



## FERC Denies Rehearing of Opinion No. 531

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Reading Time : **3 min**

FERC denied all requests for rehearing of Opinion No. 531.<sup>6</sup> Of particular note, the NETOs challenged FERC's finding in Opinion No. 531, pursuant to Section 206 of the Federal Power Act (FPA), that the existing NETO ROEs were unjust and unreasonable. The NETOs argued that an existing base ROE cannot be found unjust and unreasonable if it falls within the "zone of reasonableness" established in the DCF analysis. In making this argument, the NETOs relied on long-established precedent holding that there is not one single "just and reasonable" rate, but, rather, FERC must ensure that rates fall within a so-called "zone of reasonableness."

When rejecting the NETOs' argument, FERC held that the term "zone of reasonableness" used in the context of a DCF analysis has a "particular, more technical meaning that differs from its meaning when used in general descriptions of what constitutes a just and reasonable rate. . . ." <sup>7</sup> FERC pointed out that, if the NETOs' position were true, then all utility rate filings establishing a base ROE would have to be accepted as long as the ROE does not exceed the top end of the zone of reasonableness—which would contradict the consumer- protection purpose of the FPA.<sup>8</sup> FERC also held that, in contrast to other rate filings, when FERC finds a utility's base ROE to be just and reasonable, FERC is finding "only that single point to be just and reasonable."<sup>9</sup>

The Petitioners and EMCOS also challenged FERC's decision to place the base ROE halfway between the midpoint and the top of the zone. They argued that FERC may set the base ROE at a point other than the point of central tendency only if FERC finds that the risk level of the transmission owners differs from the risk level of the proxy group. FERC disagreed, holding that it may rely on other considerations, such as "whether unique circumstances render the results of the Commission's DCF analysis less reliable than usual."<sup>10</sup> FERC concluded in Opinion

No. 531 that anomalous capital market conditions produced a midpoint ROE in the DCF analysis that would fail the *Hope* and *Bluefield* capital attraction standards.

Additional requests for rehearing focused primarily on the technical implementation of FERC's DCF analysis. FERC also clarified that Opinion No. 531 did not establish an effective date for the 10.57 percent base ROE on the date of issuance of Opinion No. 531. Rather, FERC held that the new base ROE became effective as of the issuance of Opinion No. 531-A on October 16, 2014.<sup>11</sup>

Commissioner Colette D. Honorable issued a concurring statement. She emphasized that, while FERC must balance the interests of both consumers and investors when setting rates, FERC's "primary" duty is to protect consumers. She noted that FERC's reliance on "anomalous market conditions" in Opinion No. 531 did not create a presumption that market conditions will be found to be anomalous going forward and that, indeed, the decision to establish an ROE above the point of central tendency was "atypical."

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<sup>1</sup> *Martha Coakley v. Bangor Hydro-Elec. Co.*, Order No. 531-B, 150 FERC ¶ 61,165 (2015) ("Opinion No. 531-B").

<sup>2</sup> *Martha Coakley v. Bangor Hydro-Elec. Co.*, Order No. 531, 147 FERC ¶ 61,234 (2014).

<sup>3</sup> The NETOs include Bangor Hydro-Elec. Co.; Central Maine Power Co.; New England Power Co.; New Hampshire Transmission LLC; NSTAR Electric & Gas Corp.; Northeast Utilities Service Co.; United Illuminating Co.; Unitil Energy Systems, Inc. and Fitchburg Gas & Electric Light Co.; and Vermont Transco, LLC.

<sup>4</sup> *Martha Coakley v. Bangor Hydro-Elec. Co.*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014).

<sup>5</sup> *Id.* P 1.

<sup>6</sup> The NETOs submitted an identical request for hearing of Opinion No. 531-A, and FERC therefore denied the NETOs' request for rehearing of Opinion No. 531-A as well.

<sup>7</sup> Opinion No. 531-B at P 24.

<sup>8</sup> *Id.* P 26.

<sup>9</sup> *Id.* P 32.

<sup>10</sup> *Id.* P 47.

<sup>11</sup> *Id.* P 151.

## Categories

Energy Regulation, Markets & Enforcement

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