

155 FERC ¶ 61,048  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

North Carolina Electric Membership Corporation  
North Carolina Municipal Power Agency Number 1  
Piedmont Municipal Power Agency  
City of Concord, North Carolina  
City of Kings Mountain, North Carolina

Docket Nos. EL16-29-000

v.

Duke Energy Carolinas, LLC

North Carolina Electric Membership Corporation  
North Carolina Eastern Municipal Power Agency  
Fayetteville Public Works Commission

EL16-30-000

v.

Duke Energy Progress, LLC

ORDER ON COMPLAINTS, ESTABLISHING CONSOLIDATED HEARING AND  
SETTLEMENT JUDGE PROCEDURES

(Issued April 21, 2016)

1. On January 7, 2016, pursuant to sections 206, 306 and 309 of the Federal Power Act (FPA)<sup>1</sup> and Rules 206 and 212 of the Commission's Rules of Practice and

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<sup>1</sup> 16 U.S.C. §§ 824e, 825e, 825h (2012).

Procedure,<sup>2</sup> two overlapping groups of Complainants filed complaints against Duke Energy Carolinas, LLC (Duke Carolinas) in Docket No. EL16-29-000 (Duke Carolinas Complainants)<sup>3</sup> and Duke Energy Progress, LLC (Duke Progress) in Docket No. EL16-30-000 (Duke Progress Complainants)<sup>4</sup> (together, Complainants).

2. The Duke Carolinas Complainants contend that the current 10.2 percent base return on equity (ROE) in Duke Carolinas' Open Access Transmission Tariff (OATT) substantially exceeds Duke Carolinas' current cost of equity, is no longer just and reasonable, and should be set no higher than 8.49 percent (a reduction of 171 basis points). The Duke Progress Complainants likewise contend that the current 10.8 percent base ROE in Duke Progress' OATT substantially exceeds Duke Progress' current cost of equity, is no longer just and reasonable, and should be set no higher than 8.49 percent (a reduction of 231 basis points). Complainants request that the Commission set both Complaints for consolidated hearing and order refunds, with interest calculated pursuant to Section 35.19a of the Commission's regulations,<sup>5</sup> effective January 7, 2016, the Complaint's filing date.<sup>6</sup>

3. In this order, we establish hearing and settlement judge procedures, consolidate the dockets for purposes of settlement, hearing and decision, and set a refund effective date of January 7, 2016.

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<sup>2</sup> 18 C.F.R. §§ 385.206, 385.212 (2015).

<sup>3</sup> Complainants in Docket No. EL16-29-000 include North Carolina Electric Membership Corporation, North Carolina Municipal Power Agency Number 1, Piedmont Municipal Power Agency, City of Concord, North Carolina and City of Kings Mountain, North Carolina.

<sup>4</sup> Complainants in Docket No. EL16-30-000 include North Carolina Electric Membership Corporation, North Carolina Eastern Municipal Power Agency 1 and Fayetteville Public Works Commission.

<sup>5</sup> 18 C.F.R. § 35.19a (2015).

<sup>6</sup> Duke Carolinas Complaint at 2, 27; Duke Progress Complaint at 2, 26.

## **Background**

4. On December 21, 2011, the Commission accepted a settlement agreement between Duke Carolinas and its customers<sup>7</sup> that set Duke Carolinas' current OATT ROE at 10.2 percent.<sup>8</sup> On June 27, 2008, the Commission accepted a settlement agreement between Duke Progress' predecessor and its customers<sup>9</sup> that set Duke Progress' current OATT ROE at 10.8 percent.<sup>10</sup>

5. On June 19, 2014, the Commission issued Opinion No. 531. In Opinion No. 531, the Commission changed the way it applied the discounted cash flow (DCF) methodology in public utility rate cases, by adopting a two-step DCF methodology in place of the one-step DCF methodology the Commission had historically used for public utilities.<sup>11</sup> The Commission explained that the two-step DCF formula, or  $k = \frac{D}{P} + g$ , estimates the cost of equity using the inputs: (1) "D/P," the dividend yield, using a single, average dividend yield based on the indicated dividend and the average monthly high and low stock prices over a six-month period; and (2) "g," the constant dividend growth rate, by averaging short-term and long-term growth estimates, giving the short-term estimate two-thirds weight and the long-term estimate, one-third weight.<sup>12</sup>

6. In Opinion No. 531's two-step DCF analysis, the Commission used a national proxy group of companies comparable in risk to the New England Transmission Owners

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<sup>7</sup> *Duke Energy Carolinas, LLC*, Docket Nos. ER11-2895-002 and ER11-2895-003, Letter Order (Dec. 21, 2011).

