

149 FERC ¶ 61,210
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Seminole Electric Cooperative, Inc.
and
Florida Municipal Power Agency

Docket Nos. EL14-90-000

v.

Duke Energy Florida, Inc.

Seminole Electric Cooperative, Inc.
and
Florida Municipal Power Agency

EL13-63-000

v.

Duke Energy Florida, Inc.

Seminole Electric Cooperative, Inc.
and
Florida Municipal Power Agency

EL12-39-000
(Consolidated)

v.

Florida Power Corporation

ORDER ON COMPLAINT, ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES, AND CONSOLIDATING PROCEEDINGS

(Issued December 5, 2014)

1. On August 12, 2014, Seminole Electric Cooperative, Inc. (Seminole) and Florida Municipal Power Agency (FMPA) (collectively, Complainants) filed a complaint against

Duke Energy Florida, Inc. (Duke Energy Florida) (formerly Florida Power Corporation) pursuant to sections 206, 306 and, 309 of the Federal Power Act (FPA),¹ and Rule 206 of the Commission's Rules of Practice and Procedure,² alleging that the 10.8 percent base return on equity (ROE) in Duke Energy Florida's transmission formula rate (Formula Rate) is unjust and unreasonable and should be replaced with a just and reasonable ROE no higher than 8.69 percent (Complaint). In this order, we set the Complaint for hearing and settlement judge procedures, establish a refund effective date of August 12, 2014, and consolidate this proceeding with the proceedings in Docket Nos. EL12-39-000 and EL13-63-000.

I. Background

2. Duke Energy Florida recovers its transmission revenue requirements through a Formula Rate included in its Open Access Transmission Tariff (OATT). The Formula Rate resulted from a settlement between Duke Energy Florida and its customers, including Complainants (Rate Settlement). On December 17, 2007, the Commission approved the Rate Settlement, which provided for an ROE of 10.8 percent.³ Under the Rate Settlement, the ROE remained fixed until the end of a rate moratorium (December 31, 2011), at which time either Duke Energy Florida or its customers could seek to change the ROE under either section 205 or section 206 of the FPA.

3. On February 29, 2012, in Docket No. EL12-39-000, Complainants filed a complaint against Duke Energy Florida,⁴ asserting that a discounted cash flow (DCF) analysis showed that the zone of reasonableness ranged from 6.95 percent to 11.58 percent with a median of 9.02 percent (2012 Complaint). Complainants argued that a just and reasonable base ROE should not exceed 9.02 percent. On May 13, 2013, Complainants filed another complaint against Duke Energy Florida asserting that, since the filing of the 2012 Complaint, capital markets had experienced continued volatility and that DCF analyses using more recent market data showed that a just and reasonable ROE for Duke Energy Florida was either 8.63 percent or 8.84 percent (2013 Complaint). On June 19, 2014, the Commission set the 2012 Complaint and 2013 Complaint for hearing and settlement judge procedures, established separate refund effective dates for

¹ 16 U.S.C. §§ 824e, 825e, and 825h (2012).

² 18 C.F.R. § 385.206 (2014).

³ *Florida Power Corp.*, Docket No. ER08-105-000 (Dec. 17, 2007) (delegated letter order).

⁴ At the time the 2012 Complaint was filed, Duke Energy Florida was named Florida Power Corp.

the 2012 Complaint and 2013 Complaint, and consolidated the 2012 Complaint and 2013 Complaint for purposes of hearing, settlement, and decision.⁵

4. On August 12, 2014, Complainants filed the instant Complaint against Duke Energy Florida.

II. The Complaint

5. Complainants state that their expert witness conducted a DCF analysis, based on market data for the six-month period ending June 2014, using the two-step DCF methodology that the Commission adopted in Opinion No. 531.⁶ Complainants assert that this DCF analysis shows that Duke Energy Florida's current 10.8 percent ROE is unjust and unreasonable, and that a just and reasonable ROE is 8.69 percent.⁷

