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Federal Regulator Slashes Major Rate Relief Due on New England Electric Bills

Potential Precedent-Setting FERC Ruling Harms Five Million Families

(BOSTON) The Federal Energy Regulatory Commission's (FERC) recent potentially precedent-setting decision to boost profits for New England transmission owners is a stunning corporate giveaway that will harm more than five million households in New England, the National Consumer Law Center and Public Citizen said today.

Last Friday, three of four commissioners overruled a decision by a FERC administrative law judge to set the return on equity (ROE) – effectively, profit rate -- for New England electricity transmission owners at 9.7 percent. Instead, the commission preliminarily approved a higher rate of 10.57 percent, which will lead to significantly larger profits for transmission owners, to be paid for by higher electric rates for households and businesses. The potentially precedent-setting decision presents a radical change in how FERC sets the legally allowable return to owners. For decades, FERC set ROE at the "midpoint of the zone of reasonableness." This FERC decision moves the actual ROE number to "halfway between the midpoint of the zone of reasonableness and the top of the zone of reasonableness," abandoning the prior approach that set ROE at the "50-yard line" between consumers' interest in lower rates and utility interests in hefty profits. In essence, the FERC commissioners have changed the rules of the game, which would benefit industry in future requests for rate hikes.

"At a time when millions of New England utility customers struggle to pay their electric bills due to a still sluggish economy and stubbornly high unemployment, it is stunning that the commission thinks that the appropriate response to a complaint filed by state agencies seeking to protect ratepayers is to increase the profits that transmission owners are allowed," said National Consumer Law Center attorney Charles Harak. "FERC has abdicated its role to protect the interest of consumers."

The dispute originated with a 2011 complaint by the Massachusetts Attorney General and other New England entities that the ROE for New England transmission owners was far too high – 11.14 percent – and resulted in "unjust and unreasonable" rates in violation of the Federal Power Act.

In 2013, a FERC administrative law judge ruled, based on the evidence and using a long-established FERC methodology for calculating ROE, that the ROE rates were indeed "unjust and unreasonable," and ordered that they be set at 9.7 percent going forward. That lower rate would have saved ratepayers approximately $100 million annually. The commission's decision to overrule the judge cuts the rate reduction roughly in half.

After sitting on the ALJ decision for 10 months, three of the commissioners overruled the decision. They threw out the old methodology, which led to the Judge's much more favorable result for ratepayers, and instead adopted a new, industry-friendly method. Their vote will jack up electric rates for millions of households.

In his lone dissent, FERC Commissioner John R. Norris criticized his fellow commissioners' decision to set 10.57 percent as the allowable ROE, which is near the top end of ROE that could have been allowed under the new method. Norris wrote that "the decision to grant New England transmission owners an ROE at the midpoint of the upper half of the zone of reasonableness is unjustified, lacks reasoning to support it, and sets troubling precedent. I am concerned that this determination subjects consumers to unjust and unreasonable rates in this proceeding and potentially in future ROE proceedings … I am further troubled by today's order in light of recent Commission decisions that have served to protect incumbent transmission owners from competition in the development of new transmission. Simply put not only will incumbent transmission owners be more insulated from competition they will also be the primary beneficiaries of the new precedent established in this proceeding that could provide for substantially higher ROEs."

"Consumers lose and transmission owners win with this flawed ruling," said Tyson Slocum, director of Public Citizen's Energy Program. "Now more than ever, an Office of Consumer Advocate at FERC is needed to give consumers a fighting chance to have some influence over complex and costly FERC proceedings."

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