

108 FERC ¶ 61,276
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Boston Edison Company

Docket Nos. EL02-123-003
and EL02-123-004

ORDER DENYING REHEARING AND ACCEPTING COMPLIANCE FILING
SUBJECT TO REVISIONS

(Issued September 21, 2004)

1. On June 2, 2004, the Commission issued an order affirming an initial decision issued in this proceeding, concluding that Boston Edison Company's (Boston Edison) filed unexecuted service agreements for local network service (LNS)¹ for the Towns of Wellesley (Wellesley) and Concord (Concord), Massachusetts (the Towns) were unjust and unreasonable under section 206 of the Federal Power Act (FPA) (June 2 Order).² On July 2, 2004, Boston Edison filed both a request for rehearing and revised LNS service agreements in compliance with the Commission's order. For the reasons discussed below, this order denies rehearing and accepts the compliance filing, subject to revisions, which Boston Edison must refile within 30 days from the date of issuance of this order.

I. Background and the June 2 Order

2. Under the 1980 Settlement Agreement between the Towns and Boston Edison (1980 Settlement Agreement or Settlement), the Towns purchased outright certain subtransmission facilities within the Towns' borders and also purchased use rights in

¹ Boston Edison's LNS facilities are 115 kV, non-pool transmission facilities (non-PTF) radial transmission lines, related equipment and substations to load. LNS facilities provide access between 14 kV subtransmission facilities and the New England Power Pool (NEPOOL) PTF facilities. Costs of PTF facilities are recovered from all NEPOOL members.

² Boston Edison Co., 107 FERC ¶ 61,248 (2004) (June 2 Order).

certain Boston Edison subtransmission facilities located mainly outside the Towns' borders, for lump sum capital payments and monthly payments for operation, maintenance, and tax (OMT) expenses.³ At certain locations on Boston Edison's system, the Towns' subtransmission rights do not physically connect with PTF facilities. At those locations, the Towns must use Boston Edison's 115 kV, non-PTF facilities (LNS facilities) in order to receive power transmitted from PTF delivery points. Settlement article IV (Pool Transmission Facility Transactions) provides the Towns with an exemption from a "PTF interconnection charge" up to the capacity in megavolt amperes (MVA) "of the facilities connected to PTF with respect to which the Town has made lump-sum payments."⁴ Subsequent agreements,⁵ the IA, TSA, and RNA,⁶ continued the Settlement's exemption. At issue in this proceeding is the extent to which the Towns are responsible under those agreements for LNS charges proposed to be assessed by Boston Edison for use of those intervening 115 kV, non-PTF, i.e., LNS facilities.

3. In the June 2 Order, the Commission found that the Presiding Judge reasonably determined that the 1980 Settlement Agreement and subsequent agreements entitle the Towns to be considered to be directly (contractually) connected to PTF facilities at certain locations where Boston Edison's 115 kV, non-PTF facilities make the actual physical connection between the Towns' subtransmission use rights and PTF facilities. Consequently, the Commission concluded that:

- the Towns were exempt up to their contract use rights from full rolled-in LNS rates (except for a roughly three month period after the filed rates became effective⁷);

³ Letter order approving uncontested Settlement in Docket No. E-7738, *et al.* (June 26, 1980) (unreported).

⁴ The text of Settlement article IV appears in the appendix of this order.

⁵ This proceeding involves issues of interpretation under the 1980 Settlement Agreement, Wellesley's 1992 All Requirements Agreement with Boston Edison (ARA), Concord's 1993 Interconnection Agreement (IA), the 1997 Restated NEPOOL Agreement (RNA), and Wellesley's 1998 Transmission Services Agreement (TSA).

⁶ The text of RNA section 16.3(iii) appears in the appendix of the June 2 Order. The ID quotes other relevant provisions.

⁷ August 20 – November 14, 2002.

