

174 FERC ¶ 61,118
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

Cloverland Electric Cooperative

Docket No. EL20-57-000

v.

Wisconsin Electric Power Company

ORDER ON COMPLAINT AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued February 18, 2021)

1. On July 1, 2020, pursuant to sections 206 and 306 of the Federal Power Act (FPA),¹ and Rule 206 of the Commission's Rules of Practice and Procedure,² Cloverland Electric Cooperative (Cloverland) filed a complaint against Wisconsin Electric Power Company (Wisconsin Electric) (Complaint). Cloverland seeks a reduction in the ROE component of the formula rate included in Wisconsin Electric's market rate tariff service agreement with Cloverland (Service Agreement), under which Wisconsin Electric supplies wholesale power to Cloverland. Cloverland argues that the 11% ROE in the formula rate calculations used to develop charges for the service that Cloverland receives from Wisconsin Electric is unjust and unreasonable under the Commission's current methodology for determining an appropriate ROE. In this order, we set Cloverland's Complaint for hearing and settlement judge procedures, and establish a refund effective date of July 1, 2020.

I. Complaint

2. Cloverland states that it is a Michigan nonprofit member-owned distribution cooperative corporation that is engaged in the distribution and sale of electric energy to

¹ 16 U.S.C. §§ 824e, 825e.

² 18 C.F.R. § 385.206 (2020).

its member-customers in the Upper Peninsula region of Michigan.³ Cloverland states that Wisconsin Electric is a market participant in Midcontinent Independent System Operator, Inc. (MISO), and that Wisconsin Electric's unaffiliated wholesale customers, including Cloverland, take service at a cost-based rate under contracts that provide that the rate for capacity and energy will be in accordance with Wisconsin Electric's Formula Rate Wholesale Sales Tariff (Formula Rate Tariff).⁴

3. Cloverland states that it entered into the Service Agreement with Wisconsin Electric in 2010,⁵ under which Wisconsin Electric provides load-following service to Cloverland to meet Cloverland's capacity and energy requirements in excess of its own generating resources at the rate established by the Formula Rate Tariff.

4. The Formula Rate Tariff incorporates an 11% ROE, which was established as part of a settlement that was approved by the Commission on September 14, 2007 in Docket No. ER06-1320.⁶ Cloverland states that section 4.12(a) of the Formula Rate Tariff provides that Cloverland "may file under FPA section 205 or 206, as applicable, in order to change the formula rate so that it reflects the fully allocated embedded cost in a manner that is just, reasonable, and not unduly discriminatory."⁷ Cloverland states that by its Complaint, it seeks a change to the fixed 11% ROE incorporated in Wisconsin Electric's Formula Rate Tariff.

5. Cloverland argues that, applying the methods described by the Commission in its Opinion Nos. 569 and 569-A,⁸ Wisconsin Electric's existing ROE of 11% is excessive,

³ Cloverland Complaint at 2-3.

⁴ The contracts between Wisconsin Electric and its unaffiliated wholesale customers were negotiated pursuant to Wisconsin Electric's market-based rate authority. However, the wholesale contracts provide that the rate for capacity and energy will be in accordance with Wisconsin Electric's Formula Rate Tariff. Cloverland Complaint at 3. The Commission accepted the Formula Rate Tariff in 2007. *Wis. Elec. Power Co.*, Docket Nos. ER08-145-000 and ER08-146-000 (Dec. 27, 2007) (delegated order).

⁵ Cloverland states that Edison Sault Electric Company, LLC (Edison Sault) is also a party to the Service Agreement and that, subsequently, Edison Sault was merged with and into Cloverland with Cloverland the surviving entity. Cloverland Complaint at 4.

⁶ *Id.* (citing *Wis. Elec. Power Co.*, 120 FERC ¶ 61,236 (2007)).

⁷ *Id.* at 5 (quoting section 4.12(a) of the Formula Rate Tariff).

⁸ *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569, 169 FERC ¶ 61,129 (2019), *order on reh'g*, Opinion No. 569-A,

and unjust and unreasonable. Cloverland requests that the Commission establish a just and reasonable ROE.

6. Cloverland asserts that in Opinion No. 569, the Commission used the discounted cash flow (DCF) model and capital-asset pricing model (CAPM) in its determinations under the first and second prongs of FPA section 206, giving each model equal weight under both prongs, and did not use the expected earnings (Expected Earnings) or risk premium (Risk Premium) models. In addition, it asserts that the Commission used the ranges of presumptively just and reasonable ROEs in its analysis under the first prong of section 206, used a high-end outlier test⁹, used the Institutional Brokers' Estimate System (IBES) as the source of short-term earnings growth estimates in the DCF and CAPM, and used a revised low-end outlier test that eliminates DCF and CAPM proxy group ROE results that are less than the yields of generic corporate Baa bonds plus 20% of the CAPM risk premium.

7. Cloverland states that in Opinion No. 569-A, the Commission granted rehearing of Opinion No. 569 to use the Risk Premium model under both prongs of the Commission's section 206 analysis, to give the short-term growth rate 80% weighting and the long-term growth rate 20% weighting in the two-step DCF model, to modify the high-end outlier test to treat any proxy company as a high-end outlier if its cost of equity estimated under the model in question is more than 200% of the median result of all of the potential proxy group members in that model¹⁰ before any high or low-end outlier test is applied, subject to a "natural break" analysis, to consider the use of *Value Line* short-term earnings growth estimates in the CAPM in future proceedings, and to calculate the ranges of presumptively just and reasonable base ROEs by dividing the overall composite zone of reasonableness into thirds.

8. Cloverland states that it evaluated Wisconsin Electric's existing ROE under the Commission's methodology.¹¹ Cloverland states that due to the recent market volatility

171 FERC ¶ 61,154, *order on reh'g*, Opinion No. 569-B, 173 FERC ¶ 61,159 (2020).

⁹ The high-end outlier test treats any proxy company as a high-end outlier if its cost of equity estimated under the model in question is more than 150% of the median result of all the potential proxy group members in the model before any high or low-end outlier test is applied, subject to a "natural break" analysis. Opinion No. 569-A, 171 FERC ¶ 61,154 at P 154.

