

126 FERC ¶ 61,039  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Town of Norwood, Massachusetts

Docket No. EL03-37-009

v.

National Grid USA,  
New England Electric System,  
Massachusetts Electric Company,  
and Narragansett Electric Light Company

ORDER ON REMAND

(Issued January 15, 2009)

1. By contract, the Town of Norwood, Massachusetts (Norwood) is required to pay interest on late contract termination charge (CTC) payments made to the New England Power Company (New England Power).<sup>1</sup> The Commission initially held that the 18 percent per year interest rate<sup>2</sup> charged by New England Power was just and reasonable,<sup>3</sup> but later reversed its decision and ordered New England Power to charge an interest rate based on the prime rate, as set forth in section 35.19a of the Commission's regulations<sup>4</sup> (Revised Interest Rate).<sup>5</sup> In a subsequent order, the Commission clarified that the

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<sup>1</sup> New England Power is now National Grid USA Service Company, Inc. However, for continuity with previous orders, we will continue refer to the company as New England Power.

<sup>2</sup> The interest rate is one and one-half percent per month, i.e., 18 percent per year.

<sup>3</sup> *Town of Norwood, Massachusetts v. National Grid USA*, 115 FERC ¶ 61,396, at P 21-27 (2006) (June 30, 2006 Order). Previously, the Commission referred to this order as the "Second Rehearing Order."

<sup>4</sup> 18 C.F.R. § 35.19a (2008).

<sup>5</sup> *Town of Norwood, Massachusetts v. National Grid USA*, 119 FERC ¶ 61,148, at P 7 (2007) (May 17, 2007 Order on Remand).

Revised Interest Rate should apply to Norwood's late payments from the time a bill was first rendered.<sup>6</sup> In *New England Power Co. v. FERC*,<sup>7</sup> the United States Court of Appeals for the First Circuit vacated the Commission's holding with respect to the effective date of the Revised Interest Rate and remanded the issue to the Commission for further consideration. For the reasons discussed below, we find that section 206 of the Federal Power Act<sup>8</sup> requires that we make the Revised Interest Rate effective June 30, 2006, the date of the order where the Commission initially determined that the 18 percent interest rate was just and reasonable. Additionally, we find that section 206 permits us to apply the Revised Interest Rate to the fifteen-month period following the refund effective date established in this proceeding.

## I. Background

2. Previous orders contain detailed descriptions of the background and history of the parties' contractual relationship, the CTC payments, and the dispute over the CTC payments.<sup>9</sup>

3. In brief, New England Power had a contract to provide wholesale full requirements electric service to Norwood through October 2008. Norwood notified New England Power that it intended to terminate the contract early—on April 1, 1998—so that it could obtain electric service from another supplier. Shortly after receiving notice, New England Power filed an amendment to its tariff to allow customers to buy out their service agreements provided that they pay CTC payments.<sup>10</sup> Since then, the parties have engaged in extensive litigation concerning the CTC payments, including litigation over Norwood's obligation to pay interest on late CTC payments.

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<sup>6</sup> *Town of Norwood, Massachusetts v. National Grid USA*, 120 FERC ¶ 61,196, at P 13-16 (2007) (August 30, 2007 Order).

<sup>7</sup> *New England Power Co. v. FERC*, 533 F.3d 55 (1<sup>st</sup> Cir. 2008).

<sup>8</sup> 16 U.S.C. § 824e (2006).

<sup>9</sup> *E.g.*, *Town of Norwood, Massachusetts v. National Grid USA*, 107 FERC ¶ 63,041, at P 1-23 (2004), *order on initial decision*, 112 FERC ¶ 61,099, at P 4-8 (2005) (Order on Initial Decision).

<sup>10</sup> The Commission accepted the amendment in *New England Power Co.*, 83 FERC ¶ 61,174, *order denying reh'g*, 84 FERC ¶ 61,175 (1998), *aff'd sub nom. Town of Norwood v. FERC*, 202 F.3d 392 (1<sup>st</sup> Cir. 2000).