- the Towns, however, were subject to LNS charges to the extent of the 20 percent LNS transitional phase-down allocation, limited by Boston Edison Open Access Transmission Tariff's (OATT) revenue caps, until complete LNS phase-out on February 28, 2003, under RNA section 16.3(iii);
- Boston Edison was responsible for refunds, with interest, during the statutory refund period for all LNS charges paid in excess of the RNA transitional amounts; and
- Boston Edison must make a compliance filing that implements in its tariff, effective from the refund effective date, the RNA's phase-down of LNS charges for directly connected load, subject to the Settlement's exemption up to contract use rights and to the RNA's phase-out of all LNS charges.

II. Boston Edison's Request for Rehearing and Compliance Filing

4. On rehearing, Boston Edison continues to make many of the same contract interpretation arguments it raised in earlier stages of this proceeding, most of which have already been adequately addressed in the initial decision, which the June 2 Order adopted, or in the June 2 Order itself.⁸ Boston Edison continues its alternative arguments: (1) that the agreements do not create an exemption for use of LNS facilities; or (2) that there is only an exemption to the extent that a Town has a direct physical connection PTF facilities. Boston Edison asserts that the June 2 Order, in particular Ordering Paragraph (B), misinterprets the 1980 Settlement Agreement, especially article IV, in various respects, *i.e.*, article IV does not mention "115 kV facilities" or "deem the Towns to be directly connected to PTF." Boston Edison contends that the June 2 Order also disregards Settlement article VII, which permits Boston Edison to provide transmission service at rates subject to future agreement.⁹

⁸ Thus, there is no need to further address arguments challenging the scope of Concord's 26 MVA exemption in IA article 9.2 discussed in the ID at P 46-54, 58, 75, and generally in the June 2 Order at P 16, 17; the Memphis clause in Wellesley's TSA article 2.3 addressed in the ID at P 76, 77; TSA delivery points applicable to Constellation purchases addressed in the ID at P 62-72 and in P 22 and 23 of the June 2 Order; reference in TSA article 3.2 (and Settlement articles 3.2 and 3.3) to "115 kV customer" with PTF interconnection addressed in the ID at P 69; full LNS charges as consistent with prior requirements rate practice discussed in P 21 of the June 2 Order; and the discussion of rate pancaking discussed in P 21 of the June 2 Order.

⁹ Settlement article VII (Transmission Rates) provides

Edison will furnish firm and non-firm transmission services pursuant to its firm and non-firm transmission tariffs, as they are in effect from time to

5. Boston Edison also filed a compliance filing that amends its since expired LNS service agreements to incorporate the various determinations made in the June 2 Order applicable to LNS service effective on August 20, 2002. Notice of Boston Edison's compliance filing was published in the *Federal Register*, 69 Fed. Reg. 43,577 (2004), with interventions or protests due on or before July 23, 2004. On July 23, 2004, the Towns separately filed protests with proposed revisions to the compliance filing to be discussed below. On August 9, 2004, Boston Edison filed an answer to the Towns' protests to which Wellesley responded on August 24, 2004.¹⁰

III. Discussion

A. Boston Edison's Request for Rehearing

6. The basic issue on rehearing is whether, under the 1980 Settlement Agreement and the subsequent agreements, the Towns at certain locations are PTF-connected (and thus exempt from full LNS charges and subject to RNA phase-down/phase-out), as the June 2 Order concluded, or non-PTF connected (and thus subject to full LNS charges), as Boston Edison continues to assert. The answer to that question hinges on whether, as used in the 1980 Settlement Agreement and RNA, respectively, "connected to PTF" or "directly connected to PTF" contemplates a contract connection, as the June 2 Order concludes, or a physical connection, as Boston Edison continues to assert.

7. In the June 2 Order, the Commission read the contracts as providing the Towns an exemption from full LNS charges otherwise applicable to their use of 115 kV, non-PTF facilities. The exemption is based on the Towns' direct contract connection to PTF achieved through the Towns' contract use rights in subtransmission facilities and the Towns' contract rights to a PTF interconnection. We continue to believe that the June 2 Order, adopting the Presiding Judge's rationale as our own,¹¹ is the more reasonable reading of the agreements. Under Boston Edison's approach, in contrast, the Settlement's purpose of providing the Towns a PTF interconnection would be

time under the Federal Power Act. The parties have been unable to agree on the price and the terms and conditions for the provision of transmission services, and the Towns reserve their rights, at any time after July 1, 1980, to contest the applicability and the provisions of the said tariffs.