<sup>8</sup> *Duke Energy Carolinas, LLC*, Docket No. ER11-2895-000, Transmittal at 7-10 (filed Feb. 16, 2011).

<sup>9</sup> *Carolina Power and Light Co.*, Docket No. ER08-889-000, Letter Order (June. 27, 2008).

<sup>10</sup> *Carolina Power and Light Co.*, Docket No. ER08-889-000 (Transmittal at 8 (filed Apr. 30, 2008).

<sup>11</sup> See generally *Martha Coakley, Mass. Attorney Gen. v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014) (Opinion No. 531), *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (Opinion No. 531-A), *order on reh'g*, Opinion No. 531-B, 150 FERC ¶ 61,165 (2015) (Opinion No. 531-B).

<sup>12</sup> Opinion No. 531, 147 FERC ¶ 61,234 at PP 15, 17, 39.

(NETOs),<sup>13</sup> and applied the resulting base ROE to both the refund period and the prospective period.<sup>14</sup> Because the parties had not litigated one of the two-step DCF methodology's inputs -- i.e., the appropriate long-term growth projection -- the Commission instituted a paper hearing on that narrow issue.<sup>15</sup> The Commission then concluded, based on record evidence of unusual capital market conditions, that mechanically applying the DCF methodology and placing the NETOs' base ROE at the midpoint of the zone of reasonableness would not satisfy the requirements of *Hope* and *Bluefield*.<sup>16</sup> Therefore, based on the record evidence in the proceeding, the Commission placed the NETOs' base ROE halfway between the midpoint of the zone of reasonableness and the top of that zone.<sup>17</sup> However, the Commission reiterated that its finding on the specific numerical just and reasonable ROE for the NETOs would be subject to the outcome of the paper hearing on the appropriate long-term growth projection.<sup>18</sup> Finally, the Commission explained that, under Commission precedent, "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."<sup>19</sup>

## **I. Complaints**

7. Complainants contend that Duke Carolinas' 10.2 percent base ROE and Duke Progress' 10.8 percent ROE are no longer just and reasonable, and that as a result, transmission customers are overcompensating Duke Carolinas by approximately \$20.5 million annually, and Duke Progress, by approximately \$21.8 million annually.<sup>20</sup>

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<sup>13</sup> *Id.* P 96.

<sup>14</sup> *Id.* PP 64-69.

<sup>15</sup> *Id.* PP 8, 10, 43, 125, 142, 153-154.

<sup>16</sup> *Id.* P 142 (citing *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679 (1923) (*Bluefield*); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (*Hope*)).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* P 165.

<sup>20</sup> Duke Carolinas Complaint at 9; Duke Progress Complaint at 8.

According to Complainants, the Commission should set both ROEs no higher than 8.49 percent.<sup>21</sup>

8. To support their claim that the current base ROEs are no longer just and reasonable, Complainants filed the testimony and exhibits of J. Bertram Solomon. Mr. Solomon testifies that the current base ROEs rest on the Commission's former one-stage DCF methodology and data from an era in which the economic environment and capital conditions differed significantly from those that prevail today. For example, Mr. Solomon notes that during the six-month study periods the companies used to develop the dividend yields in the DCF analyses that established their current ROEs, the average Moody's A Rated Public Utility Bond yield was 5.24 percent for Duke Carolinas, and 6.11 percent for Duke Progress. By contrast, Mr. Solomon performed a two-stage, constant growth DCF analysis that he states complies with Opinion Nos. 531, 531-A and 531-B, using financial data from a six-month study period ending November 2015. Complainants state that the comparable average bond yield for that period was 4.35 percent. According to Mr. Solomon, the 89-basis point drop in long-term public utility debt costs since the study period used to develop Duke Carolinas' existing ROE, and the 176-basis point drop in long-term public utility debt costs since the six-month period used to develop Duke Progress' existing ROE, demonstrate that capital costs have declined since the Commission set both utilities' current ROEs. In addition, Moody's has upgraded both utilities' long-term issuer ratings from A3 to A1, and Standard & Poor's (S&P) has upgraded Duke Progress' long-term issuer rating from BBB+ to A-, which, Mr. Solomon testifies, shows that the rating agencies perceive both utilities as less risky than when the Commission approved their current ROEs.<sup>22</sup>

