

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. ER01-890-006  
ER01-890-007  
ER02-1465-003  
ER02-1465-004

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued September 22, 2004)

1. In this order we address the request for rehearing filed by Exelon Mystic Development, LLC (Exelon)<sup>1</sup> of the Commission's order issued in this proceeding on February 17, 2004 (February 17, 2004 Order).<sup>2</sup> Exelon argues that an interconnection agreement between itself and Boston Edison Company (Boston Edison) improperly designates network facilities as interconnection facilities, and therefore improperly subjects those facilities to an annual facilities charge (AFC). As discussed below, we will deny Exelon's request for rehearing. We will also accept for filing Boston Edison's compliance filing to the February 17 Order.

2. This order benefits customers by ensuring finality of Commission orders.

**Background**

3. On January 4, 2001, Boston Edison filed an unexecuted interconnection agreement between itself and Exelon (unexecuted IA). The parties disputed the terms of section 5.4 of the unexecuted IA, which governs redispatch cost responsibility. By order issued March 5, 2001 (March 5, 2001 Order), the Commission accepted the unexecuted IA for filing, suspended it for a nominal period to become effective March 6, 2001, subject to refund, and set section 5.4 for hearing.<sup>3</sup>

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<sup>1</sup> Exelon was formerly known as Sithe Mystic Development and had entered into the executed interconnection agreement (executed IA), discussed below, with Boston Edison under that name.

<sup>2</sup> Boston Edison Company, 106 FERC ¶ 61,150 (2004).

<sup>3</sup> Boston Edison Company, 94 FERC ¶ 61,236 (2001).

4. In the course of that proceeding, Boston Edison and Exelon reached a settlement on section 5.4 issues. By letter order dated February 27, 2002 (February 27, 2002 Letter Order),<sup>4</sup> the Commission approved the settlement and directed Boston Edison to file a substitute interconnection agreement reflecting the terms and conditions of the settlement agreement. Accordingly, on March 28, 2002, Boston Edison filed the executed IA.

5. Exelon protested section 5.6 of the executed IA, regarding the AFC. Section 5.6 provided: “[t]o the extent one or more of the interconnection facilities are new additions to [Boston Edison’s] Transmission System, not merely higher capacity replacements or upgrades of existing facilities, such new facilities shall be subject to an [AFC] for the full service life of [Exelon’s] generators.” Section 5.6 further provided that AFCs shall be calculated pursuant to Schedule 3 and shall apply to the percentage of each line item listed in Schedule 2 that is flagged by an asterisk.

6. Exelon argued that section 5.6 was inconsistent with the Commission’s decision in *Boston Edison*,<sup>5</sup> concerning an interconnection agreement between Boston Edison and IDC Bellingham, LLC (Bellingham IA). Exelon requested that, in rendering a determination regarding the executed IA, the Commission clarify whether its policy on operation and maintenance (O&M) charges<sup>6</sup> for network upgrades, as stated in *Boston Edison* and further discussed below, would apply to all generators interconnecting with the Boston Edison transmission system.

7. By letter order issued May 31, 2002 (May 31, 2002 Letter Order),<sup>7</sup> the Commission accepted for filing the executed IA, subject to certain modifications. Citing *Boston Edison*,<sup>8</sup> the Commission stated that Boston Edison cannot charge an interconnecting generator O&M costs for facilities that are part of Boston Edison’s integrated transmission system. The Commission directed Boston Edison to “revise Section 5.6 to state that AFC will not be assessed for network upgrades and to delete, in Schedule 2, the asterisk from any line items that qualify as network upgrades.”<sup>9</sup>

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<sup>4</sup> Boston Edison Company, 98 FERC ¶ 61,198 (2002).

<sup>5</sup> Boston Edison Company, 98 FERC ¶ 61,200 (2002) (*Boston Edison*). This order issued on the same date as the February 27, 2002 Letter Order.

