

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

ENE (Environment Northeast), *et al.*

v.

Bangor Hydro-Electric Co., *et al.*

Docket No. EL13-33-002

Attorney General of the Commonwealth  
of Massachusetts, *et al.*,

v.

Bangor Hydro-Electric Co., *et al.*

Docket No. EL14-86-000

**COMPLAINANT-ALIGNED PARTIES’  
BRIEF REGARDING DATA CUT-OFF**

Pursuant to the Presiding Judge’s Orders dated November 6, 7, and 25, 2014, numerous parties that are participating in these now-consolidated proceedings as either complainants, or intervenors, or both (collectively hereafter, the “Complainant-Aligned Parties,” or “CAPs”)<sup>1</sup> hereby present their brief on a pre-trial procedural question.

**I. STATEMENT OF THE ISSUE TO BE BRIEFED**

The question for briefing concerns the data inputs to be used in preparing the final round of pre-filed testimony, scheduled to be submitted on May 26, 2015.<sup>2</sup> On that date, witnesses for all parties may present the results of combining updated financial market data inputs with their previously-presented methodologies and criteria for identifying the cost of the equity capital

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<sup>1</sup> For purposes of this brief, CAPs consist of the Connecticut Attorney General; Connecticut Office of Consumer Counsel; Connecticut Public Utilities Regulatory Authority; Maine Office of the Public Advocate; Massachusetts Attorney General; Massachusetts Department of Public Utilities; Massachusetts Municipal Wholesale Electric Company; New Hampshire Electric Cooperative; New Hampshire Office of Consumer Advocate; New Hampshire Public Utilities Commission; Rhode Island Division of Public Utilities Control; Vermont Department of Public Service; Acadia Center (formerly Environment Northeast); The Energy Consortium; Associated Industries of Massachusetts; and the Industrial Energy Consumer Group.

<sup>2</sup> See Orders dated November 6, 2014 and December 4, 2014. Hereafter, all dates refer to 2015 unless otherwise stated.

invested by Respondents in transmission rate base facilities. The core of these presentations necessarily will be updated two-stage DCF studies, conducted pursuant to the Commission's longstanding primary focus on the Discounted Cash Flow ("DCF") methodology for inferring the cost of equity.<sup>3</sup> There should be no dispute on this point: the Commission held in Opinion No. 531 that any reference to other methodologies must be subordinate to DCF-based findings.<sup>4</sup> And, in setting this case for hearing, the Commission directed that the DCF studies presented here must follow the Opinion No. 531 two-stage DCF methodology.<sup>5</sup>

Consistent with earlier Commission precedents,<sup>6</sup> Opinion No. 531 provides that the duration of the study period from which dividend histories and share prices will be taken as inputs for those updates necessarily will consist of six calendar months. And, in accord with the purpose of updating prior studies, the specific six-month period that should be used is the most recent six full calendar months available as of the time of the update, *i.e.*, November 2014 through the end of April 2015. CAPs believes that all participants are in agreement on that threshold point.

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<sup>3</sup> See, e.g., *Pac. Gas & Elec. Co.*, 141 FERC ¶ 61,168, P 23 (2012); *S. Cal. Edison Co.*, 131 FERC ¶ 61,020, PP 114-16 (2010), *reh'g denied*, 137 FERC ¶ 61,016 (2011), *petition for review granted in part, denied in part sub nom. S. Cal. Edison Co. v. FERC*, 717 F.3d 177 (D.C. Cir. 2013); *Peppo Holdings, Inc.*, 124 FERC ¶ 61,176, P 127 (2008), *reh'g denied*, 139 FERC ¶ 61,144 (2012); *Xcel Energy Servs., Inc.*, 122 FERC ¶ 61,098, P 73, *clarified*, 125 FERC ¶ 61,092 (2008); *ITC Holdings Corp.*, 121 FERC ¶ 61,229, P 43 (2007); *Orange & Rockland Util. Inc.*, Op. No. 314, 44 FERC ¶ 61, 253, *order on reh'g*, Op. No. 314-A, 45 FERC ¶ 61, 252 (1998), *reh'g denied*, 46 FERC ¶ 61,036 (1989).