¹⁰ These answers do not provide information that the Commission needs to resolve the matters at issue and thus are rejected consistent with Rule 213(a)(2) of the Commission's Rules of Practice and Procedure. See 18 CFR § 385.213(a)(2) (2004).

¹¹ Except on the rate pancaking issue, we note.

meaningless and the Settlement's exemption, as continued in the IA, RNA, and TSA,¹² would likewise be meaningless.

8. The contracts provide the Towns with a direct contract connection to PTF facilities. Boston Edison's contractual arguments to the contrary do not convince us that the parties intended a direct physical connection to PTF when the contracting parties knew that there were obvious physical gaps in the system that had to be bridged.¹³ The agreements do not make a direct physical connection an additional requirement to qualify for an exemption from an interconnection charge. The lack of reference to "115 kV, not PTF" in Settlement article IV does not negate the Settlement's express exemption from LNS charges (in contrast to what Boston Edison claims), but it does undercut Boston Edison's view of that article as a cost recovery provision for load that is within contract use rights. There is no mention in Settlement article IV of "cost recovery" for load that is within contract use rights.¹⁴ We reject as strained Boston Edison's assertion that Settlement article VII invalidates Settlement article IV's exemption, because Settlement article VII acknowledges the Towns' right to "contest the applicability and the provisions" of Boston Edison's effective transmission tariffs. The June 2 Order's interpretation of Settlement article IV, as explained in that order, does not conflict with subsequent agreements or other provisions of the Settlement. Accordingly, Boston Edison's specific interpretative arguments are rejected. Boston Edison's other main arguments are addressed below.

1. Are There Use Rights in 115 kV, non-PTF Facilities?

9. Boston Edison asserts that the June 2 Order erroneously concluded that Settlement article IV gave the Towns use rights in Boston Edison's 115 kV, non-PTF facilities for PTF transactions.

10. Settlement article IV does give the Towns, contrary to Boston Edison's assertion, use rights in 115 kV, non-PTF facilities, because that use is necessary to implement the Towns' contract right in the same article to a PTF interconnection. For Wellesley, TSA

¹² While making several arguments based on the TSA, Boston Edison does not acknowledge TSA article 1.1, providing that "neither parties' rights or obligations under the 1980 Settlement Agreement ... shall neither be enhanced nor diminished as a result of entering into this Agreement."

¹³ ID at P 43, 67-69.

¹⁴ Settlement article IV does, in contrast, establish a procedure for cost recovery for load that is in excess of contract use rights.

article 3.2 continues the Settlement's right to a PTF interconnection.¹⁵ For Concord, IA article 9.2 accomplishes the same objective.¹⁶ Settlement article IV does not except those situations in which there is a physical gap between the Towns and PTF facilities that is filled by 115 kV, non-PTF facilities. Boston Edison does not explain how, in fact, a Town could take advantage of its Settlement use rights to engage in a PTF transaction (and achieve PTF access) without using known 115 kV, non-PTF facilities that bridge the gap. Boston Edison's request for rehearing in this regard is denied.

2. "Free Transmission" on LNS Facilities?

11. The June 2 Order described the Settlement's exemption as providing bargained-for transmission up to contract use rights at no additional charge after the RNA phase-out. Boston Edison contends that the June 2 Order's exemption imposes on Boston Edison an irrational business bargain of providing a service for which it receives no consideration or "free transmission." Boston Edison argues that the Towns' OMT payments only apply to the Towns' rights to subtransmission capacity.

12. Boston Edison ignores the multiplicity of issues resolved in the 1980 Settlement Agreement, including nine Commission dockets and the dismissal of a federal anti-trust court proceeding involving the Towns and Boston Edison. The June 2 Order recognized

¹⁵ TSA article 3.2 provides in its entirety

[Wellesley] through these Use Rights Facilities is entitled to 115 kV customer status. [Wellesley] shall be able to utilize for PTF transactions and interconnection as defined in the NEPOOL Agreement its share of the capacity of the facilities set forth in [TSA] Appendix B.

