

151 FERC ¶ 61,028
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.

New England Power Company

Docket No. ER15-418-001

ORDER ON TARIFF REVISIONS

(Issued April 16, 2015)

1. On November 17, 2014, as amended on February 18, 2015, New England Power Company (New England Power) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ revisions to the return on equity (ROE) components of its formula rates for integrated facilities service under Schedule III-B of New England Power's Tariffs, Rate Schedules, and Agreements (Tariff No. 1).² In this order, we reject New England Power's tariff revisions.

I. Background

2. New England Power operates its transmission facilities and those of its New England affiliates as a single integrated system. Under Schedule III-B of Tariff No. 1, New England Power compensates its distribution affiliates, Massachusetts Electric Co. (Mass Electric) and Narragansett Electric Co. (Narragansett), for the use of their respective transmission facilities.³ Tariff No. 1 requires that, if the Commission modifies the ROEs applicable to transmission assets under the ISO New England Open Access Transmission Tariff (ISO-NE OATT), New England Power must file, pursuant to FPA section 205, tariff revisions to apply the ROEs reflected in the ISO-NE OATT to the calculation of the Transmission Revenue Requirement in Tariff No. 1.⁴

¹ 16 U.S.C. § 824d (2012).

² New England Power Co., Tariffs, Rate Schedules, Agreements, [Schedule III-B, Schedule III-B \(2.0.0\)](#).

³ *Id.* at Schedule III-B (0.0.0).

⁴ *Id.*

3. On October 16, 2014, the Commission issued Opinion No. 531-A, finding that the New England Transmission Owners’⁵ 11.14 percent base ROE in the ISO-NE OATT was unjust and unreasonable,⁶ and that 10.57 percent represents a just and reasonable base ROE.⁷ Earlier in that proceeding, in Opinion No. 531, the Commission stated 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.”⁸ 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.⁹ Accordingly, the Commission 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).”¹⁰

4. On November 17, 2014, the New England Transmission Owners submitted revisions to the ISO-NE OATT to reflect the ROE changes the Commission directed in Opinion No. 531-A.¹¹ Also on November 17, 2014, New England Power submitted the

⁵ The New England Transmission Owners include: Emera Maine (formerly Bangor Hydro-Electric Co.); Central Maine Power Co.; New England Power Co.; New Hampshire Transmission LLC; The Connecticut Light and Power Co.; NSTAR Electric Co.; Western Massachusetts Electric Co.; Public Service Co. of New Hampshire; The United Illuminating Company; Unitil Energy Systems, Inc., and Fitchburg Gas and Electric Light Company; and Vermont Transco LLC.

⁶ *Coakley, Mass. Attorney Gen. v. Bangor Hydro-Elec. Co.*, Opinion No. 531-A, 149 FERC ¶ 61,032, at P 10, *aff’g*, Opinion No. 531, 147 FERC ¶ 61,234 (2014).

⁷ Opinion No. 531-A, 149 FERC ¶ 61,032 at P 10.

⁸ Opinion No. 531, 147 FERC ¶ 61,234 at P 165.

⁹ Opinion No. 531-A, 149 FERC ¶ 61,032 at P 11 (citing Opinion No. 531, 147 FERC ¶ 61,234 at P 165).

¹⁰ *Id.* at Ordering Paragraph (B).

¹¹ *See* ISO New England, Inc., Compliance Filing, Docket No. ER15-414-000 (filed Nov. 17, 2014). On March 31, 2015, the New England Transmission Owners filed a motion requesting that the Commission delay action on their November 17, 2014 compliance filing to allow them time to amend their compliance filing to reflect the Commission’s determination in Opinion No. 531-B, 150 FERC ¶ 61,165 (2015).

filing at issue here, as required by Schedule III-B of Tariff No. 1, to apply the ROE changes in the ISO-NE OATT to Tariff No. 1. On January 15, 2015, Commission staff issued a deficiency letter requiring New England Power to provide data for 2013, rather than 2012, and to clarify whether the data in New England Power's filing reflects the Commission's directives in Opinion No. 531-A.¹² On February 18, 2015, New England Power submitted a response to the deficiency letter.