¹⁰ The high-end outlier test only applies to the DCF model and CAPM because they utilize results of the relevant analysis applied to a proxy group, while the Risk Premium model is derived from actual ROEs. *Id.* n.267.

¹¹ Cloverland Complaint at 7 (citing Affidavit of Brendan T. Mac Mathuna).

following the global outbreak of COVID-19, it used financial data that immediately predates the recent market volatility, in addition to the most recent six-months of financial data available at the time the analysis was prepared. As a result, Cloverland utilized financial data for the selected proxy groups for the six-month period of August 2019 – January 2020 (Study Period 1) and the six-month period of November 2019 – April 2020 (Study Period 2). In addition, Cloverland prepared a sensitivity study that examines the financial data for the months of March and April 2020, in order to stress test its ROE evaluation by focusing on the two complete months of data from its Study Period 2 analysis that were impacted by the global outbreak of COVID-19.¹²

9. Cloverland states that, in order to select a risk-comparable proxy group of electric utilities for its analysis, it used the Commission's screening criteria and Wisconsin Electric's current credit ratings (A- from Standard & Poor's Global Ratings (S&P) and A2 from Moody's Investors Service, Inc. (Moody's)). Cloverland states that the typical application of the Commission's screening criteria results in an S&P credit rating range of BBB+ to A and a Moody's credit rating range of A3 to A1. However, Cloverland indicates that there were only two *Value Line* electric utilities that had a Moody's credit rating of A3 or greater during the relevant study periods. Therefore, Cloverland lowered the Moody's screen by one additional notch to Baa1 and excluded any *Value Line* electric utility that did not satisfy the criterion of having an S&P long-term issuer rating of BBB+ to A and a Moody's long-term issuer or senior unsecured credit rating of Baa1 to A1.¹³ Cloverland utilized 15 electric utilities for its Study Period 1 analysis. Cloverland's analysis utilized the same proxy group of electric utilities for its Study Period 2 analysis except for two that it excluded following downgrades to their respective credit ratings.¹⁴

10. Cloverland states that its analysis indicates that Wisconsin Electric has lower investment risk, as measured by credit ratings, than the proxy groups as a whole.

Cloverland asserts that the Commission's ROE methodology has flaws and deficiencies. But Cloverland asserts that its application of the Commission's ROE methodology demonstrates that, even without correcting those flaw and deficiencies, Wisconsin Electric's ROE of 11% is unjust and unreasonable. *Id.* n.23.

¹² *Id.* at 7-8.

¹³ *Id.* at 8-9.

¹⁴ *Id.* at 9.

Nevertheless, Cloverland states that it conservatively concludes that Wisconsin Electric's risk is similar to the average risk of each proxy group.¹⁵

11. Cloverland states that having established its proxy groups, it performed the two-step DCF method for the two study periods. For Study Period 1, Cloverland states that, before applying tests of economic logic and eliminating outliers, the DCF results for the proxy group produce a range of 6.07% to 13.18%. Then, after applying the tests of economic logic and eliminating one low-end outlier and one high-end outlier as a result of the natural break analysis, Cloverland states that the DCF results for the remaining members of the proxy group range from 7.10% to 9.38%, with a median of 8.16%, for Study Period 1.¹⁶ Cloverland states that for Study Period 2, before applying tests of economic logic and eliminating outliers, the DCF results for the proxy group produce a range of 6.30% to 9.35%. Cloverland states that it did not find it appropriate to eliminate any low-end or high-end ROE results for Study Period 2, and it calculated that the DCF results for the proxy group range from 6.30% to 9.35%, with a median of 8.32%, for Study Period 2.¹⁷

12. Cloverland states that it applied the CAPM to the two study periods. For Study Period 1, Cloverland states that, before applying tests of economic logic and eliminating outliers, the CAPM results for the proxy group produced a range of 5.95% to 9.76%. Cloverland states that it did not find it appropriate to eliminate any low-end or high-end ROE results. As a result, Cloverland states that the CAPM results remained unaltered after applying the tests of economic logic and it calculated that the CAPM results for the proxy group range from 5.95% to 9.76%, with a median of 7.19%, for Study Period 1. Cloverland states that for Study Period 2, before applying tests of economic logic and eliminating outliers, the CAPM results for the proxy group produced a range of 5.59% to 8.90%, and it did not find it appropriate to eliminate any low-end or high-end ROE results. As a result, Cloverland states that the CAPM results remained unaltered after applying the tests of economic logic and it calculated that the CAPM results for the proxy group range from 5.59% to 8.90%, with a median of 6.82%, for Study Period 2.¹⁸

13. Cloverland states that it applied the Risk Premium model to the two study periods. Cloverland states that its analysis produced a Risk Premium point estimate of 9.40% for Study Period 1. Cloverland states that, using the Commission's methodology in Opinion

¹⁵ *Id.* at 10.

¹⁶ *Id.* at 10-11.

¹⁷ *Id.* at 11-12.

¹⁸ *Id.* at 12-13.

