

149 FERC ¶ 61,032
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Martha Coakley, Massachusetts Attorney General;
Connecticut Public Utilities Regulatory Authority;
Massachusetts Department of Public Utilities; New
Hampshire Public Utilities Commission; Connecticut
Office of Consumer Counsel; Maine Office of the Public
Advocate; George Jepsen, Connecticut Attorney
General; New Hampshire Office of Consumer Advocate;
Rhode Island Division of Public Utilities and Carriers;
Vermont Department of Public Service; Massachusetts
Municipal Wholesale Electric Company; Associated
Industries of Massachusetts; The Energy Consortium;
Power Options, Inc.; and the Industrial Energy
Consumer Group,

Docket No. EL11-66-001

v.

Bangor Hydro-Electric Company; Central Maine Power
Company; New England Power Company d/b/a National
Grid; New Hampshire Transmission LLC d/b/a NextEra;
NSTAR Electric and Gas Corporation; Northeast
Utilities Service Company; The United Illuminating
Company; Unitil Energy Systems, Inc. and Fitchburg
Gas and Electric Light Company; Vermont Transco,
LLC

OPINION NO. 531-A
ORDER ON PAPER HEARING
(Issued October 16, 2014)

1. On June 19, 2014, the Commission issued Opinion No. 531, affirming in part and reversing in part an Initial Decision¹ addressing a complaint filed pursuant to section 206 of the Federal Power Act (FPA)² challenging the New England Transmission Owners' (NETOs) base return on equity (ROE) reflected in ISO New England Inc.'s (ISO-NE) open access transmission tariff (OATT).³ In Opinion No. 531, the Commission adopted the two-step, constant growth discounted cash flow (DCF) methodology (i.e., the two-step DCF methodology) for determining the base ROE for public utilities. Because the parties in the proceeding did not litigate one of the inputs to the two-step DCF methodology, i.e., the appropriate long-term growth rate to use, the Commission instituted a paper hearing and reopened the record to provide participants an opportunity to submit briefs on that issue. In this order, we find that gross domestic product (GDP) is the appropriate long-term growth rate to use. We thus further find, consistent with Opinion No. 531, that the NETOs' existing 11.14 percent base ROE is unjust and unreasonable, that a just and reasonable base ROE for the NETOs is 10.57 percent, and that a just and reasonable total ROE for the NETOs does not exceed the top of the range of reasonable returns, i.e., 11.74 percent. Finally, we direct the NETOs to make refunds, with interest, accordingly.

¹*Coakley, Mass. Attorney Gen. v. BangorHydro-Elec. Co.*, 144 FERC ¶ 63,012 (2013) (Initial Decision).

²16 U.S.C. § 824e (2012).

³*Coakley, Mass. Attorney Gen., et al. v. Bangor Hydro-Elec. Co., et al.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014) (Opinion No. 531). Requests for rehearing of Opinion No. 531 are currently pending before the Commission.

I. Background

2. The NETOs recover their transmission revenue requirements through formula rates included in ISO-NE's OATT.⁴ The revenue requirements for Regional Network Service⁵ and Local Network Service⁶ that the NETOs provide are calculated using the same, single base ROE. On October 31, 2006, the Commission, in Opinion No. 489, established that base ROE at 11.14 percent.⁷ On September 30, 2011, the Complainants⁸ filed a complaint alleging that the NETOs' 11.14 percent base ROE is unjust and unreasonable because capital market conditions have significantly changed since that base ROE was established in 2006. On May 3, 2012, the Commission issued an order on the complaint, establishing hearing and settlement judge procedures and setting a refund effective date of October 1, 2011.⁹

⁴ ISO-NE's OATT is section II of ISO-NE's Transmission, Markets, and Services Tariff (Tariff). *See* ISO-NE, Tariff, § II.

⁵ Regional Network Service is the transmission service over the pool transmission facilities described in Part II.B of the OATT. ISO-NE, Tariff, § I.2 (50.0.0); *see also* ISO-NE, Tariff, § II.B Regional Network Service (0.0.0), *et seq.*

⁶ Local Network Service is the network service provided under Schedule 21 and the Local Service Schedules of ISO-NE's OATT. ISO-NE, Tariff, § I.2 (50.0.0); *see also* ISO-NE, Tariff, Schedule 21 Local Service (1.0.0), *et seq.*

⁷ *Bangor Hydro-Elec. Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006) (Opinion No. 489), *order on reh'g*, 122 FERC ¶ 61,265 (2008), *order granting clarification*, 124 FERC ¶ 61,136 (2008), *aff'd sub nom. Conn. Dep't of Pub. Util. Control v. FERC*, 593 F.3d 30 (2010).

