

107 FERC ¶ 61,248
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 No. EL02-123-002

ORDER AFFIRMING INITIAL DECISION

(Issued June 2, 2004)

I. Introduction

1. This order affirms an initial decision issued in this proceeding on August 7, 2003, in Docket No. EL02-123-002,¹ addressing the justness and reasonableness of unexecuted service agreements for local network service (LNS),² filed by Boston Edison Company (Boston Edison) under its open access transmission tariff (OATT) for service to the Towns of Wellesley (Wellesley) and Concord (Concord), Massachusetts (collectively, the Towns).

II. Background

2. Under individually negotiated agreements, the Towns took both generation and transmission service from Boston Edison until May 31, 2002.³ Beginning on June 1, 2002, the Towns received generation service from Constellation Power Services, Inc.

¹ Boston Edison Co., 104 FERC ¶ 63,031 (2003).

² Boston Edison's LNS facilities are 115 kV, non-pool transmission facilities (non-PTF) radial transmission lines, related equipment, and substations to load. Boston Edison explains that LNS facilities are, figuratively speaking, the access ramps between the 14 kV feeder roads and the NEPOOL PTF main electricity highway.

³ From the mid-1980's through October 31, 2003, the Towns also purchased small quantities of power from the New York Power Authority (NYPA), for which Boston Edison provided the transmission.

(Constellation), transmission service over the PTF⁴ from the New England transmission-owning companies (TOs) and LNS from Boston Edison.

3. On June 20, 2002, Boston Edison filed in Docket No. ER02-2127-000 the unexecuted agreements for LNS at issue here. Boston Edison requested waiver of the 60-day notice period to permit an effective date of June 1, 2002. Boston Edison proposed to recover LNS costs through a rolled-in transmission rate. Concord's point of receipt was proposed to be Boston Edison's Station 416 (Maynard) and the LNS charges would apply to approximately 30 megavolt amperes (MVA) of Concord's load delivered to Station 416. Wellesley's points of receipt were proposed to be Boston Edison's Station 292 (Newton) and Station 148 (Needham). Boston Edison would serve transmission of approximately 50 MVA of Wellesley's load, 20 MVA of which would be delivered to Station 148 and 30 MVA to Station 292.

4. As the Commission did not act on Boston Edison's filing within the statutorily-prescribed period, the unexecuted agreements became effective on August 20, 2002. On August 22, 2002, in Docket No. EL02-123-000, the Commission issued an order under section 206 of the Federal Power Act (FPA)⁵ instituting an investigation and hearing into the justness and reasonableness of the unexecuted agreements (Hearing Order).⁶ Notice of the initiation of the proceeding and refund effective date was published in the Federal Register on September 16, 2002,⁷ creating a refund effective date of November 15, 2002.⁸

⁴ "Pool Transmission Facilities" or "PTF" are the pool transmission facilities defined in section 15.1 of the Restated NEPOOL Agreement (RNA), and any other new transmission facilities which the Reliability Committee determines, in accordance with criteria approved by the Participants Committee and subject to review by ISO-NE, and should be included in PTF. The costs of PTF facilities are recovered from all NEPOOL members, based on the understanding that they serve all members. See New England Power Pool, et al., 102 FERC ¶ 61,112 at P 7(2003).

⁵ 16 U.S.C. § 824e (2000).

⁶ Boston Edison Co., 100 FERC ¶ 61,202, reh'g granted in part, 101 FERC ¶ 61,068 (2002).

⁷ 67 Fed. Reg. 58,409 (2002).

⁸ We note that the Presiding Judge stated that the refund effective date was October 27, 2002. ID at P 4. The refund effective date is November 15, 2002, 60 days from the publication of the notice of initiation of the proceeding.

5. As discussed more fully below, this proceeding involves issues of interpretation of a 1980 settlement between Boston Edison and the Towns (1980 Settlement Agreement),⁹ Wellesley's All Requirements Agreement with Boston Edison (ARA), Concord's 1993 Interconnection Agreement (IA), the 1997 RNA, and Wellesley's 1998 Transmission Services Agreement (TSA).