No. 569-A, it imputed an ROE range for the Risk Premium model by superimposing the average width of the DCF and CAPM ranges onto the Risk Premium point estimate, with that point estimate serving as the measure of central tendency of the Risk Premium range. Cloverland states that using this methodology produced a Risk Premium imputed range of 7.87% to 10.92% for Study Period 1. Cloverland further states that its analysis resulted in a Risk Premium point estimate of 9.42% for Study Period 2. According to Cloverland, its analysis imputed a range for the Risk Premium model of 7.83% to 11.01% for Study Period 2 following the same methodology described in Opinion No. 569-A.¹⁹

14. Cloverland asserts that, based on the results of its application of the DCF, CAPM, and Risk Premium models the composite zone of reasonableness is 6.97% to 10.02% for Study Period 1 and 6.57% to 9.75% for Study Period 2. Cloverland argues that the next step in the analysis under Opinion Nos. 569 and 569-A is to develop risk-based ranges within the composite zone of reasonableness and to see whether Wisconsin Electric's existing ROE falls inside or outside the applicable risk-based range. However, Cloverland asserts that Wisconsin Electric's existing ROE of 11% falls entirely outside the composite zone of reasonableness—98 basis points greater than the top-end value for Study Period 1 and 125 basis points greater than the top-end value for Study Period 2. Cloverland argues that this evidence alone shows that Wisconsin Electric's existing 11% ROE is excessive.²⁰

15. Nevertheless, Cloverland states, it evaluated Wisconsin Electric's existing ROE against the applicable risk-based range within the composite zone of reasonableness and determined that Wisconsin Electric's risk was similar to the average risk for the proxy groups in Study Period 1 and Study Period 2. According to Cloverland, the Commission did not provide specific guidance in either Opinion Nos. 569 or 569-A on how to establish the risk-differentiated ranges for proceedings involving a single utility. However, Cloverland asserts that the Commission did indicate in Opinion No. 569 that the average risk range will be centered on the median in cases where the ROE of a single utility is at issue. As a result, Cloverland states that it calculated an average risk range of 7.83% to 8.76% for Study Period 1 and 7.60% to 8.58% for Study Period 2 to be used in evaluating Wisconsin Electric's existing ROE.²¹

16. Cloverland also states that it performed a sensitivity analysis to stress test its evaluation of Wisconsin Electric's existing ROE of 11% by applying the Commission's methodological framework to two months of financial data from March and April 2020, a period during which the stock markets experienced significant volatility. Cloverland

¹⁹ *Id.* at 13-14.

²⁰ *Id.* at 14-15.

²¹ *Id.* at 15-16.

states that it did not find it necessary to eliminate any ROE results from its DCF analysis, which produced a range of 6.97% to 9.58% under the sensitivity analysis, after applying the tests of economic logic and eliminating outliers. Cloverland asserts that in the sensitivity analysis using the CAPM, it eliminated several low-end ROE results but did not eliminate any high-end outliers or other ROE results, and the CAPM results ranged from 6.41% to 8.73%, with a median of 7.08%. Cloverland further asserts that the sensitivity analysis using the Risk Premium model resulted in a Risk Premium point estimate of 9.49%. Based on these DCF, CAPM, and Risk Premium results, Cloverland asserts that the composite zone of reasonableness is 7.22% to 9.68%. Further, Cloverland states that it developed an average risk range of 7.96% to 8.70%. Cloverland contends that even when using financial data for the months in which the capital markets were particularly volatile, Wisconsin Electric's 11% ROE is unjust and unreasonable.²²

17. Cloverland further argues that another factor the Commission may consider as part of its section 206 determination on whether an existing ROE is unjust and unreasonable is a comparison of Wisconsin Electric's existing ROE of 11% with a current determination of a just and reasonable ROE. Cloverland states that, under its calculations for Study Period 1, the median result for the DCF analysis was 8.16%; the median result for the CAPM analysis was 7.19%; and the Risk Premium point estimate was 9.40%. Cloverland further asserts that the average of these three values is 8.25%, which is 275 basis points lower than Wisconsin Electric's existing ROE of 11%. Cloverland contends that for Study Period 2, the median result for the DCF analysis was 8.32%; the median result for the CAPM analysis was 6.82%; and the Risk Premium point estimate was 9.42%. Cloverland asserts that the average of these three values is 8.19%, which is 281 basis points lower than Wisconsin Electric's existing ROE of 11%.²³ In addition, Cloverland asserts that using its composite zone of reasonableness of 7.22% to 9.68% for the sensitivity analysis, the median result for the DCF analysis was 8.49%; the median result for the CAPM analysis was 7.08%; and the Risk Premium point estimate was 9.49%. Cloverland contends that the average of these three values is 8.36%, which is 264 basis points lower than Wisconsin Electric's existing ROE of 11%.²⁴

18. Noting that Wisconsin Electric's existing 11% ROE was established as part of a settlement in 2007, Cloverland states that it examined changes in financial markets since that time. Cloverland asserts that the Dow Jones Industrial Average (DJIA) during Study Period 1 and Study Period 2 was valued approximately 108% and 117% greater than its value during the six-month period immediately preceding the establishment of Wisconsin

²² *Id.* at 16-18.

²³ *Id.* at 18-19.

²⁴ *Id.* at 19.

Electric's existing ROE. Cloverland contends that capital costs generally, and capital costs for electric utilities specifically, have significantly declined during the period since Wisconsin Electric's existing ROE of 11% was established.²⁵

19. Cloverland concludes that, strictly applying the methods described in Opinion Nos. 569 and 569-A, Wisconsin Electric's existing ROE of 11% is excessive, and unjust and unreasonable. Cloverland estimates that each 100-basis point reduction in the stated ROE included in the Formula Rate Tariff and Service Agreement would reduce Wisconsin Electric's charges for load following service to Cloverland by approximately \$2.34 million over the remaining life of the Service Agreement.²⁶ Cloverland requests that the Commission establish hearing procedures to establish a just and reasonable replacement ROE based on the evidence presented at hearing and direct Wisconsin Electric to provide credits or pay refunds for the time period beginning with the date of Cloverland's Complaint as the start of the refund effective period.²⁷

II. Notice of Complaint and Responsive Pleadings

20. Notice of Cloverland's Complaint was published in the *Federal Register*, 85 Fed. Reg. 41,582 (July 10, 2020), with Wisconsin Electric's answer, motions to intervene and protests due on or before July 21, 2020. On July 8, 2020, Edison Electric Institute filed a motion to intervene. On July 8, 2020, Wisconsin Electric filed a motion for extension of time to file its answer to August 18, 2020. By notice issued on July 14, 2020, the Commission granted Wisconsin Electric's motion for an extension of time and extended the comment date for Wisconsin Electric's answer, motions to intervene and protests to August 18, 2020. On August 18, 2020, Wisconsin Electric filed an answer to the Complaint. On September 9, 2020, Cloverland filed a motion for leave to answer and answer to Wisconsin Electric's August 18 answer. On October 9, 2020, Wisconsin Electric filed a motion for leave to answer and answer to Cloverland's September 9 answer. On October 28, 2020, Cloverland filed a motion for leave to respond and response to Wisconsin Electric's October 9 answer. On November 18, 2020, Wisconsin Electric filed a motion for leave to respond and response to Cloverland's October 28 response.

