

149 FERC ¶ 61,156
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Attorney General of the Commonwealth of
Massachusetts; Connecticut Public Utilities
Regulatory Authority; Massachusetts Municipal
Wholesale Electric Company; New Hampshire
Electric Cooperative, Inc.; Massachusetts
Department of Public Utilities; New Hampshire
Public Utilities Commission; George Jepsen,
Attorney General of the State of Connecticut;
Connecticut Office of Consumer Counsel; Maine
Office of the Public Advocate; New Hampshire
Office of the Consumer Advocate; Rhode Island
Division of Public Utilities Carriers; Vermont
Department of Public Service; Associated
Industries of Massachusetts; The Energy
Consortium; Power Options, Inc.; Western
Massachusetts Industrial Group; Environment
Northeast; National Consumer Law Center;
Greater Boston Real Estate Board; and Industrial
Energy Consumer Group

Docket No. EL14-86-000

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; Northeast
Utilities Service Company, on behalf of its
operating company affiliates: The Connecticut
Light and Power Company, Western
Massachusetts Electric Company, and Public
Service Company of New Hampshire; NSTAR
Electric Company; The United Illuminating
Company; Until Energy Systems, Inc. and
Fitchburg Gas and Electric Light Company, and
Vermont Transco, LLC

ENE (Environment Northeast),
The Greater Boston Real Estate Board,
National Consumer Law Center, and
NEPOOL Industrial Customer Coalition

Docket No. EL13-33-000
(consolidated)

v.

Bangor Hydro-Electric Co.,
Central Maine Power Co.,
New England Power Co.,
New Hampshire Transmission LLC,
NSTAR Electric Co.,
Northeast Utilities Service Co.,
The United Illuminating Co.,
Unitil Energy Systems, Inc.,
Fitchburg Gas and Electric Light Co., and
Vermont Transco, LLC

ORDER ON COMPLAINT, ESTABLISHING HEARING, AND CONSOLIDATING
PROCEEDINGS

(Issued November 24, 2014)

1. On July 31, 2014, Complainants¹ filed a complaint pursuant to section 206 of the Federal Power Act (FPA)² against the New England Transmission Owners (New England

¹ Complainants are the Attorney General of the Commonwealth of Massachusetts; Connecticut Public Utilities Regulatory Authority; Massachusetts Municipal Wholesale Electric Company; New Hampshire Electric Cooperative, Inc.; Massachusetts Department of Public Utilities; New Hampshire Public Utilities Commission; George Jepsen, Attorney General of the State of Connecticut; Connecticut Office of Consumer Counsel; Maine Office of the Public Advocate; New Hampshire Office of the Consumer Advocate; Rhode Island Division of Public Utilities Carriers; Vermont Department of Public Service; Associated Industries of Massachusetts; The Energy Consortium; Power Options, Inc.; Western Massachusetts Industrial Group; Environment Northeast; National Consumer Law Center; Greater Boston Real Estate Board; and Industrial Energy Consumer Group.

² 16 U.S.C. § 824e (2012).

TOs)³ contending that the New England TOs' 11.14 percent base return on equity (ROE) reflected in ISO New England, Inc.'s (ISO-NE) open access transmission tariff (OATT) is unjust and unreasonable (Complaint). Complainants also contend that the application of the Commission's two-step discounted cash flow (DCF) methodology to current financial information demonstrates that the appropriate base ROE for the New England TOs is 8.84 percent and the combined ROE⁴ should be capped at 12.54 percent. In this order, we establish a trial-type, evidentiary hearing, and consolidate this proceeding with the proceeding in Docket No. EL13-33-000. Further, we set a refund effective date of July 31, 2014.

