERC ¶ 61,099 (2005), *order on reh'g and compliance filing*, 114 FERC ¶ 61,187 (2006), *reh'g denied*, 115 FERC ¶ 61,396 (2006).

<sup>5</sup> New England Power has been renamed National Grid USA Service Company, Inc. following the merger of its corporate parent. However, here, as in the previous orders, the company is referred to as New England Power.

<sup>6</sup> *New England Power Co.*, 83 FERC ¶ 61,174, *order on reh'g*, 84 FERC ¶ 61,175 (1998), *aff'd sub nom. Town of Norwood v. FERC*, 202 F.3d 392 (1<sup>st</sup> Cir. 2000).

<sup>7</sup> *Town of Norwood, Massachusetts v. National Grid USA*, 114 FERC ¶ 61,187 at P 43-51 (2006)

<sup>8</sup> *Town of Norwood, Massachusetts v. National Grid USA*, 115 FERC ¶ 61,396 (2006).

tariff that was applied to its late payments was unreasonable and inconsistent with Commission precedent. For support, Norwood cited *Connecticut Light & Power Co.*, where the Commission rejected a proposed 18 percent interest rate on late payments.<sup>9</sup>

6. In its decision, the court largely affirmed the Commission's order, including the requirement for interest on late payments to be based on at least the prime rate, but remanded the issue of whether more than the prime rate is due.<sup>10</sup>

## II. Discussion

7. Upon further review, consistent with *Connecticut Light & Power*, we find that an 18 percent interest rate for late payments is unjust and unreasonable. In the absence of a persuasive showing in this proceeding justifying a different interest rate, we conclude that it is appropriate to apply the prime rate-based interest rate set forth in section 35.19a of our regulations.<sup>11</sup> We direct New England Power to remove the 18 percent penalty interest rate presently found in section J of its tariff and on compliance replace it with the prime rate-based interest rate specified in the Commission's regulations. As for calculating the amount due here, consistent with the Remand Order,<sup>12</sup> Norwood owes New England Power the CTCs plus interest calculated from the time the bill was first rendered. Accordingly, we direct New England Power to calculate the late CTC payments and interest as described herein and submit a report to the Commission within 30 days of the date of this order.

### The Commission orders:

(A) Within 30 days of the date of this order, New England Power is directed to file a report with the Commission reflecting the amount of the CTCs owed, plus the applicable interest rate(s) and interest amount(s), calculated pursuant to section 35.19a of the Commission's regulations.

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<sup>9</sup> 59 F.P.C. 811, 821 (1977). The Commission reasoned that the charge was "not supported by cost data" and that, while late payment penalties might be appropriate in cases of chronic delinquency, "we do not believe as a matter of policy that this Commission should assume the functions of a bill collection enforcement agency except in otherwise hopeless situations." *Id.*

<sup>10</sup> Remand Order, 476 F.3d at 29.

<sup>11</sup> 18 C.F.R. § 35.19a (2006)

<sup>12</sup> Remand Order, 476 F.3d at 29.

(B) New England Power is directed to file, within 30 days of this order, revised tariff sheets consistent with the discussion in the body of this order.

By the Commission.

( S E A L )

Philis J. Posey,  
Deputy Secretary.