

154 FERC ¶ 61,230  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England, Inc. Participating  
Transmission Owners Administrative Committee  
Emera Maine  
Town of Braintree Electric Light Department  
NSTAR Electric Company  
Chicopee Electric Light Department  
Central Maine Power Company  
Maine Electric Power Company (MEPCO)  
Connecticut Municipal Electric Energy Cooperative &  
Connecticut Transmission Municipal Electric Energy  
Cooperative  
The City of Holyoke Gas and Electric Department  
New Hampshire Transmission, LLC  
Green Mountain Power Corporation  
Massachusetts Municipal Wholesale Electric Company  
New England Power Company  
New Hampshire Electric Cooperative, Inc.  
The Connecticut Light and Power Company, Western  
Massachusetts Electric Company, and Public Service  
Company of New Hampshire  
Town of Hudson Light and Power Department  
Town of Middleborough Gas & Electric Department  
Town of Norwood Municipal Light Department  
Town of Reading Municipal Light Department  
Town of Wallingford (CT) Electric Division  
Taunton Municipal Lighting Plant  
The United Illuminating Company  
Unitil Energy Systems, Inc. and Fitchburg Gas and  
Electric Light Company  
Vermont Electric Cooperative, Inc.  
Vermont Electric Power Company, Inc. and  
Vermont Transco, LLC  
Vermont Public Power Supply Authority  
Shrewsbury Electric and Cable Operations

Docket No. EL16-19-001

## ORDER DENYING REHEARING

(Issued March 22, 2016)

**I. Background**

1. In an order issued on December 28, 2015, the Commission, pursuant to section 206 of the Federal Power Act (FPA),<sup>1</sup> found that ISO-New England's (ISO-NE) Transmission, Markets, and Services Tariff (ISO-NE Tariff) is unjust and unreasonable because it lacks adequate transparency and challenge procedures with regard to the formula rates for ISO-NE Participating Transmission Owners.<sup>2</sup> In addition, the Commission found that the Participating Transmission Owners' Regional Network Service (RNS) and Local Network Service (LNS) formula rates appear to be unjust or unreasonable because they lack sufficient detail to determine how certain costs are derived and recovered.<sup>3</sup> Accordingly, the Commission set the justness and reasonableness of the formula rates and the development of formula rate protocols for the RNS and LNS formula rates for a trial-type evidentiary hearing, held the hearing in abeyance and established settlement judge procedures.<sup>4</sup> In addition, the Commission established the earliest possible refund effective date, i.e., the date that notice of the section 206 investigation was published in the Federal Register.<sup>5</sup>

2. In its January 27, 2016 request for rehearing, Vermont Electric Cooperative, Inc. (VEC) asserts that the Commission erred in establishing an investigation and setting a refund effective date under section 206 of the FPA as to VEC because it is an electric cooperative that sells less than 4,000,000 MWh annually and is thus generally exempt from the provisions of Part II of the FPA by virtue of section 201(f) of the Act.<sup>6</sup> VEC

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<sup>1</sup> 16 U.S.C. § 824e (2012).

<sup>2</sup> *ISO-New England, Inc. Participating Transmission Owners Administrative Committee*, 153 FERC ¶ 61, at 343, PP 1, 6-7 (2015) (December 28 Order).

<sup>3</sup> *Id.* at PP 8-10. For an overview of how ISO-NE Participating Transmission Owners recover their transmission revenue requirements through regional and local formula rates, *see* December 28 Order, 153 FERC ¶ 61,343 at PP 2-3.

<sup>4</sup> December 28 Order, 153 FERC ¶ 61,343 at P 11.

<sup>5</sup> *Id.* P 12.

<sup>6</sup> *See* Rehearing Request at 6 (citing 16 U.S.C. § 201(f) (2012), and VEC May 5, 2006 letter to Commission, amended June 26, 2006, Docket Nos. ER06-959-000/001); *see also id.* at 1, 3, 9-11, 15.

argues that the Commission lacks authority to examine VEC's LNS rates because they are not "passed through" the jurisdictional RNS rate administered or charged by ISO-NE.<sup>7</sup> VEC therefore asks the Commission to specifically exclude VEC's LNS rates from the scope of the section 206 investigation.<sup>8</sup> As discussed below, we deny rehearing.