I. Background

2. The New England TOs recover their transmission revenue requirements through formula rates included in ISO-NE's OATT. The revenue requirements for Regional Network Service⁵ and Local Network Service⁶ that the New England TOs provide are calculated using a single base ROE. In 2008, as a result of the Opinion No. 489 proceeding, the base ROE was determined to be 11.14 percent, consisting of an initial base ROE of 10.4 percent with an upward adjustment of 74 basis points to account for changes in capital market conditions that took place between issuance of the Administrative Law Judge's initial decision in the case and the issuance of Opinion

³ The New England TOs are 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; The Connecticut Light and Power Company; Western Massachusetts Electric Company; Public Service Company of New Hampshire; NSTAR Electric Company; The United Illuminating Company; Unitil Energy Systems, Inc. and Fitchburg Gas and Electric Light Company; and Vermont Transco, LLC.

⁴ A utility's combined or total ROE is the utility's base ROE plus any ROE incentive adders the Commission has granted the utility.

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.*

No. 489,⁷ as reflected in changes in 10-year U.S. Treasury bond yields during that time period.

3. On September 30, 2011, a group of complainants⁸ consisting mostly of state representatives filed a complaint in Docket No. EL11-66-000 (Docket No. EL11-66-000 complaint), alleging that the 11.14 percent base ROE was unjust and unreasonable and that their discounted cash flow (DCF) analysis showed that the just and reasonable base ROE should not exceed 9.2 percent.⁹ The complainants in Docket No. EL11-66-000 also pointed to changes in capital market conditions, including the 2008 financial crisis and the resulting “flight to quality,”¹⁰ that had occurred since the 11.14 percent base ROE was established in the Opinion No. 489 proceeding,¹¹ as justification for lowering the base ROE. On May 3, 2012, the Commission set the Docket No. EL11-66-000 complaint for hearing and settlement judge procedures.¹²

4. On August 6, 2013, the presiding Administrative Law Judge issued an initial decision in Docket No. EL11-66-000, finding that the New England TOs’ 11.14 percent base ROE was unjust and unreasonable.¹³ On June 19, 2014, the Commission issued its

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

⁸ Complainants in Docket No. EL11-66-000 include 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.

⁹*Martha Coakley, Mass. Attorney Gen.*, Complaint, Docket No. EL11-66-000, at 25, Aff. Ex. C-1 at 7 (filed Sept. 30, 2011).

¹⁰ “Flight to quality” refers to investors seeking low-risk investment vehicles.

¹¹*Coakley, Mass. Attorney Gen.*, Complaint, Docket No. EL11-66-000, at 25, Aff. Ex. C-1 at 6-11 (filed Sept. 30, 2011).

¹²*Martha Coakley, Mass. Attorney Gen., et al. v. Bangor Hydro-Elec. Co.*, 139 FERC ¶ 61,090 (2012).

¹³*Martha Coakley, Mass. Attorney Gen., et al. v. Bangor Hydro-Elec. Co.*, 144 (continued...)

order on initial decision in Docket No. EL11-66-001.¹⁴ In Opinion No. 531, the Commission changed its approach to determining the ROE for public utilities by adopting a two-step DCF methodology, rather than the one-step DCF methodology the Commission used in the past.¹⁵ Based on the two-step DCF methodology, the Commission tentatively found that the just and reasonable base ROE for the New England TOs was 10.57 percent; however, that finding was subject to the outcome of a paper hearing on one issue concerning the two-step DCF methodology that was not litigated at the hearing.¹⁶ On October 16, 2014, the Commission issued its order on the paper hearing, finding that the New England TOs' 11.14 percent base ROE was unjust and unreasonable, that the just and reasonable ROE was indeed 10.57 percent, and that the New England TOs' total ROE, including incentive ROE adders, could not exceed 11.74 percent, i.e., the top of the zone of reasonableness in that proceeding.¹⁷

5. On December 27, 2012, while the hearing in Docket No. EL11-66-000 was ongoing, a separate group of complainants¹⁸ filed a complaint in Docket No. EL13-33-000 (Docket No. EL13-33-000 complaint), also alleging that the 11.14 percent base ROE was unjust and unreasonable and that their DCF analysis showed that the just and reasonable base ROE should not exceed 8.7 percent.¹⁹ The complainants in Docket No. EL13-33-000 pointed to the decline in yields on 10-year Treasury bonds and certain public utility bonds since the 11.14 percent base ROE was established and asserted that the decline in bond yields is indicative of similar decline in utility capital costs and

FERC ¶ 63,012 (2013).

