

185 FERC ¶ 61,091
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

Consolidated Edison Company of New York, Inc.
New York Independent System Operator, Inc.

Docket Nos. ER23-2212-000
ER23-2212-001

ORDER ON TARIFF FILING, AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEEDINGS

(Issued October 31, 2023)

1. On June 22, 2023, as amended on September 1, 2023, pursuant to section 205 of the Federal Power Act (FPA)¹ and section 35.13 of the Commission's regulations,² New York Independent System Operator, Inc. (NYISO) submitted, on behalf of Consolidated Edison Company of New York, Inc. (Consolidated Edison),³ revisions to the NYISO Open Access Transmission Tariff (OATT)⁴ to add Consolidated Edison's proposed formula rate template (Formula Rate Template), associated formula rate protocols (Protocols), and conforming OATT amendments addressing derivation and recovery of the costs for eligible transmission projects identified and designated under Attachment 3 to Rate Schedule 19 and new Attachment 4 to Rate Schedule 10 (Tariff Filing).⁵ The

¹ 16 U.S.C. § 824d.

² 18 C.F.R. § 35.13 (2022).

³ NYISO states that it submits the filing on Consolidated Edison's behalf solely in its role as the tariff administrator of the NYISO OATT. Tariff Filing, Transmittal Letter at 1 n.3.

⁴ Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in the NYISO OATT.

⁵ NYISO, NYISO Tariffs, NYISO OATT, 6.10.10 OATT Schedule 10 – attach. 4 - Rate Mechanism for (0.0.0) (Attachment 4 to Rate Schedule 10); NYISO, NYISO Tariffs, NYISO OATT, 6.19.8-6.19.8.2.1 OATT Schedule 19 attach. 3 - Rate Mechanism (0.0.0) (Attachment 3 to Rate Schedule 19 and Protocols); NYISO, NYISO Tariffs,

Tariff Filing further requests a base return on equity (ROE) for transmission facilities under Rate Schedule 19, a separate base ROE for transmission facilities under Rate Schedule 10, and a 50 basis point adder to the ROE for transmission facilities under Rate Schedule 10 for participation in a Regional Transmission Organization (RTO Adder).

2. In this order, we: (1) accept Consolidated Edison's proposed Attachment 3 to Rate Schedule 19 and Protocols, effective August 22, 2023, as requested; (2) accept the proposed Attachment 4 to Rate Schedule 10, effective August 22, 2023, as requested; (3) accept the proposed Formula Rate Template subject to further compliance, suspend it for a nominal period, effective August 22, 2023, as requested, subject to refund, and to hearing and settlement judge procedures on the proposed base ROEs; and (4) conditionally grant the request for a 50 basis point adder to the base ROE for Rate Schedule 10.

I. Background

3. The NYISO OATT contains several rate schedules allowing the New York transmission owners and transmission developers to recover project-specific incremental costs of new transmission investments. As explained further below, the two rate schedules at issue in this proceeding are Rate Schedule 19 (which allows recovery of the costs of new transmission facilities that have historically been bundled as local transmission and distribution under state-jurisdictional rates) and Rate Schedule 10 (which allows recovery of the costs of different types of new transmission projects that have been selected in NYISO's Order No. 1000⁶ regional transmission planning process, along with other types of transmission projects).

4. Consolidated Edison explains that, in a prior order, the Commission accepted Rate Schedule 19 to the NYISO OATT along with the Cost Sharing and Recovery Agreement (CSRA) among the New York transmission owners.⁷ Consolidated Edison states that

NYISO OATT, 6.19.8.2.2 OATT Rate Schedule 19 attach. 3 - Formula Rate Template (0.0.0) (Formula Rate Template).

⁶ *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g & clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁷ *Consolidated Edison Co. of N.Y., Inc.*, 180 FERC ¶ 61,106 (2022) (CSRA Order). Consolidated Edison states that the CSRA is a voluntary participant funding agreement among the six New York State-regulated public utility transmission owners (Consolidated Edison, Niagara Mohawk Power Corp., Orange and Rockland Utilities, Inc., New York State Electric & Gas Corp., Rochester Gas and Electric Corp., and

together these tariff records provide a cost recovery and allocation framework for certain local transmission upgrades that are necessary to meet New York State climate and renewable energy goals as required by New York State law⁸ (Approved Local Transmission Upgrades).⁹