6. Complainants state that their expert witness conducted the DCF analysis using a national proxy group of companies that: (1) are considered electric utilities by Value Line; (2) have an S&P corporate credit rating between A- and BBB, and Moody's long-term issuer or senior unsecured credit rating between A2 and Baa1; (3) have an IBES-published analysts' consensus five-year earnings per share growth rate; (4) are not engaged in a major merger or acquisition (currently or during the 6-month dividend yield analysis period); (5) paid dividends throughout the six-month dividend yield analysis period, did not cut dividends during that period, and have not subsequently announced a dividend cut; and (6) have DCF results that pass threshold tests of economic logic and which are not outliers.⁸

7. Complainants state that after applying the above screens, 25 companies remained in the proxy group. Complainants state that their expert witness used a single six-month average dividend yield for each proxy company for the six-month period ended June 2014, and then calculated a single weighted average growth rate for each proxy group company using (1) a forecasted five-year earnings per share growth rate, given two-thirds weight, and (2) a long-term forecasted GDP growth rate, given

⁵ *Seminole Electric Coop., Inc. and Fla. Muni. Power Agency v. Florida Power Corp.*, 147 FERC ¶ 61,236 (2014); *Seminole Elec. Coop., Inc. and Fla. Muni. Power Agency*, 147 FERC ¶ 61,237 (2014).

⁶ Complaint at 7 (citing *Coakley, Mass. Attorney Gen. v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014) (Opinion No. 531)).

⁷ Complaint at 7.

⁸ *Id.* at 8.

one-third weight. Complainants state that for the short-term growth rate, their expert witness used the average of the analysts' consensus five-year earnings per share growth rate projections for each proxy group company as reported by Yahoo! Finance, from the IBES data base, as of June 30, 2014. For the long-term growth rate, Complainants state that their expert witness used a projection of 4.39 percent growth in gross domestic product (GDP), based on the same GDP sources the Commission used in Opinion No. 531.⁹ Complainants state that the results of this analysis produced a zone of reasonableness from 6.71 percent to 12.54 percent, with a median of 8.70 percent.

8. Complainants state that their expert witness found no low-end outliers, as the lowest ROE in the proxy group was much more than 100 basis points above the average Moody's A and Baa Public Utility Bond Index yields for the six months ended June 2014. Complainants state that their expert witness removed Portland General Electric Co. (Portland General) from the proxy group as a high-end outlier because it was 249 basis points, roughly 25 percent, higher than the next highest DCF result. Complainants state that the removal of Portland General from the proxy group produced a range of 6.71 percent to 10.04 percent, with a median of 8.69 percent, which Complainants assert is the just and reasonable ROE for Duke Energy Florida.¹⁰

9. Complainants state that the Commission, in Opinion No. 531, did not mandate that a public utility's base ROE be set between the median and the top of the zone of reasonableness produced by the two-step DCF methodology, or that there is any one method for finding the "central tendency" of the upper half.¹¹

10. Complainants argue that the conditions the Commission found to warrant a base ROE above the central tendency of the zone of reasonableness in Opinion No. 531—namely the historically low bond yields and the fact that yields on 10-year U.S. Treasury bonds during the six-month period ended March 2013 were below 2 percent—no longer exist.¹² Complainants state that bond yields have risen to 2.69 percent for the period ending June 2014, the unemployment rate has dropped, the stock market is strong, and the Federal Reserve has substantially decreased its quantitative easing initiative.¹³

⁹ *Id.* at 9.

¹⁰ *Id.* at 9-12.

¹¹ *Id.* at 12.

¹² *Id.* at 12-13 (citing Opinion No. 531, 147 FERC ¶ 61,234 at P 145, n.285).

¹³ *Id.* 12-13.