9. To reevaluate the current ROEs, Mr. Solomon selected a national electric utility proxy group of companies that: (1) are included in the Value Line electric utility industry universe; (2) have S&P corporate credit ratings of BBB+ to A and Moody's long-term issuer or senior unsecured credit ratings of A3 to Aa3 (i.e., credit ratings ranges from one notch above to one notch below both companies' A- S&P rating, and from one notch

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<sup>21</sup> *Id.* Complainants note that under FPA Section 206, they need only show that the current ROEs are unjust and unreasonable, and that the Commission must then determine a new just and reasonable rate. *Md. Pub. Serv. Comm'n v. FERC*, 632 F.3d 1283, 1285, n.1 (D.C. Cir. 2011). Even so, Complainants contend that their analyses show both that the current 10.2 and 10.8 percent ROEs are unjust and unreasonable, and that an 8.49 percent ROE is just and reasonable.

<sup>22</sup> Duke Carolinas Complaint at 10; Duke Progress Complaint at 9.

above to two notches below their Moody's A1 rating<sup>23</sup>); (3) have an Institutional Brokers Estimate System (IBES) published analysts' consensus "five-year" earnings per share growth rate; (4) are not engaged in major merger or acquisition (M&A) activity currently or during the six-month dividend yield study period ending November 30, 2015 (the most recent period for which data were available when Mr. Solomon performed his DCF analysis); (5) paid dividends throughout the six-month dividend yield study period and did not cut their dividends during that period or thereafter; and (6) yield DCF results that pass threshold tests of economic logic and are not outliers. These criteria yielded an 11-company proxy group, from which Mr. Solomon excluded two companies, due to major M&A activity, and one that failed the low-end outlier test.<sup>24</sup>

10. Mr. Solomon's two-stage, constant growth DCF analysis, national proxy group and current financial data from the six-month study period ending November 2015, produce a zone of reasonableness with a range of investor-required ROEs of 6.61 percent to 9.34 percent, and a median of 8.49 percent.<sup>25</sup> As a result, Complainants urge the Commission to adopt the median value of 8.49 percent as the just and reasonable ROE for Duke Carolinas and Duke Progress, consistent with Commission policy requiring the use of the median for a single electric utility of average risk.<sup>26</sup>

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<sup>23</sup> Complainants state that because S&P and Moody's ratings diverge for most Value Line electric utilities that both firms rate, Mr. Solomon selected his proxy group members based on both firms' ratings, to achieve a proxy group that is more comparable in risk to Duke Carolinas and Duke Progress than using a single rating. In addition, Complainants cite Opinion No. 531-B's requirement that analysts use both S&P and Moody's ratings when available (150 FERC ¶ 61,165 at P 107), and state that because Moody's does not currently rate any Value Line utilities one notch below Duke Carolinas and Duke Progress, Mr. Solomon expanded the Moody's rating range to two notches below both companies. Complaint at 11 and n.22.

<sup>24</sup> Duke Carolinas Complaint at 12-15, citing Testimony of J. Bertram Solomon (Solomon Test.) at 14-21; Duke Progress Complaint at 11-14, citing Solomon Test. at 15-21. Commission policy excludes any company whose low-end ROE fails to exceed the average bond yield by 100 basis points or more. *S. Cal. Edison Co.*, 131 FERC ¶ 61,020, at P 55 (2010); Opinion No. 531, 147 FERC ¶ 61,234 at PP 122-123.

<sup>25</sup> Duke Carolinas Complaint at 15 and Duke Progress Complaint at 14, citing Solomon Test. at 23.

<sup>26</sup> Duke Carolinas Complaint at 15-16 and Duke Progress Complaint at 14-15, citing *S. Cal. Edison Co. v. FERC*, 717 F.3d 177 (D.C. Cir. 2013).