¹⁶ The first paragraph of IA article 9.2 provides in relevant part

In the event [Concord] is no longer receiving Full Requirements Service from Edison as defined in the 1993 Power Agreement, [Concord] may purchase from Pool-Planned Units, in which case under current NEPOOL rules [Concord] would pay EHV and LV PTF charges billed by NEPOOL. Since the facilities between Station 342 and Station 416 are not considered PTF facilities by NEPOOL, the wheeling of these purchases from Station 342 through Station 416 could be subject to a radial transmission charge when these purchases exceed 26 MVA, the level of transmission use rights purchased in the 1980 Settlement Agreement. For purchases up to 26 MVA, for [Concord], Station 416 will be treated as a PTF Facility for [Concord]'s obtaining electric power.

that the Settlement's LNS charge exemption for the Towns' contractually connected load was part of the overall Settlement of these issues, which benefited both Boston Edison and the Towns. The exemption from LNS charges is one element of the overall Settlement. Boston Edison's request for rehearing, denying an exemption from LNS charges essentially for lack of consideration, is, therefore, denied.

3. Other Issues

a. Direct Assignment As Moot

13. If the Commission denies rehearing, Boston Edison asserts that the June 2 Order erroneously rejected as moot a direct assignment methodology for LNS costs as an alternative to RNA transitional amounts.¹⁷ Boston Edison asks the Commission to exercise its authority under section 206: (1) to revise the filed LNS agreements as contrary to the public interest to permit recovery of the 115 kV, non-PTF costs on a specific facility cost basis (without an exemption) during the refund period and after June 2, 2002 and (2) to authorize a related compliance filing. Boston Edison relies on *Mansfield Municipal Electric Dept., et al. v. New England Power Co.*¹⁸ in which, it argues, the Commission required a direct assignment of LNS costs.

14. The June 2 Order did not address the merits of direct assignment of LNS costs because the June 2 Order found that the transitional LNS rate was the just and reasonable rate for the Towns during the statutory refund period, abbreviated by the RNA LNS phase-out on February 28, 2003 for directly connected load.¹⁹ Also, the evidentiary record did not identify or develop specific assignment rate methodologies associated with specific facilities.²⁰ In *Mansfield*, the Commission required a direct assignment of LNS costs (instead of filed rolled-in rates) to remedy unduly discriminatory treatment not at issue in this Boston Edison proceeding.²¹ Boston Edison's request for rehearing based on a claim to a direct assignment methodology is rejected, and Boston Edison's request for a Commission-imposed modification of its filed LNS service agreements is denied.

¹⁷ June 2 Order at P 30; ID at P 81-83.

¹⁸ Opinion No. 454, 97 FERC ¶ 61,134 (2001), *reh'g denied*, Opinion No. 454-A, 98 FERC ¶ 61,115 (2002).

¹⁹ June 2 Order at P 28, 30.

²⁰ ID at P 83.

²¹ Opinion No. 454, 97 FERC ¶ 61,134 at 61,613-16 (2001).

b. Rate Recovery During an Interim Period

15. Wellesley's ARA terminated on May 31, 2002 in accordance with the terms of the 1998 First Amendment to the ARA. Concord's all requirements Power Purchase Agreement also expired in accordance with its terms on the same date. Boston Edison's superseding LNS rates became effective on August 20, 2002.

16. On rehearing, Boston Edison asserts that since it did not file required notices of termination of the filed bundled rate schedules pursuant to the Commission's regulations,²² those rates: (1) remain effective as the filed rates and (2) as a consequence, are legally collectable for the interim period June 1 through August 19, 2002. Boston Edison requests equitable compensation for service from the Towns in the amount of the LNS component of its expired bundled rates, up to the RNA transitional charge. Boston Edison states that the LNS component of its expired bundled rates approximately equals its full, filed LNS rates.²³

17. Whether Boston Edison is entitled to collect its bundled rate (or a portion of it) or other compensation for service rendered after the bundled contracts expired on May 31, 2002, and before the unbundled LNS rates at issue here became effective on August 20, 2002, is a matter beyond the scope of this proceeding. Here, we are interested in rates since August 20, 2002, and more specifically since the refund effective date of November 15, 2002. Boston Edison's request for compensation in this proceeding, which concerns LNS service after August 20, 2002, is denied.