1980 Settlement Agreement

6. Under the 1980 Settlement Agreement, the Towns purchased outright certain subtransmission facilities within the Towns' borders and also purchased use rights in certain Boston Edison subtransmission facilities located mainly outside the Towns' borders, for lump sum capital payments and monthly payments for operation, maintenance, and tax (OMT) expenses. Articles 2.2 and 2.4 provide that "no other charges would be required of [Wellesley or Concord] for its use of the facilities up to the said Appendix [A or B] percentages and the capital investment therein on July 1, 1980." article IV grants the Towns an exemption, the applicability and scope of which are in dispute in this proceeding, from payment of "a PTF interconnection charge" for PTF transactions to the extent of the Towns' use rights for capacity in subtransmission facilities "connected to PTF" for which the Towns had made lump sum payments.¹⁰

Concord's IA

7. In 1993, Boston Edison and Concord entered into an IA designed to provide Concord with 60 MVA firm capacity at 115 kV at Maynard (Station 416). Pursuant to IA article 7.1, Concord sold and Boston Edison bought back use rights in Boston Edison's subtransmission facilities acquired under the 1980 Settlement Agreement and a 1985 letter agreement. To replace those use rights, Boston Edison agreed in the IA to construct, and Concord agreed to pay for the construction of, certain interconnection facilities (Boston Edison owning other interconnection facilities) that connect Concord to Boston Edison at 115 kV at Maynard. IA article 9.2 provides:

Since the facilities between Stations 342 [Sudbury] and 416 are not considered PTF facilities by NEPOOL, the wheeling of these purchases from Stations 342 and 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 purchases up to 26

⁹ Letter Order approving uncontested settlement in Docket No. E-7738, et al. (June 26, 1980)(unreported).

¹⁰ See the Appendix for the full text of the 1980 Settlement Agreement article IV (and also RNA section 16.3).

MVA, for [Concord], Station 416 will be treated as a PTF Facility for [Concord's] obtaining electric power.

8. IA Appendix D provides for a determination of annual charges for the interconnection facilities equal to the sum of return, OMT, administrative and general expense, and municipal tax expense.

Wellesley's ARA

9. In 1992, Wellesley entered into the ARA, as amended, with Boston Edison under which Boston Edison agreed to furnish Wellesley, from June 1, 1992 through May 31, 2002, with all its electric power supply at a stated monthly demand rate per KW.

Wellesley's TSA

10. After Boston Edison divested its non-nuclear generation assets, Boston Edison and Wellesley amended their ARA and executed the TSA. Effective August 1, 1998, Wellesley and Boston Edison agreed to unbundle Wellesley's power supply from delivery service provided under the 1992 ARA and the 1980 Settlement Agreement. The TSA did not enhance or diminish the parties' rights or obligations under the settlement.

III. Initial Decision

11. The Presiding Judge found that the unexecuted agreements were unjust and unreasonable, and required refunds from the refund effective date (as corrected, November 15, 2002) through the 15-month statutory refund period (as corrected, through February 14, 2004). He found that the unexecuted agreements were inconsistent with the exemption from LNS charges in the 1980 Settlement Agreement, as reaffirmed and perpetuated in subsequent agreements. The Presiding Judge also found that the agreements were inconsistent with the phase-out, on February 28, 2003 (the end of the NEPOOL transition period), of such charges pursuant to the RNA for "load directly connected to PTF" and conforming Schedule 9 of Boston Edison's OATT. Specifically, for generation purchases from Constellation and any other prospective PTF transactions, the Presiding Judge found that the Towns had the contractual right to be deemed to be directly connected to PTF through subtransmission facilities acquired pursuant to the 1980 Settlement Agreement and subsequent agreements.