11. Further, Complainants contend that no basis exists upon which to raise the ROE from the median to the central tendency of the upper half of the zone of reasonableness, as the Commission did in Opinion No. 531. First, according to Complainants, the anomalous market conditions that prompted the Commission to move the ROE halfway between the midpoint and the top of the zone of reasonableness no longer exist. Specifically, Complainants maintain that higher current six-month average yields on 10-year Treasury bonds (2.23 percent during Mr. Solomon's study period ending November 2015, versus historically low bond yields below 2.0 percent during Opinion No. 531's study period ending March 2013), lower unemployment and inflation, and the end of the Federal Reserve's quantitative easing program demonstrate that capital market conditions are no longer anomalous. Complainants also state that Mr. Solomon evaluated bond yields in the 52-month period ending November 2015, and determined that yields throughout his recent study period are not unusual, and are in fact consistent with average yields over the past four years.<sup>27</sup>

12. Second, Complainants note that although Opinion No. 531 also relied on state-allowed ROEs in boosting the ROE to the midpoint of the upper half of the zone of reasonableness, those ROEs have actually fallen from an average of 10.01 percent in 2012 to 9.55 percent in the first three quarters of 2015. Further, Complainants state that because state-regulated retail service encompasses both distribution and generation, it is inherently more risky than FERC-regulated transmission service. As a result, Complainants maintain that FERC ROEs should, all other things being equal, be lower than retail ROEs -- particularly where, as here, Duke Carolinas and Duke Progress recover their actual cost of providing service through formula rates that enable them to earn their authorized returns, without regulatory lag, and despite fluctuations in sales and changes in cost.<sup>28</sup>

13. Third, Complainants argue that the alternative benchmark methodologies on which Opinion No. 531 relied in boosting the ROE to the midpoint of the upper half of the zone of reasonableness are thoroughly discredited; that even the Commission had previously rejected them; and that the Commission only relied on them in Opinion No. 531 based on record evidence of "unusual market conditions" that no longer exist. Nevertheless, should the Commission deem it appropriate to raise the ROE above the median here, Complainants contend that the Commission should use the median of the upper half of

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<sup>27</sup> Duke Carolinas Complaint at 17-20 and Duke Progress Complaint at 16-19, citing Solomon Test. at 18-22. See Opinion No. 531, 147 FERC ¶ 61,234 at P 145, n.285.

<sup>28</sup> Duke Carolinas Complaint at 20-22 and Duke Progress Complaint at 19-21, citing Solomon Test. at 33-35.

the zone of reasonableness (8.9%), rather than the midpoint of the upper half of the zone, because it would be more consistent with how the Commission sets the ROE for stand-alone transmission utilities.<sup>29</sup>

14. Finally, Complainants request that the Commission consolidate both Complaints in one proceeding, given their substantially similar issues of fact and law, the same expert witness supporting both Complaints, the same corporate parent supplying the equity capital for both Duke Carolinas and Duke Progress, and their same credit ratings and resulting proxy groups. Complainants argue that separate prosecution of these cases would duplicate the Commission's and parties' expenditure of resources, and would force customers to bear double their own litigation expense and Duke's, once passed through Duke Carolinas' and Duke Progress' transmission formula rates. Complainants urge the Commission to consolidate the two proceedings to achieve substantial efficiencies for all involved.<sup>30</sup>

## **II. Notice and Responsive Pleadings**

15. Notices of the Complaints were published in the *Federal Register*, 81 Fed. Reg. 1946 (2016) (Duke Progress) and 81 Fed. Reg. 1943-1944 (2016) (Duke Carolinas), with protests and interventions due on or before January 27, 2016, later extended to February 16, 2016.

16. In Docket No. EL16-29-000, Rutherford Electric Membership Corporation, Piedmont Electric Membership Corporation, Blue Ridge Electric Membership Corporation, EnergyUnited Electric Membership Corporation and Haywood Electric Membership Corporation filed timely motions to intervene.

17. In Docket No. EL16-30-000, Piedmont Electric Membership Corporation and Haywood Electric Membership Corporation, and Greenville Utilities Corporation (Greenville) filed timely motions to intervene. Greenville's intervention includes comments supporting the Complaint and the relief it requests.