4. Initially, the Commission held that Norwood's obligation to pay interest on late CTC payments was governed by section N of New England Power's tariff, which establishes an interest rate calculated pursuant to section 35.19a of the Commission's regulations.<sup>11</sup> On rehearing, the Commission found that it misread the tariff and that section J—which established an annual interest rate of 18 percent—governed late CTC payments.<sup>12</sup> Norwood requested rehearing and alleged in the alternative that an 18 percent interest rate was unjust and unreasonable and contrary to the guidelines for penalty interest rates that the Commission established in *Connecticut Light & Power Co.*<sup>13</sup> The Commission issued an order on June 30, 2006 denying rehearing, finding that 18 percent was a just and reasonable interest rate, and distinguishing the section J interest rate of 18 percent from the interest rate at issue in *Connecticut Light & Power Co.*<sup>14</sup>

5. Norwood appealed to the United States Court of Appeals for the First Circuit. In *Town of Norwood v. FERC*, the court affirmed the Commission's holding that section J governed interest on late CTC payments, but rejected the Commission's rationale for finding that an 18 percent interest rate was just and reasonable.<sup>15</sup> The court also rejected the Commission's rationale for distinguishing the section J interest rate from the interest rate at issue in *Connecticut Light & Power Co.* Consequently, the court remanded to the Commission the issue of whether 18 percent was a just and reasonable interest rate.<sup>16</sup> On May 17, 2007, the Commission issued an order on remand finding that 18 percent was unjust and unreasonable and directing New England Power to replace it with the Revised Interest Rate.<sup>17</sup>

6. New England Power filed a motion for clarification, and in the alternative, request for rehearing of the May 17, 2007 Order on Remand. In its motion, New England Power asked the Commission to clarify that it intended in the May 17, 2007 Order on Remand to

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<sup>11</sup> Order on Initial Decision, 112 FERC ¶ 61,099 at P 81-82.

<sup>12</sup> *Town of Norwood, Massachusetts v. National Grid USA*, 114 FERC ¶ 61,187, at P 49-51 (2006) (February 22, 2006 Order). Previously, the Commission referred to this order as the "First Rehearing Order."

<sup>13</sup> *Connecticut Light & Power Co.*, 59 FPC 811, 821 (1977).

<sup>14</sup> June 30, 2006 Order, 115 FERC ¶ 61,396 at P 21-27.

<sup>15</sup> *Town of Norwood v. FERC*, 476 F.3d 18, 27-29 (1<sup>st</sup> Cir. 2007).

<sup>16</sup> *Id.* at 28-29.

<sup>17</sup> May 17, 2007 Order on Remand, 119 FERC ¶ 61,148 at P 7.

make the Revised Interest Rate effective prospectively from June 30, 2006, and that Norwood would have to pay interest at 18 percent on all late CTC payments due prior to June 30, 2006. New England Power argued that an earlier effective date for the Revised Interest Rate was inconsistent with section 206 of the Federal Power Act and would violate the filed rate doctrine and the rule against retroactive ratemaking.

7. The Commission denied the motion for clarification without reaching New England Power's arguments.<sup>18</sup> The Commission explained that, in its view, in *Town of Norwood v. FERC*, the court concluded that whatever interest rate the Commission specified on remand must apply from the time a bill was first rendered. The Commission relied on this sentence from the court's opinion:

[S]ection J makes it quite clear that, when a customer disputes an amount billed by a carrier, the carrier is entitled to prescribed interest that accrues "from . . . the rendering of said bill" on "the amount finally determined to be due and payable." Norwood has challenged the amount of interest prescribed; *but whatever the figure FERC finds justified, the tariff provides that Norwood owes that amount from the time the bill was rendered.*<sup>19</sup>

Thus, the Commission found that the court had determined the Revised Interest Rate's effective date and that the Commission did not need to reach New England Power's arguments.

8. New England Power appealed. In *New England Power Co. v. FERC*, the First Circuit found that the Commission misread its previous opinion. The Court explained that, in *Town of Norwood v. FERC*, it did not decide the Revised Interest Rate's effective date and that the sentence the Commission relied on merely paraphrased the tariff.<sup>20</sup> The Court vacated the Commission's decision with respect to the Revised Interest Rate's effective date and remanded it to the Commission for further consideration in light of New England Power's arguments.

9. Subsequently, Norwood filed a motion urging the Commission to confirm its previous decision that made the Revised Interest Rate effective from the time a bill was first rendered, i.e., going back to 1998. In its motion, Norwood argues that the rationale

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<sup>18</sup> August 30, 2007 Order, 120 FERC ¶ 61,196, at P 13-16.

