

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Boston Edison Company

Docket No. ER03-1274-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued October 22, 2003)

1. In this order, the Commission considers Boston Edison Company's (Boston Edison) filing pursuant to Section 205 of the Federal Power Act and Commission Order No. 618,¹ of proposed changes in its transmission plant book depreciation rates. Boston Edison requests a November 1, 2003 effective date for its filing. The Commission accepts the filing and suspends it for a nominal period to be effective November 1, 2003, subject to refund, and establishes hearing and settlement judge procedures. The order benefits customers because it provides the parties with a forum in which to resolve their dispute over Boston Edison's proposed depreciation rate change.

Boston Edison's Proposal

2. On August 29, 2003, Boston Edison submitted for filing a proposal to change its book depreciation rates as of November 1, 2003. Boston Edison states that its existing composite transmission depreciation rate is 1.8 percent, which was adopted in response to a settlement of a rate case before the former Massachusetts Department of Public Utilities (now the Massachusetts Department of Telecommunications and Energy or MDTE) in DPU92-92. Boston Edison states that this transmission depreciation rate is unacceptably low at a time when it has divested its generation and provides for transmission service as a stand-alone business, and with the advent of a competitive market system, transmission upgrades for reliability and market efficiency are occurring at a rapid pace.

3. Boston Edison explains that because it recovers its transmission costs principally through formula rates for Local Network Service (LNS) and Regional Network Service (RNS) as those services are defined in Section 16 of the Restated NEPOOL Agreement, a

¹ Depreciation Accounting, Order No. 618, FERC Stats. & Regs. ¶ 31,104 (2000).

change in the depreciation rate will affect the depreciation component of those formula rates. The depreciation rate changes would also affect the Boston Edison and regional point-to-point transmission rates, although no customers now take service under those rates.

4. Boston Edison states that, consistent with Commission requirements, the proposed depreciation rate allocates the cost of Boston Edison's transmission facilities over their useful life in a systematic and rational manner. Boston Edison's witness John J. Spanos prepared a depreciation study in support of its proposal. Boston Edison states that Mr. Spanos calculated annual depreciation rates ranging between 1.8 percent and 3.08 percent for the affected transmission accounts. The resulting weighted average depreciation rate for the eight pertinent accounts is 2.61 percent.

5. Boston Edison states that the RNS and LNS formula rates that are affected by this filing do not themselves need to be amended, as the depreciation components of those rates reflect Boston Edison's book depreciation rates. Since the LNS rates are based on current calendar year costs, the LNS rates will reflect the depreciation rate change on a partial-year basis (November and December) during this calendar year and on a full-year basis in 2004 and thereafter. The RNS formula rates are calculated on a lagging basis (they are rested on June 1 of each year for the ensuing 12-month period based on the prior calendar year costs of the transmission owning utilities).

6. Boston Edison states that if the Commission elects to suspend the filing for one day, Boston Edison requests an October 31, 2003 effective date so that the depreciation rate changes would be reflected on its books as of November 1, 2003.

Notice of Filing, Interventions and Protests

7. Notice of Boston Edison's filing was published in the Federal Register, 68 Fed. Reg. 54,221 (2003), with protests and interventions due on or before September 19, 2003. Central Maine Power Company filed a motion to intervene. Braintree Electric Light Department, Reading Municipal Light Department, Taunton Municipal Lighting Plan, and Wellesley Municipal Light Plant (Wellesley) (collectively Braintree), jointly and severally, filed a motion intervene, motion for summary rejection, and alternative protest and request for hearing one day out-of-time. Concord Municipal Light Plant filed a motion to intervene and protest.

8. On October 6, 2003, Boston Edison filed an answer to the protests.

Protests

9. Concord argues that Boston Edison's filing should be summarily rejected. Specifically, Concord contends that Boston Edison's proposed change at issue here is not for accounting purposes only, because the RNS and LNS formula rates are affected by the instant filing. Consequently, the filing is not subject to the abbreviated filing requirements set forth in Order No. 618. Moreover, Concord states that Boston Edison has failed to include with its filing the requisite supporting materials, in contravention of the Commission's regulations.

10. Concord argues that Boston Edison's proposed depreciation rate is inflated, and unsubstantiated by supporting documentation and data. While Boston Edison proposes to increase its existing composite transmission depreciation rate from 1.67 percent to 2.61 percent, representing a 56.3 percent increase, there is little evidence accompanying Boston Edison's filing to support such an increase.

11. Braintree also argues that Boston Edison's depreciation study is unreliable because it relies on inadequate data. Braintree adds that the depreciation study inappropriately mixes actual and "inferred" data in determining retirement rates for the small sample that it analyzes, and it fails to explain and provide adequate support for each subfunctional depreciation rate it proposes.

12. Braintree states that Boston Edison has the burden of establishing the reasonableness of its proposed change in depreciation rates, and it has failed to sustain that burden. Braintree adds that Boston Edison has mischaracterized Wellesley as an LNS customer, when Wellesley is entitled to be treated as connected to PTF under its 1998 Transmission Services Agreement with Boston Edison, and should not be subject to any LNS charges after February 28, 2003.²

Discussion

Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. The Commission will grant the late motion to intervene filed by Braintree given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 384.213(a)(2) (2003)

² See Boston Edison Co., 104 FERC ¶ 63,031 (2003), reh'g pending.

prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We will deny Boston Edison's answer.

Commission Determination

14. Our preliminary analysis indicates that Boston Edison's proposal has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the proposed depreciation rates for filing, suspend them for a nominal period, to become effective November 1, 2003, subject to refund, as requested, and set them for hearing and settlement judge procedures.

15. 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 commence. To aid the parties in their settlement efforts, the hearing will be held in abeyance and a settlement judge shall be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.³ 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.⁴

16. Concord's request to summarily reject the filing is denied. We find that the filing substantially complies with the Commission's filing requirements.⁵

The Commission orders:

(A) Boston Edison's proposed depreciation rates are hereby accepted for filing and suspended for a nominal period, to become effective, subject to refund, on November 1, 2003.

(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

³ 18 C.F.R. § 385.603 (2003).

⁴ 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 the date of this order. FERC's website contains a listing of the Commission's judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

⁵ See, e.g., Cambridge Electric Light Co., 51 FERC ¶ 61,198 at 61,563 n.12 (1990).

Department of Energy Organization Act and by the Federal Power Act, particularly Sections 205, 206, 301 and 302 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 in Docket No. ER03-1274-000 concerning the justness and reasonableness of Boston Edison's proposed depreciation rates, as discussed in the body of this order. However, the hearing will be held in abeyance while the parties attempt to settle, as discussed in 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, 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. To the extent consistent with this order, the designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and 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 his case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report every 30 days thereafter, apprising the Chief Judge and the Commission of the parties' progress toward settlement.

(E) If the settlement discussions fail, a presiding administrative law judge, to be selected by the Chief Judge, shall convene a prehearing conference in these proceedings, to be held within approximately fifteen (15) days of the date of the presiding judge's appointment, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.