<sup>4</sup> See Opinion No. 531, P 146 ("In considering...other methodologies, we do not depart from our use of the DCF methodology; rather, we use the record evidence to inform the just and reasonable placement of the ROE within the zone of reasonableness established in the record by the DCF methodology.").

<sup>5</sup> See Hearing Order, 147 FERC ¶ 61,235 P 26 ("We note...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.").

<sup>6</sup> *Portland Natural Gas Trans. Sys.*, Op. No. 510, 134 FERC ¶ 61,129 P 162 (2011), *on reh'g*, 142 FERC ¶ 61,198 (2013). *PJM Interconnection, L.L.C.*, 139 FERC ¶61,068 P 84 (2012); *S. Cal Edison*, 139 FERC ¶61,042 P 27 (2012); *SFPP, LP*, 137 FERC ¶61,220 PP 257-58 (2011); *RITELite Illinois, LLC*, 137 FERC ¶61,039 P 68 (2011); *N. Pass Trans. LLC*, 134 FERC ¶61,095 P 46 (2011); *S. Cal. Edison*, 133 FERC ¶61,269 P 23 (2010).

The disagreement that gave rise to the present briefing concerns the cut-off date for the other<sup>7</sup> updated inputs. In particular, NETOs seek to reserve the possibility of utilizing, in their May 26 updates, Earnings Per Share (“EPSG”) growth rate projections that are first posted *after* April 30, *i.e.*, that surface during the interval May 1-26.

The question addressed here is whether each updating participant should ring its own closing bell for the sampling of financial market data at a time of its own choosing—potentially as late the afternoon of the May 26 due date—or whether the procedural schedule should establish a consistent data cut-off of April 30, applicable to all participants. CAPs’ answer is that a consistent, April 30 cut-off date will promote administrative efficiency, while ensuring that the ROE selected in this proceeding is “based on the most recent financial data available at the time of the hearing consistent with the due process rights of the participants.” Opinion No. 531, P 160.

However the present question is resolved, if extraordinary circumstances arise, the Presiding Judge will inherently retain authority to consider a motion for admission of post-cut-off financial market data inputs. The present issue is simply whether the use of such late-arising information should be permitted as-of-right under the schedule, or should require a motion and justification, with the attendant opportunities for compensating procedural relief, such as the live sur-rebuttal testimony that was permitted by Judge Cianci in Docket No. EL11-66.

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<sup>7</sup> “Other” meaning other than the six months of dividend payment and share price data that are inputs into the dividend yield portion of the DCF methodology. As just noted, all participants appear to be in agreement that the dividend payment and share price data will be taken from the period November 2014 through the end of April 2015.

## II. THE VALUE OF USING THE “MOST RECENT” FINANCIAL DATA MUST BE BALANCED AGAINST DUE PROCESS CONCERNS ASSOCIATED WITH PERMITTING RELIANCE UPON LATE-ARISING AND INCONSISTENT DATA

As noted, the Commission’s updating practices seek to balance two considerations: minimizing data lag while maximizing data reliability through due process. This is an aspect of the balancing of data currency and data reliability that the Commission has also recognized in structuring other elements of its DCF process. For example, a similar balancing undergirds the Commission’s policy of using six months of historical stock market data, rather than looking back further or using only the most recent “spot” market data.<sup>8</sup> In agreeing to the initial and revised schedule dates for final-update testimony, CAPs likewise sought to minimize data lag while also maximizing data reliability through due process. Indeed, all participants recognize, at least implicitly, that both of these considerations are pertinent and must be balanced:

- If minimizing data lag were the only consideration, the final updates would not be pre-filed; they would be presented by each party’s witness upon taking the stand at trial, using the most recent data they had time to process, perhaps even data obtained mere hours earlier. While allowing for the use of the “most recent” data, this protocol would maximize that objective at the expense of due process. Each side would lose the ability to seek discovery of and to evaluate its adversary’s data. Consequently, focusing solely on the use of the most current data would open the door to the inclusion in the record of *unreliable*, albeit recent, information.
- On the other hand, if the assurance of data reliability through due process data vetting were the only consideration, the procedural schedule would not provide