<sup>19</sup> *Id.* P 15 (quoting *Town of Norwood v. FERC*, 476 F.3d 18 at 29) (emphasis added in August 30, 2007 Order).

<sup>20</sup> *New England Power Co. v. FERC*, 533 F.3d 55 at 59-60.

for a June 30, 2006 effective date is based solely on “a technical statutory interpretation.”<sup>21</sup> Norwood contends that the Commission has authority to make the Revised Interest Rate effective from the time a bill was first rendered because of its broad remedial authority and ability to correct error, its authority to interpret tariffs, choose among applicable tariff sections, and grant waivers, the remedial nature of interest, and the command of the Federal Power Act to ensure that rates are just and reasonable. Norwood further maintains that the purposes of the filed rate doctrine and rule against retroactive ratemaking would not be achieved by establishing a June 30, 2006 refund effective date, and therefore that these principles do not apply in this case.

10. New England Power filed an answer reiterating the arguments in its motion for clarification. Specifically, New England Power asserts that section 206 of the Federal Power Act does not authorize the Commission to establish an effective date for the Revised Interest Rate that is earlier than June 30, 2006 and that court and Commission precedent permits the Commission to establish June 30, 2006 as the effective date because that is the date of the Commission order that improperly upheld the 18 percent interest rate. New England Power also argues that an effective date for the Revised Interest Rate earlier than June 30, 2006 would violate the filed rate doctrine and the rule against retroactive ratemaking.<sup>22</sup>

## II. Commission Decision

### A. Procedural Matters

11. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure<sup>23</sup> prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers to New England Power’s answer, and all subsequent pleadings, and will, therefore, reject them.

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<sup>21</sup> Norwood Motion to Confirm Commission Interest Rate Order on Remand and for Other Relief at 3 (Norwood Motion).

<sup>22</sup> Norwood, New England Power, and Norwood again filed successive answers. That is, Norwood filed a reply to New England Power’s answer, and New England Power filed a reply to the reply. Finally, Norwood filed an answer to the reply.

<sup>23</sup> 18 C.F.R. § 385.213(a)(2) (2008).

**B. Decision on Remand****1. Prospectively, the Revised Interest Rate Will Be Effective From June 30, 2006.**

12. Upon further review, we find that the Revised Interest Rate should be effective prospectively from June 30, 2006.

13. Section 206 of the Federal Power Act establishes the parameters under which we can set the effective date for the Revised Interest Rate.<sup>24</sup> Section 206 authorizes the Commission to order two types of relief: prospective relief and limited retroactive relief in the form of refunds.<sup>25</sup> Section 206(a) permits the Commission to order prospective relief only from the date that it finds an existing rate to be unjust and unreasonable.<sup>26</sup> The Commission found that section J's 18 percent interest rate was unjust and unreasonable in its May 17, 2007 Order on Remand.

14. Ordinarily, that would be the end of the case and, consistent with section 206, the Revised Interest Rate would be effective prospectively from May 17, 2007. However, both the courts and the Commission have held that, when an appellate court determines that a Commission order has improperly upheld an existing rate, the Commission can make the relief effective as of the date of the faulty order (June 30, 2006 in this case).<sup>27</sup> In the first of the two court decisions relevant here, *Town of Norwood v. FERC*, the First Circuit found that the June 30, 2006 Order did not provide a persuasive explanation for finding that the 18 percent interest rate was just and reasonable or for distinguishing it from the interest rate at issue in *Connecticut Light & Power Co.* On remand, the Commission reversed the June 30, 2006 Order and found that the 18 percent interest rate

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<sup>24</sup> *Town of Norwood v. FERC*, 476 F.3d 18 at 29 (“[T]his remains a section 206 proceeding in which Norwood is attacking a longstanding tariff provision and bears the ultimate burden of proof.”).

<sup>25</sup> The latter is discussed in greater detail below.

<sup>26</sup> 16 U.S.C. § 824e(a) (2006).