5. Consolidated Edison states that the costs of these Approved Local Transmission Upgrades have historically been borne primarily through state-administered, bundled, local transmission and distribution rates that reflect both New York Commission-approved ROE and associated capital structure.¹⁰ Consolidated Edison states that the CSRA provides that the costs of the Approved Local Transmission Upgrades shall instead be shared statewide and recovered on a volumetric load-ratio share basis from Load Serving Entities. Consolidated Edison states that in order to implement this statewide cost allocation for the upgrades consistent with any New York Commission order approving the upgrades, the six New York State-regulated public utility transmission owners each must amend or establish an applicable formula rate under the NYISO OATT, which is the proposed Attachment 3 to Rate Schedule 19 and the Formula Rate Template part of this filing for Consolidated Edison.

Central Hudson Gas & Electric Corp.), Long Island Power Authority (LIPA), New York Power Authority and, for limited purposes, the New York Public Service Commission (New York Commission) to share the costs of Approved Local Transmission Upgrades. Tariff Filing, Transmittal Letter at 3.

⁸ The State laws are the Climate Leadership and Community Protection Act (CLCPA) and the Accelerated Renewable Energy Growth and Community Benefit Act (AREGCBA). *See* 2019 N.Y. Sess. Laws, ch. 106; 2020 N.Y. Sess. Laws, ch. 58, Part III.

⁹ Tariff Filing, Transmittal Letter at 3-4. Section 7(e) of the AREGCBA defines “local transmission upgrade” to include: (1) a new transmission facility that is identified within a utility’s local transmission capital plan, (2) an upgrade to a local transmission facility as defined in the tariff of the state grid operator, or (3) an improvement, enhancement, replacement, or other modification to a transmission facility in a utility’s service territory that facilitates achievement of the CLCPA targets. CSRA Order, 180 FERC ¶ 61,106 at P 3, n. 7 (citing § 7(e) of the AREGCBA). An “Approved Local Transmission Upgrade” refers to those local transmission upgrades that have been approved by the New York Commission subsequent to the New York Commission’s determination that the upgrade facilitates achievement of CLCPA renewable energy targets. *Id.*

¹⁰ Tariff Filing, Transmittal Letter at 2.

6. Consolidated Edison further explains that, in a separate Commission order,¹¹ the Commission approved NYISO's proposed revisions to the NYISO OATT to allow a Transmission Owner that becomes a Designated Entity for a Public Policy Transmission Upgrade to allocate costs under Attachment Y to the NYISO OATT consistent with a selected Public Policy Transmission Project.¹² The March 2022 Order also authorized Designated Entities to use Rate Schedule 10 of the NYISO OATT to recover costs of a Designated Public Policy Project¹³ comprised of Public Policy Transmission Upgrades, subject to appropriate filings with and review by the Commission. Consolidated Edison states that, in a later order, the Commission accepted revisions to § 31.5 of Attachment Y and to Rate Schedule 10 to allow a Connecting Transmission Owner or Affected Transmission Owner designated under § 22.9.6 of Attachment P to the NYISO OATT to use the same cost allocation and recovery mechanism with respect to Designated Network Upgrade Facilities.¹⁴

¹¹ *Id.* (citing *N. Y. Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,179 (2022) (March 2022 Order)).

¹² NYISO, NYISO Tariffs, NYISO OATT, 31 OATT attach. Y - New York ISO Comprehensive System Plan (0.0.0) (Attachment Y); *see* March 2022 Order, 178 FERC ¶ 61,179. Section 31.1.1 of Attachment Y provides that a Public Policy Transmission Project is a transmission project or a portfolio of transmission projects proposed by developers to satisfy an identified Public Policy Transmission Need and for which the developers seek to be selected by NYISO for purposes of allocating and recovering the project's costs under the NYISO OATT.

¹³ Section 31.4.11 of Attachment Y defines a Designated Public Policy Project as the Public Policy Transmission Project selected by NYISO as the more efficient or cost-effective solution to a Public Policy Transmission Need, or a portion of such Public Policy Transmission Project, that NYISO designates to a Designated Entity pursuant to § 31.4.11 of Attachment Y.

¹⁴ Tariff Filing, Transmittal Letter at 2 (citing *N. Y. Indep. Sys. Operator, Inc.*, Docket No. ER23-1151-000 (Apr. 5, 2023) (delegated order). Section 31.1.1 of Attachment Y provides that Designated Network Upgrade Facilities are facilities identified for a Public Policy Transmission Project selected as the more efficient or cost-effective solution to a Public Policy Transmission Need that meet the definition of upgrade under § 31.6.4 of Attachment Y and that are designated to the Connecting Transmission Owner or Affected Transmission Owner pursuant to § 22.9.6 of Attachment P.