B. Boston Edison's Compliance Filing

18. The June 2 Order observed that the NEPOOL OATT requires Boston Edison to provide LNS service after the transition period "pursuant to the applicable terms and conditions" of Boston Edison's OATT and an LNS service agreement.²⁴ In its compliance filing, Boston Edison filed service agreements, including Appendix A (specifications for LNS) and Appendix B (the Towns' sample applications for LNS). These Appendices A and B generally follow the Boston Edison OATT Attachment F

²² 18 CFR § 35.15(a) (2004).

²³ While not disputing that it received service, Concord asserts that it opposes any attempt to reinstate the rates of an expired bundled agreement. Protest to compliance filing at 10, n. 31 (July 23, 2004).

²⁴ June 2 Order at P 33, referencing NEPOOL OATT First Revised Sheet No. 63.

format.²⁵ Wellesley proposed an alternative service agreement based on Boston Edison's compliance filing, and Concord proposed various revisions.

19. This order uses Boston Edison's compliance filing as a starting point and incorporates certain revisions in ordering a new compliance filing that Boston Edison must file within 30 days from the date of issuance of this order. Boston Edison must incorporate the same revisions, discussed below, in both Wellesley's and Concord's agreements (except as differences between the Towns warrant). Boston Edison also must incorporate the Towns' updated information for inclusion in the sample applications for LNS service.

1. Disputed Provisions in LNS Service Agreements

a. Rate Periods

20. Boston Edison proposes in the second paragraph of its section 3 to commence LNS service on the latter of June 1, 2002 or three other events.²⁶ In lieu of that proposal, Wellesley proposes to break down LNS service into three rate periods based on the June 2 Order. Wellesley's proposed service periods are: (1) August 20 to November 14, 2002 for collection of full filed rates (given a November 15, 2002 refund effective date); (2) November 15, 2002 to May 31, 2003 (end of the filed LNS service agreement) for collection of RNA transitional amounts (which the RNA ended on February 28, 2003); and (3) prospectively from June 2, 2004 at no additional rate.

21. Boston Edison's proposed June 1, 2002 service commencement option is inconsistent with the June 2 Order, which made it clear that the Commission-imposed revisions to the LNS service agreements became effective from the refund effective date.²⁷ The second paragraph of proposed section 3 thus should be deleted from the compliance filing. Wellesley's proposal correctly recognizes that there will be three different LNS rate levels for three different time periods. Boston Edison must enumerate the following discrete service periods (clarifying Wellesley's proposal) and make conforming changes in Appendix A section 9, as follows:

²⁵ Original Sheet Nos. 200-13.

²⁶ These are the date of: (1) completion of Direct Assignment Facilities and/or Network Upgrades, (2) execution of and compliance with a Network Operating Agreement, and (3) service effectiveness pursuant to order by the Commission.

²⁷ June 2 Order at P 31.

Period A: August 20, 2002 to November 14, 2002 (Period of Originally Filed Rates)
Period B: November 15, 2002²⁸ to February 28, 2003 (Period of RNA Transitional Rates)
Period C: March 1, 2003 and forward at no additional rate (Post-RNA Period)²⁹

b. Contract Termination

22. Boston Edison proposes to permit termination of LNS service “upon a filing with the Commission.” Wellesley proposes as an alternative to continue current LNS service until terminated by a Town on two years’ advance written notice (based on the same provision in TSA article 5.2). A two-year notice of termination, as compared to little or no advance notice, appears reasonable given the need for service over 115 kV, non-PTF facilities to access NEPOOL’s PTF facilities. Boston Edison must incorporate a provision permitting Boston Edison or a Town to terminate current LNS service upon two years’ advance written notice.

c. Contractual Inconsistency

23. Boston Edison’s proposed section 4 provides that LNS service is provided under its OATT and the LNS service agreement, except that proposed Appendix A section 9 of the LNS service agreement governs if there is a conflict between Appendix A section 9 and other provisions of the LNS service agreement or Boston Edison’s OATT. Wellesley responds by proposing an alternative stating that LNS service is provided under the OATT, LNS service agreement, and the TSA, except that the TSA governs in the event of a conflict among those three authorities. The LNS service agreement is subordinate to the TSA as construed by the June 2 order. Accordingly, Boston Edison must include Wellesley’s proposed language in the revised compliance filing ordered below, rather than Boston Edison’s original proposal.

