



**“The Same Numbers,  
Constantly in a State of Flux” –  
Transmission Return on Equity**

Energy Bar Association  
Annual Meeting & Conference  
May 7, 2018

**SPIEGEL &  
McDIARMID**  
LLP

“In the Led Zeppelin shows of the Sixties and Seventies, it was the same numbers every night, but they were constantly in a state of flux.”

-- Jimmy Page

“Yes, there are two paths you can go by/  
But in the long run/ There's still time to  
change the road you're on.”

-- Led Zeppelin, *Stairway to Heaven*

## Emera Maine Applied FPA § 206 “Dual Burden”

- Emera Maine v. FERC, 854 F3d. 9 (D.C. Cir. 2017)
- Burden 1: FERC must “make an explicit finding that the existing rate is unlawful before setting a new rate.”
- Burden 2: in setting a new rate, FERC must “establish a rational connection between the record evidence and its decision.”
- Opinions 531, 531-A, and 531-B carried neither burden

SPIEGEL &  
McDIARMID  
LLP

## Burden 1: Finding Prior Rate Unlawful

- Did FERC find the prior rate unreasonable?
- “[S]ection 206 required FERC to make an explicit finding that Transmission Owners’ existing rate was unjust and unreasonable before proceeding to set a new rate. . . . FERC failed to make such a finding in this case.” *Emera Maine* at 24.

SPIEGEL &  
McDIARMID  
LLP

## Burden 1 finding WAS made.

---

“Based on our finding here that 4.39 percent is indeed the appropriate long-term growth rate to be used in this proceeding, we now find, pursuant to FPA section 206, that the NETOs’ existing 11.14 percent base ROE is unjust and unreasonable and that a just and reasonable base ROE is 10.57 percent.”  
Opinion No. 531-A, P 10 (2014) (emphasis added).

SPIEGEL &  
MCDIARMID  
LLP

## But that finding was inadequately explained

---

- “FERC concluded that the existing 11.14 percent base ROE was unlawful solely because it had determined that 10.57 percent...was a just and reasonable base ROE. ... That conclusion, without any further explanation, is insufficient to prove that Transmission Owners’ existing base ROE was unlawful.” *Emera Maine* at 26.

SPIEGEL &  
MCDIARMID  
LLP

### Explanation supplied in Opinion 551:

---

- “[A] base ROE that authorized a utility to collect more than is necessary to satisfy the requirements of *Hope* and *Bluefield* would exploit consumers and, therefore, would be unjust and unreasonable.” Opinion No. 551, 156 FERC ¶ 61,234, PP 10, 13 (2016) (reciting and affirming Initial Decision).

SPIEGEL &  
MCDIARMID  
LLP

### Burden 2: Rationally Placing New ROE

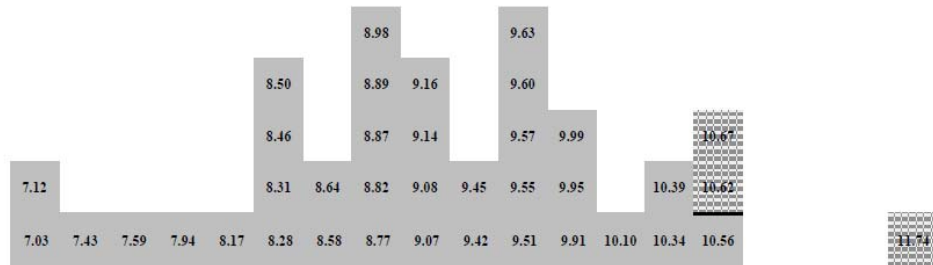
---

- “Notably, this 10.57 percent base ROE was higher than 35 of the 38 data points FERC used to construct its DCF zone of reasonableness. In reaching its decision, FERC failed to explain how any evidence demonstrated that 10.57 percent was a just and reasonable base ROE for Transmission Owners.” *Emera Maine* at 28.