II. Filings

7. Consolidated Edison states that, although it currently has a stated rate for its existing transmission facilities in Attachment H of the NYISO OATT (Transmission Service Charge),¹⁵ it does not propose to use this to recover the cost of certain new transmission investments.¹⁶ Instead, Consolidated Edison proposes to establish an incremental formula rate with separate workpapers within the formula rate to calculate the revenue requirements of two types of new transmission facilities: (1) Approved Local Transmission Upgrades under Attachment 3 to Rate Schedule 19; and (2) regulated transmission projects that are eligible for cost recovery under Attachment 4 to Rate Schedule 10 in accordance with the NYISO's Comprehensive System Planning Process requirements set forth in Attachment Y of the NYISO OATT.¹⁷ Consolidated Edison states that the proposed formula rate is comparable to other Commission-accepted rates under Attachment H of the NYISO OATT and has the same structure as other Commission-approved NYISO OATT Rate Schedules. Consolidated Edison requests an effective date of August 22, 2023 for the proposed tariff amendments implementing the formula rate for these projects.¹⁸ Consolidated Edison states that the Formula Rate Template, in Workpaper 8-Depreciation Rates, directly assigns depreciation expense related to projects under Rate Schedule 19 and Rate Schedule 10 according to depreciation rates approved by the New York Commission.

8. Section 6.10.10.1 of Consolidated Edison's proposed Attachment 4 to Rate Schedule 10 identifies the transmission projects covered by the Attachment as Consolidated Edison's projects that are eligible for cost recovery under Rate Schedule 10. Section 6.10.10.1 states that the "Eligible Projects" are Consolidated Edison's Designated Public Policy Project, which is a portion of the Public Policy Transmission Project selected by NYISO in response to the "Long Island Offshore Wind Export Public Policy Transmission Need" and identified in Public Policy Transmission Planning Report dated June 13, 2023, and any Designated Network Upgrade Facilities associated with that Project (Consolidated Edison's Long Island Transmission Projects).

9. In addition, while Consolidated Edison states that it expects that its most immediate need for Rate Schedule 10 cost recovery will result from the designation of Public Policy Transmission Upgrades and Designated Network Upgrade Facilities in

¹⁵ NYISO Tariffs, NYISO OATT, 14.2.3-14.2.3.1 OATT attach. H - NYPA Formula Rate (9.0.0).

¹⁶ Tariff Filing, attach. B, Ex. No. CECONY-001 (Direct Testimony of Dr. Paul A. Dumais) at 6, 15 (Dumais Test.).

¹⁷ Tariff Filing, Transmittal Letter at 1-2.

¹⁸ *Id.* at 2.

connection with its Long Island Transmission Projects, Consolidated Edison states that transmission projects eligible for cost recovery under Rate Schedule 10 can arise in a number of different ways, as described in Rate Schedule 10 and Attachment Y.¹⁹

A. Rate Schedule 19

10. Consolidated Edison explains that Rate Schedule 19 calculates and allocates to New York Load Serving Entities on a volumetric load-ratio share basis a new CLCPA Facilities Charge that is a cost of service charge to be derived from formula rates filed by Consolidated Edison and each of the other New York transmission owners.²⁰

Consolidated Edison emphasizes that Rate Schedule 19 does not by itself create or produce transmission use charges; rather, such charges and implementation of Rate Schedule 19 depend on acceptance of each New York transmission owner's formula rate and protocols. Consolidated Edison further notes that the Commission's acceptance of Rate Schedule 19 did not include any acceptance or pre-approval of costs or revenue requirements for any Approved Local Transmission Upgrade.²¹

11. Consolidated Edison states that, for Approved Local Transmission Upgrades under Rate Schedule 19, the CSRA Order provides that the Commission will determine the base