12. More specifically, the Presiding Judge concluded, in relevant part, that the 1980 Settlement Agreement provided that:

the Towns received the right to purchase power in a qualified PTF transaction up to the stated capacities, pay the applicable PTF charges, and

have it wheeled to them by Boston Edison without paying Boston Edison an additional transmission fee, (i.e., a PTF interconnection charge).¹¹

[The 1980 Settlement Agreement and subsequent agreements] lead to the inescapable conclusion that the agreements intended to exempt the Towns from Boston Edison's local transmission fees for PTF transactions utilizing the Use Rights facilities up to the stated shares of capacity, notwithstanding that these facilities themselves may not have provided a direct connection between the Towns and PTF.¹²

That exemption from [PTF interconnection charges] was created by the 1980 Settlement Agreement as part of the bargain of settlement. . . . The right to be deemed connected to PTF as granted by the 1980 Settlement Agreement still exists and did not terminate with the termination of subsequent agreements that recognized and affirmed that right.¹³

On the record here, Concord and Wellesley have proven that their contract entitlements are to a direct connection to PTF, leaving them exempt from LNS charges on their Constellation energy except as may have been due on the phase-out provided under the NEPOOL agreement, and that it would be unjust and unreasonable to subject them to any additional LNS charges under the Service Agreements filed by Boston Edison.¹⁴

13. Boston Edison, Wellesley, and Concord each filed timely Briefs on Exceptions and Briefs Opposing Exceptions.¹⁵ The exceptions raise issues of the contractual authorization for and rates applicable to Boston Edison's LNS for Wellesley and Concord.

¹¹ ID at P 34.

¹² ID at P 36.

¹³ ID at P 72.

¹⁴ ID at P 84.

¹⁵ On October 24, 2003, Boston Edison filed a motion to strike portions of the Towns' Briefs Opposing Exceptions, contending that the briefs raised issues that should have been addressed in the Briefs on Exceptions. The motion to strike is denied since the matters addressed in the Towns' briefs opposing exceptions are within the appropriate scope of their briefs.

IV. Discussion

14. The briefs on and opposing exceptions largely repeat arguments raised at hearing and decided by the Presiding Judge.¹⁶ Having reviewed the record, the initial decision and the parties' briefs, we find that the determinations made by the Presiding Judge are reasonable and supported by the record of this proceeding. None of parties' exceptions warrants reversal of those determinations. A few issues, however, warrant further discussion.

15. For these reasons, as discussed below, this order: (1) adopts the Presiding Judge's conclusions with respect to the Towns' entitlement to an exemption from LNS charges in excess of transitional phase-down LNS amounts; (2) denies all of Boston Edison's exceptions (other than to clarify the initial decision on the issue of rate pancaking);¹⁷ (3) denies the Towns' exceptions; (4) requires refunds of LNS rates collected in excess of the RNA transitional amounts (the just and reasonable rate) from the refund effective date of November 15, 2002 through the RNA phase-out date of February 28, 2003 until the end of the refund period on February 14, 2004; and (5) requires Boston Edison to file a compliance filing providing the authority to charge and collect LNS phase-down amounts pursuant to RNA section 16.3 (iii) and establishing a new LNS rate as the just and reasonable rate prospectively from the date of issuance of this order.

A. Disputed Contractual Interpretations

16. The basic issue on exceptions is whether the Presiding Judge reasonably determined that the 1980 Settlement Agreement and subsequent agreements entitle the Towns to be considered to be directly connected to Boston Edison's PTF, and exempt from full LNS charges (even though in certain locations Boston Edison's 115 kV, non-PTF lines make the actual physical connection between the Towns' use rights and PTF).¹⁸ Boston Edison continues to argue that for the exemption to apply the Towns must have use rights in subtransmission facilities that physically connect to PTF without any

¹⁶ Arguments adequately addressed in or mooted by the ID include Boston Edison Exception Nos. 2 (effectiveness of the 1980 Settlement Agreement); 3(i) and 3(ii) (Prior NEPOOL Agreement) addressed at P 73 and 74; 4 and renumbered 7 (Wellesley's facilities at Stations 292 and 148, respectively), addressed at P 78; 5 (TSA article 2.3 Memphis clause) addressed at P 76-77; renumbered Exception No. 9 (direct assignment of LNS costs) addressed at P 81-83; Concord's Exception No. 1 (turned-back facilities) addressed at P 57; and Wellesley Exception No. 1 (TSA article 6.2).

¹⁷ Boston Edison Exception No. 1.

