

123 FERC ¶ 61,270
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.

NSTAR Electric Company

Docket Nos. ER07-549-000,
ER07-549-001,
ER07-549-002,
EC06-126-002,
EC06-126-003,
EC06-126-004,
EL07-71-000,
EL07-71-001,
and
ER05-69-003

ORDER ACCEPTING UNCONTESTED SETTLEMENT, TERMINATING EXISTING
ANNUAL INFORMATIONAL FILING REQUIREMENTS, AND REQUIRING
COMPLIANCE

(Issued June 19, 2008)

1. In this order, we address an uncontested Settlement filed on March 12, 2008, by NSTAR Electric Company (NSTAR Electric), the Massachusetts Attorney General (MassAG) and the Concord Municipal Light Plant (Concord) (collectively, the Settling Parties). The Settlement establishes a return on equity of 10.9 percent to be used by NSTAR Electric in its formula rates and resolves related issues for which hearing and settlement judge procedures were established by the Commission in its initial order issued in this proceeding.¹ For the reasons discussed below, we accept the uncontested Settlement.

¹*NSTAR Electric Co.*, 120 FERC ¶ 61,027, at P 1 (2007) (July 2007 Order).

2. In this order, we also address NSTAR Electric's existing compliance filing requirement resulting from the Commission's previous approval of 50 percent of transmission construction work in-progress (CWIP) in rate base.² For the reasons discussed below, we terminate the existing CWIP annual informational filing requirements in Docket No. ER05-69-000, *et al.*, to be superseded by the annual informational filing requirements stipulated in the Settlement.

I. Background

3. On May 26, 2006, NSTAR Electric, Cambridge Electric Light Company (Cambridge), Commonwealth Electric Company (Commonwealth), and Canal Electric Company (Canal) filed an application under section 203 of the Federal Power Act (FPA) to merge and consolidate Cambridge, Commonwealth and Canal into NSTAR Electric.³ The Commission's October 20, 2006 authorization of the transaction included a requirement that NSTAR Electric conform its Schedule 21⁴ to the rulings ultimately to be made by the Commission in Docket No. ER05-742-000, *et al.*, concerning section 205 filings that Cambridge and Commonwealth had made in 2005 to revise their respective Schedule 21 (Cambridge Proceeding).

4. On October 30, 2006, NSTAR Electric submitted a compliance filing accepting the conditions specified in the October 2006 Order, but requesting that it not be required to include in the post-merger Schedule 21 certain specific provisions that it viewed as appropriate for Cambridge and Commonwealth but not for NSTAR Electric. The Commission's November 2006 Order granted this request.⁵ Prior to that order, on November 17, 2006, a settlement was submitted to the Commission in the Cambridge

² *Boston Edison Co.*, 109 FERC ¶ 61,300 (2004); *order on reh'g*, 111 FERC ¶ 61,266 (2005) (CWIP Orders). As a result of these orders, NSTAR Electric was required to file an annual compliance filing in Docket No. ER05-69, *et al.*, detailing the accounting for CWIP and Allowance for Funds Used During Construction.

³ The orders approving the consolidation and merger are *Boston Edison Co.*, 117 FERC ¶ 61,083, at P 32 (2006) (October 2006 Order); *order on reh'g, clarification and compliance*, 117 FERC ¶ 61,240, at P 9 (2006) (November 2006 Order) (collectively, the Merger Orders).

⁴ ISO New England Inc., FERC Electric Tariff No. 3, section II- Open Access Transmission Tariff, Schedule 21-NSTAR (Schedule 21-NSTAR).

⁵ November 2006 Order, 117 FERC ¶ 61,240 at P 8.

Proceeding.⁶ Thus, to comply with the Merger Orders, to reflect its post-merger operations and anticipating Commission approval of the Cambridge Settlement, NSTAR Electric on February 14, 2007 submitted a new Schedule 21, which NSTAR Electric asserted, with limited exceptions, incorporated the Cambridge Settlement Schedule 21 provisions. On March 7 and March 12, 2007, the MassAG and Concord, respectively, protested certain provisions of that submittal. In the July 2007 Order, the Commission accepted the new Schedule 21 subject to refund, ordered that Schedule to become effective as of January 1, 2007, and established hearing and settlement judge proceedings.

II. Proposed Settlement and Responsive Pleadings

5. As noted above, the Settlement was filed on March 12, 2008, after extensive negotiations. The Settlement provides for revised formula rates to become effective January 1, 2007, and revised formula rate protocols applicable to NSTAR Electric's annual informational filings to the Commission.