¹⁹ *Id.* at 5. Consolidated Edison states that Rate Schedule 10 projects may also include other Public Policy Transmission Projects proposed by Consolidated Edison, as a Developer, in response to a request by the New York Commission or LIPA in accordance with § 31.4.3.2 of Attachment Y, as well as, pursuant to the exercise of its federal right of first refusal, upgrades to Consolidated Edison's existing facilities that are part of, or needed by, another Developer's Public Policy Transmission Project. *Id.* at 2 (citing the March 2022 Order, 178 FERC ¶ 61,179, that accepted amendments to the NYISO OATT to establish a mechanism by which transmission owners in New York may exercise their federal right of first refusal to build, own, and recover the costs of Public Policy Transmission Upgrades to their existing transmission facilities that are part of a transmission solution selected by NYISO in its Order No. 1000 Public Policy Transmission Planning Process) and *N. Y. Indep. Sys. Operator, Inc.*, Docket No. ER23-1151-000 (Apr. 5, 2023) (delegated order), which accepted NYISO OATT amendments to align the development, funding, and cost recovery provisions for Designated Network Upgrade Facilities identified through NYISO's Transmission Interconnection Procedures under Attachment P that satisfy the definition of "upgrade" under § 31.6.4 of the OATT with the rules for the associated selected Public Policy Transmission Project).

²⁰ *Id.* at 3. Consolidated Edison explains that there is a specific CLCPA Facilities Charge for LIPA.

²¹ *Id.* at 3-4 (citing CSRA Order, 180 FERC ¶ 61,106 at P 47).

ROE for each of the New York transmission owners, which will be the ROE “ceiling,” with the applicable ROE being the lesser of the Commission-approved ceiling or the ROE determined by the New York Commission.²² Consolidated Edison states that, in the CSRA Order, the Commission found that the Approved Local Transmission Upgrades benefit customers throughout New York State because they facilitate compliance with New York State climate and renewable energy goals and, further, that the Commission found that the proposed ceiling ROE structure is just and reasonable.²³

B. Rate Schedule 10

12. Consolidated Edison states that Rate Schedule 10 establishes the Regulated Transmission Facilities Charge for the recovery of the costs of a regulated transmission project that is eligible for cost recovery in accordance with NYISO’s Comprehensive System Planning Process requirements in Attachment Y of the NYISO OATT.²⁴ Consolidated Edison explains that Rate Schedule 10 recovers the cost of several project types, including a Designated Public Policy Project that is a Public Policy Transmission Project, or part of a Public Policy Transmission Project, that NYISO has selected pursuant to § 31.4.8.3 of Attachment Y as the more efficient or cost-effective solution to a Public Policy Transmission Need.²⁵ Consolidated Edison explains that Rate Schedule 10 recovers the cost of Designated Network Upgrade Facilities designated pursuant to § 22.9.6 of Attachment P of the NYISO OATT and associated with a Public Policy Transmission Project selected by NYISO and that § 6.10.1.1 of Rate Schedule 10 provides that the costs will be allocated pursuant to NYISO’s regional cost allocation methods in Attachment Y of the NYISO OATT.

III. Notices and Responsive Pleading

13. Notice of Consolidated Edison’s filing was published in the *Federal Register*, 88 Fed. Reg. 41,954 (June 28, 2023), with interventions and protests due on or before July 13, 2023. New Jersey Division of Rate Counsel filed a timely motion to intervene. New York Association of Public Power (NYAPP) filed a motion to intervene out-of-time.

²² *Id.* at 7, n. 24.

²³ *Id.* at 4 (citing CSRA Order, 180 FERC ¶ 61,106 at PP 50-51).

²⁴ Tariff Filing, Dumais Test. at 12.

²⁵ Section 31.1.1 of Attachment Y provides that a Public Policy Transmission Need is a transmission need identified by the New York Commission that is driven by a Public Policy Requirement pursuant to §§ 31.4.2.1 - 31.4.2.3 of Attachment Y, and a Public Policy Requirement is a federal or New York State statute or regulation, including a New York Commission order adopting a rule or regulation that may relate to transmission planning on the New York Bulk Power Transmission Facilities.

14. On August 18, 2023, Commission staff issued a letter informing Consolidated Edison that its filing was deficient and requested additional information (Deficiency Letter). On September 1, 2023, Consolidated Edison submitted a response (Deficiency Response) to the Deficiency Letter and filed amendments to the Formula Rate Template and Protocols.

15. Notice of Consolidated Edison's Deficiency Response was published in the *Federal Register*, 88 Fed. Reg. 62,077 (Sep. 8, 2023), with interventions and protests due on or before September 22, 2023. NYAPP filed a protest on September 29, 2023.

16. On October 16, 2023, Consolidated Edison filed an answer.

IV. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2022), New Jersey Division of Rate Counsel's timely unopposed motion to intervene make it a party to this proceeding.

18. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant NYAPP's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2022), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Consolidated Edison's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

20. As discussed below, we accept Consolidated Edison's Attachment 3 to Rate Schedule 19 and Protocols, and we accept Attachment 4 to Rate Schedule 10, effective August 22, 2023, as requested. We accept Consolidated Edison's proposed Formula Rate Template subject to further compliance, suspend it for a nominal period, effective August 22, 2023, as requested, subject to refund, and establish hearing and settlement judge procedures for the proposed base ROEs for projects under Rate Schedule 19 and projects under Rate Schedule 10. We conditionally grant the request for a 50 basis point adder to the base ROE for Rate Schedule 10 for Consolidated Edison's participation in NYISO, conditional on the adder being applied to a base ROE that has been shown to be just and reasonable, and subject to the resulting ROE being within the applicable zone of reasonableness, as may be determined in the hearing and settlement judge procedures.

1. Formula Rate Protocols

21. The Commission established its policy regarding formula rate protocols in a series of cases involving Midcontinent Independent System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff.²⁶ The resulting MISO Protocol Orders have served as the benchmark for proceedings involving the justness and reasonableness of formula rate protocols.²⁷

a. Filing

22. Consolidated Edison states that Rate Schedule 19 calculates and allocates to New York Load Serving Entities on a volumetric load-ratio share basis a new CLCPA Facilities Charge (CFC Charge).²⁸ Section 6.19.8.1 of Attachment 3 to Rate Schedule 19 establishes the CFC Charge of Consolidated Edison and provides that Consolidated Edison's revenue requirement shall be determined in accordance with the Protocols set forth in § 6.19.8.2.1 and the Formula Rate Template set forth in § 6.19.8.2.2. Consolidated Edison states that its Protocols prescribe the proposed annual update process, which establishes the legal framework for development and review of formula rates.²⁹ Consolidated Edison explains that its proposed Protocols provide that each annual update will be publicly posted on NYISO's website not later than October 15 and that, as part of the annual update process, Consolidated Edison will determine a true-up adjustment by comparing the prior calendar year's actual Annual Transmission Revenue Requirement (ATRR)—using data from its FERC Form No. 1—against transmission revenues received under Rate Schedule 19 and Rate Schedule 10, respectively, during the preceding rate year.

²⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012), *order on investigation*, 143 FERC ¶ 61,149 (2013) (MISO Investigation Order), *order on reh'g*, 146 FERC ¶ 61,209, *order on compliance*, 146 FERC ¶ 61,212 (2014) (MISO Compliance Order), *order on reh'g*, 150 FERC ¶ 61,024, *order on compliance*, 150 FERC ¶ 61,025 (2015) (MISO Compliance Order II) (collectively, MISO Protocol Orders).

²⁷ *See, e.g., Black Hills Power, Inc.*, 150 FERC ¶ 61,198 (2015); *UNS Elec., Inc.*, 153 FERC ¶ 61,132 (2015); *The Empire Dist. Elec. Co.*, 153 FERC ¶ 61,127 (2015); *Kansas City Power & Light Co.*, 153 FERC ¶ 61,150 (2015); *Louisville Gas & Elec. Co.*, 153 FERC ¶ 61,126 (2015); *Westar Energy, Inc.*, 153 FERC ¶ 61,143 (2015); *Alabama Power Co.*, 182 FERC ¶ 61,015 (2023).

²⁸ Tariff Filing, Transmittal Letter at 8, 11-12.

²⁹ *Id.* at 11.

23. Consolidated Edison states that the proposed Protocols provide for review procedures that are consistent with the Commission's directives and determinations regarding, among other aspects: (i) scope of participation in the information exchange process, including specification that "interested party" is defined broadly to include any transmission customer under the NYISO OATT, the New York Commission, other New York State government entities that may have an interest in transmission rates, and any party that has standing in a Consolidated Edison formula rate proceeding under the FPA; (ii) the transparency of the information exchange; and (iii) the ability of interested parties to challenge Consolidated Edison's implementation of the formula rates as a result of the information exchange.³⁰ Consolidated Edison states that the Protocols are also consistent with the Commission's guidance on timing, sequence, transparency, and other specifications in proceedings concerning the formula rate protocols of transmission owning members of MISO, and considers recent formula rate protocol show cause orders issued to various transmission owners by the Commission.

b. Deficiency Letter and Response

24. In the Deficiency Letter, Commission staff asked Consolidated Edison to explain how its proposed Protocols comply with Commission requirements regarding extensions of time in the event of a delay in the publication date of the annual update.³¹ Consolidated Edison responded that it agrees to extend the information request deadline for any delays in the publication date, including when the publication date falls on a holiday or weekend, and in the event these dates fall on a weekend or holiday, to move the deadline for information requests and the end of the review period to the next business day.³² Consolidated Edison adds that, while informal challenges already allow for an extension of the due date if the deadline falls on a weekend or holiday, it has amended its Protocols to make a comparable extension for the due date for formal challenges.