¹⁸ ID at P 72.

intervening 115 kV, non-PTF transmission facilities. On the other hand, the Towns continue to assert that their use rights in subtransmission facilities for which they pay Boston Edison entitle the Towns to a direct contract connection to PTF through Boston Edison's intervening 115 kV, non-PTF transmission facilities.

17. The Presiding Judge carefully parsed the 1980 Settlement Agreement and subsequent agreements in light of the testimony at the evidentiary hearing and concluded that these agreements, read together, supported the Towns' reading.¹⁹ We agree with the Presiding Judge that the 1980 Settlement Agreement article IV's exemption does not require a direct physical connection to PTF. Nor do the parties' subsequent agreements. Boston Edison's contrary interpretations are strained. Indeed, the cumulative effect of Boston Edison's proposed interpretations is to re-write the various agreements and to present us and the Towns with new contracts purporting to authorize LNS charges when the contracts on file with us do not. Boston Edison's interpretations are at odds with the 1980 Settlement Agreement and subsequent agreements, and must be rejected.

18. In the alternative, Boston Edison argues that the Presiding Judge's interpretations of the 1980 Settlement Agreement are irrelevant because the settlement has been effectively superseded by the IA and the TSA. Although 24 years old, the 1980 Settlement Agreement is still effective because it includes no termination date and was never terminated by the parties. Subsequent agreements between the parties, the ARA, IA, and TSA, complement, incorporate, and coexist with, but do not terminate the 1980 Settlement Agreement or article IV in particular.²⁰

B. Clarification of the Initial Decision

1. "Free" Transmission

19. The Presiding Judge stated that the Towns receive essentially "free" transmission on LNS facilities.²¹ Boston Edison argues that the 1980 Settlement Agreement changed the way the Towns paid for service (permitting acquisition of subtransmission use rights

¹⁹ ID at 33-84.

²⁰ For example, ARA article 9 provides that: "Following termination of this Agreement, the 1980 Settlement Agreement shall continue to be in effect without any modifications thereto as a result of this Agreement..." Also, TSA article 1.1 provides that "neither parties' rights or obligations under the 1980 Settlement Agreement ...shall neither be enhanced nor diminished as a result of entering into this Agreement."

²¹ ID at P 81, 88.

in lieu of paying a low voltage surcharge) and was not intended to provide “free” transmission service over Boston Edison’s 115 kV, non-PTF transmission facilities.²² The Towns contend that their use of 115 kV, non-PTF is not free and was bargained for.²³

20. We take the Presiding Judge’s mention of “free” transmission as merely a short-hand description of the 1980 Settlement Agreement’s exemption from additional charges. Under the settlement, Boston Edison agreed to permit the Towns to purchase subtransmission facilities and use rights that gave the Towns the right to a direct contract connection to PTF without payment of a separate PTF interconnection charge. This was an express, bargained-for exemption.²⁴ Moreover, such transmission was not free. Over the years, the Towns have paid lump sum and monthly OMT payments. Boston Edison’s exceptions thus amount to an indirect attack on the interpretation of the various agreements affirmed by the Presiding Judge. The exceptions are denied, and the initial decision is clarified accordingly.

2. Rate Pancaking

21. The Presiding Judge asserted that full LNS charges would result in pancaked rates, requiring the Towns to pay both LNS and RNS charges for purchases from Constellation’s distant generators in lieu of the previous single bundled rate for purchases from local generators.²⁵ Boston Edison argues that the combination of full LNS and RNS charges does not constitute rate pancaking.²⁶ Given our findings above, we need not reach this issue. Nevertheless, we note that in Rumford Power Associates, L.P., et al., the Commission upheld the approach followed in New England of allowing separate charges for PTF and non-PTF facilities.²⁷ Charging separate rates for use of these separate facilities would not, in this context, constitute rate pancaking.

²² Boston Edison Exception Nos. 2 and 3(iii).

²³ Wellesley states that it has paid Boston Edison over \$2 million to date for its use rights in subtransmission facilities. Wellesley Br. Opp. Ex., at 18, n. 23.

²⁴ See ID at P 33-43 and P 44-84.

