

MEMORANDUM

TO: NEPOOL Transmission Committee
FROM: NEPOOL Counsel (Eric Runge, Margaret Czepiel)
DATE: September 25, 2026
RE: **Summary of FERC Opinion No. 594-A, Order Addressing Arguments Raised on Rehearing in the New England Transmission Owners' Base ROE Proceedings** (196 FERC ¶ 61,232; Docket Nos. EL11-66-006, EL13-33-004, EL14-86-002, EL16-64-004, and ER15-414-005)

On September 24, 2026, the Federal Energy Regulatory Commission (FERC or the Commission) issued Opinion No. 594-A, addressing requests for rehearing of Opinion No. 594, the Commission's March 19, 2026 order resolving the long-running complaints challenging the base return on equity (ROE) of the New England Transmission Owners (NETOs). Requests for Rehearing of Opinion No. 594 were filed by the NETOs and Vermont Transco LLC (Vermont Transco). In response, FERC sustained Opinion No. 594 in full: the NETOs' prior 11.14% base ROE remains unjust and unreasonable, the 9.57% replacement base ROE stands, and the NETOs must pay refunds, with interest, for both the 15-month refund period (October 1, 2011, through December 31, 2012) and the period from October 16, 2014, through March 19, 2026.

In Opinion No. 594-A, the Commission denied all rehearing requests of Opinion No. 594. Per the Commission, and subject to appellate review, the NETOs' prior 11.14% base ROE remains unjust and unreasonable, the 9.57% replacement base ROE stands, and the NETOs must pay refunds, with interest, for both the 15-month refund period (October 1, 2011 through December 31, 2012) and the period from October 16, 2014, through March 19, 2026. The Commission also denied a separate motion seeking clarification of the refund extension.

This memorandum briefly summarizes the background of Opinion No. 594-A and then, for each request for rehearing or clarification, identifies the requesting party, the issue raised, and FERC's determination.

Please contact Eric Runge (ekrunge@daypitney.com) or Margaret Czepiel (mzczepiel@daypitney.com) with questions about this matter.

I. Background

For a full history of the proceeding, please see the Day Pitney March 25, 2026 [Memorandum](#) about Opinion No. 594. Beginning in 2011, New England transmission customers filed four successive FPA Section 206 complaints challenging the NETOs' base ROE. FERC's initial resolution was, Opinion No. 531 *et seq.*, in 2014, which set a 10.57% replacement ROE

effective October 16, 2014, and adopted a revised two-step DCF methodology and established a new zone of reasonableness.¹

Opinion No. 531 was vacated and remanded in *Emera Maine v. FERC*² because FERC had not adequately shown that the existing 11.14% ROE was unjust and unreasonable or that the replacement ROE was just and reasonable. In response to the remand in *Emera Maine*, the Commission issued a Briefing Order, seeking comments on a revised ROE framework. FERC issued a similar Briefing Order in two complaint proceedings involving the base ROE of Midcontinent Independent System Operator, Inc. (MISO) transmission owners (MISO TOs). Subsequently, in the MISO TOs proceeding, FERC issued Opinion Nos. 569, 569-A and 569-B, the Commission adopted a revised methodology incorporating multiple methods (including DCF and CAPM) and applied the precept of presumptively just and reasonable ROE ranges based on utility risk profiles.³

The revised methodology in Opinion No. 569 was challenged on appeal and, in response, FERC removed the Risk Premium model from its methodology but affirmed reliance on the DCF and CAPM models.⁴

In Opinion No. 594, FERC applied a methodology relying on the DCF and CAPM models, producing a composite zone of reasonableness of 7.04% to 12.09%, and used ranges of presumptively just and reasonable ROEs (dividing the composite zone into thirds). FERC granted the First Complaint, found the 11.14% base ROE unjust and unreasonable, and required a 9.57% base ROE effective prospectively from October 16, 2014. FERC dismissed the Second, Third, and Fourth Complaints and ordered refunds, with interest, for the First Complaint's 15-month refund period and for the October 16, 2014, through March 19, 2026, period (the "Prospective Date Period"). By an April 14, 2026, notice, the deadline to complete refunds was extended to May 20, 2027, with the refund report due June 4, 2027 (the "April Extension").