25. In addition, Commission staff asked Consolidated Edison to explain how its proposed Protocols comply with Commission requirements to include certain provisions for the disclosure of information in its Projected ATRRs, especially requirements that transmission owners disclose certain changes in accounting and identification of items included in the formula rate at an amount other than on a historical cost basis (e.g., fair value adjustments).³³ Consolidated Edison responded that, although it believes that

³⁰ *Id.* at 12; *see, e.g., Empire Dist. Elec. Co.*, 150 FERC ¶ 61,200 (2015).

³¹ Deficiency Letter at 2 (citing MISO Compliance Order, 146 FERC ¶ 61,212 at P 61).

³² Deficiency Response, Attachment 1 at 3.

³³ Deficiency Letter at 2-3 (citing MISO Investigation Order, 143 FERC ¶ 61,149

providing this information at the time of posting its Actual ATRR provides adequate transparency to stakeholders, it has amended its Protocols to provide additional information with the posting of its Projected ATRR, including information related to accounting changes and details related to any item where the amount differs from original cost and for any reorganization or merger transactions.³⁴ Consolidated Edison states that it will also provide a narrative explanation of the individual impact of such changes on the Projected ATRR.

26. In the Deficiency Letter, Commission staff asked Consolidated Edison to explain how its proposed Protocols comply with Commission requirements to disclose all accounting changes that affect inputs to the formula rate or the resulting charges billed under the formula rate in its Annual Update posting.³⁵ Consolidated Edison responded that it agrees to eliminate the “materiality” threshold from accounting change disclosures provided in both the Actual ATRR and Projected ATRR provisions of its Protocols and to include this information with the posting of its Projected ATRR.³⁶

27. Commission staff also asked Consolidated Edison to explain how its proposed Protocols comply with Commission requirements to include the information that is reasonably necessary to determine, among other things, the reasonableness of projected costs included in the projected capital addition expenditures (for forward-looking formula rates).³⁷ Consolidated Edison responded that the requirement regarding providing information on projected capital additions in section 3.g of the Protocols does not apply to section 3.h because it addresses actual information, not projected information.³⁸ Consolidated Edison states that section 3.h already meets Commission requirements regarding the reasonableness of projected costs included in the projected capital addition expenditures and states that it will post such information with its Projected ATRR. Nevertheless, Consolidated Edison proposes new provisions in section 3.h identifying,
at P 87).

³⁴ Deficiency Response, attach. 1 at 5.

³⁵ Deficiency Letter at 4 (citing MISO Compliance Order, 146 FERC ¶ 61,212 at P 66). The Commission found that provisions that limit utility disclosure of accounting changes to only those that are “material” are insufficient to ensure just and reasonable rates and that the word “material” must be removed from the description of the accounting changes that will be disclosed. *Id.* P 65.

³⁶ Deficiency Response, attach. 1 at 6.

³⁷ Deficiency Letter at 4 (citing MISO Compliance Order, 146 FERC ¶ 61,212 at P 22, 62).

³⁸ Deficiency Response, attach. 1 at 6.

among other things, the calculations in the Projected ATRR that are based on an amount other than historic cost basis (e.g., fair value adjustments), and the effect of any of these items on the Projected ATRR.

28. In the Deficiency Letter, Commission staff asked Consolidated Edison to explain how its proposed Protocols comply with Commission requirements to provide certain cost allocation methodologies and details for the “prior Rate Year,” and not the “applicable rate year.”³⁹ In response, Consolidated Edison amended its Protocols to change the language in section 3.g.x of the Protocols from “prior Rate Year” to “applicable rate year.”⁴⁰

29. In addition, Commission staff asked Consolidated Edison to explain how its proposed Protocols comply with Commission requirements to provide interested parties the opportunity to obtain information on procurement methods and cost control methodologies used by the transmission owner.⁴¹ Consolidated Edison responded that section 6.a.vii and 6.a.ix of the Protocols already provide that interested parties can request information on the accuracy of actual costs and expenditures and any other information that may reasonably have a substantive effect on the calculation of the Projected ATRRs or Actual ATRRs pursuant to the formula rate and Protocols.⁴² However, Consolidated Edison states that it has amended its Protocols so that interested parties can request information regarding procurement approaches and cost control methodologies.