²⁵ ID at P 59-61.

²⁶ Boston Edison Exception No. 1 (rate pancaking aspect).

²⁷ 97 FERC ¶ 61,173 at 61,810 (2001); accord, New England Power Pool, 83 FERC ¶ 61,045 at 61,232-33 (1998), reh’g denied, 95 FERC ¶ 61,074 (2001).

3. TSA's Expressly Incorporated Provisions of the Wellesley's ARA

22. Appendix A to TSA article 2.1 incorporates delivery points for transmission service as defined in the 1980 Settlement Agreement and ARA Exhibit A,²⁸ and Appendix B to TSA articles 3.1 and 3.2 incorporates and updates facilities at delivery points for subtransmission service as defined in the 1980 Settlement Agreement (Appendix B, page 2) and the ARA. The Presiding Judge found that, although the 1992 ARA had expired on May 31, 2002, with the termination of ARA service, the ARA definition of delivery point survived by incorporation into the TSA and represented sufficient capacity to cover the transmission in dispute.²⁹ The Presiding Judge concluded that termination of the ARA did not alter Wellesley's status as PTF-connected to the extent of its use rights granted by the 1980 Settlement Agreement.

23. Boston Edison asserts that the references in TSA articles 2.1 and article 3.1 to the ARA have expired and that the ARA's expiration precludes the TSA's incorporation of the ARA's delivery point provisions to unbundled transmission under the TSA for Constellation purchases.³⁰ While the Presiding Judge stated that the "language of all these agreements, the Wellesley ones all being incorporated into the 1998 TSA," Wellesley asks the Commission to clarify that the delivery point provisions of prior agreements, *i.e.*, the 1980 Settlement Agreement and the ARA, explicitly incorporated into the TSA, remain effective and apply to its purchases from Constellation. (Wellesley points out that the outcome of the delivery point issue in this section 206 proceeding will determine Boston Edison's compliance with Order No. 614 as to the TSA.³¹)

²⁸ The ARA Exhibit A definition of transmission delivery point states

'Delivery Point' means BECO's transmission interconnections with [Wellesley] under which [Wellesley] will be deemed to be a 115 kV customer at NEPOOL PTF ('Pool Transmission Facilities') including, but not limited, as set forth in Appendix B, page 2 of the 1980 Settlement Agreement.

²⁹ ID at P 66, 67.

³⁰ Boston Edison renumbered Exception No. 6 (delivery points), misnumbered as No. 7 in Boston Edison's brief, is addressed in the ID at P 62-72. Subsequent numbering of exceptions is also corrected through renumbered Exception No. 10.

³¹ On April 21, 2003, Boston Edison filed a stipulation in Docket Nos. ER02-170-002, *et al.*, asking the Commission to hold those proceedings in abeyance until 15 days after the issuance of a final order in Docket No. EL02-123-002. *See* Boston Edison Co., 101 FERC ¶ 61,218 (2002); Designation of Electric Rate Schedule Sheets,

24. The ARA's delivery points applied to Boston Edison's expired generation service for Wellesley. Boston Edison asserts that these delivery points do not apply to Constellation's requirements service, effective June 1, 2002, because of the ARA's expiration. The TSA anticipated, however, that Wellesley could purchase power from new suppliers. The ARA Exhibit A definition of delivery point survives termination of the ARA by virtue of its express incorporation into TSA Appendix A, which remains effective after May 31, 2002. Updated Appendix B, page 2, of the 1980 Settlement Agreement is incorporated as TSA Appendix B. The settlement is the source of Wellesley's delivery point authority in both TSA Appendix A and B. Wellesley's contract path or connection to PTF through the incorporated delivery points is not altered by the ARA's termination and these delivery points remain available for Wellesley's Constellation purchases. Boston Edison's exception is denied, and Wellesley's requested clarification is granted.