On April 20, 2026, the NETOs and Vermont Transco LLC filed requests for rehearing. On May 8, 2026, a group of consumer-aligned parties, including the Massachusetts Attorney General, the Connecticut PURA, state consumer advocates, and others (the "Motion Parties"), filed a Motion for clarification or, alternatively, reconsideration of the April Extension. As a procedural matter, FERC rejected answers to the rehearing requests filed by the Vermont Department of Public Service and a group of Consumer Advocates, as Rule 713(d) prohibits answers to rehearing requests, but accepted NESCOE's late-filed answer supporting the Motion.

After FERC issued the Notice of Denial of Rehearing by Operation of Law on May 21, 2026, the NETOs filed a Petition for Review of Opinion No. 594 in the D.C. Circuit (Case No. 26-

¹ *Coakley Mass. Attorney Gen. v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014), *order on paper hearing*, 149 FERC ¶ 61,032 (2014) (Opinion No. 531-A), *order on reh'g*, Opinion No. 531-B, 150 FERC ¶ 61,165 (2015).

² 854 F.3d 9 (D.C. Cir. 2017) (*Emera Maine*).

³ *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569, 169 FERC ¶ 61,129 (2019); *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569-A, 171 FERC ¶ 61,154 (2020); *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569-B, 173 FERC ¶ 61,159 (2020).

⁴ *MISO Transmission Owners v. FERC*, 45 F.4th 248, at 264 (D.C. Cir. 2022).

1123). That case remains pending and the NETOs will likely file to add Opinion No. 594-A to their appeal based on the outcome. Also, on April 30, 2026, the NETOs filed to increase their base ROE prospectively from the current 9.57% to 11.39% in Docket No. ER24-2389. On June 29, 2026, the Commission issued an order accepting and suspending the rate filing and established a paper hearing. Briefs in the paper hearing were filed between August 28 and September 8, 2026.

II. Rehearing and Clarification Determinations

The table below summarizes each request for rehearing or clarification and the Commission's response; each item is discussed in more detail with the Commission's reasoning following the table.

Requesting Party	Issue	Request	Commission Response
NETOs	Refunds for the Prospective Date Period	Limit refunds to March 19, 2026, forward.	Denied. Section 309 permits relief dating to FERC's legal error; notice and the filed-rate doctrine are satisfied.
NETOs	Interest on Refunds	Waive interest on Prospective Date Period refunds.	Denied. Interest makes customers whole; delay is not a basis to forgo it.
NETOs	Natural Break Test (UIL exclusion)	Restore UIL to the DCF proxy group.	Denied. UIL's 130-basis-point gap supports exclusion as an outlier.
NETOs	Total ROE Incentive Cap	Remove the cap at the top of the composite zone.	Denied. Order No. 679 and the FPA require total ROE to remain within the zone; no separate finding was needed.
NETOs	Financial Models	Retain the Expected Earnings and Risk Premium models and give DCF less weight.	Denied. Those models lack sufficient support as direct inputs, and no model is shown superior.
NETOs	Section 206 Step-One Analysis	Reconsider the step-one findings and related methodology.	Denied. The record supports the findings, midpoint, two-step DCF, and use of current test-period data.

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NETOs	Pancaked Complaints	Dismiss the Second, Third, and Fourth Complaints as duplicative.	Denied. Successive complaints based on current data are permitted; the dismissed complaints caused no additional refunds.
NETOs	Denial of Supplemental Briefs	Accept supplemental briefs and updated data.	Denied. Record reopening is discretionary; prior briefing provided notice and an opportunity to address the methodology.
NETOs	Presumptively Just and Reasonable Zones	Reject dividing the composite zone into thirds.	Denied. The D.C. Circuit upheld the framework as a reasonable tool for identifying likely just and reasonable ROEs.
NETOs	Consistency with Prior 9.39% Finding	Exclude values below 9.39% and reconsider 9.57%.	Denied. The prior statement was tentative and vacated; 9.57% also exceeds 9.39%.
NETOs	FPA Section 205 Filing Rights	Preserve the ability to file a new ROE under Section 205.	Denied. No order restricted Section 205 rights; the NETOs remained free to file.
NETOs	Dismissal of 2017 Rehearing Request as Moot	Reinstate 11.14% and allow surcharges.	Denied. The 9.57% ROE applies from October 16, 2014, making the request moot.
Vermont Transco	Refund Authority	Limit Vermont Transco's refunds to 15 months.	Denied. The same Section 309 reasoning applies.
Vermont Transco	Vermont-Specific Equitable Relief	Limit refunds due to pass-through costs and ratepayer impact.	Denied. Vermont Transco collected the same excessive ROE; special treatment would be inequitable, and deferral was already approved.
Motion Parties	Refund Status Reports — clarification of April Extension	Require June 1 and October 14 status reports.	Denied. The May 20, 2027, deadline is sufficient; the added reporting burden is not justified.