Complainants state that the relatively lower bond yields “are a reflection of relatively lower capital costs, and the DCF method reflects the reality of such lower capital costs.”¹⁴ Complainants also argue that the record in this case will show that Duke Energy Florida is no more risky than the proxy group.¹⁵

11. Complainants also state that the Commission in Opinion No. 531 deviated from its standard practice of placing the base ROE at the central tendency in the zone of reasonableness based on the ROEs that state regulatory commissions have allowed. Complainants assert that state ROEs have generally decreased since 2012, and that the Commission-allowed transmission ROE for Duke Energy Florida should be lower than the ROEs that state commissions have allowed Duke Energy Florida.¹⁶ Complainants also state that, although the Commission in Opinion No. 531 relied on alternative ROE analyses to justify deviating from the use of the central tendency, the Commission conceded that it has rejected such approaches in the past and indicated that it was giving weight to the alternative analysis in Opinion No. 531 only because the record in that case indicated “unusual capital market conditions.”¹⁷ Complainants argue that under current market conditions these discredited alternative benchmark methodologies do not provide a basis for moving the ROE above the median of the zone of reasonableness.¹⁸

12. Complainants request that the Commission act promptly to establish a refund-effective date coincident with the filing date of this Complaint, establish hearing and settlement judge procedures, and consolidate this proceeding with the already consolidated 2012 Complaint proceeding and 2013 Complaint proceeding. The Complainants state that the Commission will typically consolidate proceedings when they are closely intertwined, when they share common issues of law and fact, and when consolidation will promote administrative efficiency. Complainants state that each of these factors is satisfied in this case.¹⁹

¹⁴ *Id.* at 13.

¹⁵ *Id.* at 12.

¹⁶ *Id.* at 13-14.

¹⁷ *Id.* at 14 (citing Opinion No. 531, 147 FERC ¶ 61,234 at P 142).

¹⁸ *Id.*

¹⁹ *Id.* at 16-18.

III. Notice and Responsive Pleadings

13. Notice of the complaint was published in the *Federal Register*, 79 Fed. Reg. 49,301 (2014), with interventions and protests due on or before September 2, 2014. The comment date was extended to September 23, 2014, in a notice issued on August 21, 2014. On September 23, 2014 Duke Energy Florida filed an answer. On October 8, 2014, Complainants filed an answer to Duke Energy Florida's answer.
14. Reedy Creek Improvement District and North Carolina Electric Membership Corporation timely filed motions to intervene.

A. Duke Energy Florida's Answer

15. Duke Energy Florida states that the complaint should be dismissed as an impermissible attempt to evade the statutory 15-month refund period that applies to section 206 complaints.²⁰ Duke Energy Florida claims that in *Allegheny Electric* the Commission dismissed one of two complaints which were substantively identical and raised the same legal and factual allegations, but were filed on different dates.²¹ Duke Energy Florida argues that the Commission should prohibit such complaints where the complaint is "instituting a duplicative proceeding intended solely to expand the amount of refund protective beyond 15 months."²² Duke Energy Florida also states that failure to dismiss this complaint would constitute a clear violation of the Congressional intent embodied in FPA section 206 and the Regulatory Fairness Act, which introduced the refund procedure in FPA section 206.²³

²⁰ Duke Energy Florida Answer at 8-10 (citing *Allegheny Electric Coop., Inc. v. Niagara Mohawk Power Corp.*, 58 FERC ¶ 61,096 (1992) (*Allegheny Electric*); *Wabash Valley Power Ass'n v. N. Ind. Pub. Serv. Co.*, 82 FERC ¶ 61,139, at 61,521 (1998); *City of Hamilton v. Ky. Power Co.*, 72 FERC ¶ 61,158, at 61,786 n.4 (1995); *EPIC Merch. Energy NJ/PA, L.P. v. PJM Interconnection, L.L.C.*, 136 FERC ¶ 61,041 at P 14, (2011)).

²¹ *Id.* at 9-10.