25. TSA article 4.1 provides that ARA Exhibit C.III.D "shall remain in full force and effect for additional investments and capital payments in Use Rights Facilities made after the date of this Agreement, but not for operation and maintenance expenses." Wellesley asks the Commission to clarify that TSA articles 3.4, 3.5, and 4.1 expressly incorporate, amend, and continue in effect ARA Exhibit C.III.D applicable to Boston Edison's recovery of the cost of additional Use Rights Facilities (other than for OMT expenses).³² Wellesley states that TSA article 4.1 does not carry forward the ARA Exhibit C.III.D OMT charge which is replaced by TSA article 3.5. Boston Edison does not oppose this request.³³ Wellesley's requested clarification is granted.

C. Network Cost Allocation Design

26. The Presiding Judge found that the unexecuted agreements and their rates were unjust and unreasonable.³⁴ Boston Edison asserts that the Presiding Judge should have approved its rolled-in LNS rates consistent with Boston Edison's bundled requirements (S) and unbundled transmission (NYPA) rate practice over 30 years.³⁵ Concord contends Boston Edison's history of rolling-in LNS costs with other network transmission costs is

Order No. 614, FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,096 (2000).

³² Wellesley Exception No. 3.

³³ Boston Edison Motion to Strike at 1 (October 24, 2003).

³⁴ ID at P 89.

³⁵ Boston Edison renumbered Exception No. 8.

immaterial to Boston Edison's contractual authorization to charge for full LNS costs. Concord adds that it never sought a reduction in its S and NYPA transmission rates because neither involved a PTF transaction that would have qualified for the 1980 Settlement Agreement's exemption. Boston Edison's past practice as to other rates cannot undo the exemption from full LNS charges discussed above. Consistent with the discussion above, Boston Edison's exception is denied.

D. Rates, Refunds, and Revised Service Agreements

1. Boston Edison's Requested Rate Relief

27. If the Commission affirms the Presiding Judge's rejection of rolled-in LNS rates, Boston Edison asks the Commission to permit it to make a compliance filing to establish an LNS rate based on specific LNS facility costs (direct assignment).³⁶ Failing that, Boston Edison contends that the Presiding Judge erred in not explicitly providing for Boston Edison's recovery of NEPOOL transition charges in the periods June 1, 2002 through August 19, 2002 and August 20, 2002 through February 28, 2003.³⁷ The Towns do not dispute their responsibility for RNA transitional amounts from August 20, 2002 through February 28, 2003 for twenty percent of the LNS charges that would otherwise be applicable to its PTF-connected load, as limited by the cost caps in Schedule 9 of Boston Edison's LNS OATT and their contract exemptions.

28. This order rejects Boston Edison's request to charge the Towns full LNS rates in the future and finds that the transitional LNS rates in RNA section 16.3(iii) are the just and reasonable rates from August 20, 2002 until February 28, 2003. In light of our conclusion that RNA transitional rates are the just and reasonable rates, Boston Edison's request for direct assignment of LNS costs is denied as moot. During the transition period, Boston Edison must honor Concord's up-to-26 MVA exemption for its directly connected load and Wellesley's contractual entitlements up to its use rights. The Towns, however, have no responsibility for LNS charges before the August 20, 2002 effective date of the filed LNS rates. The Towns are responsible for paying Boston Edison's full LNS charges, as the filed rates, from August 20, 2002, when those charges became effective, for about three months, *i.e.*, until the refund effective date in this proceeding, without refund protection.

³⁶ Boston Edison renumbered Exception No. 9 (Br. on Ex. at 23).

³⁷ Boston Edison renumbered Exception No. 10.

2. Refunds

29. The Presiding Judge stated that as unlawful as Boston Edison's LNS rates may have been, under FPA section 206, refunds in this case may only be ordered from the refund effective date for LNS rates greater than RNA transitional rates.³⁸ Boston Edison asserts that at the very least, any refunds should be restricted to the difference between the full LNS rates and rates based on a direct assignment methodology.³⁹ The Towns argue that the LNS filing is void from its filing on June 20, 2002 and that the Commission has the authority to order refunds from that date, if the seller violated tariffs or did not charge the filed rate.⁴⁰ Wellesley mainly relies on American Electric Power Service Corp., et. al.,⁴¹ and Enron Power Marketing, Inc., et al.⁴² for the proposition that the Commission should order Boston Edison to disgorge its unjust profits above RNA transition levels retroactive to the effective date of August 20, 2002.