¹⁴*Martha Coakley, Mass. Attorney Gen., et al. v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014).

¹⁵*Id.* P 32.

¹⁶*Id.* P 142.

¹⁷*Martha Coakley, Mass. Attorney Gen., et al. v. Bangor Hydro-Elec. Co.*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014).

¹⁸ Complainants in Docket No. EL13-33-000 include ENE (Environment Northeast), The Greater Boston Real Estate Board, National Consumer Law Center, and New England Power Pool (NEPOOL) Industrial Customer Coalition. However, the NEPOOL Industrial Customer Coalition subsequently filed a notice of withdrawal as a complainant because its members disbanded the coalition. *See* NEPOOL Industrial Customer Coalition, Notice of Withdrawal, Docket No. EL13-33-000, at 3 (filed July 15, 2014).

¹⁹ ENE (Environment Northeast), et al., Complaint, Docket No. EL13-33-000, at 6, Aff. Ex. C-1 at 6-7 (filed Dec. 27, 2012).

thus justifies lowering the base ROE an additional 0.5 percent from the level sought in the Docket No. EL11-66-000 complaint. On June 19, 2014, concurrently with the issuance of Opinion No. 531 in Docket No. EL11-66-000, the Commission set the Docket No. EL13-33-000 complaint for hearing and settlement judge procedures.²⁰ On October 24, 2014, the Chief Administrative Law Judge terminated the settlement judge procedures and appointed an Administrative Law Judge to preside at the hearing ordered by the Commission.

II. The Complaint

6. In the instant Complaint, Complainants allege that, due to changes in capital market conditions since issuance of Opinion No. 489, the New England TOs' 11.14 percent base ROE is unjust and unreasonable. Complainants assert that their two-step DCF analysis shows that the zone of reasonable returns ranges between 6.34 percent and 12.54 percent.²¹ Complainants argue that the Commission should set the New England TOs' base ROE at 8.84 (the median of the zone of reasonableness) or, alternatively, at no more than 9.44 percent (the midpoint of the zone of reasonableness). Additionally, Complainants state that, even if the Commission chose to set the base ROE at the midpoint of the upper half of the zone of reasonableness, as it did in Opinion No. 531, the resulting base ROE would be 10.99 percent, which is still below the 11.14 percent base ROE.²² Complainants estimate that reducing the New England TOs' base ROE to 9.44 percent would reduce Regional Network Service costs in New England by \$150 million annually.²³ Complainants request that the Commission institute a new section 206 investigation into the New England TOs' base ROE, establish the earliest possible refund effective date, and direct ISO-NE to refund the difference between transmission rates reflecting the current 11.14 percent base ROE and the lower ROE sought here.

7. Complainants posit that the instant Complaint is not merely duplicative of the complaints in Docket Nos. EL11-66-000 and EL13-33-000 because the DCF analysis in the instant Complaint is based on new financial market data for the six-month period ending June 30, 2014, using the two-step DCF methodology that the Commission adopted in Opinion No. 531. Complainants also assert that the "anomalous capital market

²⁰ *ENE (Environment Northeast), et al. v. Bangor Hydro-Elec. Company*, 147 FERC ¶ 61,235 (2014) (Docket No. EL13-33-000 Hearing Order).

²¹ Complaint at 26.