6. The Settlement also establishes a revenue requirement for Local Network Transmission Service and provides for a base-level return on equity of 10.9 percent, a benefits analysis on applicable CWIP-related costs to be reported along with other formula rate data in an annual informational filing with the Commission,⁷ recovery of costs associated with post-employment benefits other than pensions (PBOPs), and a publicly-available independent audit to be performed on request by the MassAG. In addition, the Settlement provides that, subject to the Commission's acceptance of NSTAR Electric's compliance filing in Docket No. ER05-69-003,⁸ and subject to acceptance of the Settlement filings without suspension, *inter alia*, all pending pleadings in Docket Nos. ER07-549-000, EC06-126-000 and EL07-71-000 and their various subdockets are rendered moot. NSTAR Electric conditions the Settlement on the Commission's acceptance of the Settlement in its entirety, or with conditions that are acceptable to the Settling Parties.

⁶The Commission approved the settlement in *Cambridge Electric Light Co*, 118 FERC ¶ 61,166 (2007) (the Cambridge Settlement).

⁷ The content of the annual informational filing is provided in more detail in Articles 4 and 5 of the Settlement.

⁸ Article 8.5(d).

7. On April 1, 2008, comments generally supporting the Settlement were filed by Trial Staff and Concord. Both ask that the Commission direct NSTAR Electric to include a template of the rate formula in the Settlement as part of the Company's filed rate. In addition, Concord asks that the Commission modify Article 6.8 of the Settlement, which states that NSTAR Electric's rate of return on common equity is 10.9 percent, by adding that the fifty basis point incentive adder for RTO participation applies only to Pool Transmission Facilities, and not to the Company's entire transmission base. On April 7, 2008, the Settlement Judge certified the Settlement to the Commission as an uncontested settlement.

8. On April 11, 2008, NSTAR Electric filed reply comments, saying the template is unnecessary and possibly counter-productive considering the request is being made after negotiations were completed and that needed provisions to integrate the template into the rate have not been negotiated.

9. However, NSTAR Electric states that if the Commission were to require a template, the Commission should require it as a compliance filing, and should also include the following provisions: (i) the template does not change and is subordinate to the words of the formula rate; (ii) the template is not a substitute for the tariff language; (iii) in the event of a conflict or inconsistency between the template and the tariff language, the tariff language is controlling; and (iv) the template is illustrative and the actual true-up filing may include format changes that enhance the tariff's transparency or that reflect new accounts or non-material changes to the Uniform System of Accounts.⁹

10. NSTAR Electric also argues that the adder clarification is unnecessary. On April 15, 2008, the Settlement Judge issued an Errata to the certification of the settlement to include the certification of the reply comments.

III. Discussion

11. The Commission finds that the Settlement is fair, reasonable, and in the public interest and is hereby approved. The standard of review for any modifications to this settlement not agreed to by the parties, including modifications by the Commission acting *sua sponte*, shall be the "just and reasonable" standard of review. The tariff sheets contained in the Settlement that are not otherwise subject to the further compliance filing ordered herein satisfactorily comply with Order No. 614 and are accepted effective as

⁹ NSTAR Electric's Answer at footnote 8.

noted in the Settlement.¹⁰ Other than the principles and issues specifically addressed in the Discussion section of this order, the Commission's acceptance of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the FPA.¹¹ The Settlement also resolves all pending requests for rehearing.¹²

12. Trial Staff and Concord, as noted above, do not contest the Settlement. However, they seek a commitment, in the form of a Settlement condition, that we require NSTAR Electric to file a template of the formula rate in the settlement. Participants cite to Appendix D of the Settlement as an example of the formula rate template. We agree with participants that a formula rate template should be filed as part of NSTAR's Schedule 21. However, we specify that all sheets of the formula rate template should be filed, and not only the summary data sheet illustrated in Appendix D.¹³ This requirement promotes formula rates transparency and is consistent with our treatment of formula rates.¹⁴

¹⁰ See *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).

¹¹ 16 U.S.C. § 824e (2000 & Supp. V 2005).

¹² The Commission concludes that although the Settling Parties did not include in the Settlement caption the rehearing request pending in Docket Nos. ER07-549-002, EC06-126-004, and EL07-71-001, that rehearing request is rendered moot by article 8.6 of the Settlement, which states that all pending pleadings not already acted on by the Commission in Docket Nos. ER07-549-000, EC06-126-000 and EL07-71-000 and their various subdockets are rendered moot.