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<sup>8</sup> See, e.g., *Blue Ridge Power Agency, et al.*, Opinion No. 363, 55 FERC ¶ 61,509, at 62,783 (adopting six-month period as a “fair balance between overly long and excessively short measurement periods”), *aff’d in relevant part*, 57 FERC ¶ 61,100 (1991), *aff’d*, 58 FERC ¶61,193 (1992); *Boston Edison Co.*, Opinion No. 299, 42 FERC ¶ 61,374, at 62,093 (1988), *aff’d in rel. part sub nom. Boston Edison Co. v. FERC*, 885 F.2d 962 (1st Cir. 1989).

for data updating. Instead, each participant would simply present its studies using data available months before trial, appropriate opportunities would follow for discovery into and rebuttal of those studies, and the case would then proceed to trial, using less-recent but well-scrutinized data inputs. Although such a process would provide the best-vetted data, it would not allow for the use of the most current or recent data. Consequently, it would be designed to yield a record that would be reliable, but stale.

Thus, by proposing a schedule that includes a date for updated studies, but requires those studies to be pre-filed and open to discovery, all participants have already recognized the need to balance the importance of using recent data with due process. However, NETOs' proposal does not balance those considerations well, while the proposal shared by CAPs and Staff does.

The procedural schedule includes only six business days between the filing of updates (on May 26) and the close of discovery (on June 3). That period is tight, but is minimally adequate *if* the data filed on May 26 is sourced by April 30. Because the updates are to be just that, once April closes, each participant should be able to discern from prior testimony what input sources will factor into the updates, and to begin their analysis and discovery related to those sources before May 26. With that head start, the six business days available to complete discovery after final updates are filed should prove sufficient. If the updates utilize data arising as late as May 26, however, the requisite head start will disappear.

This concern is particularly significant in light of the principal source of dubious data inputs under the Opinion No. 531 methodology, namely third-party summaries of stock analysts' estimates of proxy companies' EPSG. In both Opinion No. 531 and NETOs' Docket Nos. EL11-66, EL13-33, and EL14-86 testimonial submissions, the third-party source used for those summaries was the no-charge, no-subscription Yahoo! Finance website, [www.finance.yahoo.com](http://www.finance.yahoo.com) (hereafter "Yahoo"). The Commission has also made clear that its

approval of those Yahoo-reported growth estimates that represent a consensus of analyst estimates is not exclusive of other credible sources, and has itself relied on other EPSG sources.<sup>9</sup> Nonetheless, CAPs anticipate that NETOs, and perhaps other participants, will utilize that source again here. CAPs are prepared to demonstrate at trial the following relevant allegations, most of which are either taken directly from publisher documentation or have already been substantiated through a sworn statement:

- Yahoo obtains from Thomson Reuters<sup>10</sup> what it or its source label as “updated quarterly”<sup>11</sup> “consensus”<sup>12</sup> “analyst estimates”<sup>13</sup> of “LT [Long Term]”<sup>14</sup> “Next 5 Years (per annum)”<sup>15</sup> EPSG. But all five elements of that labeling are often false.
- As to “updated quarterly,” if Thomson Reuters has no updated EPSG to report for a given company, it will “auto stop” that EPSG reporting after approximately 180 days,<sup>16</sup> but Yahoo may continue to post its prior figure.<sup>17</sup>

