

154 FERC ¶ 61,196
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 17, 2016

In Reply Refer To:
New York Independent System
Operator, Inc.
Docket Nos. ER15-572-001
ER15-572-004

Winston & Strawn, LLP
1700 K Street, NW
Washington, DC 20006-3817

Attn: Elias G. Farrah, Esq.
Attorney for New York Transco, LLC

Dear Mr. Farrah:

1. On November 5, 2015, you filed, on behalf of Applicants,¹ in the above referenced proceedings, an Offer of Partial Settlement (Settlement) among the Settling Parties.² On November 25, 2015, Applicants filed comments in support of the Settlement, along with some small changes to the Settlement, and Trial Staff filed comments opposing the

¹ The Applicants are the New York Transco, LLC (NY Transco), Central Hudson Gas and Electric Corp., Consolidated Edison Co. of New York, Inc., Niagara Mohawk Power Corp., New York State Electric and Gas Corp., Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corp.

² The Settling Parties are Applicants, the New York Power Authority (NYPA), Power Supply Long Island, New York Public Service Commission (New York Commission), New York State Department of State Utility Intervention Unit (UIU), City of New York, New York Association of Public Power (NYAPP), Municipal Electric Utilities Association of New York, and Multiple Intervenors (an unincorporated association of approximately 60 industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout the New York state).

Settlement. On December 14, 2015, Trial Staff, Applicants, the New York Commission and UIU filed reply comments. On December 18, 2015, Trial Staff filed supplemental comments on further changes to the Settlement. On December 28, 2015, NYPA filed comments on Trial Staff's supplemental comments and in support of the Settlement. Although Trial Staff objected to the Settlement, no party filed comments opposing the Settlement. On January 12, 2016, Settlement Judge certified the Settlement to the Commission as an uncontested settlement.³

2. The Settlement addresses the financial terms that are components of NY Transco's revenue requirement for the proposed Transmission Owner Transmission Solution (TOTS) Projects, including the base return on equity (ROE), the characterization of the 50-basis point ROE adder, the capital structure, and the cost allocation under the New York Independent System Operator, Inc. (NYISO) Open Access Transmission Tariff (OATT) for the TOTS Projects.

3. The Settlement provides that

[t]he standard of review for any change to the Settlement Agreement proposed by a Settling Party shall be the "public interest" application of the just and reasonable standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *Fed. Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified in *Morgan Stanley Capital Grp., Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty., Wash.*, 554 U.S. 527 (2008), and refined in *NRG Power Mktg. v. Maine Pub. Utils. Comm'n*, 130 S. Ct. 693, 700 (2010). The ordinary just and reasonable standard of review (rather than the "public interest" standard), as clarified in *Morgan Stanley Capital Grp., Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty., Wash.*, 554 U.S. 527 (2008) applies to any changes to the Settlement Agreement sought by the Commission acting *sua sponte* or at the request of a non-Settling Party or non-party to this proceeding.⁴

³ Settlement Judge notes that Trial Staff's objection is not based on, and does not raise, any material issue of fact. *N.Y. Transco, LLC*, 154 FERC ¶ 63,007, at P 11 (2016). Staff objects to the characterization of the Settlement's 50-basis point adder. In the underlying order, *N.Y. Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,004 (2015) (Hearing Order), the Commission approved a 50-basis point adder for Regional Transmission Organization participation. The Settlement states that the purpose of the 50-basis point adder is "[t]o account for benefits to customers, including congestion relief." NY Transco Nov. 5, 2015 Offer of Partial Settlement, § 3.2.

⁴ *Id.* § 6.1.

4. The Settlement resolves all issues set for hearing or pending in requests for rehearing in Docket No. ER15-572-002 with respect to the Applicants' proposed TOTS Projects. The projects to be developed by NY Transco that were proposed by the Applicants in the New York Commission's Alternating Current Transmission Proceeding are not subject to the terms of this Settlement.⁵

5. Applicants note in their comments that certain formula rate line items require correction. Applicants request the Commission to direct the Settling Parties to make three small changes to the formula rate template in the compliance filing provided for in Article 3.8 of the Settlement, which will be submitted within 30 days of the date that the Commission approves the Settlement. Trial Staff supports these formula rate corrections, submits further corrections to the formula rate agreed to by the Applicants and Trial Staff, and requests that the Commission order Applicants to file a compliance filing to make these corrections. No Settling Party objects to the changes.

6. The Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings. Because the Settlement contains the allocation of costs for the TOTS Projects, we reject Applicants' pending compliance filing in Docket No. ER15-572-001 as moot.

7. Applicants are directed to file revised tariff sheets in eTariff format,⁶ within 30 days of the date of issuance of this order, to reflect the Commission's action in this order. As part of this compliance filing, we direct NY Transco to make the necessary formula rate corrections as noted above. We also direct Applicants to include in the compliance filing revisions to Section 3(e)(ix) and Section 4(b) of the protocols for the formula rate, pursuant to the Hearing Order.⁷

⁵ The Settlement provides that any requests for rehearing in Docket No. ER15-572-002, insofar as they apply to the AC Projects, will be held in abeyance and provides for settlement negotiations to resume with respect to the AC Projects in the coming months. *Id.* § 3.7.

⁶ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

⁷ Hearing Order, 151 FERC ¶ 61,004 ordering paragraph (E).

8. This letter order terminates Docket Nos. ER15-572-001 and ER15-572-004.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.