⁸ Complainants include Martha Coakley, Mass. Attorney Gen.; Conn. Pub. Utilities Regulatory Auth.; Mass. Dept. of Pub. Utilities; N.H. Pub. Utilities Comm'n; Conn. Office of Consumer Counsel; Me. Office of the Pub. Advocate; George Jepsen, Conn. Attorney Gen.; N.H. Office of Consumer Advocate; R.I. Div. of Pub. Utilities and Carriers; Vt. Dept. of Pub. Serv.; Mass. Mun. Wholesale Elec. Co.; Associated Indus. of Mass.; the Energy Consortium; Power Options, Inc.; and the Indus. Energy Consumer Group.

⁹ *Coakley, Massachusetts Attorney Gen. v. Bangor Hydro-Elec. Co.*, 139 FERC ¶ 61,090 (2012) (Hearing Order). The refund period in this proceeding, established pursuant to section 206 of the FPA, is the 15-month period from October 1,

(continued ...)

3. On August 6, 2013, following an evidentiary hearing in which each party submitted its own ROE analysis, the presiding Administrative Law Judge (Presiding Judge) issued the Initial Decision, finding the NETOs' current 11.14 percent base ROE to be unjust and unreasonable.¹⁰ On June 19, 2014, in Opinion No. 531, the Commission issued its order on the Initial Decision. In Opinion No. 531, the Commission determined that, while the Commission has historically used a one-step DCF methodology for determining the base ROE for public utilities, it is appropriate to adopt for public utility ROE cases the two-step DCF methodology that the Commission has long-used in natural gas pipeline and oil pipeline cases.

4. Although the parties did not use the two-step DCF methodology in their ROE analyses, the Commission found that the initial proxy group the NETOs used for their one-step DCF methodology was consistent with Commission precedent and that the record contained all the financial data necessary to conduct a DCF analysis of that proxy group using the two-step DCF methodology, except for a projection of long-term growth, which is an input in the two-step DCF methodology but not in the one-step DCF methodology. The Commission tentatively found that the long-term growth projection for public utilities should be based on projected long-term growth in GDP, which the Commission also uses as the long-term growth projection in natural gas and oil pipeline cases. However, because the parties in the proceeding did not litigate the issue of the appropriate long-term growth rate, the Commission instituted a paper hearing and reopened the record to provide participants an opportunity to submit briefs on that issue.

5. The Complainants, NETOs, and Commission Trial Staff (Trial Staff) each submitted Initial Briefs and Reply Briefs in the paper hearing.

II. Summary of Pleadings

6. All participants in the paper hearing agree that the estimated long-term growth in GDP is the appropriate growth rate to use as the long-term growth component of the two-step DCF methodology for public utilities;¹¹ that the Commission's reliance on data from the Energy Information Administration, Social Security Administration, and IHS Global

2011 through December 31, 2012.

¹⁰Initial Decision, 144 FERC ¶ 63,012 at P 544.

¹¹Complainants Initial Brief at 2-3; NETOs Initial Brief at 4; Trial Staff Initial Brief at 8.

Insight to determine the GDP growth rate estimate is appropriate;¹² and that the Commission properly calculated the GDP growth rate in this case to be 4.39 percent.¹³

7. Complainants assert that 4.39 percent should be the uppermost limit of the long-term growth component in the two-step DCF methodology in this proceeding, because real GDP growth of more than 4.39 percent is likely a high estimate.¹⁴ The NETOs contend that the GDP growth estimate should be considered a floor for the long-term growth rate estimate, because assigning a one-third weighting to the long-term GDP forecast in the two-step DCF methodology underestimates investors' expectations of growth for the public utility industry.¹⁵ The NETOs assert that the use of GDP as the long-term growth rate estimate, therefore, also supports the Commission's determination to establish a base ROE above the midpoint of the zone of reasonableness.

8. In their reply brief, Complainants assert that, because all parties agree that 4.39 percent is the appropriate long-term growth projection in this proceeding, the NETOs' arguments that 4.39 percent should be the minimum value are superfluous.¹⁶ Complainants state that the NETOs' arguments that long-term GDP forecasts underestimate investor expectations are unsupported and based on an incomplete data analysis, and that a complete review of the data indicate that long-term GDP forecasts represent an upper limit on the long-term growth rate for public utilities.¹⁷ Complainants state that because all parties agree that 4.39 percent is the appropriate long-term growth rate estimate, the Commission should therefore fix the just and reasonable base ROE for the NETOs at 10.57 percent.¹⁸

¹²Complainants Initial Brief at 4; NETOs Initial Brief at 4-5; Trial Staff Initial Brief at 9-10.