²⁵ *Id.* at 20-22.

²⁶ *Id.* at 23.

²⁷ *Id.* at 29, 31.

III. Wisconsin Electric's August 18 Answer

21. Wisconsin Electric argues that Cloverland's Complaint fails to meet its burden of proof and should be dismissed. Wisconsin Electric asserts that Cloverland's analysis is technically deficient in several respects and ignores that a utility's ROE must be commensurate with the risk it faces.²⁸ First, Wisconsin Electric argues that Cloverland's mechanical application of the Opinion No. 569-A methodology fails to consider the extremely volatile prevailing market conditions created by the COVID-19 pandemic, leading to the erroneous conclusion that risk to Wisconsin Electric's equity investors has declined since 2007. Wisconsin Electric asserts that this market volatility, and the resulting risk to investors, is unprecedented, arguing that volatility indexes show that the pandemic has caused a level of uncertainty and volatility in the market even greater than during the Great Recession of 2008/2009.²⁹ Wisconsin Electric further asserts that the extremely volatile market conditions have been influenced by unprecedented Federal Reserve intervention, including expansive programs to maintain access to capital markets for corporate borrowers, which has resulted in lower borrowing costs for corporate firms and thus continued access to capital needed to offset the economic effects of COVID-19. According to Wisconsin Electric, the Federal Reserve's balance sheet has grown from \$4.2 trillion in February 2020 to more than \$7 trillion in four months. Wisconsin Electric argues that the extent of those measures underscores the level of risk in the market—while resulting in greater stability in the bond markets, these policies have resulted in higher equity prices for utilities as investors have had to move along the risk spectrum in search of returns.³⁰ Wisconsin Electric argues that Cloverland's analysis fails to either (1) consider the spectrum of risk to which utilities are exposed at this time; or (2) apply real-time volatility measurements to each input in the ROE models, and consistently between models.³¹

22. Second, Wisconsin Electric argues that Cloverland's use of Study Period 1 is inappropriate because it predates and ignores recent market turmoil and thus misrepresents economic and market conditions due to the pandemic. Wisconsin Electric asserts that rating agencies have addressed the effects of current market conditions on regulated utilities, stating that S&P recently downgraded the outlook on the entire North American

²⁸ Wisconsin Electric August 18 Answer at 9 (citing *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944); *Bluefield Waterworks Improvement Co. v. Pub. Serv. Comm'n of W.V.*, 262 U.S. 679 (1923)).

²⁹ *Id.* at 10-11 (citing Rebuttal Testimony of Ann E. Bulkley).

³⁰ *Id.* at 11-12.

³¹ *Id.* at 13.

utilities sector.³² Moreover, Wisconsin Electric argues that Cloverland's use of Study Period 2 includes outdated measurements of beta that fail to capture the current market volatility.³³

23. Third, Wisconsin Electric argues that Cloverland's proxy group is too narrow and does not capture the range of companies that are comparable to Wisconsin Electric. Wisconsin Electric argues that Cloverland's restriction of the proxy group to companies that meet certain S&P and Moody's thresholds unnecessarily limits the proxy group to only those utilities that are rated by both agencies. Wisconsin Electric asserts that when the resulting proxy group of 13 to 15 companies is divided into even thirds, the range is limited to only four to five companies. Wisconsin Electric contends that such a restricted proxy group does not accurately reflect Wisconsin Electric's risk. Further, Wisconsin Electric argues that Cloverland erred in excluding one utility from the proxy group, Avangrid, Inc. (Avangrid), because it is a foreign-controlled company. Wisconsin Electric argues that in the recent Policy Statement on Determining Return on Equity for Natural Gas and Oil Pipelines, the Commission found that it may be appropriate to include foreign-controlled companies to alleviate "the shrinking proxy group problem."³⁴ Wisconsin Electric contends that there is no reason to exclude the company.

24. Fourth, Wisconsin Electric contends that Cloverland relies on outdated measurements of beta, which measures volatility, in its CAPM analysis. Wisconsin Electric asserts that there is a significant delay in *Value Line's* publication schedule that can cause the most recently available betas to be stale and no longer reflect current market conditions. Therefore, Wisconsin Electric contends that relying on *Value Line's* estimates is not appropriate when there has been a significant increase in volatility in the study period. Wisconsin Electric further asserts that relying on stale betas also means that the inputs underlying Cloverland's CAPM analysis are not aligned to measure the same capital market conditions. Wisconsin Electric contends that, given the current volatility in capital market conditions, Cloverland should have relied on a more up-to-date measurement of beta, such as Bloomberg.³⁵

³² *Id.* at 14.

³³ *Id.* at 14-15.

³⁴ *Id.* at 16 (citing *Inquiry Regarding the Commission's Policy for Determining Return on Equity*, 171 FERC ¶ 61,155, at P 66 (2020)).

³⁵ *Id.* at 16-17.

