147 FERC ¶ 61,235
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

ENE (Environment Northeast),
The Greater Boston Real Estate Board,
National Consumer Law Center, and
NEPOOL Industrial Customer Coalition

Docket No. EL13-33-000

v.

Bangor Hydro-Electric Company,
Central Maine Power Company,
New England Power Company,
New Hampshire Transmission LLC,
NSTAR Electric Company,
Northeast Utilities Service Company,
The United Illuminating Company,
Unitil Energy Systems, Inc.,
Fitchburg Gas and Electric Light Company, and
Vermont Transco, LLC

ORDER ON COMPLAINT AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued June 19, 2014)

1. On December 27, 2012, Complainants[1] filed a complaint pursuant to section 206 of the Federal Power Act (FPA)[2] against the New England Transmission Owners (New

[1] Complainants are ENE (Environment Northeast), The Greater Boston Real Estate Board, National Consumer Law Center, and New England Power Pool (NEPOOL) Industrial Customer Coalition.

[2] 16 U.S.C. § 824e (2012).

England TOs),[3] contending that the New England TOs' 11.14 percent base return on equity (ROE) reflected in ISO New England, Inc.'s (ISO-NE) open access transmission tariff (OATT) is unjust and unreasonable. Complainants also contend that investor expectations of returns have continued to decline since the date that a separate complaint assailing the same ROE was filed in Docket No. EL11-66-000 (Docket No. EL11-66-000 complaint),[4] and that the just and reasonable ROE is now 8.7 percent. In this order, we establish hearing and settlement judge procedures. Further, we set a refund effective date of December 27, 2012.

I. Background

2. The New England TOs recover their transmission revenue requirements through formula rates included in ISO-NE's OATT. The Regional Network Service (RNS) and Local Network Service (LNS) revenue requirements for all the New England TOs are calculated using a single base ROE. Since 2008, as a result of the Opinion No. 489 proceeding, the base ROE has been 11.14 percent, consisting of an initial base ROE of 10.4 percent with an upward adjustment of 74 basis points to account for changes in capital market conditions—specifically, the yield of 10-year U.S. Treasury Bonds—that took place between issuance of the Administrative Law Judge's initial decision in the case and the issuance of Opinion No. 489.[5]

3. On September 30, 2011, a group of complainants consisting mostly of state representatives filed the Docket No. EL11-66-000 complaint, also alleging that the

[3] The New England TOs are Bangor Hydro-Electric Co.; Central Maine Power Co., New England Power Co.; New Hampshire Transmission LLC; Northeast Utilities Service Co., on behalf of its operating companies; Connecticut Light and Power Company; Western Massachusetts Electric Company; Public Service Company of New Hampshire; NSTAR Electric Co.; United Illuminating Co.; Unitil Energy Systems, Inc.; Fitchburg Gas and Electric Light Co.; and Vermont Transco, LLC.

[4] The hearing in Docket No. EL11-66-000 ended on May 10, 2013, and the Administrative Law Judge presiding over that hearing certified an initial decision to the Commission on August 6, 2013. *See Martha Coakley, Mass. Attorney Gen., et al. v. Bangor Hydro-Elec. Co., et al.*, 144 FERC ¶ 63,012 (2013). As discussed *infra* at P 26, the Commission is issuing its order on initial decision in Docket No. EL11-66-000 concurrently with the instant order.

[5] *See Bangor Hydro-Elec. Co., et al.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006) (Opinion No. 489), *order on reh'g*, 122 FERC ¶ 61,265 (2008) (Opinion No. 489 Rehearing Order), *appeal denied*, 593 F.3d 30 (D.C. Cir. 2010).