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<sup>9</sup> See, e.g., *Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity*, 123 FERC ¶61,048, PP 83-84 (2008), *reh’g dismissed*, 123 FERC ¶ 61,259 (2008) (conditionally allowing, but not requiring, reference to growth forecasts published by Yahoo); *ISO New England, Inc.*, 109 FERC ¶ 61,147, P 205 (2004), *petition for review denied sub nom. Me. Pub. Utils. Comm’n v FERC*, 454 F.3d 278 (D.C. Cir. 2006). (stating, in an earlier proceeding to set the NETOs’ base return on equity, that comparable growth projections from other sources could be considered along with Value Line projections and what was then I/B/E/S); *ISO New England, Inc.*, 110 FERC ¶ 61,111, P 23, *reh’g denied*, 111 FERC ¶ 61,344 (2005) (same); *Yankee Atomic Elec. Co.*, Op. No. 285, 40 FERC ¶ 61,372, at 62,210 (1987) (“[w]hen calculating a factor as nebulous as the dividend growth rate, the analyses should be based upon as much independently calculated data as possible”), *reh’g denied*, Op. No. 285-A, 43 FERC ¶ 61,232 (1988) (rejecting sole reliance on Zack’s predictions of earnings growth in favor of multiple data sources for projecting earnings).

<sup>10</sup> See <https://help.yahoo.com/kb/finance/analyst-estimates-sln4245.html?impressions=true>.

<sup>11</sup> See *id.*

<sup>12</sup> See, e.g., Affidavit of J. Randall Woolridge, filed Sept. 25, 2014 in Docket No. EL14-86, Ex. CPL-204 (header at top of page 2 of 2, “CONSENSUS ESTIMATES ANALYSIS”).

<sup>13</sup> See, e.g., Affidavit of J. Randall Woolridge, filed Sept. 25, 2014 in Docket No. EL14-86, Ex. CPL-203 ((header at top of pages 1 and 3 of 4, “Analyst Estimates”).

<sup>14</sup> See note 12 above.

<sup>15</sup> See note 13 above.

<sup>16</sup> See Thomson Reuters, *Methodology For Estimates: A Guide To Understanding Thomson Reuters Methodologies, Terms And Policies For The First Call And I/B/E/S Estimates Databases*, at 18 (“All non-updated estimates are auto-stopped at 180 days”). *available at*

- As to “consensus,” although Yahoo does not transparently identify the number of analyst firms that factor into each of its reported EPSG estimates, investigation has revealed that estimate reports frequently represent only one analyst firm. That hardly represents a Wall Street “consensus,” and reliance on such single-analyst estimates would fly in the face of Commission precedent holding that IBES EPSGs are reliable only insofar as they represent the consensus of *multiple* analysts.<sup>18</sup>
- As to “analyst estimates,” Thomson Reuters prepares its EPSG figures by averaging EPSG figures that it either obtains from analysts or infers from data files provided by analysts.<sup>19</sup> However, Thomson Reuters’ interpretation of analyst reports and data files is performed largely or entirely by non-analyst staff based in far-flung locations such as Bangalore, India,<sup>20</sup> is not systematically checked with the analysts themselves, and is often wrong, such that Thomson Reuters attributes

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[http://www.library.kent.edu/files/TF\\_Methodology\\_for\\_Estimates\\_October\\_2009.pdf](http://www.library.kent.edu/files/TF_Methodology_for_Estimates_October_2009.pdf)

<sup>17</sup> As of this writing, for example, reuters.com posts no current LT EPSG for ALLETE, Inc. (ALE), Black Hills Corp. (BKH), El Paso Electric Co. (EE), Empire District Electric (EDE), or Otter Tail Corp. (OTTR), whereas Yahoo (which obtains all of its posted LT EPSGs from Thomson Reuters) continues to post estimates for each of those companies.

<sup>18</sup> See *Nw. Pipeline Corp.*, 87 FERC ¶ 61,266, at 62,059 (1999) (finding it generally acceptable to rely on IBES data as the source of first-stage growth because “[t]he IBES data is a compilation of projected growth rates from various knowledgeable financial advisors within the industry. As such, it already reflects an average of numerous projections of short-term growth of the proxy companies.”).

<sup>19</sup> See Affidavit of J. Randall Woolridge, filed Sept. 25, 2014 in Docket No. EL14-86, Ex. CPL-205, at 1 (attaching Thomson Reuters email stating that the EPSGs that factor into the average EPSG reported by Thomson Reuters may be “sourced through ...files” rather than stated by analysts themselves in their reports).