25. Fifth, Wisconsin Electric argues that Cloverland's analysis improperly limits the zone of reasonableness to the middle four to five proxy companies resulting in calculated zones of reasonableness for Wisconsin Electric that are artificially low when compared to other authorized ROEs.³⁶ Wisconsin Electric argues that for fully litigated electric rate cases since 2017 (excluding cases involving formula rates), the average allowed ROE from state public utility commissions for electric utilities—a metric that the Commission has considered in the past—has been approximately 9.64%, with a range from 8.25% to 10.50%. Moreover, Wisconsin Electric asserts that the low end of Cloverland's composite range of reasonableness, 6.57%, does not reasonably reflect the cost of equity for a regulated utility, asserting that no utility has been authorized an ROE that is even within 168 basis points of that result since 1980.³⁷ Wisconsin Electric argues that Cloverland's zone of reasonableness is inadequate, driven by its use of an overly restrictive proxy group; its failure to consider prevailing economic conditions; and its arbitrary use of an "average" risk profile.³⁸

26. In addition, Wisconsin Electric contends that correcting the flaws in Cloverland's ROE analysis shows that Wisconsin Electric's ROE is reasonable under the standards the Commission set in Opinion No. 569-A. According to Wisconsin Electric, the Commission explained that the existing rate will be presumed unjust and unreasonable if it falls above the appropriate risk-adjusted third of the zone of reasonableness, but that it would dismiss an ROE complaint if the targeted utility's existing ROE falls within the range of presumptively just and reasonable ROEs for a utility of its risk profile unless that presumption is sufficiently rebutted. Wisconsin Electric asserts that its analysis includes the foreign-controlled company in the proxy group, uses the entire composite zone of reasonableness to take into account the spectrum of risk to which utilities are exposed during this time of extreme market volatility, and applies Bloomberg betas to ensure that the underlying market data remained consistent with the other model inputs. Wisconsin Electric asserts that, after correcting Cloverland's analysis, the zone of reasonableness when excluding the Expected Earnings methodology is 8.46% to 12.23%, or 8.45% to 12.76% when including the Expected Earnings methodology. Within those zones, the ranges for an average risk utility are 9.72% to 10.98% (excluding Expected Earnings analysis) and 9.89% to 11.33% (including Expected Earnings analysis).³⁹

³⁶ *Id.* at 10.

³⁷ *Id.* at 17-18.

³⁸ *Id.* at 18-19.

³⁹ *Id.* at 20-22.

27. Wisconsin Electric further argues that its comprehensive, independent analysis also shows that Wisconsin Electric's ROE is just and reasonable. Wisconsin Electric states that its analysis relies exclusively on S&P credit ratings to retain a robust proxy group that measures the full range of risk borne by Wisconsin Electric's equity investors and arrives at a proxy group of 19 companies. Further, Wisconsin Electric states that it performed the DCF, CAPM, Risk Premium, and Expected Earnings analyses to derive a zone of reasonableness for Wisconsin Electric and also strictly applied the Commission's method in Opinion No. 569-A to exclude the Expected Earnings analysis. Wisconsin Electric asserts that the results in both scenarios show that Wisconsin Electric's current 11% ROE remains just and reasonable. Wisconsin Electric states that its application of the Commission's methodology in Opinion No. 569-A, which excludes the Expected Earnings analysis, results in a range of reasonableness of 9.79% to 11.08% for the middle third of the composite zone of reasonableness.⁴⁰ Wisconsin Electric argues that the Commission has discretion to make pragmatic adjustments to a utility's ROE based on the particular circumstances of a case. Wisconsin Electric contends that in this instance, particularly volatile capital market conditions would completely undermine the Commission's analysis, if not properly considered within modeling inputs and to the resulting ROE.⁴¹

IV. Cloverland's September 9 Answer

28. Cloverland argues that, because Cloverland strictly applies the Commission's methodology, Wisconsin Electric's criticisms are more properly considered attacks against the Commission's methodology set forth in Order Nos. 569 and 569-A than against Cloverland's ROE analysis.⁴²

29. In response to Wisconsin Electric's argument concerning market volatility, Cloverland argues that several of the figures presented by Wisconsin Electric only contain data through June 2020, despite Wisconsin Electric's reliance on a six-month study period ending July 2020, which results in only a partial representation of capital market conditions. Cloverland asserts that capital market conditions continued to stabilize and improve during July 2020 and that the volatility index cited by Wisconsin Electric was significantly lower in July 2020 than its highs in March 2020. Cloverland further argues that Wisconsin Electric presented data from a discontinued volatility index. Further, with respect to the S&P's outlook for the North American regulated utility

⁴⁰ *Id.* at 22-36.

⁴¹ *Id.* at 36.

⁴² Cloverland September 9 Answer at 4.

sector, Cloverland asserts that other authoritative sources have commented recently on the continued resilience of the utility sector during the current economic turmoil.⁴³

30. In response to Wisconsin Electric's argument that Cloverland's Study Period 1 preceded the deterioration of economic and market conditions resulting from COVID -19, Cloverland states that its Study Period 2 (November 2019-April 2020) analysis included financial data reflecting the global outbreak of COVID-19. Additionally, Cloverland asserts that its sensitivity analysis specifically focused on the two months impacted the greatest by the pandemic, March-April 2020.⁴⁴

31. In addition, Cloverland argues that Wisconsin Electric's argument that the proxy group analysis should use only S&P credit ratings ignores the fact that the Commission requires the use of both S&P and Moody's credit ratings as screening criteria for the proxy group when both credit ratings are available. Cloverland also justifies the exclusion of Avangrid (the foreign-controlled company) from the proxy group because according to Cloverland, only 18.5% of Avangrid's outstanding common stock is available for public trading and Avangrid is classified as a "controlled company" on the New York Stock Exchange, and these factors may affect Avangrid's stock price.⁴⁵ Cloverland also asserts that in the policy statement cited by Wisconsin Electric, the Commission was discussing proxy groups of natural gas and oil pipelines, to address concerns about a shrinking pool of representative proxy group members, neither of which is involved in this case. In response to Wisconsin Electric's argument that Cloverland utilized too small a proxy group, Cloverland argues that the proxy group in its analysis is not atypically sized.⁴⁶

32. Cloverland also contends that Wisconsin Electric's criticism of Cloverland's use of *Value Line* as its source of betas ignores the fact that the Commission relied upon beta estimates produced by *Value Line* in Opinion Nos. 569 and 569-A. Cloverland adds that the Commission also has acknowledged that *Value Line* updates its projections and data on a rolling quarterly basis. Thus, Cloverland argues, the Commission is well-aware that *Value Line* data may not reflect up-to-the-minute market conditions.⁴⁷ Moreover, to address any potential concerns regarding a mismatch between its risk-free rate and the

⁴³ *Id.* at 5-6.