11.14 percent base ROE was unjust and unreasonable. They submitted a discounted cash flow analysis (DCF) in support of their assertion that the base ROE should not exceed 9.2 percent.[6] Those complainants also pointed to changes in capital market conditions, including the 2008 financial crisis and the resulting "flight to quality,"[7] that had occurred since the 11.14 percent base ROE was established in the Opinion No. 489 proceeding,[8] as justification for lowering the base ROE. On May 3, 2012, the Commission set the complaint for hearing and settlement judge procedures.[9]

II. The Complaint

4. As in Docket No. EL11-66-000, Complainants here[10] allege that due to changes in capital market conditions since issuance of Opinion No. 489, the New England TOs' 11.14 percent base ROE is unjust and unreasonable and should be lowered to 8.7 percent.[11] Complainants estimate that reducing the New England TOs' base ROE to 8.7 percent will have the financial impact of reducing RNS costs in New England by $142 million per year—a further $29 million savings over the 9.2 percent base ROE proposed in Docket No. EL11-66-000.[12] Complainants request that the Commission institute a new section 206 investigation into the New England TOs' base ROE, establish the earliest possible refund effective date (December 28, 2012), and direct ISO-NE to refund the difference between transmission rates reflecting the current 11.14 percent base ROE and the lower ROE sought here. Alternatively, Complainants request that the Commission set the matter for evidentiary hearing, without establishing initial settlement judge procedures, and consolidate this proceeding with Docket No. EL11-66-000.

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[6] Docket No. EL11-66-000 complaint at 25, Exh. C-1 at 8.

[7] "Flight to quality" refers to investors seeking low-risk investment vehicles.

[8] Docket No. EL11-66-000 complaint at 25, Exh. C-1 at 8.

[9] *Martha Coakley, et al. v. Bangor Hydro-Electric Co., et al.*, 139 FERC ¶ 61,090 (2012).

[10] NEPOOL Industrial Customer Coalition is the only complainant here who also intervened in Docket No. EL11-66-000.

[11] Complainants filed the instant complaint four days before expiration of the refund period in Docket No. EL11-66-000.

[12] Complaint at 16.

5. Complainants posit that the instant complaint is not merely duplicative of the Docket No. EL11-66-000 complaint, asserting that their DCF analysis reflects more current proxy group information and an updated zone of reasonableness, all of which indicates that the base ROE should be 0.5 percent lower than the ROE sought in the Docket No. EL11-66-000 complaint.[13] Complainants further state that the existence of an ongoing section 206 investigation into a public utility's ROE does not immunize that ROE from investigation through a second section 206 proceeding[14] and that, by filing a new complaint rather than seeking late intervention in Docket No. EL11-66-000, their consent would be required to complete any settlement in this case.[15] Complainants also posit that although refund protection under section 206 is limited to a maximum period of 15-months,[16] their complaint is based on updated information and therefore should be accorded a new refund period.[17]

6. Turning to the merits of their complaint, Complainants attach the affidavit of Dr. J. Randall Woolridge in which he states that the yields on 10-year Treasury bonds and certain public utility bonds have dropped since the existing base ROE was established and that this drop indicates a similar decline in utility capital costs. To illustrate that decline vis-à-vis the New England TOs, Dr. Woolridge conducted a DCF analysis.

7. Dr. Woolridge's DCF methodology begins by selecting a national proxy group of companies that pass the following screening criteria: (1) receives at least 50 percent of revenues from regulated electric operations as reported by *AUS Utilities Report*; (2) listed as an Electric Utility by *Value Line Investment Survey* (*Value Line*) and listed as an Electric Utility or Combination Electric & Gas Company in *AUS Utilities Report*; (3) has an investment grade corporate credit and bond rating that falls within the comparable risk band (S&P corporate credit rating from A to BBB-); (4) has paid a cash dividend for the

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[13] *Id.* at 3-4.

[14] *Id.* (citing *Southern Co. Servs., Inc.*, 83 FERC ¶ 61,079, at 61,386 (1998) (*Southern Co. Services*); *Consumer Advocate Div. of the Pub. Serv. Comm'n of W. Va., et al. v. Allegheny Generating Co.*, 67 FERC ¶ 61,288, at 62,000 (1994) (*Allegheny Generating*)).

