

152 FERC ¶ 61,115
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc.

Docket No. ER15-584-000

ORDER ON COMPLIANCE FILING

(Issued August 7, 2015)

1. On December 5, 2014, ISO New England Inc. (ISO-NE) filed, on behalf of Connecticut Transmission Municipal Electric Energy Cooperative (CTMEEC), pursuant to section 206 of the Federal Power Act (FPA),¹ revisions to the transmission formula rate under Schedule 21-CTMEEC, Attachment B Annual Localized Transmission Revenue Requirement of Section II of the ISO New England Inc. Transmission, Markets and Services Tariff (ISO-NE OATT)² to conform Schedule 21-CTMEEC to the Commission's directives in Opinion No. 531-A.³ In this order, we reject CTMEEC's compliance filing.

I. Background

2. CTMEEC states that, although it is a non-jurisdictional entity, it owns Pool Transmission Facilities (PTF) in New England and is, therefore, a Participating Transmission Owner (PTO) under the terms of the Transmission Operating Agreement between the PTOs and ISO-NE. CTMEEC provides Regional Network Service and Local Network Service under the ISO-NE OATT, and recovers the revenue requirements for its PTF assets under formula rates in the ISO-NE OATT, including those set forth in Schedule 21-CTMEEC. The revenue requirements for Regional Network Service and

¹ 16 U.S.C. § 824e (2012).

² ISO New England Inc., ISO New England Inc. Transmission, Markets and Services Tariff, [Schedule 21 - CTMEEC, Schedule 21 - CTMEEC \(2.0.0\)](#).

³ See *Coakley, Mass. Attorney Gen. v. Bangor Hydro-Elec. Co.*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014).

Local Network Service under the ISO-NE OATT are calculated using the same base ROE. Pursuant to Schedule 21-CTMEEC, CTMEEC charges certain transmission customers a formula rate using an ROE of 12.64 percent, which consists of a base ROE of 11.14 percent plus a 150 basis point transmission incentive ROE adder.

3. On October 16, 2014, the Commission issued Opinion No. 531-A, finding that the 11.14 percent base ROE in the ISO-NE OATT was unjust and unreasonable,⁴ and that 10.57 percent represents a just and reasonable base ROE.⁵ Earlier in that proceeding, in Opinion No. 531, the Commission explained that “when a public utility’s ROE is changed, either under section 205 or section 206 of the FPA, that utility’s total ROE, inclusive of transmission incentive ROE adders, should not exceed the top of the zone of reasonableness produced by the two-step DCF methodology.”⁶ Accordingly, in Opinion No. 531-A, the Commission explained that the total ROE, including incentive ROE adders, for the New England Transmission Owners could not exceed 11.74 percent, i.e., the top of the zone of reasonableness determined in that proceeding.⁷ The Commission therefore directed the New England Transmission Owners to submit revised rates “reflecting a 10.57 percent base ROE and a total or maximum ROE not exceeding 11.74 percent (inclusive of transmission incentive ROE adders).”⁸

4. On November 17, 2014, the New England Transmission Owners submitted a compliance filing to revise the ISO-NE OATT to reflect the ROE changes the Commission directed in Opinion No. 531-A.⁹ On December 5, 2014, ISO-NE submitted, on CTMEEC’s behalf, the instant compliance filing to conform Schedule 21-CTMEEC to the Commission’s directives in Opinion No. 531-A.

⁴ *Id.* P 10, *aff’g*, Opinion No. 531, 147 FERC ¶ 61,234 (2014).

⁵ Opinion No. 531-A, 149 FERC ¶ 61,032 at P 10.

⁶ Opinion No. 531, 147 FERC ¶ 61,234 at P 165.

⁷ Opinion No. 531-A, 149 FERC ¶ 61,032 at P 11 (citing Opinion No. 531, 147 FERC ¶ 61,234 at P 165).

⁸ *Id.* at Ordering Paragraph (B).

⁹ On April 22, 2015, the New England Transmission Owners amended their compliance filing, and the Commission accepted the amended compliance filing on July 8, 2015. *ISO New England Inc.*, Docket No. ER15-414-001 (July 8, 2015) (delegated letter order).

5. The New England Transmission Owners sought rehearing of Opinion Nos. 531 and 531-A, raising, *inter alia*, the issue of whether the Commission's findings in those orders impact the New England Transmission Owners' existing transmission incentive ROE adders and the total ROE, including those ROE adders, that the New England Transmission Owners may earn.¹⁰ On March 3, 2015, the Commission denied rehearing of Opinion Nos. 531 and 531-A.¹¹

II. Summary of CTMEEC's Compliance Filing

6. CTMEEC seeks to revise Attachment CTMEEC-B Annual Localized Transmission Revenue Requirement of Schedule 21-CTMEEC to conform with the Commission's orders in Opinion Nos. 531 and 531-A. CTMEEC states that, while it was not one of the named entities in the complaint underlying the Opinion No. 531 proceeding, "CTMEEC's recovery of its revenue requirements associated with the CTMEEC Transmission Assets is authorized because it is integral to the ISO-NE transmission tariff and recovered as part of the transmission rates administered by ISO-NE, determined to be just and reasonable by the Commission."¹² Therefore, CTMEEC asserts that the change in base ROE as a result of Opinion NO. 531-A also applies to Schedule 21-CTMEEC.¹³

7. CTMEEC's filing changes the reference to base ROE in Schedule 21-CTMEEC to incorporate by reference the ROE "most recently approved by the Commission."¹⁴ CTMEEC also proposes to add the following language to Schedule 21-CTMEEC: "The Localized Incremental Return on Equity will be adjusted accordingly so that the aggregate ROE does not exceed the top of the range for the aggregate allowed ROE set forth by the Commission."¹⁵

¹⁰ See New England Transmission Owners, Request for Rehearing, Docket No. EL11-66-002, at 6-26 (filed July 21, 2014); New England Transmission Owners, Request for Rehearing, Docket No. EL11-66-003, at 6-26 (filed Nov. 17, 2014).