30. In the Deficiency Letter, Commission staff asked Consolidated Edison to explain how its proposed Protocols comply with Commission requirements that formula rate protocols cannot define the scope of various types of future section 205 filings.⁴³ Consolidated Edison responded that, although it is aware of many other transmission formula rate protocols that provide for limited section 205 filings for items such as those included in its Protocols, it has amended its Protocols to remove this language.⁴⁴

³⁹ Deficiency Letter at 5 (citing *Commonwealth Edison Co.*, 182 FERC ¶ 61,156, at P 28 (2023)).

⁴⁰ Deficiency Response, attach. 1 at 7.

⁴¹ Deficiency Letter at 5 (citing MISO Investigation Order, 143 FERC ¶ 61,149 at P 90).

⁴² Deficiency Response, attach. 1 at 7.

⁴³ Deficiency Letter at 5-6 (citing *ATX Sw., LLC*, 152 FERC ¶ 61,193, at P 85 (2015)).

⁴⁴ Deficiency Response, attach. 1 at 8.

Additionally, Consolidated Edison states that it has added language to section 8.g of the Protocols to clarify that formal challenges are made pursuant to the Protocols and not section 206 of the FPA.

c. Commission Determination

31. We find that Consolidated Edison's amended Attachment 3 to Rate Schedule 19 and Protocols is just and reasonable and complies with Commission precedent in the MISO Protocol Orders and related orders.⁴⁵ We accept Attachment 3 to Rate Schedule 19 and Protocols effective August 22, 2023, as requested.

2. Formula Rate Template

a. Overall Structure

i. Filing

32. Consolidated Edison states that it anticipates being designated to build and own projects eligible for cost recovery under Rate Schedule 10 and Rate Schedule 19, which will require a formula rate to be on file under the respective Rate Schedules to effectuate the annual revenue requirement and applicable cost allocation and to implement associated cost recovery for any such projects.⁴⁶ Consolidated Edison explains that the proposed formula rate is designed to include functionality that would separately cover both Rate Schedule 19 projects and Rate Schedule 10 projects. Consolidated Edison states that the proposed formula rate would be placed in the NYISO OATT under Attachment 3 to Rate Schedule 19, with appropriate cross references pertaining to Rate Schedule 10 projects under Attachment 4 to Rate Schedule 10. Consolidated Edison adds that, prior to recovering any costs related to an eligible project, it will be required to satisfy all applicable requirements of the NYISO OATT and the formula rate.

33. Consolidated Edison proposes a common Formula Rate Template for both Rate Schedule 10 projects and Rate Schedule 19 projects.⁴⁷ Consolidated Edison states that the proposed formula rate adheres to established cost-of-service principles for electric utilities, enabling it to recover its ATRR on a forward-looking basis using projected data

⁴⁵ See, e.g., *Black Hills Power, Inc.*, 150 FERC ¶ 61,198 (2015); *UNS Elec., Inc.*, 153 FERC ¶ 61,132 (2015); *The Empire Dist. Elec. Co.*, 153 FERC ¶ 61,127 (2015); *Kansas City Power & Light Co.*, 153 FERC ¶ 61,150 (2015); *Louisville Gas & Elec. Co.*, 153 FERC ¶ 61,126 (2015); *Westar Energy, Inc.*, 153 FERC ¶ 61,143 (2015); *Alabama Power Co.*, 182 FERC ¶ 61,015 (2023).

⁴⁶ Tariff Filing, Transmittal Letter at 5-6.

⁴⁷ *Id.* at 8.

for a January 1 to December 31 period (Rate Year), with annual true-up adjustments. Consolidated Edison maintains that the difference between an actual ATRR for a Rate Year and the projected ATRR for the same Rate Year, along with interest calculated in accordance with section 35.19a of the Commission's regulations,⁴⁸ will be reflected as a true-up adjustment to the applicable forecasted ATRR for the next applicable Rate Year.