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.¹³ On March 3, 2015, the Commission denied rehearing of Opinion Nos. 531 and 531-A.¹⁴

II. Summary of New England Power's Tariff Filing

6. New England Power seeks to modify the ROE components of Tariff No. 1 "so that the ROE applicable to Tariff No. 1 integrated facilities will be identical to those ordered by the Commission under Opinion Nos. 531 and 531-A."¹⁵ New England Power further states that, to comply with the Commission's directive that the New England Transmission Owners' "total or maximum ROE, including transmission incentive ROE adders, cannot exceed 11.74 percent,"¹⁶ New England Power has revised the Annual True-Up Adjustment in Section L of Schedule III-B to include the following language:

. . . the Annual True-up shall also include a calculation of Customer's ROE, inclusive of transmission incentive ROE adders (such calculation to include the total ROE to be earned in the applicable year by Customer for all FERC jurisdictional transmission service) and in any year in which a Customer's total ROE exceeded 11.74%, the ROE incentives to be earned by the

¹² New England Power Co., Docket No. ER15-418-000 (Jan. 15, 2015) (deficiency letter).

¹³ 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).

¹⁴ Opinion No. 531-B, 150 FERC ¶ 61,165.

¹⁵ New England Power Transmittal at 2.

¹⁶ *Id.* at 2 (quoting Opinion No. 531-A, 149 FERC ¶ 61,032 at P 11).

Customer shall be reduced so that the Customer's total ROE equals 11.74 percent.¹⁷

New England Power states that this language provides for an annual true-up of Mass Electric's and Narragansett's ROE each year and "a reduction to any ROE incentives to the extent necessary to ensure that the total ROE does not exceed 11.74 percent."¹⁸

7. New England Power states that the overall effect of its tariff revisions is a rate decrease of approximately \$2.2 million, or "about a 2.5% reduction to total integrated facilities credits under Tariff No. 1 during the 2012 calendar year test period."¹⁹ New England Power states that the calendar year 2012 data included in its filing does not reflect the implementation of the Commission's directives in Ordering Paragraphs (A) and (C) of Opinion No. 531-A because those directives reset the ROE for Regional Network Service and Local Network Service rates under the ISO-NE OATT and ordered refunds for those rates for the period October 1, 2011 through December 31, 2012.²⁰ New England Power states that Tariff No. 1 was not part of the ISO-NE OATT and the calculation of revenue requirements under Tariff No. 1 was not at issue in the Opinion No. 531 proceeding.²¹ Therefore, New England Power states that the calendar year 2012 data provided in the filing is "intended to reflect implementation of Section 2(a)(iii) of Tariff No. 1 and to provide an estimate of the decrease in revenues, prospectively, as of the requested effective date of October 16, 2014, that will result from the change in ROEs requested."²² New England Power states that, although it did not have the 2013 Form No. 1 data for Mass Electric and Narragansett when it submitted its original filing in this proceeding, that data is available to provide in response to the Commission's deficiency letter.²³ Using the calendar year 2013 data, New England Power calculates the decrease in revenues associated with its tariff revisions to be \$2,297,186.²⁴

¹⁷ *Id.* at 2-3.

¹⁸ *Id.* at 3.

¹⁹ *Id.*

²⁰ New England Power Response to January 15 Letter at 4.

²¹ *Id.*

²² *Id.* at 5.

²³ *Id.*

²⁴ New England Power Response to January 15 Letter at Ex. NEP-7, 1.

8. New England Power requests waiver of the Commission's 60-day notice requirement to allow the tariff changes to become effective October 16, 2014.²⁵ New England Power also requests waiver of the Commission's Period I test period requirements to allow New England Power to use calendar year 2012 data, rather than calendar year 2013 data, to calculate the estimated decrease in revenues resulting from New England Power's tariff revisions.²⁶

III. Notice of Filing and Responsive Pleadings

9. Notice of the filing was published in the *Federal Register*, 79 Fed. Reg. 70,174 (2014), with interventions and protests due on or before December 8, 2014. Notice of New England Power's deficiency letter response was published in the *Federal Register*, 80 Fed. Reg. 10,472 (2015), with interventions and protests due on or before March 11, 2015. Northeast Utilities Service Co. filed a timely motion to intervene.

10. No comments or protests were filed.

IV. Commission Determination

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the Northeast Utilities Service Co.'s timely, unopposed motion to intervene serves to make Northeast Utilities Service Co. a party to this proceeding.