¹¹ Opinion No. 531-B, 150 FERC ¶ 61,165 (2015).

¹² CTMEEC Transmittal at 3.

¹³ *Id.* at 4.

¹⁴ ISO-NE, ISO New England Inc. Transmission, Markets and Services Tariff, Schedule 21-CTMEEC, Schedule 21-CTMEEC (2.0.0), at § II.A.2.a(ii).

¹⁵ *Id.*

III. Notice of Filing and Responsive Pleadings

8. Notice of the filing was published in the *Federal Register*, 79 Fed. Reg. 74,080 (2014), with interventions and protests due on or before December 26, 2014.

9. No comments or protests were filed.

IV. Commission Determination

10. We reject CTMEEC's compliance filing. We find that the following language does not comply with the Commission's directives in Opinion No. 531-A, or the Commission's policy on transmission incentive ROE adders: "The Localized Incremental Return on Equity will be adjusted accordingly so that the aggregate ROE does not exceed the top of the range for the aggregate allowed ROE set forth by the Commission."¹⁶ This tariff language concerning the "aggregate ROE" would allow CTMEEC to average the ROE earned on its facilities under Schedule 21-CTMEEC, which would allow CTMEEC to earn an equity return on certain assets, for which incentive ROE adders have been granted, at a level that exceeds the zone of reasonableness produced by the DCF methodology—i.e., a return above the level that has been shown to be just and reasonable.¹⁷ Such an outcome is inconsistent with the Commission's policy on transmission incentive ROE adders and the total ROE that a utility is allowed to earn on a particular transmission asset.¹⁸ The Commission in

¹⁶ *Id.* We note that the Commission has also rejected an FPA section 205 filing, submitted by New England Power Co. as a result of Opinion Nos. 531 and 531-A, based on the presence of tariff language that raises the same issues as the tariff language in CTMEEC's instant filing. *See New England Power Co.*, 151 FERC ¶ 61,028 (2015).

¹⁷ *See New England Power Co.*, 151 FERC ¶ 61,028 at P 13.

¹⁸ *See Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at PP 2, 93 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 15, *order on reh'g*, 119 FERC ¶ 61,062 (2007); *see also, e.g.*, Opinion No. 531, 147 FERC ¶ 61,234 at P 165, *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 at P 11, *order on reh'g*, Opinion No. 531-B, 150 FERC ¶ 61,165 at PP 145-146; *Pac. Gas & Elec. Co.*, 141 FERC ¶ 61,168 (2012); *Trans Bay Cable LLC*, 145 FERC ¶ 61,151 (2013); *Atl. Path 15, LLC*, 135 FERC ¶ 61,037 (2011); *Town of Norwood, Mass. v. FERC*, 80 F.3d 526, 534-35 (D.C. Cir. 1996) (supporting the principle that ROE should be cabined within the bounds of the zone of reasonableness, by reversing a Commission decision to set ROE at the bottom of the zone of reasonableness that was established in the utility's prior rate case and explaining that the Commission cannot rely on a zone of reasonableness established in a prior rate case if the utility's circumstances have since changed).

Opinion No. 531-B explicitly rejected the New England Transmission Owners' argument that a utility can earn a project-specific ROE above the zone of reasonableness as long as the utility's entire ROE, inclusive of all transmission assets, falls within the utility's zone of reasonableness.¹⁹ In addition, CTMEEC's tariff language concerning the "aggregate ROE" appears to rely on the same interpretation of the term "total ROE" that the Commission rejected in response to the New England Transmission Owners' arguments on rehearing in the Opinion No. 531 proceeding.²⁰ As the Commission explained in Opinion No. 531-B and again in an order addressing an FPA section 205 filing that New England Power Co. submitted as a result of the Opinion No. 531 proceeding, the practical effect of this interpretation results in incentive ROE adders applying to facilities to which the Commission has not granted the adders.²¹ We, therefore, require CTMEEC to submit a revised compliance filing within 30 days of the date of this order with tariff provisions ensuring that CTMEEC does not recover an equity return of more than 11.74 percent, i.e., the top of the zone of reasonableness determined in the Opinion No. 531 proceeding, on any transmission asset and that each incentive ROE adder granted to CTMEEC applies only to the facility or facilities for which it was granted.

The Commission orders:

(A) CTMEEC's tariff revisions are hereby rejected, as discussed in the body of this order.

(B) CTMEEC is hereby directed to submit a revised compliance filing within thirty (30) days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁹ Opinion No. 531-B, 150 FERC ¶ 61,165 at P 145.

²⁰ *Id.* PP 145-146.

²¹ *Id.* P 146; *New England Power Co.*, 151 FERC ¶ 61,028 at PP 13-15.