

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.

Boston Edison Company.  
Cambridge Electric Light Co.  
Commonwealth Electric Co.  
Canal Electric Co.

Docket No. EC06-126-001

ORDER ON REHEARING, CLARIFICATION, AND COMPLIANCE

(Issued November 28, 2006)

1. On October 30, 2006, Boston Edison Company (Boston Edison), Cambridge Electric Light Company (Cambridge), Commonwealth Electric Company (Commonwealth) and Canal Electric Company (Canal) (collectively, Applicants) filed a compliance filing and request for rehearing of the Commission's October 20, 2006 Order<sup>1</sup> on Applicants' application under section 203 of the Federal Power Act.<sup>2</sup> As discussed below, the Commission will grant rehearing to clarify the October 20 Order and accepts Boston Edison's compliance filing.

**Background**

2. The underlying transaction is described in detail in the October 20 Order. Briefly, Applicants filed an application under section 203 for Boston Edison to acquire the jurisdictional facilities of its operating company affiliates, Cambridge, Commonwealth and Canal. Each operating company is a wholly-owned public utility subsidiary of NSTAR, a Massachusetts business trust. Other than Canal, each operating company provides transmission and distribution services and default electric service for retail customers in eastern Massachusetts.<sup>3</sup> As a result of the merger the facilities, properties

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<sup>1</sup> *Boston Edison Co.*, 117 FERC ¶ 61,083 (2006) (October 20 Order).

<sup>2</sup> 16 U.S.C. § 824b (2000), *amended by* Energy Policy Act of 2005 § 1289, Pub. L. No. 109-58, 119 Stat. 594, 982-93 (2005) (EPAAct 2005).

<sup>3</sup> None of the Applicants own any generation facilities.

and other rights, assets, franchises, and liabilities of the operating companies will become Boston Edison's.

3. The Massachusetts Attorney General (Attorney General) filed a response, arguing that deficiencies and differences among the tariffs of the individual operating companies make it impossible for the Commission to make an independent assessment of the effect on ratepayers.<sup>4</sup> The Attorney General argued that the Commission should order Applicants to file the new rates and tariffs under section 205 as a ratepayer protection mechanism, so that the Commission can determine the reasonableness of the rates and ensure that the proposed merger would not have an adverse effect on rates.

4. The Commission found that certain commitments made by Applicants, if accompanied by a transparency requirement, would ensure that the proposed transaction would not adversely affect transmission rates.<sup>5</sup> With regard to the Attorney General's contention that the Commission should order the companies to file new rate tariffs under section 205, the Commission noted that Applicants state at page 15 of their application that Boston Edison will submit to the Commission any revisions to Schedule 21 that may be necessary as a result of the acquisition of the other Applicants' facilities.<sup>6</sup> As to the pending proceedings referred to by the Attorney General dealing with tariffs of individual Applicants, the Commission stated that the proceeding in *Cambridge* is still ongoing. The Commission ruled that if the outcome of the *Cambridge* proceeding requires changes to Cambridge's tariff,<sup>7</sup> Applicants must reflect such changes in Boston Edison's revised Schedule 21. Customers would then have the opportunity in a 205 proceeding to review and contest any change. The Commission found that this requirement, in combination with the informational requirement above, adequately addressed the Attorney General's

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<sup>4</sup> Attorney General Comments at 2 (citing *Cambridge Electric Light Company and Commonwealth Electric Company*, 111 FERC ¶ 61,246 (2005) (*Cambridge*). In that proceeding, the Attorney General argued that Cambridge and Commonwealth did not provide an evidentiary basis to determine if the rates were fair and reasonable. The case was set for hearing and settlement judge procedures.).

<sup>5</sup> October 20 Order, 117 FERC ¶ 61,083 at P 31 (citing *ITC Holdings Corp.*, 116 FERC ¶ 61,271, at P 48 (2006)).

<sup>6</sup> Schedule 21s are now filed individually by each Applicant as schedules under the ISO-New England tariff and are used for transmission service over "non-pool" facilities. After the merger, Boston Edison will file one Schedule 21 for transmission service reflecting the combined non-pool facilities of all Applicants.

<sup>7</sup> Such changes would also include changes to Commonwealth's tariff.

concerns.<sup>8</sup> Lastly, the Commission required Applicants to make a compliance filing stating that they accept the conditions in the October 20 Order.