⁴⁴ *Id.* at 6-7.

⁴⁵ *Id.* at 9-10.

⁴⁶ *Id.* at 10.

⁴⁷ *Id.* at 11.

Value Line betas for Study Period 2, Cloverland notes that it performed a further sensitivity analysis in which it modified its CAPM analysis based on financial data during Study Period 2 to incorporate the *Value Line* betas which became available in mid-May 2020 (after the conclusion of Study Period 2). According to Cloverland, this further sensitivity analysis shows that Wisconsin Electric's 11% ROE is 18 basis points greater than the top end of the composite zone of reasonableness and 141 basis points greater than the upper end of the subrange for average-risk utilities.⁴⁸ Regarding Wisconsin Electric's argument that Bloomberg (rather than *Value Line*) should be used as a source for beta measurements, Cloverland asserts that the Bloomberg platform is only available through expensive subscription services and, therefore, parties without ready access to the Bloomberg platform cannot independently validate the beta measurements. Cloverland asserts that *Value Line* beta measurements are available through a relatively modest subscription.⁴⁹

33. Additionally, Cloverland contends that Wisconsin Electric's suggestion that Cloverland should consider the entire composite zone of reasonableness is in direct conflict with the Commission's methodology set forth in Opinion Nos. 569 and 569-A, which Cloverland argues, requires the development of risk-based ranges within the composite zone of reasonableness and an assessment of whether Wisconsin Electric's 11% ROE falls within or outside the applicable risk-based range. Cloverland further contends that it followed the Commission's methodology by developing a risk-comparable proxy group for Wisconsin Electric through the application of the S&P and Moody's credit rating screens.⁵⁰

34. In addition, Cloverland argues that Wisconsin Electric's analysis of Cloverland's suggested ROE differs markedly from the Commission's methodology with respect to the proxy group, the CAPM method, the Risk Premium method, the Expected Earnings method, and the zone of reasonableness for the assessment of Wisconsin Electric's 11% ROE.⁵¹ For example, Cloverland asserts that in Wisconsin Electric's analysis of Cloverland's suggested ROE, the CAPM method deviates from Opinion Nos. 569 and 569-A with respect to (i) the calculation of the risk-free rate, (ii) the calculation of the market return estimate, and (iii) the application of the size adjustment.⁵² Cloverland

⁴⁸ *Id.* at 12.

⁴⁹ *Id.* at 12-13.

⁵⁰ *Id.* at 14.

⁵¹ *Id.* at 15-24.

⁵² *Id.* at 16-17.

further argues that since Wisconsin Electric's alternative analysis relies on many of the same model inputs and assumptions used in its analysis of Cloverland's suggested ROE, the alternative analysis suffers from the same problems as well as several additional deficiencies. For example, Cloverland asserts that additional deficiencies include the use of beta estimates sourced through the Bloomberg platform in the CAPM, the inclusion of a one-step DCF model, and developing a proxy group based on screening criteria that deviates from the Commission's preferred screens.⁵³

V. Wisconsin Electric's October 9 Answer

35. Wisconsin Electric argues that Cloverland's analysis continues to ignore the volatile capital market environment resulting from the COVID-19 pandemic. Wisconsin Electric disputes Cloverland's argument that capital market conditions stabilized and improved through July 2020, arguing that while the overall market has stabilized, the utility sector is currently down 20% from pre-pandemic levels. Wisconsin Electric further argues that an ROE at the high end of the range suggested by Cloverland would not meet investors' expectations for just and reasonable ROEs and could result in utility credit ratings being downgraded.⁵⁴

36. In addition, Wisconsin Electric contends that Cloverland's model inputs are neither reliable nor sustainable, and the range of reasonableness that results from Cloverland's analysis does not reflect a reasonable return on shareholder investment. Wisconsin Electric contends that Cloverland errs in its: (i) proxy group selection; (ii) CAPM and inputs; (iii) Risk Premium Analysis; (iv) DCF Analysis; and (v) refusal to consider the Expected Earnings Analysis.⁵⁵

37. Wisconsin Electric contends that Cloverland's proposed proxy group is too narrow and that Cloverland's reliance on the range of returns for only the middle tertile of four to five companies is significantly less than what has been traditionally relied upon by the Commission for individual company cases and in state jurisdictional cases. Wisconsin Electric also asserts that Cloverland has not shown any evidence that Avangrid's stock price is being manipulated.⁵⁶

⁵³ *Id.* at 22-24.

⁵⁴ Wisconsin Electric October 9 Answer at 3-4.

⁵⁵ *Id.* at 5-6.

⁵⁶ *Id.* at 6-7.