SPIEGEL &  
MCDIARMID  
LLP

## Burden 2: Rationally Placing New ROE

Customers' *Emera Maine* Brief, Showing Opinion 531 DCF Distribution:



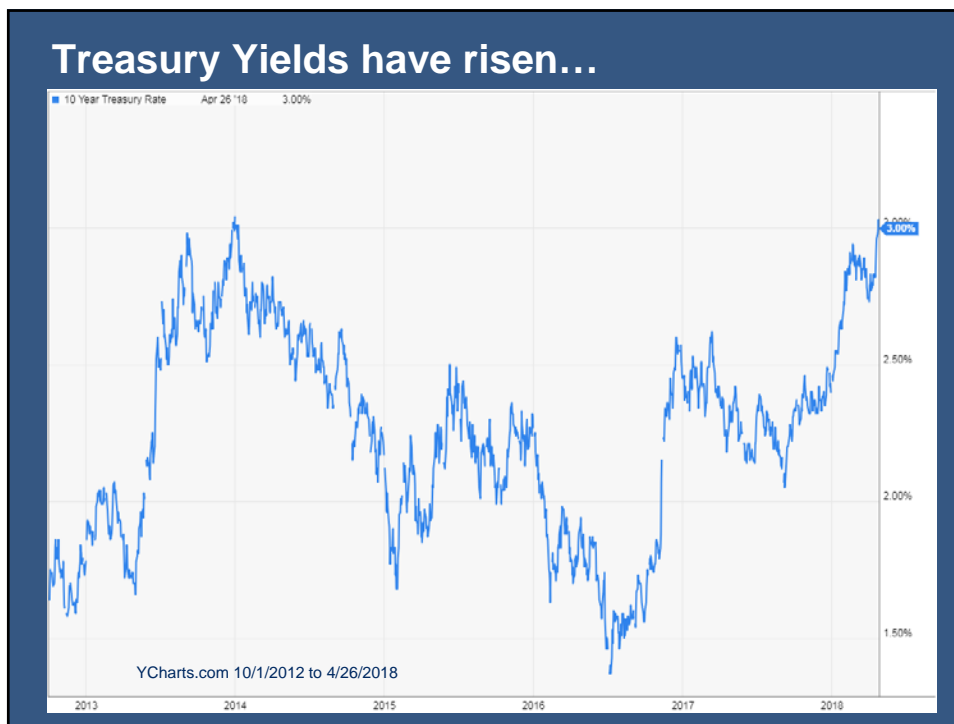
Grey fill: Below 10.57%

Crosshatch: Above 10.57%

## False premise for vacated Opinion 531

- NETOs predicted (Docket No. EL11-66 Exceptions at 33-35) that in the “very near future,” upon termination of the Federal Reserve’s then-ongoing “Quantitative Easing,” interest rates and DCF inputs and outputs would all rise substantially. FERC seemed to rely on that prediction, citing 10-year treasury yields then below 2%. See Opinion 531, PP 130, 142, 145 & n.285.