<sup>6</sup> As defined in the executed IA, AFC would include O&M charges.

<sup>7</sup> Boston Edison Company, 99 FERC ¶ 61,241 (2002).

<sup>8</sup> 98 FERC at 61,696-97.

<sup>9</sup> May 31, 2002 Letter Order, 99 FERC at 61,991.

8. Boston Edison sought rehearing. Boston Edison contended that, because the Commission had conditionally accepted for filing the unexecuted IA (in the March 5, 2001 Order) and set for hearing only issues surrounding section 5.4, the Commission could not direct changes to section 5.6 of the executed IA without initiating a proceeding pursuant to section 206 of the Federal Power Act (FPA).<sup>10</sup> Boston Edison explained that sections 5.6 in the unexecuted IA and the executed IA were identical, that Exelon had been fully aware of its responsibilities under that section, and that Exelon should not be allowed to raise new issues concerning that section after construction of the subject interconnection facilities was 95 percent complete.

9. Notwithstanding its rehearing request, on July 2, 2002, Boston Edison submitted its compliance filing to the May 31, 2002 Letter Order (July 2, 2002 Compliance Filing). Exelon initially protested the July 2, 2002 Compliance Filing, arguing that Schedule 2 retained an asterisk by three facilities, erroneously indicating that those facilities are network upgrades.<sup>11</sup> Boston Edison filed a response, maintaining that its compliance filing properly characterized the nature of the facilities at issue. Subsequently, however, both parties filed a joint withdrawal of pleadings; the parties agreed to certain AFC calculations, depending upon whether the Commission either granted or denied Boston Edison's rehearing request.<sup>12</sup>

10. In the February 17, 2004 Order, the Commission found that it had erred in ordering changes to section 5.6 of the executed IA. We explained:

In the May 31, 2002 Letter Order, we relied upon *Boston Edison* in ordering Boston Edison to modify Section 5.6. As explained in *Boston Edison*, 98 FERC at 61,696-97, O&M charges cannot be assessed for facilities that are part of

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<sup>10</sup> 16 U.S.C. § 824e (2000).

<sup>11</sup> The three facilities were: (1) the Exelon Interconnection at Dexter Street; (2) 90 percent of the Exelon Unit 9-3 115kV Tie; and (3) 90 percent of the Exelon Unit 9-4 115 kV Tie.

<sup>12</sup> More specifically, the parties agreed that, if the Commission ruled in Exelon's favor, *i.e.*, denied Boston Edison's rehearing request, then Boston Edison will determine the actual installed costs of the non-network portions of all new facilities included in the Exelon interconnection, subject to reconciliation and audit contemplated in section 5 of the executed IA, and will use such actual costs as the basis for the AFC calculations provided in Schedule 3. If, on the other hand, the Commission ruled in Boston Edison's favor and found that Schedule 2 should remain as originally filed, then the parties agreed that the costs of each of the asterisked line items of Schedule 2, to the extent of the percentages indicated therein, will be used to calculate the AFCs. Such costs would be subject to reconciliation and audit.

Boston Edison's integrated transmission system. However, we also found that Section 5.6 of the [Bellingham IA], which mirrors Section 5.6 of the executed IA at issue here, did not conflict with that policy, since it subjected only non-integrated transmission facilities to AFC.

11. Accordingly, the Commission reversed its prior directive that Boston Edison modify section 5.6 of the executed IA and directed Boston Edison to submit a compliance filing restoring the language of section 5.6 and Schedule 2 as originally proposed in the executed (and unexecuted) IA. Given the parties' joint withdrawal of pleadings, the Commission made no finding regarding the nature of the disputed facilities.