A. NETOs Request for Rehearing

1. Refunds for the Prospective Date Period

Issue Raised: The NETOs (joined by Vermont Transco) argued that FERC lacked authority to order refunds for the Prospective Date Period. Because *Emera Maine* vacated the Commission’s finding in Opinion No. 531-A that the existing rate was unjust and unreasonable (the “step-one” finding in a Section 206 analysis), they contended no valid step-one finding existed until Opinion No. 594, so the 9.57% rate could only be effective from March 19, 2026. The NETOs contend that ordering refunds for the Prospective Date Period based on the rate that was not actually fixed until Opinion No. 594 constitutes impermissible retroactive ratemaking that was not cured by prior notice. They further argued that the refunds exceed FPA Section 206(b)’s 15-month limit, that FPA Section 309 cannot override that limit, and that the refunds violate the filed rate doctrine and rule against retroactive ratemaking because vacated orders cannot supply notice.

FERC Determination: Denied. Relying principally on *MISO TOs II*, the Commission found that when it is remedying its own error after reversal in court, it has authority under FPA Section 309 to make relief effective as of the date of the error, a “clear exception” to Section 206’s limits. The identified legal error here is the same one addressed in the MISO proceeding, where the step-one finding was also fully vacated, yet the court upheld backdated relief. FERC also found no filed rate doctrine or rule against retroactive ratemaking violation: Opinion No. 531-A itself provided notice that the ROE was subject to change, and FERC repeatedly stated (in 2017 and in the 2018 Briefing Order) that any ROE set on remand would be effective as of October 16, 2014. Opinion No. 594-A, 196 FERC ¶ 61,232, at PP 45-60 (2026).

2. Interest on Refunds

Issue Raised: The NETOs asked FERC to waive interest on Prospective Date Period refunds on equitable grounds, arguing that the lengthy delay was attributable to FERC’s legal error and inaction.

FERC Determination: Denied. FERC’s discretion to waive interest is narrow and reserved for exceptional circumstances; interest is not a penalty but ensures customers are made whole for the time value of money and prevents a windfall to the NETOs. Delay not attributable to customers is a reason to award interest, not deny it, and FERC distinguished the precedent cited by the NETOs because the proceedings remained under active consideration and refunds can fully restore the parties. *Id.* at PP 63-73.

3. Natural Break Test

Issue Raised: The NETOs challenged the exclusion of UIL Holdings from the DCF proxy group under the natural break test. NETOs argued that the test lacks an economic or statistical basis, that UIL’s 12.27% result was not an outlier (being below certain accepted CAPM results and a 12.87% DCF result accepted in the Third Complaint), that UIL’s status as a NETO parent made its data especially relevant, and that the test should apply to the composite zone rather than to individual models.

FERC Determination: Denied. UIL’s 130 basis point gap from the next closest result, compared with a maximum 43 basis point gap among other proxy members, supports its exclusion as an outlier. UIL’s parent-company relationship is irrelevant to the outlier analysis, differences between DCF and CAPM results are not instructive, and FERC has consistently applied outlier tests to each model separately. *Id.* at PP 80-83.

4. Total ROE Incentive Cap

Issue Raised: The NETOs contested capping their total ROE (base plus incentive adders) at the top of the composite zone of reasonableness, arguing that Order No. 679 applies the cap only when incentives are approved, that incentives are outside the scope of the complaints, and that reducing incentives requires a separate Section 206 finding.

FERC Determination: Denied. Order No. 679 *et seq.* establishes a longstanding policy that total ROE may not exceed the upper end of the zone of reasonableness, and the FPA requires all rates to be just and reasonable. The issue, including incentives, was within scope because the Briefing Order expressly proposed the cap. The Commission did not modify any specific incentive; it changed how the zone is determined, so no separate Section 206 finding was needed. *Id.* at PP 89-92.