2. Disputed Provisions in Appendix A

a. Complete Listing of Receipt Points

24. Boston Edison’s proposed Appendix A section 3 lists as receipt points its stations 292 and 148, “as further set forth in Attachments 1 and 2, hereto.” As Boston Edison does not mention stations 110 and 433, Wellesley instead proposes to state that points of

²⁸ Ordering Paragraph (B)(2) of the June 2 Order is corrected to delete August 20, 2002 and insert November 15, 2002, the refund effective date.

²⁹ The June 2 Order at P 31 adopted the rationale of the ID at P 84 that, during the refund period, any additional LNS charges above the RNA transitional amounts would be unjust and unreasonable.

receipt are the same as the TSA Appendix B's list of delivery points. We agree with Wellesley. To avoid confusion as to what the receipt points are, in lieu of its proposed language, Boston Edison must cross-reference the TSA.

**b. LNS Rates from August 20, 2002 to November 14, 2002 and
from February 15, 2004 to June 1, 2004**

25. Boston Edison's proposed Appendix A section 9(i) of the Towns' agreements requires a Town to pay "the full charge" for LNS services for its "entire load" in two periods. The first period is from August 20, 2002 (the effective date of the filed rates) through November 14, 2002 (day before the refund effective date). The second period, for which Boston Edison offers no explanation, is from February 15, 2004 (following the refund period)³⁰ through June 1, 2004 (day before the June 2 order). Wellesley contends that full LNS rates should not be paid from February 15 through June 1, 2004, because the filed service agreements and filed rates expired on May 31, 2003, and effective February 28, 2003, the RNA's transitional LNS rates ended for directly connected load.

26. The June 2 Order stated that Boston Edison is entitled to charge and collect its full, filed LNS rates, not subject to refund, from the rate's effective date on August 20, 2002, for about three months, until the statutory refund period started on November 15, 2002.³¹ That is the only period in this proceeding in which Boston Edison is entitled to charge its full LNS rates.

27. The period following the statutory refund period from February 15 through June 1, 2004, stands on a different footing. As Wellesley observes, the RNA's LNS phase-out was effective after February 28, 2003. Ordering Paragraph (B)(2) of the June 2 order required Boston Edison to incorporate the RNA phase-out in its compliance filing. Accordingly, Boston Edison must delete its reference in proposed Appendix A section 9(i) to the "February 1[5] through June 1, 2004 period" for recovery of full LNS rates. (When the June 2 Order described LNS service after June 2, 2004 at no "additional charge,"³² we did not mean that full LNS rates applied on June 1, 2004 and earlier.)

³⁰ We assume that Boston Edison meant to start its proposed second period on February 15, 2004, the day after the refund period, instead of on its indicated date of February 14, 2004.

³¹ June 2 Order at P 31, n.45.

³² Id. at P 32.

28. For the Towns' purchases of LNS service in excess of their use rights, Boston Edison's proposed Appendix A section 9(ii) of the Towns' agreements (tracking Boston Edison's related requested clarification of the June 2 Order) would permit Boston Edison to charge from August 20 to November 14, 2002 its full, filed rates. Wellesley contends that Boston Edison's request for charges on load above contract use rights would violate the rate that applies to actual load within (not above) contract use rights limits and would result in a retroactive surcharge for such excess. Wellesley argues that Boston Edison could have addressed load above contract use rights under the TSA or in an amendment to the service agreements but did not do so.

29. Boston Edison does not demonstrate that it provided service in excess of the Towns' contract use rights or that the Towns even requested such added service. Boston Edison must revise Appendix A section 9 to delete proposed subsection (ii) and revise Appendix section 9(i) to modify "entire load" with "within contract use rights."