²² *Id.*

²³ *Id.* at 36.

conditions” that were found to have affected the DCF analysis in Opinion No. 531 are no longer present.²⁴

8. Complainants assert that their expert witness, Dr. J. Randall Woolridge, conducted a DCF analysis using the two-step DCF model specified in Opinion No. 531. Complainants state that Dr. Woolridge’s DCF methodology begins by first selecting a national proxy group of companies that pass the following screening criteria:(1) listed as Electric Utility Central, East or West by the Value Line Investment Survey; (2) possess an investment grade corporate credit and bond rating that falls within the comparable risk band for both Standard & Poor’s (S&P) and Moody’s issuer credit ratings; (3) have not cut their dividends in the past six months; (4) have not been involved, within the past six months, in an acquisition of another utility or been the target of an acquisition; and (5) have analysts’ long-term earnings-per-share (EPS) growth rate forecasts available from Yahoo! Finance.²⁵

9. Complainants state that Dr. Woolridge’s screening criteria produce a proxy group of 32 companies, which he then used to compute the implied cost of equity for the proxy group using the average dividend yield for each company during the study period, the short-term growth rate for each proxy company using analysts’ estimates of EPS growth, and a long-term nominal Gross Domestic Product growth rate estimate of 4.39 percent.²⁶ Complainants state that Dr. Woolridge then took the weighted average of the short-term and long-term growth rates (weighted at two-thirds and one-third, respectively) to calculate an overall growth rate for each proxy company.²⁷ Complainants explain that Dr. Woolridge adjusted the average dividend yield using the Commission-endorsed “1+0.5g” formula,²⁸ and then summed the adjusted dividend yield and combined growth rate to produce an implied cost of equity for each proxy company.²⁹

10. Dr. Woolridge also asserts that several other factors, in addition to his DCF analysis, support his recommendations. First, Dr. Woolridge states that the period of “anomalous” capital market conditions that the Commission cited in Opinion No. 531, as support for a base ROE above the midpoint, no longer exists.³⁰ Dr. Woolridge contends

²⁴*Id.*

²⁵Complaint at Aff. Ex. C-1, 7-8.

²⁶*Id.* at Aff. Ex. C-1, 3-4.

²⁷Complaint at 27-28.

²⁸*Id.* at 28.

²⁹*Id.*

³⁰*Id.* at Aff. Ex. C-1, 3-4.

that the economy is growing, unemployment is down to 6.1 percent, the stock market is at an all-time high, the Federal Reserve has tapered its bond buying program, and forecasts of dramatically higher interest rates have proven to be wrong.³¹ Second, Dr. Woolridge states that the stocks of electric utilities have thrived in the current market conditions and significantly outperformed the S&P 500 in 2014. Third, Dr. Woolridge argues that the Institutional Brokers' Estimate System's EPS growth rate data for Portland General Electric is flawed, and that the flaw produces a problematic high-end DCF result for the proxy group and inflates the base ROE.³² Lastly, Dr. Woolridge argues that state-authorized ROEs, upon which the Commission relied in Opinion No. 531, have continued to decline.³³

III. Notice and Responsive Pleadings

11. Notice of the Complaint was published in the *Federal Register*, 79 Fed. Reg. 46,789 (2014), with interventions and protests due on or before August 21, 2014. The comment date was extended to September 10, 2014, in a notice issued on August 12, 2014. On September 10, 2014, the New England TOs filed an answer to the Complaint. On September 25, 2014, Complainants filed an answer to the New England TOs' answer. On October 15, 2014, the New England TOs filed an amendment to their answer.

12. The New England Power Pool (NEPOOL) Participants Committee, Eastern Massachusetts Consumer-Owned Systems,³⁴ and the American Public Power Association timely filed motions to intervene. The Maine Public Utilities Commission (Maine PUC) submitted a notice of intervention and comments in support of the Complaint.

A. Maine PUC's Comments

13. The Maine PUC agrees that the 11.14 percent ROE has been found to be unjust and unreasonable, and it supports Complainants' request to institute an investigation into the just and reasonable ROE. The Maine PUC also requests that the Commission

³¹*Id.* at Aff. Ex. C-1,4.