### **Exelon's Request for Rehearing**

12. On rehearing, Exelon argues that the Commission's compliance directive in the February 17, 2004 Order erroneously allows Boston Edison to charge O&M costs to Exelon for network upgrades. Exelon contends that the directive is inconsistent with the Commission's stated policy in that order, and throughout this proceeding, that Boston Edison cannot charge O&M costs for network upgrades. Exelon maintains that section 5.6 of the executed IA in this case is almost identical to section 5.6 of the Bellingham IA at issue in *Boston Edison*, with one crucial distinction. Namely, Exelon states that there were no network upgrades at issue in *Boston Edison*, because there were no facilities flagged with an asterisk in Schedule 2 of the Bellingham IA, but there are network facilities at issue here (that is, asterisked items in Schedule 2 of the executed IA at issue here). Therefore, according to Exelon, while section 5.6 of the Bellingham IA subjected only non-integrated facilities to the AFC, section 5.6 of the executed IA actually would subject integrated, as well as non-integrated, facilities to the AFC.

13. On April 30, 2004, Boston Edison filed an answer to Exelon's rehearing request.

### **Discussion**

14. Rule 713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2004), prohibits answers to rehearing requests. Accordingly, we will reject Boston Edison's answer.

15. We will deny Exelon's rehearing request. In the February 17, 2004 Order, the Commission found that section 5.6 of the executed (and unexecuted) IA, as originally proposed, did not conflict with the Commission's general policy prohibiting a transmission provider from assessing O&M charges to a generator for network upgrades. Exelon now urges the Commission to find that, even if section 5.6 is not inconsistent with Commission policy per se, certain facilities listed in Schedule 2 are network facilities and therefore inappropriately subject to section 5.6 charges. Exelon improperly raises this

argument in a rehearing request, over three years after the Commission accepted section 5.6 and Schedule 2 for filing, as part of the unexecuted IA, and approximately two years after Exelon signed the executed IA, which included section 5.6 and Schedule 2, unaltered.<sup>13</sup> The Commission generally will not entertain on rehearing issues that should have been raised earlier, because doing so effectively creates an impermissible moving target.<sup>14</sup> There is no basis for taking any different action here.

### **Boston Edison's Compliance Filing**

16. On March 18, 2004, Boston Edison filed its compliance filing in response to the February 17 Order (March 18 Compliance Filing). In the March 18 Compliance Filing, Boston Edison restored section 5.6 of the executed IA, as originally proposed. Boston Edison also revised Schedule 2, to reinstate imposition of AFCs on certain facilities, as denoted by asterisks.

17. Notice of the March 18 Compliance Filing was published in the *Federal Register*,<sup>15</sup> with protests and interventions due on or before April 8, 2004. None was filed.

### **Discussion**

18. We will accept for filing the March 18 Compliance Filing, effective March 6, 2001 (the effective date of the executed IA), as we find that it complies with the February 17, 2004 Order.

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<sup>13</sup> Although Exelon protested Boston Edison's July 2, 2002 Compliance Filing, arguing that three facilities were improperly designated as interconnection facilities, rather than network facilities, Exelon and Boston Edison subsequently filed a joint withdrawal of pleadings, and the Commission made no finding regarding the designation of specific facilities listed on Schedule 2. In addition, as indicated in the joint withdrawal of pleadings, Exelon agreed to pay O&M charges for the facilities listed in Schedule 2, if, as it did in the February 17, 2004 Order, the Commission allowed Schedule 2 to remain as originally filed.

<sup>14</sup> *See, e.g.*, *Californians for Renewable Energy, Inc. v. Calpine Energy Services, L.P.*, 107 FERC ¶ 61,238 at P 7 & n.7 (2004); *Central Maine Power Co.*, 90 FERC ¶ 61,198 at 61,241 & n.8 (2000); *Ocean State Power II*, 69 FERC ¶ 61,146 at 61,548 & n.65 (1994).

<sup>15</sup> 69 Fed. Reg. 16,246 (2004).

The Commission orders:

(A) Exelon's request for rehearing is hereby denied.

(B) Boston Edison's March 18 Compliance Filing is hereby accepted for filing, effective March 6, 2001, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.