<sup>20</sup> The Thomson Reuters employee with whom Dr. Woolridge’s assistant corresponded (Cecilia Ambrocio, as documented in the materials cited in note 19 above) is based in Manila, the Philippines. See her LinkedIn page, at <https://www.linkedin.com/pub/cecilia-ambrocio/70/271/54b>. The Thomson Reuters employee with supervisory responsibility for data entered into the I/B/E/S database is based in Bangalore. See his LinkedIn page, at <https://www.linkedin.com/pub/sandeep-shrivastava/4/741/7b8>. The Bangalore connection is reinforced by consideration of Ameren Corp. (AEE). It was the Ameren EPSG and resulting Ameren ICOE that drove the top of the DCF results range in recent testimony by Dr. Woolridge, and is likely to do so in the direct testimony due from CAPs later this month. The Thomson Reuters employee who reports on Ameren’s earnings is based in Bangalore. See, e.g., Swetha Gopinath, *Ameren to sell merchant generation business to Dynegy* (Mar. 14, 2013), available at <http://www.reuters.com/article/2013/03/14/us-ameren-dynegy-idUSBRE92D0JM20130314>. Ms. Gopinath’s LinkedIn page states that she “lead[s] coverage of Basic Industries in Reuters’ Bangalore Bureau,” heading “a team of 5 reporters,” and that prior to occupying her present position, she obtained an M.A. in “Multi Media Journalism,” served as an intern at CBS Interactive, and reported on “Youth Centric Issues” for the New Indian Express. In short, and with no disrespect intended, she is a journalist, not a financial analyst. See <https://www.linkedin.com/pub/swetha-gopinath/25/b4b/30>.

to analyst firms EPSG figures that the analyst firms themselves would consider erroneous.

- As to “LT” and “Next 5 Years,” the analyst reports and data files from which Thomson Reuters draws Yahoo’s information rarely look ahead as much as five years. Indeed, they often look ahead only three years, from a baseline year that is already past, such that they are projecting only two years beyond the date of their posting. Thus, they are short-term forecasts, not “LT” ones. But proxy firms’ projected earnings growth is inherently more volatile over short time horizons than long ones, just as day-to-day weather exhibits temperature changes that vary more rapidly than does climate. Consequently, the Yahoo/Reuters reliance on relatively short-term EPSGs tends to disperse their posted EPS away from what an analyst or investor would project over a full five-year projection period.

CAPs anticipate that the Presiding Judge will have occasion to consider whether issues like these are distorting updated DCF results, so as to affect the conclusions that can reasonably be drawn from the DCF array. Consider CAPs’ allegation<sup>21</sup> in Docket No. EL14-86 that the DCF result associated with Portland General, which was the highest Implied Cost of Equity (“ICOE”) in the DCF study presented by NETOs (and in other parties’ studies contemporaneously filed in other proceedings), was infected with an EPSG error arising from Thomson Reuters’ misinterpretation of a data file. If the highest ICOE in the updated array appears to be distorted by any similar issue, that would reinforce the case (which CAPs believes is already compelling) against setting the Base ROE in a manner that places more weight on the highest updated ICOE than on the other ICOEs in the updated array.

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<sup>21</sup> We use the word “allegation” in order to respect the procedural schedule, including the fact that NETOs retain a rebuttal evidentiary opportunity. However, CAPs has identified above sworn evidence that it believes will amply substantiate this allegation when re-introduced at trial.

The preceding discussion is relevant to the matters at issue for the simple reason that uncovering and assessing problems such as those that may lie beneath opaque website postings takes time. If EPSGs that first surface during May are included in the pre-trial updates, there will not be adequate time in the remainder of the procedural schedule to ensure that the underlying data is properly vetted.