³²*Id.* at Aff. Ex. C-1, 5.

³³*Id.*

³⁴ The Eastern Massachusetts Consumer-Owned Systems are Belmont Municipal Light Department; Braintree Electric Light Department; Concord Municipal Light Plant; Georgetown Municipal Light Department; Groveland Electric Light Department; Hingham Municipal Lighting Plant; Littleton Electric Light & Water Department, Merrimac Municipal Light Department; Middleton Electric Light Department; Reading Municipal Light Department; Rowley Municipal Lighting Plant; Rowley Municipal Lighting Plant; Taunton Municipal Lighting Plant; and Wellesley Municipal Light Plant.

establish the earliest possible refund effective date and direct refunds for the difference, with interest, between the current rates and the rates reflecting a just and reasonable ROE.

B. New England TOs' Answer

14. The New England TOs assert that Complainants have failed to meet their burden under FPA section 206 to show that the existing ROE is unjust and unreasonable. The New England TOs argue that the Complaint was filed for the sole purpose of avoiding the 15-month statutory limitation on refunds under FPA section 206.³⁵ The New England TOs assert that, under Commission precedent, successive complaints are not allowed if the sole purpose of filing multiple complaints is to circumvent the 15-month limitation on refunds.³⁶ Further, the New England TOs assert that the Complaint is not needed to challenge the New England TOs' base ROE or to present facts, data, or analysis on that rate, because the base ROE is already being scrutinized in the proceeding on the Docket No. EL13-33-000 complaint.³⁷

15. As to the substance of the Complaint, the New England TOs assert that the current base ROE remains just and reasonable. The New England TOs argue that the 15 basis point difference between the 10.99 percent base ROE produced by Complainants' DCF analysis (with the base ROE placed halfway between the midpoint and the high end of the DCF range) and the 11.14 percent base ROE that was effective when the Complaint was filed is insufficient to warrant a new complaint proceeding.³⁸

16. The New England TOs assert that it is undisputed that the 11.14 percent base ROE falls within the zone of reasonableness that Complainants calculated, which ranges from 6.34 percent to 12.54 percent.³⁹ The New England TOs also state that they accept Dr. Woolridge's DCF analysis as consistent with Opinion No. 531, subject only to minor corrections that do not lower the high end of the range of reasonableness.⁴⁰ The New

³⁵ New England TOs September 10 Answer at 13.

³⁶ New England TOs September 10 Answer at 12 (citing *Allegheny Elec. Coop., Inc. v. Niagara Mohawk Power Corp.*, 58 FERC ¶ 61,096 (1992); *Southern Co. Services, Inc.*, 83 FERC ¶ 61,079, at 61,386 (1998) (*Southern Co.*); *Consumer Advocate Div. of the Pub. Serv. Comm'n of West Virginia, et al. v. Allegheny Generating Co.*, 67 FERC ¶ 61,288 (1994), *order on reh'g*, 68 FERC ¶ 61,207 (1994) (*Allegheny Generating*)).

³⁷ New England TOs September 10 Answer at 14.

³⁸ *Id.* at 3.

³⁹ *Id.* at 27.

⁴⁰ *Id.* at 28.