5. Financial Models

Issue Raised: The NETOs argued FERC erred in excluding the Expected Earnings and Risk Premium models, contrary to findings in Opinion No. 531, and in giving the DCF model equal weight with the CAPM despite prior findings that DCF results were skewed by anomalous market conditions.

FERC Determination: Denied. Opinion No. 531 used those models only as corroborative evidence, whereas direct inputs require stronger support. The Expected Earnings model measures return on book value rather than market price, and the record does not show investors rely on the Risk Premium model or resolve its circularity concerns. Under the multi-model methodology, whether market conditions are anomalous is not relevant, and the record does not show that either the DCF or CAPM is superior. *Id.* at PP 97-100.

6. Section 206 Step-One Analysis and Related Arguments

Issue Raised: The NETOs argued FERC’s step-one analysis failed to engage with the “particular circumstances” of the case as required by *Emera Maine*, and that the presumption that 11.14% is unjust and unreasonable was rebutted by (i) state-authorized distribution ROEs ranging up to 11.3%, (ii) their Risk Premium (10.74%) and Expected Earnings (11.15%) results, and (iii) non-utility DCF results. They also challenged FERC’s finding that the NETOs are of average risk, the use of the midpoint for an RTO-wide ROE, the two-step DCF (seeking reinstatement of the one-step model), and reliance on 2012–2013 test period data.

FERC Determination: Denied. State ROEs are only one element of the record, and 11.14% exceeds all but the highest state ROEs. The Risk Premium and Expected Earnings results are of little probative value (and, if anything, suggest 11.14% is too high), and non-utility companies are not comparable. The average-risk finding rests on credit rating comparisons across all NETOs; anomalous market conditions do not justify departing from the midpoint; the

Commission's prior rationale for the two-step DCF stands; and the Commission consistently uses the most recent record data for the relevant test period, distinguishing the "stale data" cases cited by the NETOs. *Id.* at PP 110-122.

7. Pancaked Complaints

Issue Raised: The NETOs argued FERC should have dismissed the Second, Third, and Fourth Complaints at the outset as duplicative, and that allowing them to proceed circumvented the 15-month refund limit and imposed litigation costs.

FERC Determination: Denied. FERC has consistently permitted successive ROE complaints based on new, more current data. Because Opinion No. 594 dismissed those complaints and ordered no refunds under them, they did not extend the 15-month refund period, and litigation expense is not a basis for relief. *Id.* at PP 126-127.

8. Denial of Supplemental Briefs

Issue Raised: The NETOs argued FERC violated due process by denying their December 2019 and November 2024 motions to file supplemental briefs and updated data addressing Opinion No. 569 and later market data, particularly while engaging with the same arguments in Opinion No. 594.

FERC Determination: Denied. Reopening the record is discretionary and reserved for extraordinary circumstances. The Briefing Order gave notice that the initial and reply briefs were the opportunity to address the proposed methodology, including potential changes, and addressing arguments raised elsewhere in the record does not require accepting an improper pleading. *Id.* at PP 133-136.

9. Presumptively Just and Reasonable Zones

Issue Raised: The NETOs argued that dividing the composite zone into thirds lacks a reasoned basis because the proxy group already reflects comparable risk, and that results for specific companies (*e.g.*, Dominion and Integrys) show the approach is internally inconsistent with credit ratings.

FERC Determination: Denied. The D.C. Circuit upheld this framework as a reasonable response to *Emera Maine*. The zones are an analytical tool identifying which subset of potentially lawful ROEs is likely just and reasonable for a utility of a given risk profile; they do not reflect a determination of the risk of individual proxy group companies. *Id.* at PP 139-143.

10. Consistency with Prior 9.39% Finding

Issue Raised: The NETOs argued that Opinion No. 594's composite zone of reasonableness extending to 7.04% is inconsistent with Opinion No. 531's finding that an ROE below 9.39% ROE did not satisfy *Hope* and *Bluefield* and was not just and reasonable

FERC Determination: Denied. The 9.39% statement was tentative, premised on adjusting a DCF-only analysis for anomalous market conditions (which is not relevant under the revised methodology), and vacated along with the rest of *Opinion No. 531 et seq.* A zone of reasonableness

may include rates that would not be just and reasonable in particular circumstances, and 9.57% is above 9.39% in any event. *Id.* at PP 148-151.