### **Compliance Filing and Request for Rehearing**

5. On October 27, 2006, Applicants filed a compliance filing stating that they accept all the conditions in the October 20 Order except the rate filing condition, which they state would preclude the transaction. Applicants agree generally that the Boston Edison transmission tariff (which will apply to service over the facilities for the combined companies) should be conformed to the Commission's rulings in the pending *Cambridge* proceeding. However, they ask that rulings in the *Cambridge* proceeding that are appropriate for the Cambridge and Commonwealth tariffs but inappropriate for Boston Edison not be applied to Boston Edison. Applicants argue that the treatment of certain specific matters -- capital structure, construction work in progress, depreciation rates, and stranded cost -- should be different for Boston Edison than for Cambridge and Commonwealth. In addition, Applicants argue that the negotiating concessions that may be made in the *Cambridge* proceeding by Cambridge and Commonwealth may not be appropriate for Boston Edison. Therefore, Applicants also request that any settlement of the *Cambridge* proceeding not be automatically applied to Boston Edison.

6. Applicants also argue that the October 20 Order would require Boston Edison to adopt *Cambridge* rulings through a section 205 filing. This would allow a person dissatisfied with any such rulings to re-litigate those issues against Boston Edison. Applicants ask that Boston Edison be required to incorporate *Cambridge* proceeding rulings or settlement outcomes, excluding the items discussed above, in its tariff through a compliance filing in this docket (EC06-126) rather than as a section 205 filing so that the only issue would be whether the tariff conforms to the outcome of the *Cambridge* proceeding (with the exceptions noted above). They note that any party that disputes the application of a *Cambridge* proceeding ruling or settlement outcome to the Boston Edison tariff would have the right to file a section 206 complaint on that provision.

### **Discussion**

#### **A. Applicability of Rulings on Certain Issues in *Cambridge* to Boston Edison**

7. In the October 20 Order, the Commission stated that:

The proceeding in *Cambridge* is still ongoing and the judicial decision in the other proceeding addresses issues that do not appear to be germane here. In the event that the outcome of the

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<sup>8</sup> October 20 Order, 117 FERC ¶ 61,083 at P 32.

on-going proceeding requires changes to Cambridge's tariff, Applicants are directed to reflect such changes in Boston Edison's revised Schedule 21. Customers will have the opportunity in a 205 proceeding to review and contest any change.<sup>9</sup>

8. Applicants contend that the above language could be construed as meaning that certain rulings in the *Cambridge* proceeding that are inappropriate for Boston Edison must be applied to Boston Edison. To ensure that this does not occur, we clarify that any rulings in the *Cambridge* proceeding regarding issues that are company-specific in nature, including the treatment of capital structure, construction work in progress, depreciation rates, or stranded costs affecting Cambridge and/or Commonwealth will not necessarily be applied to Boston Edison. The rulings or settlement outcomes on these issues will be based upon the factual situations of Cambridge and Commonwealth, and we will not assume that the same results are necessary for Boston Edison.

**B. Whether Boston Edison's Required Filings Will Re-Open Issues Resolved in Cambridge**

9. Applicants argue that obligating Boston Edison to adopt *Cambridge* rulings through a section 205 filing would allow parties in *Cambridge* to re-litigate those rulings against Boston Edison. Applicants request that Boston Edison be required instead to make a compliance filing in this docket (EC06-126) so that the only issue would be whether Boston Edison has conformed its tariff to reflect the outcome of *Cambridge* (except for the specific items discussed above). With the exception of the company-specific issues discussed above, we agree that a compliance filing is the most efficient way of conforming to any rulings stemming from the *Cambridge* proceeding. Any party that wishes to dispute the justness and reasonableness of Boston Edison's tariff would still have the right to file a section 206 complaint.

**C. Compliance Filing**

10. In the October 20 Order, Boston Edison was required to submit a compliance filing stating that it accepted the conditions discussed therein. On October 27, 2006, Boston Edison submitted a compliance filing stating that it accepted all of the conditions except for the rate condition implicating the *Cambridge* proceeding, as discussed above. Because we agree with Boston Edison that rulings in the *Cambridge* proceeding should not necessarily be applied to Boston Edison, we find Boston Edison's compliance to be sufficient and accept it for filing.

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<sup>9</sup> October 20 Order, 117 FERC ¶ 61,083 at P 32.

The Commission orders:

(A) Rehearing and clarification are granted, as discussed in the body of this order.

(B) Boston Edison's compliance filing is accepted, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.