²² *Id.* at 11 (citing *Southern Co. Servs., Inc.*, 83 FERC ¶ 61,079, at 61,386 (1998)).

²³ *Id.* at 12-13 (citing *Regulatory Fairness Act: Hearings on S. 1587 and H.R. 2858 Before the S. Comm. On Energy and Natural Resources*, 100th Cong., 74-76, 85-87, 91-92, 99-100, 107-08, 115-17, 295-97 (1988) (statement of Rodney O. Mundy, Balch & Bingham, on behalf of Southern Company Services, Alabama Power Company and Edison Electric Institute; statement of Jerry D. Jackson, Middle South Utilities System; statement of Edward Berlin, Swidler & Berlin, on behalf of New England Power Company; statement of John W Barr, on behalf of Morgan Stanley & Co., Inc.).

16. Duke Energy Florida also states that Complainants' decision to exclude Portland General from the proxy group because it was 249 basis points above the next highest result is inconsistent with Opinion No. 531. Duke Energy Florida explains that in *Northern Pass Transmission, LLC* the Commission accepted the applicants' proposed ROE based upon a proxy group that had a 270 basis point difference between PPL Corp. (16.7 percent) and the next highest result (13.7 percent), whereas Great Plains Energy was eliminated from the proxy group due to its DCF result of 18.0 percent.²⁴ Furthermore, Duke Energy Florida states that, although Complainants argue that the IBES growth rate data for Portland General are higher than those published by other services and therefore should be rejected, Portland General's growth rates are based on the source the Commission has relied upon for years, i.e., IBES data reported on *Yahoo! Finance*. Duke Energy Florida concludes that Complainants' attempt to eliminate Portland General's DCF result from the proxy group should be rejected, and once this analysis is corrected the Complainants' DCF results support a zone of reasonableness of 6.71 percent to 12.54 percent.²⁵

17. Duke Energy Florida also states that the Complainants have not met their burden under FPA section 206 to demonstrate that the existing ROE is unjust and unreasonable. Duke Energy Florida argues that the Commission is without statutory power to change an existing ROE unless the evidence shows that the existing ROE is entirely outside the zone of reasonableness.²⁶ Furthermore, Duke Energy Florida states that the Commission, in Order No. 679, held that approval of rates at or near the upper end of the zone of reasonableness remains consistent with the FPA requirement that incentive rates "be just and reasonable and not unduly discriminatory or preferential."²⁷ Duke Energy Florida argues that the Commission has repeatedly held that ROEs are just and reasonable because they fall within the DCF zone of reasonableness.²⁸ Duke Energy Florida states

²⁴ *Id.* at 18.

²⁵ *Id.* at 20-21.

²⁶ *Id.* at 21-22 (citing *City of Winnfield v. FERC*, 744 F.2d 871, 875 (D.C. Cir. 1984) (*City of Winnfield*); *Texas Eastern Transmission Corp.*, 32 FERC ¶ 61,056, at 61,150 & n.6 (1985) (*Texas Eastern*)).

²⁷ *Id.* at 22 (citing *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, at P 8 (2006)).

²⁸ *Id.* at 23 (citing *Southern California Edison Co.*, 139 FERC ¶ 61,042, at PP 47, 65 (2012); *Atlantic Path 15, LLC*, 122 FERC ¶ 61, 135, at PP 19-20 (2008), *order on reh'g*, 133 FERC ¶ 61,153 (2010); *Northeast Utilities Service Co.*, 124 FERC ¶ 61,044 at (*continued ...*))

that the courts and the Commission have long recognized that a just and reasonable rate is not limited to a single rate.²⁹