[15] Complaint at 5.

[16] The 15-month refund period in Docket No. EL11-66-000 ended on December 31, 2012.

[17] Complaint at 6 (citing S. Rep. No. 100-491, 1988 U.S.C.C.A.N. 2684, 2685).

past three years, with no cuts or omissions; (5) not involved in merger activity in the past six months; and (6) analysts' long-term earnings-per-share (EPS) growth rate forecasts for the company are available from "Yahoo, Reuters, and/or Zacks."[18] Dr. Woolridge's screens produce a proxy group of 33 companies, for which he then looks at the Yahoo! Finance long-term EPS growth rate estimates and the *Value Line* (br+sv) growth rate.[19] Dr. Woolridge then excludes both the high and low DCF result for two companies that he concludes are low-end outliers,[20] i.e., companies whose low-end ROE is less than 100 basis points above the average bond yield, and one company that he concludes is a high-end outlier,[21] i.e., a company whose high-end DCF result is illogically high (above 14.04 percent, according to Dr. Woolridge). Next, Dr. Woolridge averages the high and low DCF result for each of the 30 remaining companies, and then calculates the median of those 30 blended values, which equals 8.7 percent.[22]

8. Dr. Woolridge also asserts that recent policy announcements from the Federal Reserve Board (Federal Reserve) "indicate that interest rates are likely to remain low for several years into the future."[23] More specifically, Dr. Woolridge points to the Federal Reserve's announcements in September and December of 2012 about the expansion of the Quantitative Easing III program and the resulting relationship between future monetary policy and unemployment rates and interest rates.

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[18] Woolridge Aff. Ex. C-1 at 22.

[19] *Id.* at 27. Dr. Woolridge's analysis of the growth rates for the proxy group companies is based on the dividend yields for each utility during the six-month period ending December 2012. "br+sv" is the sustainable growth rate determined by the *Value Line* inputs, where "b" is the expected retention ratio, "r" is the expected earned rate of return, "s" is the percent of common equity expected to be issued annually as new common stock, and "v" is the equity accretion ratio.

[20] *Id.* at 34. Dr. Woolridge excludes Ameren Corp. and Pacific Gas and Electric as low-end outliers.

[21] *Id.* at 35. Dr. Woolridge excludes Great Plains Energy Inc. (Great Plains Energy) as a high-end outlier.

[22] *Id.* at 36. Dr. Woolridge states that the midpoint of the 30 blended DCF results is 8.5 percent. *Id.* at 38-39. However, Complainants' January 31, 2013 Answer corrects a math error that changes this value to 8.9 percent.

[23] *Id.* at 14.

III. Notice and Responsive Pleadings

9. Notice of the complaint was published in the *Federal Register*, 78 Fed. Reg. 717 (2013), with interventions and protests due on or before January 16, 2013. On January 16, 2013, the New England TOs filed an answer. On January 31, 2013, Complainants filed an answer to the New England TOs' answer.

10. The following entities filed timely motions to intervene: Martha Coakley, Massachusetts Attorney General; George Jepsen, Connecticut Attorney General; Connecticut Office of Consumer Counsel; NEPOOL Participants Committee; Associated Industries of Massachusetts; The Energy Consortium; Eastern Massachusetts Consumer-Owned Systems; Maine Office of the Public Advocate; and Vermont Department of Public Service.

11. The Maine Public Utilities Commission submitted a notice of intervention. The Connecticut Public Utilities Regulatory Authority submitted a notice of intervention and comments. On January 18, 2013, the New Hampshire Public Utilities Company submitted a motion to intervene out-of-time.

12. Massachusetts Municipal Wholesale Electric Company (MMWEC) and New Hampshire Electric Cooperative, Inc. (NHEC) jointly filed a timely motion to intervene and comments.