¹³Complainants Initial Brief at 7; NETOs Initial Brief at 9; Trial Staff Initial Brief at 11.

¹⁴Complainants Initial Brief at 7.

¹⁵ NETOs Initial Brief at 5-8.

¹⁶ Complainants Reply Brief at 1-2.

¹⁷*Id.* at Appendix, 4.

¹⁸*Id.* at 2.

9. In their reply brief, the NETOs contend that Complainants' arguments that the 4.39 percent GDP growth rate is likely a high estimate and should represent an upper limit are unsupported.¹⁹ Trial Staff, in its reply brief, states that there is no basis to conclude that long-term GDP forecasts, or the Commission's one-third weighting thereof, understate the long-term growth rates for public utilities.²⁰ Trial Staff therefore contends that the long-term GDP estimate should not establish a floor for the long-term growth component of the two-step DCF methodology, and also that the one-third weighting of GDP should not be a factor in placing the base ROE within the zone of reasonableness.

III. Commission Determination

10. We find that the projected long-term growth in GDP is the appropriate long-term growth projection to be used in the two-step DCF methodology for determining the NETOs' ROE. We further find that, in this proceeding, 4.39 percent is the appropriate projection of long-term GDP growth.²¹ In Opinion No. 531, the Commission concluded that using 4.39 percent as the projection of long-term GDP growth would produce a base ROE of 10.57 percent; however, as the Commission explained, "the specific numerical just and reasonable ROE" for the NETOs remained subject to the outcome of the instant paper hearing on the appropriate long-term growth rate.²² Based on our finding here that 4.39 percent is indeed the appropriate long-term growth rate to be used in this proceeding, we now find, pursuant to FPA section 206, that the NETOs' existing 11.14

¹⁹ NETOs Reply Brief at 3-5.

²⁰ Trial Staff Reply Brief at 7.

²¹ The Commission instituted this paper hearing to address "the limited issue of the appropriate long-term growth projection to be used in the two-step DCF methodology." Opinion No. 531, 147 FERC ¶ 61,234 at P 154. The Commission did not extend the paper hearing to include whether and how the Commission's two-step DCF methodology, or the Commission's ROE analysis more generally, may be impacted by the chosen long-term growth rate projection. There is no disagreement on the limited issue the Commission set for paper hearing, as all participants in the paper hearing agree that 4.39 percent is the appropriate long-term growth rate projection to use in this proceeding. Arguments beyond that limited issue, including the parties' arguments regarding whether projected long-term GDP growth rate represents an upper or lower limit on the long-term growth component of the two-step DCF methodology, are beyond the scope of the paper hearing. Therefore, we will not address those arguments.

²² Opinion No. 531, 147 FERC ¶ 61,234 at P 152.

percent base ROE is unjust and unreasonable and that a just and reasonable base ROE is 10.57 percent.

11. As the Commission previously explained in Opinion No. 531, “when a public utility’s ROE is changed, either under section 205 or section 206 of the FPA, that utility’s total ROE, inclusive of transmission incentive ROE adders, should not exceed the top of the zone of reasonableness produced by the two-step DCF methodology.”²³ Using a projected long-term GDP growth rate of 4.39 percent in this proceeding produces a zone of reasonableness for the NETOs of from 7.03 percent to 11.74 percent.²⁴ We, therefore, also find that the NETOs’ total or maximum ROE, including transmission incentive ROE adders, cannot exceed 11.74 percent.

12. The NETOs are directed to make refunds, with interest, as ordered below.

The Commission orders:

(A) The NETOs’ base ROE is hereby set at 10.57 percent with a total or maximum ROE including incentives not to exceed 11.74 percent, effective on the date of this order, as discussed in the body of this order.

(B) The NETOs are hereby directed to submit a compliance filing with revised rates to be effective the date of this order reflecting a 10.57 percent base ROE and a total or maximum ROE not exceeding 11.74 percent (inclusive of transmission incentive ROE adders), within thirty (30) days of the date of this order, as discussed in the body of this order.

(C) The NETOs are hereby directed to provide refunds, with interest calculated pursuant to 18 C.F.R. § 35.19a (2014), within thirty (30) days of the date of this order, for the 15-month refund period from October 1, 2011 through December 31, 2012, as discussed in the body of this order.

(D) The NETOs are hereby directed to file a refund report detailing the

²³*Id.* P 165.

²⁴*Id.* P 125.

principal amounts plus interest paid to each of their customers within forty five (45) days of the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.