<sup>27</sup> *Pacific Gas & Electric Co.*, 118 FERC ¶ 61,070, at P 12 (2007) (“[C]ourts have previously recognized the Commission’s authority to order retroactive rate adjustments when an earlier order disallowing a rate is reversed on appeal, i.e., a Commission order is later determined to be unlawful.”); *Pub. Utils. Comm’n of Cal. v. FERC*, 988 F.2d 154, 162 (D.C. Cir. 1993); *Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1074 (D.C. Cir. 1992) (*Clearinghouse*).

was unjust and unreasonable. Thus, in establishing the effective date of the Revised Interest Rate, the Commission, pursuant to section 206(a), is authorized to make the Revised Interest Rate effective prospectively as of the date of the order in which it improperly upheld the 18 percent interest rate—June 30, 2006.<sup>28</sup>

**2. For Prior Periods, the Revised Interest Rate Will Be Effective for the Fifteen-Month Period Following the Refund Effective Date.**

15. Section 206(b) authorizes the Commission to order refunds of any amounts paid “in excess of those which would have been paid under the just and reasonable rate” for the fifteen-month period following an established refund effective date.<sup>29</sup> The refund effective date that the Commission previously established in this proceeding is February 21, 2003.<sup>30</sup> Therefore, if Norwood had made any late payments to New England Power at the 18 percent interest rate from February 21, 2003, the refund effective date, through May 21, 2004, fifteen months later, we would have the authority to order New England Power to make refunds of any amounts paid in excess of the just

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<sup>28</sup> Because our decision here is necessarily driven by section 206 of the Federal Power Act, we need not reach New England Power’s arguments concerning the filed rate doctrine and the rule against retroactive ratemaking.

Regulated Entities are barred from charging rates for their services other than those properly filed with the Commission; this prohibition “arises out of filing requirements in [section] 205 of the Federal Power Act.” The corollary, the rule against retroactive ratemaking, prohibits the Commission from altering the filed rate retroactively other than consistent with the terms of the statute. *NSTAR Elec. & Gas Corp. v. FERC*, 481 F.3d 794, 800 (D.C. Cir. 2008); *accord Towns of Concord, Norwood, and Wellesley, Massachusetts v. FERC*, 955 F.2d 67, 71-73 (D.C. Cir. 1992) (*Towns of Concord*); *see generally Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577-78 (1981) (explaining the filed rate doctrine and the rule against retroactive ratemaking in the context of the Natural Gas Act.). These two doctrines, and particularly the former, are not independent of the Federal Power Act. *Towns of Concord*, 955 F.2d 67, 73 (“The filed rate doctrine does not have a life of its own. Its application depends on the underlying statute. To ask only if the filed rate doctrine mandates refunds is to miss an essential part of the inquiry. What says the [Federal Power Act]?”).

<sup>29</sup> 16 U.S.C. § 824e(b) (2006).

<sup>30</sup> The Commission established this date in *Town of Norwood v. National Grid USA*, 104 FERC ¶ 61,030, at P 22 (2003).

and reasonable Revised Interest Rate. However, Norwood did not make any late payments at the 18 percent interest rate during the fifteen month period following the refund effective date, so in this case there is no ability to order any refunds for that period. In fact, Norwood made late payments for that fifteen-month period at the interest rate specified in section 35.19a of the Commission's regulations, which is to say, at the Revised Interest Rate. Because the Commission has authority to make the Revised Interest Rate effective for that fifteen-month period, and because Norwood paid interest at the Revised Interest Rate for that period, Norwood does not owe New England Power any additional interest for that period.

16. In other words, although section 206 requires that we set June 30, 2006 as the date for prospective relief, it permits us to make the just and reasonable Revised Interest Rate effective during the fifteen-month period following the refund effective date. Therefore, New England Power is entitled to charge Norwood interest on late payments at 18 percent from the time a bill was first rendered in 1998 through February 20, 2003. From February 21, 2003, the refund effective date, through May 21, 2004, the end of the fifteen-month refund period, New England Power is entitled to collect interest on late payments only at the Revised Interest Rate. From May 22, 2004 through June 29, 2006, New England Power is entitled to collect interest on late payments at 18 percent. Finally from June 30, 2006 prospectively, New England Power is entitled to collect interest only at the Revised Interest Rate.<sup>31</sup>

17. In its motion following the remand, Norwood presents lengthy arguments pertaining to the filed rate doctrine and the rule against retroactive ratemaking, the level of the just and reasonable interest rate under section J, the determination of which tariff provision governs the interest rate for late CTC payments, and the breadth of the Commission's remedial authority. What Norwood does not address, except to dismiss as "hyper technical,"<sup>32</sup> are the limits, discussed above, that section 206 imposes on the establishment of an effective date.