13. The Connecticut Public Utilities Regulatory Authority, MMWEC and NHEC agree that the existing base ROE is unjust and unreasonable, that current financial data and DCF analysis indicate the base ROE should not exceed 8.7 percent or should at least fall below the 9.2 percent value supported by the Docket No. EL11-66-000 complaint, and that the instant complaint should be given a new, earliest refund effective date and consolidated with Docket No. EL11-66-000 for purposes of hearing and decision. MMWEC and NHEC further argue that the Commission should be skeptical of any claims that the New England TOs face certain risks that advise against lowering the base ROE.[24]

[24] Specifically, MMWEC and NHEC point to language from a November 2012 presentation by Northeast Utilities and a filing by the New England TOs, in Docket Nos. ER13-193-000 and ER13-196-000, indicating that claims of elevated payment risks would be inconsistent with the New England TOs' assertions in other contexts.

IV. The New England TOs' Answer

14. The New England TOs assert that Complainants fail to make a prima facie showing that the existing base ROE is unjust and unreasonable. Noting that the complaint was filed as expiration of the refund protection period in Docket No. EL11-66-000 was imminent, the New England TOs argue that granting the instant complaint would improperly circumvent the maximum 15-month refund period under FPA section 206(b).[25] The New England TOs contend that the Commission previously has dismissed successive complaints seeking successive refund periods, where those complaints are premised on the same facts and allegations.[26] According to the New England TOs, the Commission has allowed successive complaints only if the two cases at issue are fundamentally different and the later complaint represents an "entirely new proceeding."[27] The New England TOs argue that none of the issues in the instant complaint are new, pointing to Complainants' statement that both complaints "share a common nucleus of operative facts."[28]

15. As to the substance of the complaint, the New England TOs defend the current base ROE, attaching to their answer the testimony and DCF analysis of Dr. William E. Avera. The New England TOs assert that the Commission has a well-established DCF methodology for determining a base ROE and that Dr. Avera's analysis comports with that precedent. The New England TOs state that, in order to determine the cost of equity, Dr. Avera chose a national proxy group using six criteria that are consistent with Commission precedent.[29] The New England TOs explain that Dr. Avera then reviewed

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[25] New England TOs January 16, 2013 Answer at 14-15, 17-18 (citing S. Rep. No. 100-491 at 6 (1988), reprinted in 1988 U.S.C.C.A.N. 2684, 2688; *Regulatory Fairness Act: Hearings on S. 1567 and H.R. 2858 Before the S. Comm. on Energy and Natural Res.*, 100th Cong. (1988); 133 Cong. Rec. H9029 (daily ed. Oct. 27, 1987)).

[26] New England TOs January 16, 2013 Answer at 15 (citing *Allegheny Elec. Coop., Inc. v Niagara Mohawk Power Corp.*, 58 FERC ¶ 61,096 (1992)).

[27] New England TOs January 16, 2013 Answer at 16 (citing *Southern Co. Services, Inc.*, 83 FERC ¶ 61,079, at 61,386 (1998)).

[28] New England TOs January 16, 2013 Answer at 20 (quoting Environment Northeast, *et al.* December 27, 2012 Complaint at 17).

[29] New England TOs January 16, 2013 Answer at 27-28. The criteria in the New England TOs' DCF analysis are as follows: (1) electric utilities with no ongoing involvement in a major merger or acquisition; (2) electric utilities that paid common dividends over the last six months and have not announced a dividend cut during that

(continued…)

the companies in the proxy group whose DCF estimates were implausibly low or high, eliminating companies with a cost of equity that did not exceed the average BBB bond yield by about 100 basis points, and companies whose high-end DCF result was greater than 17.7 percent. The result was a 41-member proxy group, whose zone of reasonableness was 6.0 – 15.2 percent, with a midpoint of 10.6 percent. The New England TOs state that Dr. Avera's DCF range is conservative because it reflects neither the flotation costs associated with issuing securities, nor the "clear consensus that the cost of permanent capital over the 2014-2017 timeframe will be higher than it is today."[30]

16. The New England TOs explain that Dr. Avera performed additional analyses – a risk premium analysis and the Capital Asset Pricing Model – that, according to the New England TOs, confirm the results of Dr. Avera's DCF analysis. The New England TOs also state that the Commission should not exclude a company's high-end estimate just because the low-end estimate does not meet the criteria for proxy group inclusion.

