

130 FERC ¶ 61,253
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

New England Power Company

Docket Nos. ER10-523-000
ER10-523-001

ORDER ACCEPTING AND SUSPENDING TARIFF REVISIONS, ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued March 29, 2010)

1. On December 30, 2009, as amended on January 29, 2010, New England Power Company (New England Power) filed, pursuant to section 205 of the Federal Power Act (FPA)¹ and section 35.13 of the Commission's regulations,² revised tariff sheets amending the terms and conditions governing its integrated facilities service (Integrated Facilities Amendment) under Schedule III-B³ of New England Power's FERC Electric Tariff, First Revised Volume Number 1 and Service Agreements of its affiliates, Massachusetts Electric Company (Mass Electric) and the Narragansett Electric Company (Narragansett).
2. In this order, we accept for filing New England Power's revised tariff sheets and the related service agreements and suspend them for a nominal period, to become effective January 1, 2010, as amended, subject to refund. We also establish hearing and settlement judge procedures.

¹ 16 U.S.C. § 824d (2006).

² 18 C.F.R. § 35.13 (2009).

³ New England Power states that it uses Schedule III-B to compensate its distribution affiliates for their ownership of integrated transmission facilities.

I. Background

3. On March 30, 2007, in Docket No. ER07-694-000, New England Power filed, among other things, a revised formula rate that proposed to decrease rates contained in Schedule III-B of its FERC Electric Tariff. On May 25, 2007, the Commission accepted the revised tariff sheets containing the formula rate, subject to conditions, and set the proceeding for hearing and settlement procedures.⁴ On December 18, 2008, the Commission approved a settlement that established the currently effective formula rate (2008 Settlement).⁵ In the settlement, New England Power agreed to submit an annual informational filing that reconciles New England Power's monthly credits to Narragansett under the Schedule III-B formula rate with its FERC Form No. 1 (Annual True-Up). In addition, the parties have the right to request an audit of New England Power's Annual True-Up calculation provided in the informational filing.

II. New England Power's Filing

4. On December 30, 2009, New England Power filed its Integrated Facilities Amendment under Schedule III-B of its OATT. New England Power also submitted two amended service agreements with Mass Electric⁶ and Narragansett. New England Power requests waiver of the Commission's prior notice requirement in order to allow an effective date of January 1, 2010 for the Integrated Facilities Amendment and the amended service agreements.

5. New England Power states that there are two primary reasons for the proposed Integrated Facilities Amendment. First, the Integrated Facilities Amendment modifies the rates by which Narragansett and Mass Electric are being compensated for depreciation-related expenses and post-retirement benefits other than pensions (PBOP). Second, in an effort to make Mass Electric's cost recovery more transparent and consistent, New England Power proposes to replace Mass Electric's cost of service formula rates and calculations by: (1) bringing Mass Electric's transmission facilities under the same formula rate already established in Schedule III-B as currently set forth in Mass Electric's Tariff No. 1 Service Agreement; (2) incorporating into Schedule III-B a distribution rate formula designed to compensate Mass Electric or Narragansett for its ownership of any distribution facilities used in the wholesale transmission of electricity;

⁴ *New England Power Co.*, 119 FERC ¶ 61,189 (2007).

⁵ *New England Power Co.*, 125 FERC ¶ 61,298 (2008).

⁶ Nantucket Electric Company is also identified as a customer and signatory in New England Power Company's Fourth Revised Service Agreement No. 20 (Mass Electric Service Agreement).

and (3) clarifying the formula rate methodology by which New England Power is compensated for certain limited facilities it owns that are utilized by Mass Electric as part of its retail distribution service operations.

6. New England Power states that comparing the existing Integrated Facilities Amendment to the revised Integrated Facilities Amendment, using 2008 as the test year, yields annual rate decrease of \$1.6 million or about a 3.5 percent reduction of the total Integrated Facilities Amendment credits.

7. In addition, New England Power proposes to make an annual informational filing with the Commission of the same type utilized in the 2008 Settlement that reconciles New England Power's monthly credits to Mass Electric under the Schedule III-B formula rate with its FERC Form No. 1. New England Power explains that the parties have the right to request an audit of New England Power's Annual True-Up calculation provided in this informational filing. New England Power states that the annual informational filing will include a 5-year forecast of Mass Electric's transmission capital additions, including an estimate of the impact that such additions would have on retail customers.

8. On January 29, 2010, New England Power submitted an amendment to the Mass Electric Service Agreement to correct an incorrect designation and to make New England Power's formula rate and billings to Mass Electric established by this proceeding subject to the terms and conditions of the 2008 Settlement and an Annual True-Up.

III. Notice of Filings and Responsive Pleadings

9. Notice of New England Power's December 30, 2009 filing was published in the *Federal Register*, 75 Fed. Reg. 1,763 (2010), with interventions and protests due on or before January 20, 2010. The Attorney General of the Commonwealth of Massachusetts (Massachusetts Attorney General) filed a motion to intervene and protest and a request to set the matter for settlement and hearing procedures. New England Power filed a motion for leave to answer and answer.