## II. Discussion

3. We agree with VEC that, as a general matter, pursuant to section 201(f) of the FPA, an exempt utility such as VEC is exempt from most provisions of Part II of the FPA, including sections 205 and 206.<sup>9</sup> However, the Commission has authority pursuant to section 206 of the FPA to examine "any rule, regulation, practice, or contract affecting" the rates or charges of a public utility, including ISO-NE's RNS rate.<sup>10</sup> Thus, the Commission can review VEC's LNS rates to the extent that these rates affect ISO-NE's Commission-jurisdictional RNS rate, for the purpose of ensuring that Commission-jurisdictional rates are just and reasonable.<sup>11</sup> VEC acknowledges, in fact, that the Commission has authority to "review the inclusion of the costs of non-jurisdictional entities['] facilities in ISO-NE RNS rates which are included in the formula rate of ISO-

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<sup>7</sup> *Id.* at 1, 3-4, 11-15.

<sup>8</sup> On February 3, 2016, Braintree Electric Light Department, Chicopee Electric Light Department, Middleborough Gas and Electric Department, Norwood Light and Broadband Department, Reading Municipal Light Department, Taunton Municipal Light Department, and Town of Wallingford Lighting Plant jointly filed a motion to intervene, which is appropriately addressed by the presiding officer in this proceeding. 18 C.F.R. § 385.504(b)(12) (2015).

<sup>9</sup> *Transmission Agency of Northern Cal. v. FERC*, 495 F.3d 663, 674 (D.C. Cir. 2007) ("The implication of this exemption is clear: subsections of subchapter II do not apply to [section 201(f) entities] unless a provision expressly provides FERC with such authority.") (*TANC*).

<sup>10</sup> 16 U.S.C. § 824e.

<sup>11</sup> *See, e.g., Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1114 (D.C. Cir. 2002) (stating that "FERC may analyze and consider the rates of non-jurisdictional utilities to the extent that those rates affect jurisdictional transactions") (citing *S.C. Pub. Serv. Auth.*, 75 FERC ¶ 61,209, at 61,696 & n.7 (1996); *Pub. Utils. Comm'n v. FERC*, 660 F.2d 821, 826 (D.C. Cir. 1981)); *TANC*, 495 F.3d. at 672 (upholding FERC's evaluation of each component of non-jurisdictional entity's transmission revenue requirement under the FPA section 205 just and reasonable standard to ensure that CAISO's rate is just and reasonable).

NE, billed to and collected from transmission customers by the ISO-NE, and then disbursed to [Participating Transmission Owners].”<sup>12</sup>

4. Nevertheless, VEC objects to the examination of its LNS rates. VEC explains that it separately maintains its LNS rates and, while included as a schedule to the ISO-NE Tariff, they are not “passed through” the RNS rate.<sup>13</sup> VEC asserts that Commission precedent distinguishes between an exempt utility’s rates that are “passed through” a public utility’s rate design from those that are not. VEC contends that the Commission lacks jurisdiction to examine an exempt utility’s rates that are *not* passed through a jurisdictional rate.<sup>14</sup>

5. We disagree with VEC’s contention that the Commission cannot examine an exempt utility’s rate unless it is “passed through” a jurisdictional rate. The language of section 206 – “any rule, regulation, practice ... affecting [a jurisdictional] rate” – is not limited to situations in which those rates are “passed through” the rates of a jurisdictional entity.<sup>15</sup>

6. Indeed, in the December 28 Order, the Commission expressed concern about the timing and synchronization between the RNS and LNS formula rates. To this end, the Commission required ISO-NE’s Participating Transmission Owners to provide information on how the rates interact in order to ensure that the transmission owners are not recovering the same costs through both the LNS and RNS rates.<sup>16</sup> A mismatch in the

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<sup>12</sup> Rehearing Request at 3; *see also id.* at 14. ISO-NE administers the RNS rate, which is a single rate calculated annually based on the Participating Transmission Owners’ costs of providing service over pool transmission facilities. *See* ISO-NE Tariff, Attachment F.

<sup>13</sup> Rehearing Request at 15; *see also id.* at 1-2. While LNS rates are part of the ISO-NE Tariff, each individual Participating Transmission Owner maintains its own LNS rates. In VEC’s case, as for most Participating Transmission Owners, the RNS is subtracted from the LNS rate as a credit to the Participating Transmission Owner’s overall revenue requirement. *See* Schedule 21-VEC, Schedule 8 at 21-23, Schedule 9 at 28-30, Schedule 10 at 32-34.

<sup>14</sup> *Id.* at 12-14 (citing *East Kentucky Power Coop., Inc.*, 144 FERC ¶ 61,063, at P 23 (2013) (*East Kentucky*); *Town of Edinburgh, Indiana v. Indiana Mun. Power Agency*, 132 FERC ¶ 61,102, at P 26 (2010) (*IMPA*)).

