

111 FERC ¶ 61,246
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Cambridge Electric Light Company and
Commonwealth Electric Company

Docket No. ER05-742-000

ORDER ACCEPTING FILING AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued May 25, 2005)

1. On March 30, 2005, Cambridge Electric Light Company and Commonwealth Electric Company (collectively, Companies) filed modifications to the ISO New England Open Access Transmission Tariff.¹ The Companies also propose to modify their formula rates for scheduling, system control and dispatch to align their costs with the corresponding service offered under the ISO-NE Tariff. In this order, we accept the proposed modifications of the Companies' rates, suspend them for a nominal period, to become effective June 1, 2005, and establish hearing and settlement judge procedures. This order benefits customers because it provides the parties with a forum in which to resolve their dispute over the proposed tariff modifications.

Background

2. In New England, transmission owners recover transmission revenue requirements through a combination of local and regional open access transmission tariff rates. The rate for Regional Network Service (RNS) for the Companies' Pool Transmission Facilities (PTF) is calculated annually on a historical basis using a formula rate for all PTF facilities in New England.

¹ ISO New England Transmission, Markets, and Services Tariff, FERC Electric Tariff No. 3 (ISO-NE Tariff).

3. The Companies filed modifications to Schedule 21-CEL and Schedule 21-CEC, of the ISO-NE Tariff, Section II, to align the Companies' Local Network Service (LNS) formulas for calculating the annual transmission costs associated with their non-PTF with ISO-NE's corresponding regional formula for PTF. The LNS rate is a residual value calculated by subtracting RNS revenues from each transmission owner's total transmission revenue requirements. The Companies also propose to modify their formula rates for scheduling, system control and dispatch to align their costs with the corresponding service offered under the ISO-NE Tariff, as described more fully below. The Companies request an effective date of June 1, 2005.

4. The Companies propose to modify their existing LNS formula rates by including costs for, and a return on equity for all distribution lines operating at 13.5 kV or higher. The Companies also propose to exchange the subtraction of "Revenue for Short-term Service under the OATT [Open Access Transmission Tariff]" to subtract, instead, "Short Term and Non-Firm Point-to-Point Service Revenues," "Regional Network Service (RNS) Revenues," and "Through or Out Revenues."

5. The Companies also propose to make several changes to the rate base² component of their LNS formula rate. First, the Companies propose to use the capital investment costs for their transmission system during the Service Year to calculate rate base, rather than use beginning and end-of-year average balances. Second, the Companies propose to add FERC Account Nos. 106 and 109 (Other Regulatory Assets) into their rate base. Additionally, the Companies also propose to allocate transmission-related intangible plant into the rate base, on a transmission wages and salaries basis to recoup costs, such as capitalized software costs, related to the FERC mandate to safeguard the transmission system.

6. In their filing, the Companies request waiver of the Commission's requirement to submit a redline comparison document showing changes to the currently effective tariff sheets. The Companies explain that waiver is appropriate in this case due to the recent integration of the Companies' schedules into the ISO-NE Tariff. The Companies explain that because of this recent merge of documents, the Companies' schedules would show the entirety of the Companies' tariff sheets stricken.

² The rate base is referred to by the Companies as "Transmission Investment Base."

7. The Companies also request waiver of section 35.13 of the Commissions Rules and Regulations, which specifies the filing requirements for changing rate schedules.

Notice, Interventions, Protests

8. Notice of the Companies' filing was published in the Federal Register, 70 Fed. Reg. 19,746 (2005), with comments, protests and interventions due on or before April 20, 2005. The Massachusetts Attorney General (MassAG) filed a motion to intervene and protest. On May 2, 2005, the Companies filed an answer to the protest of the MassAG. On May 6, 2005, the MassAG filed a supplement to its protest, and on May 12, 2005, the Companies filed an answer to the MassAG's supplement. On May 16, 2005, the MassAG filed an answer to the Companies' May 2, 2005 answer and, on May 19, 2005, the Companies filed an answer to the MassAG's May 16, 2005 answer.