17. The New England TOs allege that Complainants' DCF analysis is flawed and inconsistent with Commission precedent because it excludes companies from the proxy group that (1) are not listed in *AUS Utility Reports*; (2) do not receive at least 50 percent of revenues from regulated electric operations; (3) have paid dividends with no cuts in the past three years; (4) have not been involved in a merger or acquisition; (5) have growth rate estimates from Yahoo! Finance, Zacks or Reuters; and (6) have investment grade bond ratings that fall within the comparable risk band. As to this last criterion, the New England TOs state that the criterion itself is proper, but that Complainants have misapplied it by using *AUS Utility Reports* as a source.

18. The New England TOs further maintain that there are additional flaws in Complainants' DCF analysis, apart from those present in screening criteria. Specifically, the New England TOs state that the Commission utilizes one clear indicator to eliminate high-end outliers from the proxy group – DCF results above 17.7 percent – and that Complainants' exclusion of Great Plains Energy, whose high-end DCF Dr. Woolridge calculates to be 14.9 percent, is inconsistent with Commission precedent.

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period; (3) companies that are included in the Electric Utility Industry Groups compiled by *Value Line*; (4) electric utilities that have been assigned a corporate rating from S&P between BBB- and A; (5) companies with a published 5-year consensus earnings growth forecast from IBES; and (6) electric utilities that are covered by at least two industry analysts.

[30] *Id.* at 34.

19. The New England TOs also state that by averaging the high and low DCF values of each company, and then calculating a midpoint based on those averages, Complainants lowered the upper end of the range. Besides noting that this approach deviates from the methodology that Dr. Woolridge used in Docket No. EL11-66-000, the New England TOs maintain that use of the median, rather than the midpoint, of the zone of reasonableness to establish a just and reasonable ROE violates Commission precedent.

20. The New England TOs also contend that Complainants' criticism of industry analysts' growth rates is flawed; that Complainants' additional analysis – a Capital Asset Pricing Model study – does not reflect current investor expectations; and that, overall, Complainants' DCF analysis is an outlier when compared to recent Commission precedent.[31]

V. Complainants' Answer

21. Complainants dispute the New England TOs' position that the complaint should be dismissed on procedural grounds. They argue that the maximum 15-month refund period does not bar the Commission from considering a new complaint while an earlier complaint remains pending, unless the later complaint is filed "'solely' to evade the limit."[32] Further, Complainants assert that complaints based on new evidence or which seek new relief trigger separate refund periods, and that updated ROE analyses inherently present new factual circumstances.[33]

22. As to substantive issues, Complainants reiterate that Dr. Woolridge's DCF analysis establishes a prima facie case that the existing base ROE is unjust and unreasonable. Complainants do acknowledge a math error in Dr. Woolridge's DCF analysis, noting that the midpoint among the 30 blended proxy group companies is 8.9,

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[31] *Id.* at 64-65 (citing *S. Cal. Edison Co.*, 131 FERC ¶ 61,020, at P 58 (2010); *Atl. Grid Operations A LLC*, 135 FERC ¶ 61,144, at P 88 (2011); *RITELine Ill., LLC*, 137 FERC ¶ 61,039, at P 72 (2011); *N. Pass Transmission LLC*, 134 FERC ¶ 61,095, at P 54 (2011)).

[32] Environment Northeast, *et al.* January 31, 2013 Answer at 5 (citing *S. Co. Services*, 83 FERC ¶ 61,079, at 61,386 (1998)).