30. Wellesley proposes section Appendix A section 9(v) to recognize that certain provisions of the TSA (including article 4.1) and ARA (Exhibit C.III.D) give it the right to acquire additional use rights. The issue of additional use rights is beyond the scope of this proceeding.

c. Transitional LNS Rates from November 15, 2002 to February 28, 2003

31. The June 2 Order observed that the Towns do not dispute their responsibility for RNA transitional amounts, as limited by the cost caps in Boston Edison's OATT Schedule 9 and their contract exemptions.³³ Pursuant to Ordering Paragraph (B)(2) of the June 2 Order, Boston Edison's proposed Appendix A section 9(iii) requires a Town to "pay the Local Network Integration Transmission Service charge during the transition period as specified and defined by section 16.3 (iii) of the restated NEPOOL Agreement ... for the period November 15, 2002 through February 28, 2003." Wellesley asks the Commission to require Boston Edison to incorporate in its revised service agreement the Town's entitlement to the revenue cap in Boston Edison's OATT Schedule 9 for directly connected load. Wellesley's request is consistent with the June 2 Order. Accordingly, Boston Edison must add, at the end of its Appendix A section 9(iii) " , subject to the

³³ June 2 Order at P 27. Boston Edison's OATT Original Sheet No. 146 provides

Eligible Customer's charges will be adjusted as applicable, in accordance with Section 16.3 iii of the Restated NEPOOL Agreement. Charges to the Eligible Customer for service across non-PTF facilities, as a result of this adjustment, will not exceed ... \$.2 million ... for [as relevant in this proceeding] year ... 6 of the transition period. [The full sixth (and last) transition year extended from March 1, 2002 through February 28, 2003.]

revenue caps stated in Schedule 9 of Boston Edison's OATT." Wellesley's requested modification is granted and Ordering Paragraph (B)(2) is clarified.

d. Direct Contract Connection to PTF

32. Ordering Paragraph (B)(1) of the June 2 Order required Boston Edison to acknowledge "that the Towns have a contract right to be deemed to be directly connected to PTF for PTF transactions, as defined in the RNA, even though there is a 115 kV, non-PTF gap between use rights and PTF facilities." Boston Edison's proposed Appendix A section 9(iv) provides that "a June 2, 2004 [Commission] Order determined that as of June 2, 2004 for its load up to the Use Rights capacities identified in Appendix A – Attachment 2... the Transmission Customer has a 'contract right to be deemed to be directly connected to PTF. ...' "

33. Wellesley asserts that, contrary to Boston Edison's proposal, the June 2 Order did not make the Commission's direct contract connection determination effective on June 2, 2004. Wellesley is correct. The Towns' entitlement to a direct contract connection commenced on the refund effective date (November 15, 2002). The June 2 Order's discussion of future rates (*i.e.*, applicable from the date of issuance of the order)³⁴ did not intend that the Towns' direct contract connection to PTF facilities should become effective only for LNS service rendered after the issuance of that order. Ordering Paragraph (B)(1) of the June 2 Order is clarified accordingly.

34. Concord contends that, contrary to Boston Edison's proposed language, Ordering Paragraph (B)(1) does not limit to its contract use rights the Town's right to be deemed to be directly connected to PTF facilities. The June 2 Order recognized that the right to a direct contract connection to PTF facilities is limited by contract entitlements, *i.e.*, Concord's 26 MVA.³⁵ Boston Edison's limitation is consistent with the intent of the June 2 Order.

35. Accordingly, Boston Edison must revise its proposed Appendix A section 9(iv) as follows (deleting its reference to the June 2 Order and to June 2, 2004 as the effective date of a direct connection and inserting a reference to the RNA's LNS phase-out):

(iv) For its load up to the Use Rights capacities [insert the Towns' respective capacity entitlements at all stations at which there is a physical gap in facilities to PTF], the Transmission Customer has a contract right to be deemed to be directly connected to PTF for PTF transactions, as defined in the RNA, even though there

³⁴ June 2 Order at P 32.