18. Most of Norwood's arguments are beyond the scope of this order. For example, the level of the just and reasonable interest rate under section J and the determination of which tariff provision governs the interest rate for late CTC payments are issues that have been previously decided. Similarly, because we do not reach New England Power's arguments concerning the filed rate doctrine and the rule against retroactive ratemaking, we likewise do not need to address Norwood's arguments on these issues.

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<sup>31</sup> This result is similar to the result in *Bangor Hydro-Electric Co.*, 120 FERC ¶ 61,093, at P 22 (2007), *reh'g denied*, 122 FERC ¶ 61,038 (2008).

<sup>32</sup> Norwood Motion at 15.

19. Norwood’s other arguments are intended to persuade the Commission that it has discretion to make the Revised Interest Rate effective from whatever date would best serve the public interest (which Norwood claims is the date that a bill was first rendered, i.e., in 1998) and that it also has discretion to waive application of the section J interest rate to avoid unjust enrichment.<sup>33</sup> Norwood also argues that, because the Commission has discretion to waive its regulations to reach an equitable result, it has discretion to waive a “hyper-technical” interpretation of New England Power’s tariff to avoid reaching a conclusion that Norwood claims would lead to an “inequitable windfall” to New England Power.<sup>34</sup>

20. We find that these arguments rely on a fatal premise—namely, that the Commission has discretion to disregard the statutory limits of section 206, specifically the parameters it creates as to both the prospective effective and refund effective dates. Plainly stated, Norwood’s claim is that the Commission’s remedial authority allows it to find that a rate that is unjust and unreasonable cannot apply during *any* period in which it was in effect. Norwood, however, disregards section 206’s express provisions. As we have explained, for past or prior periods section 206 allows the Commission to apply the just and reasonable rate and order refunds of any money paid in excess of the just and reasonable rate only for a fifteen month period following the refund effective date (which, given that Norwood has already paid the Revised Interest Rate during this period, is not applicable here).<sup>35</sup> Under section 206, the Commission cannot change an unjust

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<sup>33</sup> For example, Norwood argues that, because the Commission has discretion to determine in a specific case whether refunds are an appropriate remedy, it necessarily has discretion in this case to refuse to allow section J’s unjust and unreasonable 18 percent interest rate to apply to any late CTC payments. *Id.* at 29.

<sup>34</sup> *Id.* at 32.

<sup>35</sup> Norwood’s motion contains a single sentence arguing that section 206’s “thereafter observed” language does not compel the Commission to apply a rate that it finds to be unjust and unreasonable to interest payments covering a past period. *Id.* at 26. With this sentence, Norwood appears to argue that there is no link between the Commission’s obligation under section 206(a) to establish prospectively a just and reasonable rate when it finds that an existing rate is unjust and unreasonable and the Commission’s ability to provide retroactive relief by substituting the new just and reasonable rate for the pre-existing unjust and unreasonable rate. This argument attacks a position that neither the Commission nor New England Power has asserted in this proceeding. Neither the Commission nor New England Power has claimed that the Commission’s obligation to establish prospectively a just and reasonable rate thereby creates a substantive limit on the Commission’s ability to order retroactive relief. What New England Power has argued, and what the Commission explains above, is that the

(continued...)

and unreasonable rate (and order refunds) for the period prior to the refund effective date or for the period between the end of the fifteen-months and the prospective effective date of the just and reasonable rate. The Commission does not have authority in the face of this statutory prescription.<sup>36</sup>

21. We note that Norwood's motion creates the impression that the Commission is free in this proceeding to determine whether Norwood must pay any interest at all on late CTC payments. Whether Norwood should have to pay any interest or whether it should pay interest under section J or section N is not at issue in this proceeding. The Commission has already determined, and the First Circuit has already affirmed, that Norwood is required to pay interest on late CTC payments, and to do so pursuant to section J.<sup>37</sup> Furthermore, the Commission has exercised the authority granted to it under section 206 and found that section J's 18 percent interest rate is unjust and unreasonable, and that it must be replaced with the Revised Interest Rate.<sup>38</sup> The only issue on remand is when the Revised Interest Rate is effective. As we have explained, section 206 requires that we make it effective prospectively from June 30, 2006 and allows us to apply it to the fifteen-month period following the refund effective date in this proceeding.