B. Substantive Matters

12. We reject New England Power's tariff revisions. New England Power's compliance filing is inconsistent with the Commission's policy on the capping of incentive ROE adders and the Commission's directive in Opinion No. 531-A, on which the related ROE changes in the ISO-NE OATT will be based. New England Power's tariff revisions contain the following language, which we find problematic:

. . . the Annual True-up shall also include a calculation of Customer's ROE, inclusive of transmission incentive ROE adders (such calculation to include the total ROE to be earned in the applicable year by Customer for all FERC jurisdictional transmission service) and in any year in which a Customer's total ROE exceeded 11.74%, the ROE incentives to be earned by the

²⁵ New England Power Transmittal at 3.

²⁶ *Id.*

Customer shall be reduced so that the Customer's total ROE equals 11.74 percent.²⁷

13. The above tariff language would allow New England Power to average the equity returns of various transmission assets in its portfolio for purposes of applying the 11.74 percent cap on its incentive ROE adders. This would allow New England Power 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 discounted cash flow methodology—i.e., a return above the level that has been shown to be just and reasonable. Such an outcome is inconsistent with the Commission's longstanding policy on transmission incentive ROE adders and the total ROE that a utility is allowed to earn on a particular transmission asset.²⁸ The Commission reiterated this policy in the Opinion No. 531 proceeding, and specifically applied it to the New England Transmission Owners' ROE.²⁹ The New England Transmission Owners requested rehearing on the application of that policy to their ROE, and the Commission in Opinion No. 531-B denied their request.³⁰ New England Power's tariff language in the instant filing relies on the same interpretation of the term "total ROE" that the New England Transmission Owners presented on rehearing in the Opinion No. 531 proceeding.³¹ The

²⁷ New England Power Transmittal at 2-3.

²⁸ See *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 2, 93, *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., 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).

²⁹ See Opinion No. 531, 147 FERC ¶ 61,234 at PP 161-165, *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 139-146.

³⁰ Opinion No. 531-B, 150 FERC ¶ 61,165 at PP 145-146.

³¹ See *Id.*

Commission rejected that interpretation in Opinion No. 531-B, and we do so here for the same reasons.³²

14. As the Commission explained in Opinion No. 531-B, the term “total ROE” has the same meaning in the context of ROEs that apply to specific projects and in the context of ROEs that apply to multiple utility assets.³³ The Commission further explained that, when it grants an incentive ROE, the “total ROE, i.e., the base ROE plus any incentive adders, *for the transmission assets to which the adder applies* is capped at the top of the zone of reasonableness.”³⁴ The Commission stated that “[t]his is appropriate because all incentives ultimately must be evaluated according to the same methodology, i.e., they must be evaluated against a zone of reasonableness above which the record does not support the total ROE including any incentive ROE adders as just and reasonable.”³⁵

15. The Commission in 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. The Commission explained that such an argument “is inconsistent with the Commission’s precedent on project-specific ROE incentives, in which the Commission has held that the utility’s total ROE for the project cannot exceed the zone of reasonableness.”³⁶ The Commission further stated that the practical effect of the New England Transmission Owners’ argument “appears to result in incentive ROE adders applying to facilities to which the Commission has not granted the adders.”³⁷ The tariff revisions that New England Power submitted in the instant filing would produce that very result. We, therefore, reject New England Power’s compliance filing. We expect New England Power to submit another tariff filing to conform the ROE components of Schedule III-B of Tariff No. 1 to the ISO-NE OATT.³⁸

³² *Id.*

³³ *Id.* at 145 (internal citations omitted).

³⁴ *Id.* (emphasis added).

³⁵ *Id.*

³⁶ *Id.* at 146 (citing, *e.g.*, *Pepco Holdings, Inc.*, 125 FERC ¶ 61,130, at PP 75-79, 91-94 (2008)).

³⁷ *Id.*

³⁸ *See* New England Power Co., Tariffs, Rate Schedules, Agreements, Schedule III-B, Schedule III-B (0.0.0).

16. Finally, because New England Power's calendar year 2013 data is available, and New England Power has provided that data to the Commission, we deny New England Power's request for waiver of the Commission's Period I test period requirements.

The Commission orders:

New England Power's tariff filing is hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.