38. Wisconsin Electric asserts that Cloverland continues to make several errors in its CAPM analysis.⁵⁷ For example, Wisconsin Electric contends that, contrary to Cloverland's suggestion that the objective in setting the ROE in this proceeding is to establish the current cost of equity, the cost of equity is a forward-looking concept and that it is reasonable and appropriate to consider projections of interest rates as the assumptions used in the risk-free rate in the CAPM.⁵⁸ Further, in response to Cloverland's objection to using Bloomberg data because Bloomberg is a subscription service, Wisconsin Electric argues that whether relying on Bloomberg or some other service, it is the analyst's responsibility to use data that reflects current market conditions. Further, Wisconsin Electric argues that Cloverland could have used the *Value Line* formula to independently perform its calculations using current returns for the market as a whole, and the return for the individual proxy company using publicly available information.⁵⁹

39. Wisconsin Electric contends that Cloverland's DCF analysis is flawed because it reflects different market conditions than its CAPM analysis, because Cloverland updated the results of its CAPM analysis to include betas through mid-July, but relies on a DCF model as of April 2020. Wisconsin Electric asserts that this creates unreliable results because there has been a significant increase in the cost of equity during that time period.⁶⁰

40. Wisconsin Electric argues that Cloverland's criticism of Wisconsin Electric's Risk Premium analysis fails to acknowledge that Wisconsin Electric's Risk Premium analysis included three bond yield estimates (one historical and two projected) to account for the unprecedented Federal Reserve intervention, which is not expected to persist in the long run.⁶¹

41. In response to Cloverland's criticism of its use of the Expected Earnings model, Wisconsin Electric contends, given the recent volatility in utility stock prices and the consequent effect on the DCF results, the Expected Earnings model provides a long-term, more stable approach and provides a balance to other market-based analyses that are highly influenced by short-term changes in stock prices. Wisconsin Electric contends

⁵⁷ *Id.* at 7-10.

⁵⁸ *Id.* at 7, n.32.

⁵⁹ *Id.* at 7-8.

⁶⁰ *Id.* at 10-11.

⁶¹ *Id.* at 11.

that while Cloverland is correct that the Commission rejected the Expected Earnings method in Opinion No. 569, the Commission has also acknowledged that it may change its models at any time.⁶² Wisconsin Electric contends that the current, extremely volatile capital market conditions make it all the more important for the Commission to consider the results of alternative analyses.⁶³

VI. Cloverland's October 28 Response

42. Cloverland argues that Wisconsin Electric makes several erroneous accusations against Cloverland's testimony and ROE analysis. First, Cloverland disputes Wisconsin Electric's contention that Cloverland's ROE analysis is not forward-looking. Cloverland argues that, in estimating the current cost of common equity, it considered investors' forward-looking return requirements as they existed during the six-month study period. Cloverland argues that a snapshot view of investors' forward-looking return requirement is not the same as trying to evaluate the investors' expectations at a future point in time, which is speculative. According to Cloverland, Wisconsin Electric's analyses inappropriately include projected bond yields based on Wisconsin Electric's speculation that recent Federal Reserve actions cannot persist.⁶⁴

43. Cloverland disputes Wisconsin Electric's claim that there is an inconsistency between the *Value Line* beta estimates and the remaining inputs in Cloverland's CAPM analysis for Study Period 2. Cloverland asserts that the *Value Line* beta estimates it used were the latest ones available to investors at the end of Study Period 2.⁶⁵ Further, Cloverland asserts that its CAPM sensitivity analysis for Study Period 2 incorporated beta estimates that *Value Line* released in mid-May 2020, not mid-July 2020 as alleged by Wisconsin Electric. Cloverland states that the limited and specific purpose of its sensitivity analysis was to examine whether the use of mid-May 2020 *Value Line* beta estimates (that became available after the end of Study Period 2) would corroborate its finding that Wisconsin Electric's 11% ROE is unjust and unreasonable.⁶⁶ In addition,

⁶² *Id.* at 12-13.

⁶³ *Id.* at 13.

⁶⁴ Cloverland October 28 Response at 2.

⁶⁵ *Id.* at 3.

⁶⁶ *Id.* at 3-4.

Cloverland alleges that Wisconsin Electric utilizes data from inconsistent time periods to support its claims.⁶⁷

44. Finally, Cloverland rejects Wisconsin Electric's criticism that Cloverland fails to recognize that the facts and circumstances in Opinion No. 569-A relate to a large group of transmission owners, not an individual company. Cloverland argues that the Commission has applied its credit rating screen in a proceeding involving the ROE of an individual utility, in which it determined the ROE for the canceled PATH project using a proxy group developed by applying its credit rating screen.⁶⁸

VII. Wisconsin Electric's November 18 Response

45. Wisconsin Electric asserts that, although Cloverland disputes Wisconsin Electric's characterization of Cloverland's analysis as "not forward looking," Cloverland concedes that it relied on current rather than projected bond yields in its cost of equity analysis with the aim of establishing a current cost of equity. Wisconsin Electric argues that this is not a forward-looking analysis. Wisconsin Electric further argues that a forward-looking analysis using projected bond yields is appropriate to determine a just and reasonable ROE given the current volatile market conditions and unprecedented Federal Reserve intervention which Wisconsin Electric contends is not expected to persist in the long run.⁶⁹

46. Second, Wisconsin Electric claims that it did not accuse Cloverland of using beta estimates inconsistent with its Study Period 2. Rather, Wisconsin Electric states that its point was that Cloverland's Study Period 2 did not satisfy its stated intention for the study period to demonstrate the effect of recent market conditions. Wisconsin Electric argues that Cloverland should have updated its market data to capture the results that it specifically sought to study and to ensure that the resulting ROE was just and reasonable.⁷⁰

47. Third, Wisconsin Electric maintains that the updating of Cloverland's sensitivity analysis shows that its results are unreliable. Wisconsin Electric argues that in order to determine a just and reasonable ROE that meets the *Hope* and *Bluefield* capital attraction standards, the Commission should update data throughout a case and use the most recent

⁶⁷ *Id.* at 4.

⁶⁸ *Id.* at 4-5 (citing *Potomac-Appalachian Transmission Highline, LLC*, 158 FERC ¶ 61,050, at P 247 (2017)).

⁶⁹ Wisconsin Electric November 19 Response at 3-4.