22. In asserting that the Commission can retroactively waive section J and apply the Revised Interest Rate to all late CTC payments, Norwood disregards what is actually at issue in this proceeding: the Commission's authority to establish the Revised Interest Rate's effective date—a date that is controlled by section 206, not the tariff. Moreover,

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Commission's ability to order retroactive relief in this case flows from section 206(b), which specifically allows retroactive relief, but only for the fifteen month period following the refund effective date. In other words, the Commission does not need to speculate about its authority to order retroactive relief by inferring a doctrine from section 206(a), because its authority to order retroactive relief is explicitly spelled out in section 206(b).

<sup>36</sup> See *Connecticut Valley Elec. Co. v. FERC*, 208 F.3d 1037, 1044 (D.C. Cir. 2000) (“In other words, the Commission ordinarily has remedial discretion, even in the face of an undoubted statutory violation, unless the statute itself mandates a particular remedy.”).

<sup>37</sup> *Town of Norwood v. FERC*, 476 F.3d 18 at 27-28; Feb 22, 2006 Order, 114 FERC ¶ 61,187 at P 49-50; June 30, 2006 Order, 115 FERC ¶ 61,396 at P 21, 24.

<sup>38</sup> May 17, 2007 Order on Remand, 119 FERC ¶ 61,148 at P 7.

notwithstanding any authority the Commission may have to waive a tariff provision prospectively, or to waive its own regulations, it does not have the authority to waive the statutory requirements of section 206, which is what is at issue here.

23. Norwood also contends that the Commission can apply the Revised Interest Rate to all CTC payments because it has the authority to correct rates on remand.<sup>39</sup> Norwood maintains that the level of the interest rate applicable to late CTC payments has been at issue from the outset of this case, and therefore the Commission may respond to the First Circuit's latest remand by making the Revised Interest Rate effective from the time Norwood's bills were first rendered. We reject this theory. As we have explained, the Commission can provide relief back to the date of an order that an appellate court determines improperly upheld a rate. What is relevant is the date of that order, i.e., the date that the Commission improperly upheld the rate, not the date when the rate became an issue in the proceeding.<sup>40</sup> In this case, the court determined that the Commission improperly upheld the 18 percent interest rate in the June 30, 2006 Order. Thus, in accordance with section 206, the earliest date on which the Commission can establish a prospective rate is June 30, 2006.

### **3. Norwood Misinterprets the Operation and Intent of Section 309**

24. Finally, Norwood argues that the Commission can rely on section 309 of the Federal Power Act,<sup>41</sup> to reach the result that Norwood advocates. Norwood argues that, because the purpose of the Federal Power Act is to ensure just and reasonable rates, the Commission can and should use its authority under section 309 to make the Revised Interest Rate effective for all late CTC payments. We reject this interpretation of section

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<sup>39</sup> Norwood Motion at 15-16.

<sup>40</sup> Norwood claims that New England Power cited *Clearinghouse* as a limit on the Commission's remedial authority. Norwood Motion at 16-17. We disagree. *Clearinghouse* provides that the Commission can direct relief back to the date of an order that an appellate court determines improperly upheld a rate; it does not establish limits on the Commission's remedial authority.

<sup>41</sup> Section 309 of the Federal Power provides, in relevant part:

The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this [Act].

309. The Commission's section 309 authority is intended to be used to "carry out the provisions of the [Federal Power Act]." As we have explained, section 206 of the Federal Power Act provides that we can make the Revised Interest Rate effective only prospectively from June 30, 2006 and during the fifteen-month period following the refund effective date. Section 309 can only be used to effectuate that requirement, not to circumvent it. Contrary to Norwood's argument, section 309 is not an "escape hatch" for avoiding the requirements of other sections of the Federal Power Act.

The Commission orders:

(A) The Revised Interest Rate is hereby effective June 30, 2006.

(B) Within 30 days of the date of this order, New England Power is hereby directed to make a compliance filing specifying the amount owed, calculated as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.