11. FPA Section 205 Filing Rights

Issue Raised: The NETOs argued FERC's approach effectively foreclosed their ability to file under FPA Section 205 to establish a new ROE (and customers' ability to challenge rates), contrary to *Atlantic City Electric Co. v. FERC*.

FERC Determination: Denied. No FERC order restricted the NETOs' Section 205 rights; the NETOs had notice since 2017 of the October 16, 2014, effective date and remained free to file, as they did on April 30, 2026. *Id.* at P 161.

12. Dismissal of 2017 Rehearing Request as Moot

Issue Raised: The NETOs challenged dismissal as moot of their November 2017 rehearing request seeking reinstatement of the 11.14% ROE after *Emera Maine* and sought surcharges for the difference between 11.14% and 10.57% for the Prospective Date Period.

FERC Determination: Denied. Because the 9.57% ROE is effective as of October 16, 2014, the request is moot; even if 11.14% were reinstated, the NETOs would still owe refunds down to 9.57%. *Id.* at PP 164-165.

B. Vermont Transco Request for Rehearing

1. Refund Authority

Issue Raised: Vermont Transco separately argued that FERC lacks authority under FPA Sections 206 and 309 to order refunds beyond the 15-month refund period.

FERC Determination: Denied for the same reasons as the NETOs' parallel arguments (see Section II.A.1). *Id.* at PP 53-54.

2. Vermont-Specific Equitable Relief

Issue Raised: Vermont Transco argued that, because it passes transmission revenues through to its Vermont distribution utility owners as credits, the refunds would result in approximately \$80 million in net charges to Vermont ratepayers, plus borrowing and carrying costs, and asked FERC to limit its refunds to the 15-month period (with a commensurate reduction for other NETOs).

FERC Determination: Denied. Vermont Transco collected the same ROE as other NETOs and exempting it would treat it differently from similarly situated NETOs and deny refunds to non-Vermont New England customers. Vermont ratepayers previously benefited from higher revenue credits, so refunds restore parties to their rightful positions. The Commission noted that it separately approved Vermont Transco's proposal to defer recovery of a portion of the refunds over up to 10 years, and that Vermont Transco raised the pass-through issue for the first time on rehearing. *Id.* at PP 155-158 & nn.412-413.

C. Motion Parties Motion for Clarification

Issue Raised: The Motion Parties did not oppose the April Extension but asked FERC to clarify that the NETOs and ISO-NE must file refund status reports on June 1, 2026, and October 14, 2026, to improve transparency and oversight. NESCOE supported the Motion; the NETOs opposed it as unnecessary and administratively burdensome.

FERC Determination: Denied. The May 20, 2027, refund deadline is sufficient to ensure timely and orderly completion of refunds, and the additional burden of status reports is not justified. *Id.* at P 169.

III. Conclusion

Opinion No. 594-A leaves the outcome of Opinion No. 594 intact. FERC rejected every rehearing argument raised by the NETOs and Vermont Transco and denied the Motion Parties' request for interim status reports. As a result, the NETOs' base ROE remains 9.57% effective October 16, 2014, the total ROE (including incentives) remains capped at the top of the composite zone of reasonableness (12.09%), and the NETOs must complete refunds, with interest, for both refund periods by May 20, 2027, with the refund report due June 4, 2027 (all subject to the outcome of any appellate review). Vermont Transco receives no special treatment beyond the separately approved deferral of recovery from its ratepayers.

For transmission stakeholders, the order is significant in three respects. First, it confirms, consistent with *MISO TOs II*, FERC's view that its Section 309 remedial authority permits backdating relief to the date of a court-identified legal error, notwithstanding Section 206(b)'s 15-month refund limit. Second, it reaffirms the DCF/CAPM methodology, presumptively just and reasonable zones, and outlier screening as applied to New England. Third, it keeps the refund process on its current schedule. Parties seeking further review may petition for review in the U.S. Court of Appeals within the statutory period. The NETOs' separate April 30, 2026, Section 205 ROE filing in FERC Docket No. ER26-2389 remains a related matter that could change the New England transmission rate ROE prospectively.