30. The 15-month statutory refund period under FPA section 206, however, runs from the refund effective date of November 15, 2002, through February 14, 2004. For that 15-month refund period, Boston Edison must refund, with interest, amounts paid by the Towns in excess of the transitional LNS rate provided under RNA section 16.3(iii) (which responsibility the Towns do not dispute). The refund floor is the rate level established in RNA section 16.3(iii), not an amount based on a direct assignment of costs, which methodology this order rejects as moot.

³⁸ ID at P 84, 88, 89.

³⁹ Boston Edison Br. on Ex. at 89.

⁴⁰ Wellesley Exception No. 2 ; Concord Exception No. 2. Concord informs the Commission that it has placed in escrow the LNS amounts invoiced by Boston Edison after the issuance of the initial decision on August 7, 2003. Concord Br. Opp. Ex. at 15, n.53.

⁴¹ 103 FERC ¶ 61,345 at P 12 (2003), reh'g denied, 106 FERC ¶ 61,202 at P 20-24 (2004).

⁴² 103 FERC ¶ 61,346 at P 12 (2003), reh'g granted in part, 105 FERC ¶ 61,205 (2003).

31. Boston Edison's June 20, 2002 filing in Docket No. ER02-2127-000 became effective on August 20, 2002, as filed, without suspension and not subject to refund.⁴³ Those rates became the filed rates upon expiration of the statutory notice period under FPA section 205⁴⁴ given the Commission's failure to act with that period, and will remain the filed rates unless and until the Commission under FPA section 206 changes the filed rates from the refund effective date. FPA section 206 does not give the Commission, on the facts here, the authority retroactively from August 20, 2002 to vacate the LNS service agreements and to order refunds of the full LNS rates paid.⁴⁵ Thus, from August 20, 2002 through November 14, 2002, the day before the refund effective date, Boston Edison is not responsible for refunds. In American Electric Power and Enron, the Commission exercised its statutory authority under FPA sections 205 and 206 to enforce filed public utility tariffs that prohibited market manipulation. Here, in contrast, the full LNS rate was the filed rate for the roughly three months at issue. The Towns' exceptions are denied.

3. Future Rates

32. The Commission has the authority under FPA section 206 to prospectively revise the filed LNS service agreements and LNS rates if it finds that the service agreements and rates are unjust and unreasonable.⁴⁶ We agree with the Presiding Judge that Boston Edison's filed service agreements and rates for LNS service to the Towns are unjust and unreasonable under FPA section 206, since they charged full LNS rates. In the compliance filing that this order requires, Boston Edison must, effective as of the date of issuance of this order, reflect our discussion above as to the exemption, *i.e.*, that the Towns should not be charged any additional charge for the use of Boston Edison's 115 kV, non-PTF transmission facilities.

⁴³ After a rate becomes effective, absent agreement by the filing utility, the Commission lacks authority, even on rehearing, to undo its acceptance and instead suspend and order refunds under FPA section 205. Kentucky Power Co., et al., 64 FERC ¶ 61,112 at 61,922 (1993).

⁴⁴ 16 U.S.C. § 824(d) (2000).

⁴⁵ Indeed, as the full LNS rates were the filed rates for the period prior to the refund effective date, that is the rate that must be charged for that period.

⁴⁶ Papago Tribal Utility Authority v. FERC, 723 F.2d 950, 953 (D.C. Cir 1983).

4. Compliance Filing

33. Part II of the currently effective NEPOOL OATT states that

Local Network Service will be provided during and after the Transition Period pursuant to the applicable terms and conditions of tariffs filed by an individual Participant that is a Transmission Provider and/or pursuant to an agreement between a Participant that is a Transmission Provider and a Transmission Customer.⁴⁷

RNA section 16.3 requires Boston Edison to provide LNS service to customers connected to Boston Edison's transmission system pursuant to Boston Edison's tariff; Boston Edison's Tariff No. 8 (Part III) provides for LNS service. As noted above, the Towns must use LNS facilities in order to receive power transmitted through PTF delivery points (stations) that do not physically connect to the subtransmission identified earlier in this order. Consistent with the discussion in this order adopting the rationale of the Presiding Judge, Boston Edison must file, within 30 days from the date of issuance of this order, a compliance filing that includes the elements stated in Ordering Paragraph (B) below.