SPIEGEL &  
MCDIARMID  
LLP



Yet utility stock prices (overall) have continued to rise

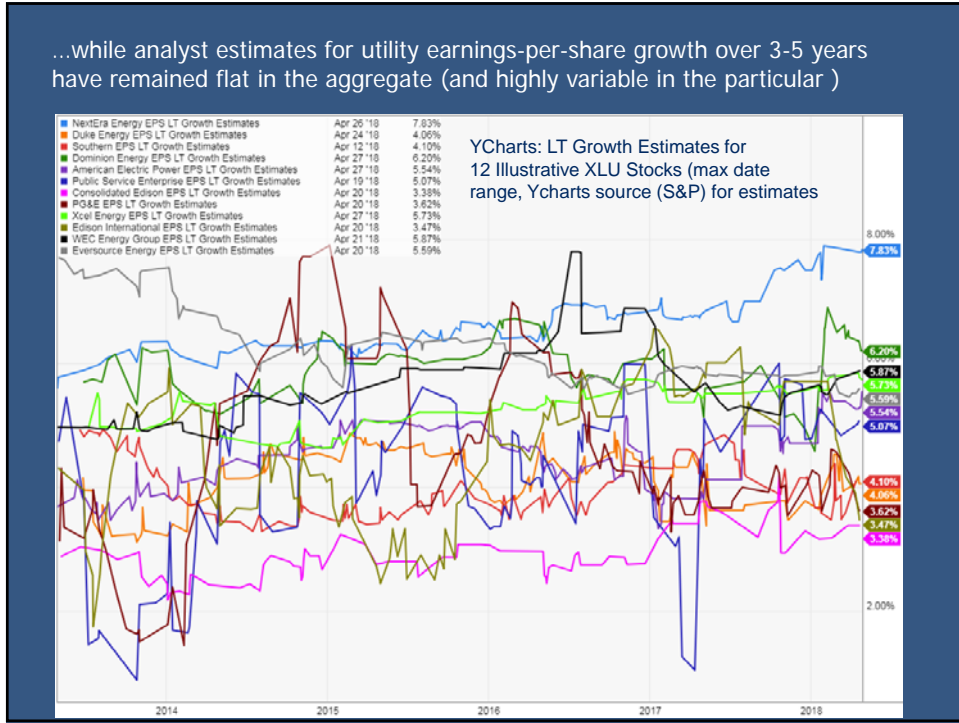


SPiegel & McDiarmid  
LLP

...and utility dividend yields have correspondingly dropped...



...while analyst estimates for utility earnings-per-share growth over 3-5 years have remained flat in the aggregate (and highly variable in the particular )



Bottom line: with 10-year treasury yields back near 3%, utility stock prices have continued to rise, dividend yields have continued to fall, and DCF medians are now consistently well below 9%. Opinion 531 DCF results were not “anomalous.”

20180306-5151 FERC PDF (Unofficial) 3/6/2018 4:54:04 PM

**TWO-STEP DCF MODEL - CORRECTED PROXY GROUP** Exhibit No. OGE-005  
Page 4 of 7

**COST OF EQUITY ESTIMATES**

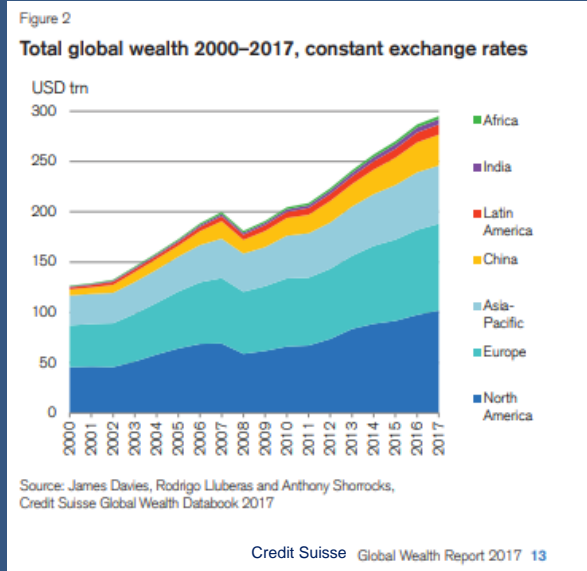
Company	IBES - Yahoo! Finance		
	(a) Adj. Yield	(b) Wghtd. Growth	(c) DCF
1 ALLETE	2.87%	4.76%	7.63%
2 Alliant Energy	3.08%	5.13%	8.17%
3 Ameren Corp.	3.13%	6.23%	9.36%
4 American Elec Pwr	3.41%	5.18%	8.59%
5 AVANGRID, Inc.	3.65%	7.09%	10.74%
6 Constellation Energy	3.91%	7.16%	11.07%
7 CMS Energy Corp.	2.90%	6.32%	9.22%
8 Consolidated Edison	3.33%	3.49%	6.82%
9 DTE Energy Co.	3.18%	4.89%	8.07%
10 Duke Energy Corp.	4.21%	3.19%	7.40%
11 Edison International	3.08%	3.99%	7.07%
12 Emera Inc.	4.72%	5.68%	10.40%
13 Energy Corp.	4.22%	-2.29%	1.92%
14 Fortis Inc.	3.77%	5.27%	9.04%
15 NextEra Energy, Inc.	2.70%	7.33%	10.03%
16 OGE Energy Corp.	3.81%	5.29%	9.10%
17 Pinnacle West Capital	3.35%	4.81%	8.00%
18 PNM Resources	2.48%	5.29%	7.78%
19 PPL Corp.	4.38%	1.41%	5.80%
20 Pub Sv Enterprise Crp.	3.57%	3.03%	6.60%
21 Southern Company	4.75%	2.95%	7.65%
22 WEC Energy Group	3.23%	4.32%	7.55%
23 Xcel Energy Inc.	3.05%	5.53%	8.58%
Lower End (d)			6.82%
Upper End (d)			11.07%
Median (b)			8.37%
Upper Midpoint			9.72%
Midpoint			8.95%
Upper Midpoint			10.01%