18. Duke Energy Florida argues that if the Commission were to change its policy and rely on a narrow pinpoint rather than the broader area of statutory reasonableness, the Commission would fail to achieve its regulatory goals of encouraging transmission investment and providing regulatory certainty and confidence to investors. Duke Energy Florida states that the 8.69 percent ROE Complainants seek would be below every one of the state commission ROE determinations for integrated utilities over the last eight quarters and would be entirely insufficient to meet the goals of promoting investment and transmission infrastructure and ensuring Duke Energy Florida's ability to maintain credit and attract capital.³⁰

19. Duke Energy Florida also argues that the Complainants' DCF results do not support a finding that Duke Energy Florida's current ROE is unjust and unreasonable, due to the existence of anomalous capital market conditions. Duke Energy Florida states that the Commission in Opinion No. 531 found that, based on the presence of anomalous capital market conditions, the New England Transmission Owners' ROE should be set at the point halfway between the midpoint and the top-end of the zone rather than the midpoint itself.³¹ Duke Energy Florida states that the anomalous capital market conditions still exist, and that applying Opinion No. 531 (but recognizing that the Commission utilizes the median rather than the midpoint of the zone of reasonableness as the measure of central tendency in single-utility cases) results in a base ROE halfway between the median of the zone of reasonableness and the top of that zone, which is 10.64 percent.³²

20. Duke Energy Florida states that while the existing 10.8 percent ROE slightly exceeds the 10.64 percent, the 17 basis point difference is immaterial. Duke Energy

P 71 (2008); *Central Maine Power Co.*, 125 FERC ¶ 61,079, at P 74 (2008); *Desert Southwest Power, LLC*, 135 FERC ¶ 61,143, at P 96 (2011)).

²⁹ *Id.* at 24 (citing *Montana-Dakota Utils. Co. v. Northwestern Pub. Serv. Co.*, 341 U.S. 246, 251-52; *FPC v. Conway Corp.*, 426 U.S. 271, 278 (1976); *Calpine Corp. v. Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,271, at P 41 (2009)).

³⁰ *Id.* at 25-26.

³¹ *Id.* at 27.

³² *Id.* at 27-28.

Florida argues that the 10.8 percent ROE is consistent with the range of results of alternative ROE benchmarks referenced by the Commission in Opinion No. 531. Duke Energy Florida also asserts that the 10.64 percent figure does not include any flotation costs, a reasonable estimate for which is 13 to 36 basis points. Duke Energy Florida further states that the 10.63 percent result is premised on a low-end result of 6.71 percent, which is only slightly above the implied 6.61 percent utility bond yield for the 2015-2018 period when the ROE would be effective.

21. Duke Energy Florida states that the Federal Reserve's Quantitative Easing purchases continue, interest rates remain low by historical standards, and unemployment remains high. Duke Energy Florida argues that current capital markets continue to reflect the legacy of the Great Recession and are not representative of what investors expect in the future, stating that utility bond rates remain near their lowest levels since the Eisenhower Administration. Duke Energy Florida argues that a Government-created, low interest rate environment coupled with expectations that interest rates will rise substantially in the future, are precisely the conditions that existed in the DCF study period in Opinion No. 531 and led the Commission in that case to conclude that capital market conditions are anomalous. Duke Energy Florida states that low interest rates combined with low-end DCF results pull down the zone of reasonableness and the median that the Commission traditionally uses to set ROE levels for individual utilities of average risk, which results in a DCF zone that fails to satisfy *Hope* and *Bluefield*.

22. Duke Energy Florida states that it applied the three alternative benchmark methodologies that the Commission relied upon in Opinion No. 531—equity risk premium analysis, the Capital Asset Pricing Model (CAPM), and the expected earning analysis—and these methodologies demonstrate that the ROE should be set at or above the middle of the top-end of the DCF zone of reasonableness.³³ Duke Energy Florida asserts that some of the alternative benchmark methodologies are above, and some below, the current 10.8 percent ROE, but that they do not support a finding that Duke Energy Florida's ROE is unjust and unreasonable.³⁴ Duke Energy Florida states that it also performed additional alternative tests to demonstrate that the results of the alternative ROE methodologies are reasonable, including ROEs approved by state regulators, an empirical CAPM, analysis of the Commission's findings for natural gas pipelines, and the application of the DCF model to a select group of low risk non-utility firms.³⁵

³³ *Id.* at 35.