10. Notice of New England Power's January 29, 2010 filing was published in the *Federal Register*, 75 Fed. Reg. 6,653 (2010), with interventions and protests due on or before February 19, 2010. The Massachusetts Attorney General filed a protest to New England Power's amended filing.

11. In response to New England Power's December 30, 2009 filing, the Massachusetts Attorney General protests the Integrated Facilities Amendment because it believes New England Power has failed to provide adequate information for the Commission to determine that the proposed tariff will produce rates that are just and reasonable. Specifically, the Massachusetts Attorney General argues that New England Power failed to provide sufficient information and supporting documentation for the reasonableness of the various inputs for New England Power's formula rate proposal, including, but not

limited to New England Power's: (1) assignment and allocation of certain investments; (2) determination of shared building and facilities' square footage allocators; and (3) PBOP amounts and calculation methodology. The Massachusetts Attorney General also points to New England Power's failure to include FERC Uniform System of Accounts account numbers for Massachusetts Electric's shared substation assets and New England Power's assets. The Massachusetts Attorney General requests that the Commission reject New England Power's filing and order New England Power to cure the deficiencies by providing sufficient information and supporting documentation for the reasonableness of the proposed inputs for its formula rate proposal.

12. The Massachusetts Attorney General further argues that while New England Power agrees to provide the same kind of reconciliation for Mass Electric that it currently provides for Narragansett, it provides no further details and does not include these obligations in the Integrated Facilities Amendment. The Massachusetts Attorney General requests that the Commission order New England Power to: (1) file annual informational filings with the Commission that reconcile New England Power's monthly credits to Mass Electric under the Schedule III-B formula rate with its FERC Form No. 1; (2) afford interested parties audit rights to review and certify the accuracy and application of the data; and (3) provide a five-year forecast of Mass Electric and New England Power's transmission capital additions, including impact estimates on retail customers within its annual information filing.

13. In its answer, New England Power states that the Massachusetts Attorney General's claims that New England Power's filing is deficient are without merit and should be rejected. New England Power provided specific responses to the deficiencies in the Integrated Facilities Amendment noted by the Massachusetts Attorney General and none of the deficiencies alleged by the Massachusetts Attorney General identify a failure to comply with the Commission's filing requirements. New England Power further states that the Massachusetts Attorney General's allegations do not warrant investigations through hearing procedures because they fail to raise genuine issues of material fact that cast doubt on the justness and reasonableness of New England Power's filing. New England Power states that its filing is consistent with the Commission's formula rate and filing requirements. Therefore, the Commission should reject the Massachusetts Attorney General's arguments and accept its filing as filed.

14. In regards to the reporting requirements requested by the Massachusetts Attorney General, New England Power states that Mass Electric's Service Agreement as re-filed on January 29, 2010, expressly states that New England Power's formula rates and billings to Mass Electric established by this proceeding will be subject to the terms and conditions of the 2008 Settlement.

15. In response to New England Power's January 29, 2010 filing, the Massachusetts Attorney General again protests the Integrated Facilities Amendment and states that despite the information submitted by New England Power in its answer, the filing

remains deficient. In addition, the Massachusetts Attorney General argues that the auditing clause inserted into the Mass Electric Service Agreement fails to protect ratepayer interests and requests that the Commission order certain revisions to the clause.

IV. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motion to intervene serves to make the party that filed it a party to this proceeding.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept New England Power's answer because it has provided information that has assisted us in our decision-making process.

B. Hearing and Settlement Judge Procedures

18. New England Power's revised tariff sheets and related service agreements raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. Such issues include, but are not necessarily limited to, whether New England Power explains in sufficient detail how the charges under the proposed formula rate are calculated, and whether New England Power provides customers with sufficient ability to monitor the charges under the proposed formula rate.⁷

19. Our preliminary analysis indicates that New England Power's revised tariff sheets and related service agreements have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept New England Power's revised tariff sheets and related service agreements for filing, suspend their effectiveness for a nominal period to become effective January 1, 2010, subject to refund, and set them for hearing and settlement judge procedures.

⁷ Additionally, we note that the Integrated Facilities Agreement contains numerous typographical errors. The typographical errors include, but are not limited to misspellings in the title of Substitute Original Sheet No. 24, Line 3; the title of Substitute Original Sheet No. 24, Line 5; the last paragraph of Original Sheet No. 32G, Line 14; and section i of Original Sheet No. 32E, Line 7. New England Power should correct these typographical errors in any revised Integrated Facilities Agreement that is filed at the conclusion of these proceedings.

20. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute 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.⁸ 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.⁹ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) New England Power's proposed tariff sheets and related service agreements are hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2010, subject to refund, as discussed in the body of this order.

(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 New England Power's revised tariff sheets and related service agreements. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering 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 (2009), 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 have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge

⁸ 18 C.F.R. § 385.603 (2009).

⁹ 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 background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, 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, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a 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.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.