<sup>15</sup> *See FERC v. Elec. Power Supply Ass’n*, 136 S. Ct. 760, 774 (2016) (approving “common-sense construction” of section 206 that extends FERC’s “‘affecting’ jurisdiction to rules or practices that ‘directly affect the [wholesale] rate’”).

<sup>16</sup> December 28 Order, 153 FERC ¶ 61,343 at PP 6-7.

timing of true-ups, cost allocation, or methodology for calculating the RNS rate and LNS rates could result in overcharging customers under the RNS rate.<sup>17</sup> The general lack of transparency and formal challenge procedures in the RNS and most LNS formula rates exacerbates these potential problems. A Participating Transmission Owner, whether a public utility or an exempt utility such as VEC, may have an incentive to recover costs through the single RNS rate charged to all ISO-NE customers, in order to lower its costs to the customers charged under its LNS rates. It is difficult to assess the impact that the rates have on each other without examining the RNS rate and all LNS rates, including that of VEC, together.<sup>18</sup> Thus, notwithstanding VEC's exempt utility status, the Commission can examine VEC's LNS rates to the extent they affect the RNS rate, for the purpose of ensuring that Commission-jurisdictional rates are just and reasonable.

7. The cases VEC cites to support its contention that the Commission can only examine exempt utility rates that are, in turn, passed through a jurisdictional rate, do not warrant a different conclusion. Neither *IMPA* nor *East Kentucky* involved a jurisdictional public utility's rates, terms or conditions.<sup>19</sup> Therefore, the exempt utility's rates, terms or conditions at issue in those proceedings did not involve, nor could they have "affected," a

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<sup>17</sup> The RNS rate is calculated on a largely historical and, to some degree, forecasted basis, whereas LNS rates are calculated on either a historical, current, or projected basis, depending on the Participating Transmission Owner's respective Schedule 21. *Id.* P 2. This, as well as differences in the timing of annual true-ups between the RNS and various LNS rates, could lead to double recovery.

<sup>18</sup> The Commission has authority to determine the extent of its jurisdiction via this section 206 investigation. *See, e.g., N. Am. Elec. Reliability Corp.*, 129 FERC ¶ 61,033, at P 31 & n.28 (2009), *reh'g rejected*, 130 FERC ¶ 61,002, at 61,001 & n.16 (2010) (citations omitted); *Western Mass. Elec. Co.*, 61 FERC ¶ 61,182, at 61,661 & n.12 (1992), *aff'd* 165 F.3d 922, 926 (1999) (citations omitted). *See also FPC v. SoCal. Edison*, 376 U.S. 206, 210 n.6 (1964) (citations omitted).

<sup>19</sup> *IMPA* involved a complaint challenging an exempt utility's rates under a grandfathered agreement in which the complainant did not name Midcontinent Independent System Operator, Inc.; *East Kentucky* involved the provision of ancillary services by an exempt utility, and not PJM Interconnection, L.L.C., via bilateral contract.

jurisdictional rate.<sup>20</sup> In contrast, the investigation in this proceeding involves a jurisdictional public utility's rate — ISO-NE's RNS rate — and how all LNS rates, including VEC's LNS rates, affect the jurisdictional RNS rate.

8. Additionally, VEC states that ISO-NE has no section 205 filing rights with respect to VEC's LNS rates and that “[a]bsent section 205 rights, there are no section 206 rights that can be invoked against ISO-NE to review, and potentially change, a non-jurisdictional rate that it does not administer.”<sup>21</sup> The scope of ISO-NE's rights under section 205 of the FPA, however, does not bear upon the Commission's authority under section 206.

9. Finally, as to VEC's assertion that the Commission erred by establishing a refund effective date for VEC because it is an exempt utility, unless and until refunds are ordered, it is premature for the Commission to opine on a particular entity's responsibility for such refunds.

The Commission orders:

Rehearing is denied, consistent with the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>20</sup> We recognize that, in *IMPA*, the Commission stated that it may review exempt utility rates and charges but “*only* as a function of determining that the pass through of such rates or charges has not caused jurisdictional rates to become unjust, unreasonable, or unduly discriminatory or preferential.” 132 FERC ¶ 61,102 at P 23 (emphasis added). That phrasing was a consequence of the facts of the *IMPA* proceeding and was not intended to definitely describe the scope of the Commission's jurisdiction under section 206 of the FPA. As noted above, section 206 vests the Commission with jurisdiction over rules or practices that directly affect the [wholesale] rate. *EPISA*, 136 S. Ct. at 774.

<sup>21</sup> Rehearing Request at 14-15.