⁷⁰ *Id.* at 4.

data unless there is a compelling reason to use a different time period and that Cloverland's analysis fails to do this. Wisconsin Electric maintains that it is inappropriate to simply update the beta coefficients in Cloverland's CAPM without also including the effects of current market conditions on utility stocks.⁷¹

48. Finally, Wisconsin Electric contends that Cloverland fails to articulate any reason why the requirement for a two-source credit rating screen should be applied to an individual company under these circumstances, when doing so would result in an extremely narrow proxy group that makes the results of such an analysis significantly less reliable. Regarding the Commission's ROE determination for the PATH project, Wisconsin Electric asserts that Cloverland fails to mention that the screen in that case yielded a proxy group of 22 companies, which is significantly larger than the proxy group of 13-15 companies that such a screen would yield in this case. Wisconsin Electric reiterates that such a narrow range of results is unlikely to be representative of the range of risk to equity investors, particularly given the current market conditions and that the relevant zone of reasonableness encompasses the entire proxy group. According to Wisconsin Electric, using S&P credit ratings yields a proxy group of 19 companies which provides a more reliable outcome and proves that Wisconsin Electric's ROE is just and reasonable.⁷²

VIII. Discussion

A. Procedural Matters

49. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), the timely, unopposed motion to intervene serves to make Edison Electric Institute a party to this proceeding. In addition, Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2020), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept Cloverland's and Wisconsin Electric's answers and responses because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

50. 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 we order below. Accordingly, we will set the Complaint

⁷¹ *Id.* at 4-5.

⁷² *Id.* at 5-6.

for trial-type evidentiary hearing and settlement judge procedures under section 206 of the FPA.

51. While we are setting these matters for a trial-type evidentiary hearing,⁷³ we encourage efforts to reach settlement before hearing procedures commence. To aid 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.⁷⁴ If parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.⁷⁵ The settlement judge shall report to the Chief Judge and the Commission within 60 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 additional time to continue settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

52. 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. Section 206(b) permits the Commission to order refunds for a 15-month refund period following the refund effective date. Consistent with our general policy of providing maximum protection to customers,⁷⁶ we will set the refund effective date at the earliest date possible, i.e., July 1, 2020, the date of the complaint.

⁷³ Trial Staff is a participant in the hearing and settlement judge procedures. See 18 C.F.R. § 385.102(b), (c) (2020).

⁷⁴ 18 C.F.R. § 385.603 (2020).

⁷⁵ 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>).

⁷⁶ 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, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

53. 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 approximately 12 months of the commencement of hearing procedures, or, if the case were to go to hearing immediately, by February 18, 2022. Thus, we estimate that, absent settlement, we would be able to issue our decision within approximately 10 months of the filing of briefs on and opposing exceptions, or by February 18, 2023.

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 the ROE under the Service Agreement. 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 (2020), the Chief Judge is hereby directed to appoint a settlement judge in this proceeding within 45 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 parties decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.

(C) Within 60 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 participants 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 60 days thereafter, informing the Commission and the Chief Judge of participants' 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 45 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, or remotely (by telephone or electronically), as appropriate. 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) Given that the circumstances caused by the COVID-19 pandemic may disrupt, complicate, or otherwise change the ability of participants to engage in normal hearing procedures, the Chief Judge is hereby authorized to set or change the dates for the commencement of the hearing and the issuance of the initial decision as may be appropriate.

(F) The refund effective date in Docket No. EL20-57-000, established pursuant to section 206(b) of the FPA, is July 1, 2020, as discussed in the body of this order.

By the Commission. Commissioner Danly is concurring with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Cloverland Electric Cooperative v.
Wisconsin Electric Power Company

Docket No. EL20-57-000

(Issued February 18, 2021)

DANLY, Commissioner, *concurring*:

1. I concur in the Commission's order issued today because I think a hearing is necessary to update the record, and because I think it important to give the parties the opportunity to settle. The data and analyses submitted by Cloverland Electric Cooperative and Wisconsin Electric Power Company cover only the time periods ending on April 2020 and July 2020, respectively. Further, some of the submitted data may not reflect market conditions, particularly in light of the COVID-19 pandemic and the policies adopted in response to the pandemic. Hearing procedures will afford an opportunity for the parties to update the record to reflect more recent data. For instance, *Value Line* data for proxy group companies is updated on a rolling quarterly basis. Hearing procedures also will afford an opportunity to submit amended CAPM analysis and the use of the 30-year U.S. Treasury average historical bond yield over a six-month period.

2. I do not think, however, that an evidentiary hearing is necessary here, either to update the record or to facilitate settlement.¹ Evidentiary hearings are expensive, time-consuming, and add additional layers of process by requiring the issuance of an Initial Decision followed by two rounds of briefs. Further, the Commission has a record of issuing untimely decisions in ROE proceedings. For example, the complaint that ultimately led to Opinion Nos. 569 and 569-A was filed in 2013 and was not finally resolved until 2020. The complaint in this proceeding was filed almost eight months ago

¹ While I agree the record should be updated, I do not think there are any significant issues that must be resolved through an evidentiary hearing to determine the appropriate return on equity (ROE) once we have the updated data. Opinion Nos. 569 and 569-A spell out in detail how ROE determinations are to be made. *See Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569, 169 FERC ¶ 61,129 (2019), *order on reh'g*, Opinion No. 569-A, 171 FERC ¶ 61,154, *order on reh'g*, Opinion No. 569-B, 173 FERC ¶ 61,159 (2020). Although there are a few disputes in this proceeding not addressed in those opinions, those disputes are discrete, relatively less important, and can be resolved by the Commission without an evidentiary hearing.

and we are only now setting it for hearing. If there is no settlement, the complaint most likely will not be resolved for three or more years from the date it was filed.

3. Although some cases need to be resolved through an evidentiary hearing, this is not one of them. Rather, the goals of updating the record and facilitating settlement could be achieved through a paper hearing in which updated evidence and arguments are filed and then settlement proceedings can begin. Such a process would be considerably less expensive and time consuming than an evidentiary hearing and would leave the Commission in position to rule in a year or less. This seems to me to be a much preferable result.

For these reasons, I respectfully concur.

James P. Danly
Commissioner