[33] Environment Northeast, *et al.* January 31, 2013 Answer at 5, 8-9. Complainants also cite *San Diego Gas & Elec. Co. v. Pub. Serv. Co. of New Mexico*, 86 FERC ¶ 61,256, at 61,992 (1999) and *San Diego Gas & Elec. Co. v. Pub. Serv. Co. of New Mexico*, 91 FERC ¶ 61,229, at 61,834 (2000) for this premise.

not 8.5, percent, but explain that this change does not detract from the merits of the complaint.[34]

23. Complainants also provide a lengthy comparison of the DCF analyses filed by Drs. Woolridge and Avera and assert that the differences between those analyses do not negate Complainants' prima facie showing.[35] Complainants identify three categories of differences between the two methodologies: (1) the proxy group screening criteria; (2) the filtering criteria for illogical or unsustainable DCF results; and (3) the method of locating the central, representative DCF result. Complainants assert that, on each point of distinction, either Dr. Woolridge's analysis is superior to Dr. Avera's, or the difference is a matter of judgment that is appropriately resolved at hearing.[36]

VI. Discussion

A. Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), we will grant the late-filed motion to intervene of the New Hampshire Public Utilities Commission given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept Complainants' answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

26. 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 and settlement judge procedures ordered below. Accordingly, we will set the complaint for investigation and a trial-type, evidentiary hearing under section 206 of the FPA. As noted above, the Commission is issuing Opinion No. 531, the order on initial decision in

[34] *Id.* at 21.

[35] *Id.* at 22-39.

[36] *Id.* at 23.

Docket No. EL11-66-000 concurrently with this order.[37] Given the late stage of that proceeding, we reject Complainants' request to consolidate the instant proceeding with Docket No. EL11-66-000. We note, however, that in Opinion No. 531, the Commission is changing its practice for determining the ROE for public utilities. Accordingly, we expect the parties in this proceeding to present evidence and any DCF analyses, as guided by our decision in Opinion No. 531.

27. While the parties raise various arguments as to the propriety of allowing the complaint, the Commission has previously allowed successive complaints when presented with a new analysis.[38] In this case, Complainants have submitted a new DCF analysis with new, more current data in support of a proposed lower ROE.

28. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[39] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[40] The settlement judge

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[37] *See Martha Coakley, Mass. Attorney Gen., et al v. Bangor Hydro-Elec. Co., et al.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014).

[38] *See Consumer Advocate Div. of the Pub. Serv. Comm'n of W.V., et al. v. Allegheny Generating Co.*, 67 FERC ¶ 61,288, at 62,000 (1994) (*Allegheny Generating I*), *order on reh'g*, 68 FERC ¶ 61,207 (1994) (*Allegheny Generating II*); *Southern Co. Services, Inc.*, 68 FERC ¶ 61,231 (1994) (*Southern Co. I*), *order on reh'g*, 83 FERC ¶ 61,079 (1998) (*Southern Co. II*); *see also San Diego Gas & Elec. Co. v. Pub. Serv. Co. of New Mexico*, 85 FERC ¶ 61,414 (1998), *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 three other proceedings in this string citation).

[39] 18 C.F.R. § 385.603 (2013).

[40] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (http://www.ferc.gov/legal/adr/avail-judge.asp).

shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

29. 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. Consistent with our general policy of providing maximum protection to customers,[41] we will set the refund effective date at the earliest date possible, i.e., December 27, 2012, as requested.

30. 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, if the case were to go to hearing immediately, by June 30, 2015. Thus, we estimate that if the case were to go to hearing immediately, we would be able to issue our decision within approximately eight months of the filing of briefs on and opposing exceptions, or by April 30, 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 Federal Power Act, particularly section 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 this complaint. 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 (2013), the Chief Administrative Law Judge is hereby directed to

[41] *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).

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 No. EL13-33-000, established pursuant to section 206(b) of the FPA, is December 27, 2012.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.