³⁵ *Id.* at P 12, 28.

is a 115 kV, non-PTF gap between use rights and PTF facilities. After RNA phase-out, the Transmission Customer should not be charged any additional charge for the use of the Company's 115 kV, non-PTF transmission facilities.

e. Delivery Points

36. Ordering Paragraph (B)(4) of the June 2 Order required Boston Edison to incorporate in its compliance filing "TSA Appendices A and B to provide Wellesley with transmission and subtransmission delivery point access up to usage rights." Boston Edison included TSA Appendices A and B in Attachments 1 and 2, respectively, and made the ARA Exhibit A definition of delivery point Attachment 3. Wellesley proposes a new Appendix A section 9(iv) to state the ARA Exhibit A definition of delivery point (duplicating the same text in Boston Edison's Attachment 3) and the three other sentences shown below in new Appendix A section 9(iv) (with minor Commission revisions) outside the quoted ARA definition of delivery point.

37. Boston Edison did not propose a separate section addressing delivery points. It is appropriate to add, more prominently in the service agreement, a separate section in Appendix A section 9 to incorporate the ARA Exhibit A definition of delivery point, to ensure consistency between the two. With the addition of Wellesley's proposed subsection, as revised herein, proposed Appendix A Attachment 3 is unnecessary and should be deleted. For clarity, Boston Edison must title its proposed Appendix A Attachment 1 as "Incorporated from TSA Appendix A," and its proposed Appendix A Attachment 2 as "Incorporated from TSA Appendix B." On Appendix A, Attachment 1, Boston Edison must restate its first N.B to read – "Attachment 2 to this Appendix A is TSA Appendix B, which updates Appendix B (page 2) to the 1980 Settlement Agreement." The second note referencing Attachment 3 should be deleted.

38. Accordingly, Boston Edison must add a new subsection in Appendix A section 9, consistent with the June 2 Order, as follows:

(iv) The Delivery Points for LNS service are as defined in the 1998 TSA by its expressly incorporated reference to the 1992 ARA Exhibit A. "Delivery Point" means Boston Edison's "transmission interconnections with [Wellesley] under which [Wellesley] will be deemed to be a 115 kV customer at NEPOOL PTF ('Pool Transmission Facilities'), including but not limited, as set forth in Appendix B, page 2 of the 1980 Settlement Agreement,"³⁶ as updated in 1998 by

³⁶ The text quoted in subsection (iv) is the ARA Exhibit A definition of transmission delivery point. We remind Boston Edison that it must make a compliance filing in Docket No. ER02-170-002, *et al.*, within 30 days after the date of issuance of this order. See Boston Edison Co., 101 FERC ¶ 61,218 (2002).

TSA Appendix B, incorporated as Attachment 2 of Appendix A hereto. The Delivery Points and Wellesley's use rights capacity in those Delivery Points are as set forth in Attachments 1 and 2 of Appendix A hereto and shall apply to the Towns' purchases from Constellation and other PTF purchases. Use rights facilities that the Company may have added since 1998 are not incorporated in TSA Appendix B.

The Commission orders:

(A) Boston Edison's request for rehearing is hereby denied as discussed in the body of this order.

(B) Within 30 days from the date of issuance of this order, Boston Edison is hereby directed to file a revised compliance filing consistent with the discussion in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

Appendix

The 1980 Settlement Agreement article IV (Pool Transmission Facility Transactions) provides:

Concord or Wellesley may utilize for PTF transactions, as defined in the NEPOOL Agreement, their shares of the capacities of the facilities as set forth in Appendix A or B with respect to which they have made lump-sum payments under articles 2.2 and 2.4 and such shares of the capacities of the facilities with respect to which they have made lump sum payments under article 2.5 without payment of a PTF interconnection charge; provided that the total of the purchases under PTF transactions for each Town does not exceed its capacity in megavolt amperes of the facilities connected to PTF with respect to which the Town has made lump-sum payments. If PTF transactions for Concord or Wellesley exceed that amount, Edison may file with the Commission such rate schedules or changes in schedules as it deems appropriate to recover its cost of service for the portion of the PTF transactions which is in excess of the capacity of such facilities. Concord and Wellesley reserve their full rights to contest the rate levels and the terms and conditions of such filings. [emphasis added]