A related concern arises from the forensic reality that an indefinite data cut-off date invites cherry-picking of data. When the participants agreed upon a procedural schedule that calls for a November 2014–April 2015 DCF updates study period, they were (and for now, remain) behind a “veil of ignorance” as to the direction in which DCF inputs will move during the remaining time prior to the due date for filing updates. If the participants are permitted to inject selectively data that materially post-dates the study period, however, they will presumably do so only if, and only to the extent, that further updating favors their cause. For example, suppose that a significant input moves upwards between May 1 and May 15, but goes back down again by May 26. What is to prevent a participant from using May 15 as its self-selected data cutoff date? For this reason as well, allowing participants to self-select their data cutoff date is more likely to lead to biased data-mining than it is to further the search for truth.

To be sure, a post-April update is not likely to have much effect on the ultimate Base ROE finding *if* the interpretation of the DCF results array looks to all of the retained ICOEs (as CAPs maintain should be done), instead of giving the most extreme ICOEs extra and dispositive weight. While that issue will be addressed at trial, the procedural schedule should be designed to yield reliable and reasonable results however that issue is resolved. Moreover, the *top* of the range of reasonableness must also be determined, because it cabins the “total or maximum ROE,

including transmission incentive ROE adders.”<sup>22</sup> A post-April update is more likely to have a significant, and potentially distorted, effect on that decisional issue.

**III. A CONSISTENT DATA CUT-OFF WILL ENABLE STRAIGHTFORWARD COMPARISONS OF THE WITNESSES’ METHODOLOGIES**

The central issue to be determined in this case will presumably be where to place the Base ROE within the array of DCF results, *i.e.*, within the array of ICOEs for which the Opinion No. 531 methodology generates one ICOE per retained proxy company. By way of informing the present procedural issue, and without intending to constrain any participant’s testimony or positions on the merits, that issue will likely implicate at least three sub-issues:

- One, whether to look to all retained ICOEs in interpreting the DCF studies, or focus instead on only the highest and lowest ICOEs.
- Two, whether to place the Base ROE at the center of the array of DCF results, or to move away from the center based on other information.
- Three, what Base ROE placement is indicated by non-DCF studies.

In resolving all of these questions, it will advance the efficient search for truth if all inputs are drawn from consistent periods, so that timing differences do not confound comparisons across the participants’ various DCF studies and comparisons between DCF and non-DCF studies.

For example, the written testimonies filed by Complainants and NETOs at the Complaint/Answer stage of Docket No. EL14-86 revealed a disagreement as to the usefulness and import of comparisons between DCF results for electric utilities and DCF results for competitive-sector firms like Coca-Cola, with NETOs’ witness advocating reliance on the

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<sup>22</sup> Opinion No. 531-A, P 11.

latter.<sup>23</sup> In addressing the validity of using Coca-Cola as a proxy for NETOs' regulated-industry risks, it will be helpful if the DCF analyses for both types of firms were drawn from the same period, so that timing differences in stock market inputs do not confound differences in the resulting DCF findings.

Consider also that witnesses may reach different conclusions as to proxy group composition, *e.g.*, as to whether merger activity by a candidate proxy is sufficiently material that it could distort that proxy's ICOE, such that that company should be excluded from the proxy group under Commission precedent.<sup>24</sup> The Presiding Judge might conclude that one witness improperly excluded a proxy, while also finding that the same witness's DCF study should be adopted in all other respects. In that event, if all DCF studies used consistent inputs and a second witness did present DCF results for the contested proxy using consistent inputs, it might prove simple and reasonable to adjust the first witness's results by bringing in the second witness's ICOE for that proxy.

#### **IV. REQUIRING SYNCHRONOUS DATA INPUTS IS CONSISTENT WITH THE PRINCIPLES UNDERLYING THE DISCOUNTED CASH FLOW METHODOLOGY**

The growth rates used in the DCF model must be kept reasonably synchronous with the six-month study period from which dividend yields are derived, consistent with DCF theory, and cannot be taken from whenever a party spots a post-period growth estimate more favorable to its cause. As NETOs' witness explained during the Docket No. EL11-66 trial, the fundamental

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<sup>23</sup> See Prepared Direct Testimony and Exhibits of William E. Avera and Adrien M. McKenzie, filed by NETOs in Docket No. EL14-86 on Sept. 10, 2014 (eLibrary No. 20140910-5206), at 63 (“The 16 companies that make up the Non-Utility Group ... include ... Coca-Cola, General Mills, McDonalds, and Wal-Mart”).