England TOs argue that there is no basis to exclude the 12.54 percent high-end value from Complainants' DCF analysis. The New England TOs assert that the 12.54 percent high-end value meets the Commission's tests of reasonableness and reflects the consensus views of securities analysts and investors' expectations.⁴¹

17. The New England TOs' also assert that the anomalous capital market conditions previously recognized by the Commission have continued unabated, which warrants the consideration of alternative benchmarks and the evaluation of a base ROE for the New England TOs in the top half of the DCF range.⁴² Based on the testimony of their expert witnesses, the New England TOs argue that current market conditions continue to reflect the legacy of the "Great Recession" and are not representative of what investors expect in the future.⁴³

18. The New England TOs further assert that the 11.14 percent base ROE is consistent with the range of results produced by the alternative methodologies for determining ROE which the Commission referenced in Opinion No. 531—specifically: (1) the equity risk premium approach based on previously authorized ROEs for electric utilities; (2) the Capital Asset Pricing Model; and (3) the expected earnings approach.⁴⁴ The New England TOs state that Complainants entirely ignored those alternative methodologies.⁴⁵ The New England TOs assert that the three alternative benchmark analyses demonstrate that the midpoint value produced by the Commission's two-step DCF method is far below investors' required return.⁴⁶ The New England TOs therefore argue that a base ROE at or above the middle of the top end of the DCF zone of reasonableness is warranted.⁴⁷

19. The New England TOs argue that, if the Commission does not dismiss the Complaint, it should summarily resolve the Complaint by setting the New England TOs' base ROE at 10.99 percent, i.e., the midpoint of the top half of the zone of reasonableness. The New England TOs also assert that if the Commission neither dismisses nor summarily disposes of the Complaint, the Commission should consolidate

⁴¹*Id.* at Aff. Ex. NET-1100, 4.

⁴²*Id.*

⁴³*Id.* at Aff. Ex. NET-1100, 15-16.

⁴⁴*Id.* at 35.

⁴⁵*Id.* at 31.

⁴⁶*Id.* at 35-36.

⁴⁷*Id.*

the Complaint with the Docket No. EL13-33-000 complaint in order to develop consistent evidentiary records.

C. Complainants' Answer to Answer

20. Complainants support the New England TOs' request for consolidation with Docket No. EL13-33-000, but oppose the New England TOs' request for summary resolution of the Complaint. Complainants assert that the New England TOs have provided a substantial evidentiary basis for their requested 10.99 percent base ROE. Further, Complainants argue that the New England TOs' DCF result for Portland General Electric was based on an erroneous 5-year EPS growth estimate of 11.21 percent. Complainants state that the 11.21 percent estimate is erroneous because one of the four estimates used as inputs was erroneous; specifically, one source mistakenly used a 5-year EPS growth rate estimate for Portland General Electric of 20.43 percent, nearly double the next highest of the other three inputs. Complainants state that, subsequent to the New England TOs' answer in this proceeding, the source of the 20.43 percent estimate retracted it after confirming that it was erroneous.

21. Complainants assert that removing the erroneous 20.43 percent input and correcting Portland General Electric's 5-year EPS growth rate estimate lowers the DCF result for Portland General Electric, and the top of the zone of reasonableness, to 10.54 percent. Complainants state that, assuming arguendo that it is appropriate to place the base ROE at the midpoint of the upper half of the zone, the New England TOs' base ROE would be 9.56 percent. Complainants reiterate that the anomalous capital market conditions that the Commission identified in Opinion No. 531 no longer exist and that the placement of the base ROE within the zone of reasonableness should be set for hearing, rather than being summarily resolved. Complainants also argue that the New England TOs' alternative methodologies and state commission-authorized ROE data do not support summarily placing the base ROE at 10.99 percent.

D. New England TOs' Amended Answer

22. The New England TOs state that they have confirmed that Portland General Electric's EPS growth rate has changed since they filed their answer, and that the change may be due to a computational error. The New England TOs state that they, therefore, amend their answer to withdraw their request for summary resolution of the base ROE. However, the New England TOs state that they do not withdraw any other aspect of their answer and they do not agree with Complainants' revised DCF calculation for Portland General Electric. The New England TOs assert that, if the Commission does not dismiss the Complaint, they agree with Complainants that the Complaint should be set for hearing and consolidated with Docket No. EL13-33-000.

IV. Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept Complainants' answer because it provided information that assisted us in our decision-making process.