(a) Dividend yield x [1+ (Analyst's Growth / 2)]  
 (b) Analyst's Growth x 2/3 + GDP Growth x 1/3  
 (c) (a) + (b)  
 (d) Excludes highlighted values.

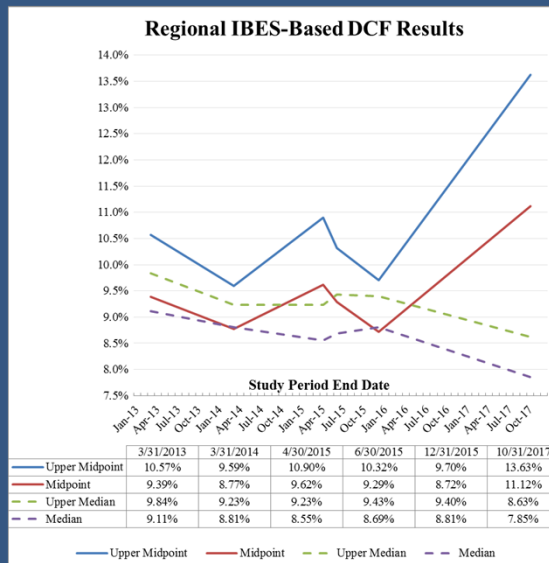
**SPIEGEL & McDIARMID LLP**



Reduced cost of capital reflects an economic fundamental: supply and demand.

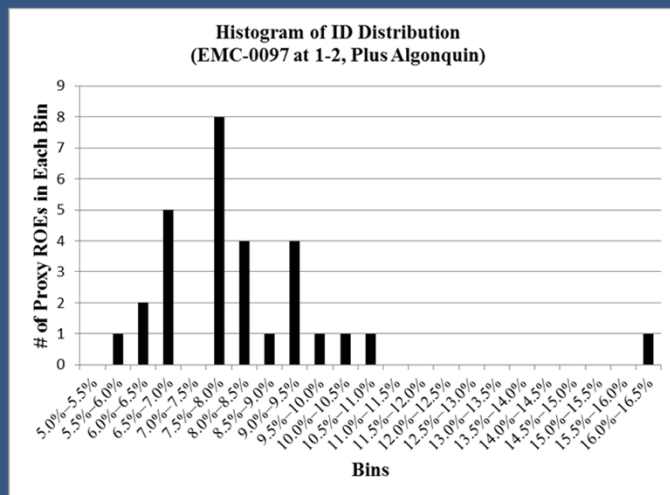


Reliance on midpoint and upper midpoint (in NE, MISO ROE cases) embodies and amplifies statistical noise, masking these trends



SPiegel & McDIARMID  
LLP

### Speaking of anomaly...



David E. Pomper  
Partner  
202.879.4000  
david.pomper@spiegelmc.com

**SPIEGEL & McDIARMID** LLP  
1875 Eye Street, NW  
Washington, DC 20006

[www.spiegelmc.com](http://www.spiegelmc.com)

**SPIEGEL &  
McDIARMID**  
LLP