<sup>24</sup> See, *e.g.*, Opinion No. 531 P 114 (excluding Entergy Corp. and ITC Holdings Corp. due to “M&A activity significant enough to distort the DCF inputs,” but finding that “[w]hile Northeast Utilities was involved in M&A activity in the recent past, the record does not indicate that the M&A activity was significant enough to distort the DCF inputs”).

theory of DCF analysis requires that “the growth rate [study period] goes with the dividend yield [study period].” Tr. 578. Such synchronism is necessary because “what we’re trying to do is we’re trying to back in to the cost of capital by solving the DCF equation for the discount rate,” and it is therefore necessary to use, “as close as possible,” the “growth rate expected at the time the stock was purchased during our study period.”<sup>25</sup> This mathematical logic explains why the Commission has previously required “that the data inputs reflect a uniform time period.”<sup>26</sup> In the 2004 complaint case that led to Opinion No. 489 and thereby established the 11.14% Base ROE that applied until Opinions Nos. 531 and 531-A, the Commission applied this standard to NETOs benefit.<sup>27</sup>

CAPs recognize that Opinion No. 531 relied on NETO testimony that combined EPSG data from mid-April 2013 with dividend yield data from October 2012–March 2013. While that decision remains the subject of a pending rehearing, CAPs further recognize that on the current state of Commission precedent, this aspect of Opinion No. 489 has been reversed and the Presiding Judge would not be precluded, as a matter of law, from accepting asynchronous, post-April data as part of the final pre-trial update. That lack of preclusion, however, does not *compel* the adoption of a procedural schedule that would encourage such asynchronism. Elsewhere in Opinion No. 531, the Commission re-affirmed the importance of using consistently-timed data. *See* Opinion No. 531 P 90 (rejecting mixture of data sources that “may use slightly different time periods from one another”). The Presiding Judge retains full authority to set the procedural

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<sup>25</sup> *Id.*; *see also* Ex. NET-300 at 28-29 (“the cash flows that investors expect from a stock are estimated, and given the stock’s current market price, we can back into the discount rate, or cost of equity, that investors implicitly *used* in bidding the stock to that price” (emphasis added)).

<sup>26</sup> *Bangor Hyro-Elec. Co.*, Op. No. 489, 117 FERC ¶ 61,129, P 28 (2000), *reh’g granted in part*, 122 FERC ¶ 61,265 (2008), *clarified*, 124 FERC ¶ 61,136 (2008), *petition for review denied sub nom. Conn Dep’t of Pub. Util. Control v FERC*, 593 F.3d 30 (D.C. Cir. 2010).

<sup>27</sup> *See id.*

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schedule and thereby determine how best to balance recency with due process. *See, e.g.*, Rule 504(b)(1) (the presiding officer may “Schedule and otherwise regulate the course of the hearing”); Rule 507(b) (“prepared written testimony must be filed and served within the time provided by the presiding officer”). *See also Attorney General v. Bangor Hydro-Electric Co.*, 149 FERC ¶ 61,156 (2014), Ordering Paragraph C (“The Presiding Judge in Docket No. EL13-33-000 shall determine the procedures best suited to accommodate the consolidation ordered herein”). For the reasons stated elsewhere in this brief, the procedures best suited to this consolidated proceeding would establish a consistent data cut-off date, applicable to all participants, and that cut-off date should be April 30, 2015.

## V. CONCLUSION

For the foregoing reasons, the financial market data to be used as inputs for the final round of pre-filed testimony should be subject to a consistent cut-off date applicable to all participants. Given that the adopted procedural schedule sets a May 26 date for that testimony, the cut-off date should be April 30.

Respectfully submitted for all the  
Complainant-Aligned Parties,

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Scott H. Strauss and David E. Pomper,  
*For Connecticut Public Utilities Regulatory Authority*

December 19, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated on this 19th day of December, 2014.

*/s/ David E. Pomper*

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David E. Pomper

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