B. Substantive Matters

25. We find that the Complaint raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing ordered below. Accordingly, we will set the Complaint for investigation and a trial-type, evidentiary hearing under section 206 of the FPA. Because of the existence of common issues of law and fact, we will consolidate this proceeding with the proceeding in Docket No. EL13-33-000 for purposes of hearing and decision.

26. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Section 206(b) permits the Commission to order refunds for a 15-month period following the refund effective date. Consistent with our general policy of providing maximum protection to customers,⁴⁸ we will set the refund effective date at the earliest date possible, i.e., July 31, 2014, as requested.

27. Due to the establishment of two refund periods in the consolidated proceeding—the 15-month refund period in the instant proceeding and the 15-month refund period in Docket No. EL13-33-000—it is appropriate for the parties to litigate a separate ROE for each refund period. Therefore, for the refund period covered by Docket No. EL13-33-000 (i.e., December 27, 2012 through March 27, 2014), the ROE for that particular 15-month refund period should be based on the most recent financial data available

⁴⁸See, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539 (1989), *reh'g denied*, 47 FERC ¶ 61,275 (1989).

during that period, i.e., the last six months of that period.⁴⁹ For the refund period in the instant docket (i.e., July 31, 2014 through October 31, 2015) and for the prospective period, the ROE should be based on the most recent financial data in the record.⁵⁰

28. While the New England TOs raise various arguments as to the propriety of allowing the Complaint, the Commission has previously allowed successive complaints when presented with a new analysis.⁵¹ In this case, Complainants have submitted a new DCF analysis with new, more current data.

29. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within twelve months of the commencement of hearing procedures, or by November 30, 2015. Thus, we estimate that, absent settlement, we would be able to issue our decision within approximately eight months of the filing of briefs on and opposing exceptions, or by September 30, 2016.

⁴⁹See Opinion No. 531, 147 FERC ¶ 61,234, at P 160 (addressing the use of recent financial data to determine the ROE); see also *New York Ass'n of Pub. Power v. Niagara Mohawk Power Corp., et al.*, 148 FERC ¶ 61,176, at P 24 (2014).

⁵⁰See Opinion No. 531, 147 FERC ¶ 61,234 at PP 65-67, 160 (holding that a single ROE should be established for the most recent refund period addressed at the hearing and for the prospective period based on the most recent financial data in the record); see also *New York Ass'n of Pub. Power v. Niagara Mohawk Power Corp.*, 148 FERC ¶ 61,176 at P 24.

⁵¹See *Allegheny Generating*, 67 FERC at 62,000, *order on reh'g*, 68 FERC ¶ 61,207; *Southern Co.*, 68 FERC ¶ 61,231, *reh'g denied*, 83 FERC ¶ 61,079; see also *San Diego Gas & Elec. Co. v. Pub. Serv. Co. of New Mexico*, 85 FERC ¶ 61,414 (1998) *reh'g denied*, 86 FERC ¶ 61,253 (1999), *reh'g denied*, 95 FERC ¶ 61,073 (2001) (*San Diego Gas & Elec.*). But see *EPIC Merchant Energy NJ/PA, L.P. v. PJM Interconnection, LLC*, 131 FERC ¶ 61,130 (2010), *reh'g denied*, 136 FERC ¶ 61,041 (2011) (rejecting the “pancaked” complaint, by distinguishing it from the complaints in *Allegheny Generating*, *Southern Co.*, and *San Diego Gas & Elec.*).

The Commission orders:

(A) 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 section 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 this Complaint.

(B) Docket No. EL14-86-000 is hereby consolidated with Docket No. EL13-33-000 for purposes of hearing and decision.

(C) The presiding judge in Docket No. EL13-33-000 shall determine the procedures best suited to accommodate the consolidation ordered herein.

(D) The refund effective date in Docket No. EL14-86-000, established pursuant to section 206(b) of the FPA, is July 31, 2014.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.