18. On February 16, 2016, Duke Carolinas and Duke Progress (together, Respondents) submitted answers to the Complaints.

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<sup>29</sup> Duke Carolinas Complaint at 22-24 and Duke Progress Complaint at 21-23, citing Solomon Test. at 26-27, 33-35.

<sup>30</sup> Duke Carolinas Complaint at 24-25; Duke Progress Complaint at 23-24.

19. In their answers, Respondents contend that Complainants have failed to satisfy their FPA Section 206 burden to show that the current ROEs lie beyond the “area of statutory reasonableness.”<sup>31</sup> To support this assertion, Respondents offer the testimony and exhibits of Adrien McKenzie and Ellen Lapon, who testify that Complainants’ witness Solomon developed a flawed proxy group; failed to adhere to applicable regulatory standards; disregarded anomalous market conditions, alternate ROE benchmark methodologies and growth rates; and conducted an unreliable DCF analysis whose results would competitively disadvantage Respondents when seeking to raise capital for electric transmission infrastructure investment. Respondents claim that the Commission should dismiss the Complaints because both companies’ ROEs are within the zone of reasonableness and are therefore just and reasonable.<sup>32</sup>

20. Respondents allege five specific failures in Mr. Solomon’s DCF analysis. First, Respondents contend that Mr. Solomon should have used only S&P ratings, rather than expand the low-end Moody’s rating screen to two notches when Moody’s rated no electric utilities one notch below Duke Carolinas and Duke Progress.<sup>33</sup> In addition, Respondents contend that Mr. Solomon should not have excluded from his proxy group a utility that engaged in M&A activity within the study period, because the merger was completed in the first month of the study period.<sup>34</sup> Respondents also assert that Mr. Solomon inappropriately relied on IBES growth rates alone, instead of using Value Line growth rates as well,<sup>35</sup> and that he calculated his dividend yields incorrectly, based on historical dividend payments during the study period, adjusted by one-half the expected weighted average growth, rather than one-half of the short-term growth.<sup>36</sup> Further, Respondents allege that Mr. Solomon should have excluded certain DCF results even

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<sup>31</sup> Duke Carolinas Answer at 3; Duke Progress Answer at 3 (hereafter, Duke Answer, given their identical content and pagination).

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

<sup>33</sup> Duke Answer at 10-11, citing Testimony of Adrien McKenzie (McKenzie Test.) at 16, 27-29, 40-45.

<sup>34</sup> Duke Answer at 11-12, citing McKenzie Test. at 29-32.

<sup>35</sup> Duke Answer at 12, citing McKenzie Test. at 2, 5, 14-15, 40-45.

<sup>36</sup> Duke Answer at 13, citing McKenzie Test. at 32-33.

though they passed the Commission's 100-basis point test low-end outlier test, because they exceeded it by only 27 basis points during Mr. Solomon's study period.<sup>37</sup>

21. Respondents allege three additional reasons, beyond the mechanics of Mr. Solomon's DCF analysis, why the Commission should dismiss both Complaints and let Respondents' current ROEs stand. First, Respondents assert that Complainants are wrong in claiming that the post-Opinion No. 531 rise in 10-year Treasury bond yields and interest rates, drop in inflation and unemployment, and winding down of the Federal Reserve's Quantitative Easing show that the anomalous conditions the Commission found present in Opinion No. 531 no longer exist. According to Respondents, the improved U.S. economic and employment conditions on which Mr. Solomon relies are not relevant to current capital market conditions; utility bonds remain near their lowest levels in modern history; and the Federal Reserve has continued to constrain short-term rates to near-zero levels through the Fed Funds target rate.<sup>38</sup> As a result, Respondents argue that Opinion No. 531's anomalous conditions in fact persist, and therefore investors expect their returns to remain at current levels.<sup>39</sup>

22. In addition, Respondents dispute Mr. Solomon's testimony that state-regulated generation and distribution service is more risky than FERC-regulated transmission service, and assert that he has exaggerated the difference between the certainty of automatic full-cost recovery under FERC formula rates and the regulatory lag that can prevent utilities from earning their authorized ROEs under retail stated rate-setting mechanisms.<sup>40</sup>

23. Further, Respondents contend that Mr. Solomon has biased his ROE recommendation downward by ignoring three alternative ROE benchmarks (i.e., the risk premium approach, the Capital Asset Pricing Model (CAPM) and the expected earnings test), on grounds that the Commission has itself discredited them.<sup>41</sup> According to

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<sup>37</sup> Duke Answer at 13-14, citing McKenzie Test. at 38.