³⁴ *Id.* at 37.

³⁵ *Id.* at 38.

23. Duke Energy Florida requests that, if the Commission does not dismiss the Complaint, the Complaint be consolidated with the 2012 Complaint and 2013 Complaint proceeding to avoid confusion about the effective date of rates, to avoid two hearings that would likely have duplicate evidence, and to avoid prolonging investor uncertainty. Duke Energy Florida states that the Commission has recently consolidated multiple ROE complaints against the same utility, including the 2012 Complaint and 2013 Complaint, because the complaints raised common issues of law and fact.³⁶

B. Complainants' Answer to Answer

24. Complainants state that Commission policy is to permit multiple complaints when a complainant bases the latter complaint on new facts and sought a new refund-effective date.³⁷ Complainants state that the Commission has consistently applied this policy to permit multiple complaints concerning a utility's ROE because ROE is "'particularly volatile' in comparison to other cost of service components."³⁸ Complainants also argue that the Commission has in the past rejected the argument that Duke Energy Florida presents concerning the history of the Regulatory Fairness Act.³⁹ Complainants state that the subsequent complaint need not support a lower ROE than the earlier complaint, because section 206 of the FPA requires only that a complaint demonstrate that the existing rate is unjust and unreasonable. Complainants also state that the 2013 Complaint sought to establish the same ROE as the 2012 Complaint, and the Commission's orders on those two complaints make clear that the Commission permits successive ROE complaints where the complainant submits a new DCF analysis that shows that the existing ROE is unjust and unreasonable.⁴⁰

25. Complainants argue that applying the two-step DCF methodology in this case produces a base ROE of either 8.69 percent or 8.70 percent, depending on whether Portland General is included in the proxy group. Furthermore, Complainants argue that

³⁶ *Id.* at 42 (citing *Mun. Elec. Utility Ass'n of N.Y. v. Niagara Mohawk Power Corp.*, 148 FERC ¶ 61,175, at P 30 (2014); *N.Y. Ass'n of Pub. Power v. Niagara Mohawk Power Corp.*, 148 FERC ¶ 61,176, at P 23 (2014)).

³⁷ Complainants Answer at 3 (citing *Southern Co. Servs., Inc.*, 83 FERC ¶ 61,079, at 61,385-86 (1998)).

³⁸ *Id.* at 3 (quoting *Consumer Advocate Div. of the Pub. Serv. Comm'n of W.V., et al., v. Allegheny Generating Co.*, 67 FERC ¶ 61,288, at 61,998 (1994)).

³⁹ *Id.* at 4 (citing *Southern Co. Servs., Inc.*, 83 FERC at 61,386).

⁴⁰ *Id.* at 5.

the Commission in Opinion No. 531 did not announce a new policy, concerning high-end outliers or the placement of the base ROE within the zone of reasonableness, to be applied axiomatically in all cases, but instead limited its determinations on those issues to the record in that case. Complainants state that the facts underlying this complaint may or may not warrant eliminating high-end outliers or making upward adjustments to the ROE.⁴¹ Complainants state that they believe Duke Energy Florida's testimony is rife with factual errors and analytical flaws that will be explored on the record in due course. Complainants assert that the Complaint makes a *prima facie* case that the existing ROE is unjust and unreasonable and is approximately 200 basis points above what is just and reasonable.⁴²

26. Complainants further state that the 11.21 percent IBES growth rate for Portland General that was posted to *Yahoo! Finance* was erroneous, due to the inclusion of a mistaken growth rate of 20.43 percent that erroneously inflated the average. Complainants state that this error has been revised on the appropriate websites, and that Portland General's IBES growth rate estimate is lower today than during the study period. Complainants state that, with this correction, Portland General's DCF result is 10.45 percent, which gives an overall zone of reasonableness of 6.71 percent to 10.45 percent, with a median of 8.7 percent and an upper half median of 9.15 percent.⁴³

IV. Commission Determination

A. Procedural Matters

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

28. 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.