9. The MassAG states that the formula rates that the Companies have filed allow the two companies to automatically pass through the costs of transmission services to their customers. The MassAG states that the Companies have not provided an evidentiary basis to determine that the rates are fair and reasonable. It further states that the Companies should be ordered to refile tariffs that comply with the Commission's policies on formula rates and filing requirements. Specifically, the MassAG states that the tariff sheets should specify the source of Form 1 account balances used in deriving each line of the cost-of service presented for each company; contain specific definitions and allocations factors used in deriving each line of the cost-of-service, including definitions of certain terms; and contain workpapers showing how the cost of service components were derived.

10. The MassAG also states that the Commission should reject the provision in the tariffs that would allow the Companies to avoid the Commission's policy requiring the use of Uniform System of Account Balances in the computation of each of the formula components.

11. In addition, MassAG states that the filed tariffs do not require annual informational filings or contain any other procedural protections to assure that the Companies will comply with the requirements of the formula rate, and since 95 percent of the regulated services consist of self-dealing transactions, the Companies should be required to make an annual informational filing under section 205 of the Federal Power Act to establish that the charges are based upon the data and the allocations stipulated by the formula rate.

Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene and notice of intervention serve to make the entities that filed them parties to the proceeding.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept the May 2, 2005 answer of the Companies because it has provided information that assisted us in our decision-making process. However, we are not persuaded to accept the May 12 and 19, 2005 answers of the Companies or the May 16 answer of the MassAG and will, therefore, reject them.

B. Analysis

14. The Companies' filing raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing ordered below. Our preliminary analysis indicates that the LNS Tariff 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 the proposed tariff sheets for filing, suspend them for a nominal period, subject to refund, to become effective June 1, 2005, and set them for hearing and settlement judge procedures.

15. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to reach a settlement before hearing procedures are commenced. To aid the 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.³ 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.⁴ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this

³ 18 C.F.R. § 358.603 (2004).

⁴ 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 backgrounds and experience (www.ferc.gov- click on the Office of Administrative Law Judges).

order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussion or provide for commencement of a hearing by assigning the case to a presiding judge.

16. In addition to the protested issues set for hearing, we set for hearing, *inter alia*, the level and calculation of transmission-related intangible plant included in the Transmission Investment Base, and the justness and reasonableness of including distribution facilities operating at 13.5 kV and above in the formula rates.

17. While we note that the Companies have included relevant Uniform System of Accounts (FERC Accounts) in several formula rate calculations, we find that the Companies have not sufficiently defined which FERC Accounts will be used for several of the rate components to calculate the formula rates as submitted. For example, it is unclear which FERC Accounts will be used for Dispatch Center Related Administrative and General Expenses, Transmission Related Integrated Facilities Charge, and Transmission Support Revenues and Expenses.

18. We therefore require the Companies to identify and to file, within 5 days of the date of this order, information specifying which FERC Account(s) will be used for each of the formula components, consistent with Commission policy and filing requirements in section 35.13(h) of the Commission's Regulations.

19. Where the Companies are not able to specify the relevant FERC Account, the Commission has found in similar cases that companies have the potential to exercise excessive discretion in calculating charges. In those cases, we have instituted reporting requirements and, likewise, will do so here.⁵ The Commission will require the Companies to file an annual report which provides detailed accounting and explanations for such costs which are not tied to a specific FERC Account. True-ups of estimated costs and actual costs should also be included in the annual reports.

Requested Waivers

20. Regarding the Companies' request for waiver of the redline requirement, we will leave it to the settlement judge to determine whether to require the Companies to comply. However, the Companies will be required to conform to the requirements of 18 C.F.R. § 35.13 (file "cost of service") to facilitate settlement and hearing proceedings.

⁵ *Midwest Independent System Operator, Inc.*, 108 FERC ¶ 61,235 at 68 (2004). See also, *ISO New England, Inc.*, 100 FERC ¶ 61,140 (2002).

The Commission orders:

(A) The Companies' filing is hereby accepted for filing, suspended for a nominal period, to become effective on June 1, 2005.

(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 the Companies' filing. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in 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 (2004), 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 convene a 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 in writing or by telephone within (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, 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 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 convene, within fifteen (15) days of the date of the presiding judge's designation, a conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426. Such 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 Companies are directed to file, within 5 days of the date of this order, information regarding which FERC Account(s) will be used for each of the formula components, as discussed above.

(G) The Companies are directed to file annual reports, including detailed accounting of all components and subcomponents of their formula rates that do not use FERC Accounts as their basis and true-ups of estimated costs and actual costs, as discussed above.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.