<sup>38</sup> Duke Answer at 17-21, citing Lapson Test. at 5-6, 11-34 and McKenzie Test. at 16-27.

<sup>39</sup> Duke Answer at 22-23, citing McKenzie Test. at 14-15 and Lapson Test. at 24-28, 34-35.

<sup>40</sup> Duke Answer at 24-25, citing McKenzie Test. at 58 and Lapson Test. at 8-9, 40-42.

<sup>41</sup> Duke Answer at 25 (citing McKenzie Test. at 3-4, 45-58), 29.

Respondents, the risk premium approach yields a 9.41 percent cost of equity;<sup>42</sup> CAPM yields a range of 8.55 percent to 11.85 percent;<sup>43</sup> and the expected earnings approach yields a range of 9.14 percent to 15.25 percent.<sup>44</sup> In Respondents' view, these alternative benchmark methodologies justify Respondents' current ROEs.<sup>45</sup>

24. Finally, if the Commission does not dismiss the Complaints and instead sets them for hearing, Respondents do not object to consolidation of both Complaints, but argue that the Commission should delay the effectiveness of Complainants' proposed rate decrease by five months. Respondents acknowledge that the Commission does not suspend rate decreases or complaints, but argue that the Complainants' requests to reduce Duke Carolinas' ROE by 171 basis points and Duke Progress' ROE by 231 basis points are more than 10 percent excessive and therefore are no different than utility rate increase proposals that the Commission, under long-standing policy, suspends for five months.<sup>46</sup>

25. On March 2, 2016, Complainants filed motions for leave to answer and answers to Respondents' answers.

### **III. Discussion**

#### **A. Procedural Matters**

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the Joint Complainants' March 2, 2016 answer, and will, therefore, reject it.

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<sup>42</sup> Duke Answer at 26-27, citing McKenzie Test. at 46-48, 51.

<sup>43</sup> Duke Answer at 27-28, citing McKenzie Test. at 51-55.

<sup>44</sup> Duke Answer at 28, citing McKenzie Test. at 51-58.

<sup>45</sup> Duke Answer at 25, citing McKenzie Test. at 3-4, 45-58.

<sup>46</sup> Duke Answer at 31-32, citing *Ariz. Pub. Serv. Co.*, 145 FERC ¶ 61,086 (2013); *W. Tex. Utils. Co.*, 18 FERC ¶ 61,189 (1982).

**B. Substantive Matters**

28. We find that the Complaints raise common issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement judge procedures we order below. Accordingly, we will set the Complaints for consolidated investigation, trial-type evidentiary hearing and settlement judge procedures under section 206 of the FPA.

29. We find unpersuasive Respondents' assertion that the Commission should dismiss the Complaints because the base ROEs fall within the zone of reasonableness. The Commission has repeatedly rejected the assertion that every ROE within the zone of reasonableness is necessarily just and reasonable,<sup>47</sup> and we do so again here.

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 refund period following the refund effective date. Consistent with our general policy of providing maximum protection to customers,<sup>48</sup> we will set the refund effective date at the earliest date possible, i.e., January 7, 2015, as requested. We find no merit in Respondents' assertions that the Commission should delay any appropriate relief to Duke Carolinas' and Duke Progress' customers, and expressly decline to do so.

31. 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 reasonable 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 April 30, 2017. 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 February 28, 2018.

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<sup>47</sup> See, e.g., *Bangor Hydro-Electric Co.*, 122 FERC ¶ 61,038, at PP 10-15 (2008); Opinion No. 531, 147 FERC ¶ 61,234 at PP 51-55; Opinion No. 531-B, 150 FERC ¶ 61,165 at PP 21-33.

<sup>48</sup> 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).

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 Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the base ROE elements of these Complaints. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (B) and (C) below.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2015), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(C) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(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 Nos. EL16-29-000 and EL16-30-000, established pursuant to section 206(b) of the FPA, is January 7, 2016, as discussed in the body of this order.

(F) The Complaints in Docket Nos. EL16-29 and EL16-30 are hereby consolidated for purposes of hearing, settlement judge procedures and decision.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.