¹³ NSTAR Electric's summary sheet references sheets 2-5 which are not filed in Appendix D, but should be filed as part of the compliance filing explained herein.

¹⁴ See, e.g., *American Electric Power Service Corp.*, 120 FERC ¶ 61,205 (2007); *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007); *San Diego Gas & Electric Co.*, 118 FERC ¶ 61,073 (2007); *Idaho Power Co.*, 115 FERC ¶ 61,281 (2006), *order on compliance*, 118 FERC ¶ 61,156 (2007); *Michigan Electric Transmission Co., LLC*, 113 FERC ¶ 61,343 (2005), *order on reh'g*, 116 FERC ¶ 61,164 (2006); *International Transmission Co.*, 116 FERC ¶ 61,036 (2006); *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, (2007), *denying rehearing*, 121 FERC ¶ 61,009 (2007);

13. Consistent with NSTAR Electric's request,¹⁵ we agree that the template does not change the existing settlement provisions of the tariff. The template is not a substitute for the tariff language, and if an inconsistency between the tariff language and the template arises, the tariff language is controlling. Finally, the template is illustrative and the actual true-up filing may include format changes or reflect non-material changes required by the Uniform System of Accounts. NSTAR Electric is hereby ordered to submit, in a compliance filing to be made within 30 days of this order, proposed tariff sheets including a complete formula rate template as discussed herein.

14. We deny Concord's request that the Commission clarify article 6.8 of the Settlement by noting that the fifty basis point incentive adder for RTO participation applies only to Pool Transmission Facilities, and not to NSTAR Electric's entire transmission rate base. First, the ROE in Schedule 21-NSTAR is a stated ROE of 10.9 percent, exclusive of the 50 basis point adder. Schedule 21-NSTAR is absent of any discussion on the 50 basis point adder. Second, the service provided under Schedule 21-NSTAR is Local Network Service, not Regional Network Service. The 50 basis point adder is simply inapplicable to Local Network Service, and therefore, mention of it is properly excluded from Schedule 21-NSTAR and it is unnecessary to modify article 6.8 of the Settlement to note this fact.

15. Additionally, article 4.4 of the Settlement outlines that the Settlement will subsume and expand the Commission's filing requirement in ER05-69-000, *et al.*, and a motion to terminate this compliance has been filed as part of the settlement package in ER07-549 to relieve NSTAR Electric of its obligation. Therefore, we accept this motion and agree that article 4.2 of this Settlement and section I.4.1(ix) of Schedule 21-NSTAR moot the Commission's requirement for annual filings established in the aforementioned docket.

16. Under the terms of the Settlement, within thirty (30) days from the date of this letter, any amounts collected in excess of the settlement rates shall be refunded together with interest computed under section 35.19a of the Commission's regulations.¹⁶ Within fifteen (15) days after making such refunds, NSTAR Electric shall file with the Commission a compliance refund report showing monthly billing determinants, revenue

Commonwealth Edison Co., 119 FERC ¶ 61,238 (2007); (2007), *order on reh'g*, 122 FERC ¶ 61,037 (2008); *Xcel Energy Services, Inc.* 121 FERC ¶ 61,284 (2007).

¹⁵ NSTAR Electric Answer at footnote 8.

¹⁶ 18 C.F.R. § 35.19a (2007).

receipt dates, revenues under the present and settlement rates, the monthly revenue refund, and the monthly interest computed, together with a summary of such information for the total refund period. NSTAR Electric shall furnish copies of the report to the affected customers and to each state commission within whose jurisdiction the affected wholesale customers distribute and sell electric energy at retail.

17. This order terminates Docket Nos. ER07-549-000, ER07-549-001, ER07-549-002, EC06-126-002, EC06-126-003, EC06-126-004, EL07-71-000, EL07-71-001, and ER05-69-003. A new subdocket will be assigned in Docket No. ER07-549 upon receipt of the required compliance filings.

The Commission orders:

- (A) The Settlement is hereby approved, as discussed in the body of this order.
- (B) The annual compliance filing in Docket No. ER05-69-003 is hereby terminated.
- (C) NSTAR must submit revised tariff sheets within 30 days of the date of this order, as described in the body of this order.
- (D) NSTAR is hereby directed to issue refunds with interest calculated pursuant to 18 C.F.R. § 35.19a (2007), as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.