⁴¹ *Id.* at 6-7.

⁴² *Id.* at 8.

⁴³ *Id.* at 11-13.

B. Substantive Matters

29. 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 Nos. EL12-39-000 and EL13-63-000 for purposes of settlement, hearing, and decision.

30. 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,⁴⁴ we will set the refund effective date at the earliest date possible, i.e., August 12, 2014, as requested.

31. Due to the establishment of multiple refund periods in the consolidated proceeding—the 15-month refund period in the instant proceeding, the 15-month refund period in Docket No. EL12-39-000, and the 15-month refund period in Docket No. EL13-63-000—it is appropriate for the parties to litigate a separate ROE for each refund period. Therefore, for the refund period covered by Docket No. EL12-39-000 (i.e., February 29, 2012 through May 29, 2013), the ROE for that particular 15-month refund period should be based on the most recent financial data available during that period, i.e., the last six months of that period.⁴⁵ For the refund period in Docket No. EL13-16-000 (i.e., May 13, 2013 through August 13, 2014), the ROE for that particular 15-month refund period should be based on the most recent financial data available during that period, i.e., the last six months of that period. For the refund period in the instant docket (i.e., August 12, 2014 through November 12, 2015) and for the prospective period, the ROE should be based on the most recent financial data in the record.⁴⁶

⁴⁴ See, 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).

⁴⁵ See Opinion No. 531, 147 FERC ¶ 61,234 at P 160 (addressing the use of recent financial data to determine the ROE); see also *N.Y. Ass'n of Pub. Power v. Niagara Mohawk Power Corp., et al.*, 148 FERC ¶ 61,176, at P 24 (2014).

⁴⁶ See 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 *(continued ...)*)

32. While Duke Energy Florida raises various arguments as to the propriety of allowing the Complaint, the Commission has previously allowed successive complaints when presented with a new analysis.⁴⁷ In this case, Complainants have submitted a new DCF analysis with new, more current data.

33. 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 December 31, 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 October 31, 2016.

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 FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning this Complaint.

(B) Docket No. EL14-90-000 is hereby consolidated with Docket Nos. EL12-39-000 and EL13-63-000 for purposes of settlement, hearing, and decision. However, the hearing shall be held in abeyance to provide time for settlement judge procedures.

record); *see also N.Y. Ass'n of Pub. Power v. Niagara Mohawk Power Corp.*, 148 FERC ¶ 61,176 at P 24.

⁴⁷ *See Consumer Advocate Div. of the Pub. Serv. Comm'n of W.V. v. Allegheny Generating Co.*, 67 FERC ¶ 61,288, at 62,000 (1994) (*Allegheny Generating*), *order on reh'g*, 68 FERC ¶ 61,207 (1994); *Southern Co. Services, Inc.*, 68 FERC ¶ 61,231 (1994) (*Southern Co.*), *order on reh'g*, 83 FERC ¶ 61,079 (1998); *see also San Diego Gas & Elec. Co. v. Pub. Serv. Co. of New Mexico*, 85 FERC ¶ 61,414 (1998) (*San Diego Gas & Elec.*), *reh'g denied*, 86 FERC ¶ 61,253 (1999), *reh'g denied*, 65 FERC ¶ 61,073 (2001). *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.*).

(C) The settlement judge in Docket Nos. EL12-39-000 and EL13-63-000 shall determine the settlement procedures best suited to accommodate the consolidation ordered herein.

(D) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(E) The refund effective date in Docket No. EL14-90-000, established pursuant to section 206(b) of the FPA, is August 12, 2014.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.