The Commission orders:

(A) The initial decision is hereby affirmed and clarified, as discussed in the body of this order.

(B) Within 30 days after the date of issuance of this order, Boston Edison is hereby directed to file a compliance filing: (1) acknowledging that the Towns have a contract right to be deemed to be directly connected to PTF for PTF transactions, as defined in the RNA, even though there is a 115 kV, non-PTF gap between use rights and PTF facilities; (2) authorizing the billing of LNS phase-down costs under RNA section 16.3(iii) from August 20, 2002 through February 28, 2003, subject to Concord's exemption of 26 MVA and Wellesley's exemption of its contract use entitlements; (3) providing, for LNS rendered prospectively from the date of issuance of this order, that the Towns should not be charged any additional charge for the use of Boston Edison's 115 kV, non-PTF transmission facilities; and (4) incorporating TSA Appendices A and B to provide Wellesley with transmission and subtransmission delivery point access up to its usage rights and designating Station 416 pursuant to the IA as Concord's delivery point.

⁴⁷ First Revised Sheet No. 63 (emphasis added).

(C) Within 30 days after the date of issuance of this order, Boston Edison is hereby directed to make refunds, with interest, pursuant to 18 C.F.R. § 35.19a (2003), of overcollections, if any, of LNS charges during the statutory refund period from November 15, 2002 through February 14, 2004, as discussed in the body of this order. However, if a request for rehearing is pending at the end of the 30-day period, refunds shall be made within 30 days of the date such rehearing is disposed of by the Commission.

(D) Within 30 days of the date of payment of such refunds, Boston Edison is hereby directed to file a refund report with the Commission showing the computation of such refunds and interest paid. A copy of the refund report shall also be sent to the affected state commissions.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

The 1980 Settlement Agreement article IV (Pool Transmission Facility Transactions) provides:

Concord or Wellesley may utilize for PTF transactions, as defined in the NEPOOL Agreement, their shares of the capacities of the facilities as set forth in Appendix A or B with respect to which they have made lump-sum payments under articles 2.2 and 2.4 and such shares of the capacities of the facilities with respect to which they have made lump sum payments under article 2.5 without payment of a PTF interconnection charge; provided that the total of the purchases under PTF transactions for each Town does not exceed its capacity in megavolt amperes of the facilities connected to PTF with respect to which the Town has made lump-sum payments. If PTF transactions for Concord or Wellesley exceed that amount, 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. Concord and Wellesley reserve their full rights to contest the rate levels and the terms and conditions of such filings. (emphasis added)

RNA section 16.3 (Obligation to Provide Local Network Service) provides:

Each Participant which owns transmission facilities other than PTF shall provide service over such facilities to other Participants or other Eligible Customers connected to the Transmission Provider's transmission system pursuant to a tariff (a 'Local Network Service Tariff') filed by the Transmission Provider with the Commission.

A Local Network Service Tariff shall provide:

- (iii) that where all or part of the load of a Participant or other Eligible Customers taking service under the tariff is connected directly to PTF, the Participant or other Eligible Customers receiving the service shall pay each Year during the Transition Period for such service with respect to the load directly connected to PTF the percentage specified in the schedule below of the applicable Local Network Service Tariff charge for service across non-PTF transmission facilities and shall have no obligation to pay charges for service across non-PTF transmission facilities with respect to that portion of the connected load after the Transition Period, but shall continue to pay its share of any other Local Network Service costs directly

associated with the PTF-connected load; provided that in the event of any inconsistency between the foregoing provisions and the terms of any Excepted Transaction which is listed in Attachment G-1 of the Tariff, the Excepted Transaction shall control:

	<u>Year One</u>	<u>Year Two</u>	<u>Year Three</u>	<u>Year Four</u>	<u>Years Five And Six</u>
% of charge to be paid	100%	80%	60%	40%	20%
