SUPPORTING COMMENTS OF THE MAINE PUBLIC UTILITIES COMMISSION

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure\(^1\) of the Federal Energy Regulatory Commission ("Commission"), and the Commission’s August 1, 2014 Notice of Complaint and its August 12, 2014 Notice of Extension of Time, the Maine Public Utilities Commission ("MPUC"), by and through counsel, Lisa Fink, State of Maine Public Utilities Commission, 101 Second Street, Hallowell, Maine, 04347, respectfully files these supporting comments in this docket.\(^2\) The MPUC supports the Complainants' request to: (1) institute an investigation into the Return on Equity ("ROE") of the New England Transmission Owners ("NETOs")\(^3\) and establish a just and reasonable ROE to be reflected in rates for transmission service provided by the NETOs under the ISO New England ("ISO-NE") Open Access Transmission Tariff ("OATT"); (2) establish the earliest possible refund effective date; and (3) direct that refunds be made for the difference, with interest, between transmission rates reflecting

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\(^2\) The MPUC filed a Notice of Intervention in this matter on August 21, 2014.

\(^3\) The NETOS are parties to the Transmission Operating Agreement (TOA) with ISO New England ("ISO-NE"). They recover their transmission revenue requirements through formula rates included in the ISO-NE Open Access Transmission Tariff ("OATT").
the ROEs currently on file and rates reflecting just and reasonable ROEs. The MPUC agrees with the Complainants that the Commission has made clear that the current base ROE of 11.14 percent is unjust and unreasonable and that the "anomalous capital market conditions" upon which the Commission relied in part recently to tentatively set the ROE at the midpoint between the midpoint of the zone of reasonableness and the top of the zone of reasonableness, are no longer present. Accordingly, the MPUC agrees with the Complainant that the ROE should be set at the center of the range or reasonableness established by the proxy group. While the methodology used by Dr. Woolridge, the Complainants' expert witness, appears consistent in broad outline with the methodology set forth in Opinion No. 531, the MPUC does not endorse such methodology for use in its own state proceedings.

I. BACKGROUND

On September 30, 2011, several parties filed a Section 206 complaint initiating Docket No. EL11-66 and alleging that the NETOs' 11.14 percent ROE was unjust and unreasonable. The MPUC and the New England Conference of Public Utility Commissioners ("NECPUC") intervened in that case and supported the Complainant's contention that market conditions no longer supported the existing 11.14 percent base ROE. On December 27, 2012, a second ROE complaint (Docket No. EL13-33) was filed by a different set of complainants. On June 14, 2014, the Commission issued Opinion No. 531 in Docket No. EL11-66. Also on June 14, 2014, the Commission issued an order in the second complaint docket setting that complaint for investigation and hearing, to be preceded by settlement negotiations.


In Opinion No. 531, the Commission determined that the existing 11.14 percent ROE is no longer just and reasonable and tentatively set the ROE at 10.57 percent, subject to the results of a paper hearing on the projected GDP growth rate component of the two-step DCF methodology which it adopted in that opinion. The two-step DCF methodology resulted in a zone of reasonableness of 7.03 percent to 11.74 percent with a midpoint of 9.39 percent. However, the Commission derived the 10.57 percent ROE by calculating the midpoint between the midpoint of the zone of reasonableness (9.39 percent) and the top of the range (11.74 percent). Because Opinion No. 531 did not grant interim relief during the pendency of the paper hearing on the projected GDP growth rate component of the two-step DCF methodology, consumers continue to pay the 11.14 percent ROE currently still in effect.

On July 31, 2014, the Complainants filed this Complaint against the NETOS, requesting the Commission to (1) institute an investigation into the NETOs ROEs and establish just and reasonable equity returns to be reflected in rates for transmission service provided by the NETOs under the ISO-NE OATT; (2) establish the earliest possible refund effective date (i.e., the date of the submission of the Complaint) and (3) direct ISO-NE to make refunds for the difference, with interest, between transmission rates reflecting the ROEs currently on file and rates reflecting just and reasonable ROEs. The Complainants' expert, Dr. Woolridge, provides testimony that, based on current market conditions, the midpoint of the zone of reasonableness, using the two-step DCF analysis adopted in Opinion No. 531, is 9.44 percent and the median is 8.84 percent. Additionally, Dr. Woolridge determines that the upper end of the zone of reasonableness is 12.54 percent. Therefore, Dr. Woolridge recommends that the Commission cap the combined ROE (base ROE plus incentives such as the 50 basis point RTO incentive and any transmission project specific ROE incentives) at 12.54 percent.
II. COMMENTS

The MPUC supports the Complainant's request to open an investigation into the just and reasonable ROE based on current market conditions. The 11.14 percent ROE currently in effect has been found to be unjust and unreasonable, a finding which provides the basis for opening an investigation. Moreover, the Commission's decision in Opinion No. 531 to select an ROE substantially above the midpoint was based in significant part on unique capital market conditions. "We are concerned that capital market conditions in the record are anomalous, thereby making it more difficult to determine the return necessary for public utilities to attract capital. In these circumstances, we have less confidence that the midpoint of the zone of reasonableness established in this proceeding accurately reflects the equity returns necessary to meet the Hope and Bluefield capital attraction standards."6

The Complainants have provided information that supports its contention that current market conditions are no longer "anomalous."7 Thus, it is appropriate for the Commission to consider whether current market conditions warrant an ROE above the midpoint of the zone of reasonableness. In addition, the Commission's obligation to protect consumers8 militates in favor of opening the investigation sought by the Complainants and setting the refund date to the date of the filing of the Complaint. Such protection is especially warranted here given the pendency of the original complaint filed three years ago in 2011, the subsequent complaint filed in Docket

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6 Opinion No. 531 at P 145 (citations omitted).
7 See Affidavit of Dr. J. Randall Woolridge at 5 ("The economy is growing; unemployment is down to 6.1%. The Federal fiscal stimulus programs are a thing of the past. The Federal Reserve has tapered its bond buying program and the dire forecasts of dramatically higher interest rates have proven to be wrong."). Woolridge Affidavit at 18.
No. EL13-33, and the fact that the refund periods have expired in both of those cases while the cases have been pending.

III. CONCLUSION

For the reasons stated above, the MPUC supports the Complainants' request to: (1) institute an investigation into the Return on Equity ("ROE") of the New England Transmission Owners ("NETOs") and establish a just and reasonable ROE to be reflected in rates for transmission service provided by the NETOs under the ISO-NE OATT; (2) establish the earliest possible refund effective date; and (3) direct that refunds be made for the difference, with interest, between transmission rates reflecting the ROEs currently on file and rates reflecting just and reasonable ROEs.

Dated: September 10, 2014

Respectfully submitted,

/s/ Lisa Fink

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document either by first class mail or electronic service upon each party on the official service list compiled by the Secretary in this proceeding.

Dated at Hallowell, Maine, this 10th day of September, 2014.

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