34. Consolidated Edison states that projected input data will be obtained from its internal budgeting processes, while actual input data will be derived from its FERC Form No. 1, consistent with Commission precedent.⁴⁹ Consolidated Edison notes that the Formula Rate Template contains several worksheets needed to determine its ATRR and that it can calculate project-specific costs with unique columns covering each separate Rate Schedule 19 project and Rate Schedule 10 project. Consolidated Edison states that the formula rate allows for the recovery of a return on rate base (including an ROE, as discussed in detail below), taxes other than income taxes, depreciation and amortization expense, operation and maintenance expense, and administrative and general expense, less any revenue credits. Consolidated Edison explains that, for transmission and general/common plant balances, land held for future use, materials and supplies, unfunded liabilities, and prepayments, the formula rate uses the average of the Rate Year 13-month balances: in the case of accumulated deferred income taxes (ADIT), it uses the average of beginning and end of year balances or a prorated balance, in accordance with Internal Revenue Service regulations, and also includes an income tax allowance.

35. Finally, Consolidated Edison states that Appendix A of its Formula Rate Template will produce the aggregate ATRR for both Rate Schedule 19 and Rate Schedule 10 projects and confirms that it excludes such charges from its retail rates or otherwise provides an appropriate credit to retail customers for the recovery of any Rate Schedule 19 or Rate Schedule 10 costs under the NYISO OATT.⁵⁰

ii. NYAPP Protest

36. NYAPP claims that Consolidated Edison cannot directly assign administrative and general (A&G) expenses, and then allocate the same expenses on a plant allocator basis.⁵¹ More specifically, NYAPP explains that the formula rate, Appendix A, lines 46-47, allocates transmission-related regulatory commission expenses both on a plant allocator basis and by directly assigning those regulatory commission expenses directly related to Rate Schedule 19 or Rate Schedule 10 projects. NYAPP states that the formula rate also

⁴⁸ 18 C.F.R. § 35.19a.

⁴⁹ Tariff Filing, Transmittal Letter at 9.

⁵⁰ *Id.* at 10.

⁵¹ NYAPP Protest at 5.

does not appear to subtract the directly assigned costs from the more general transmission-related regulatory expenses on line 46 of Appendix A before allocating the larger bucket of costs.

37. NYAPP raises additional concerns, including that the ADIT workpapers fail to correctly link the Rate Schedule 19 and Rate Schedule 10 tabs; that Workpapers 2c19 and 2c10 are showing the rate year projection over 2021, instead of further into the future; and that actual ADIT should be based on actual data, and not prorated, on Workpapers 2d19 and 2d10. NYAPP also questions why excess and/or deficient ADIT workpapers 3a19 EADIT and 3b10 EADIT are in the Formula Rate Template.⁵² Finally, NYAPP lists 29 ministerial concerns with the Formula Rate Template.⁵³

iii. Consolidated Edison Answer

38. Consolidated Edison states in its answer that the Formula Rate Template allocates transmission-related regulatory commission expenses to the ATRR of Rate Schedule 10 and Rate Schedule 19 projects only after first deducting these as directly assigned expenses, which means that there is no double assignment or allocation of regulatory expenses.⁵⁴ Consolidated Edison states that, if directed on compliance, it is willing to add a clarifying footnote to line 37 to expressly state that any transmission-related regulatory commission expenses allocated to Rate Schedule 19 or Rate Schedule 10 projects occur only after deducting any directly assigned regulatory expenses.

39. Consolidated Edison notes that Workpapers 2c19 and 2c10 show the rate year projection over 2021 for illustrative purposes in this filing and that, when live, “these workpapers will be populated with either projected data (to determine the Projected ATRR) or actual data (to determine the actual ATRR used for the annual true up adjustments).”⁵⁵ Consolidated Edison adds that NYAPP’s argument that it is inappropriate to prorate actual ADIT amounts is incorrect, and that its workpapers are consistent with Internal Revenue Service (IRS) requirements.

40. Finally, Consolidated Edison provides clarification in response to NYAPP’s list of 29 administrative observations about the formula rate template and agrees to make any corrections necessary in a compliance filing.⁵⁶

⁵² *Id.* at 5-6.

⁵³ *Id.* at 6-8.

⁵⁴ Answer at 9.

⁵⁵ Answer at 9-10.

⁵⁶ Answer at 10-11.

iv. Commission Determination

41. We disagree with NYAPP that the formula rate misallocates A&G expenses. As explained in the Dumais Testimony, there is a multi-step process used to calculate A&G expenses.⁵⁷ Beginning with total A&G expenses on line 40, the formula rate deducts certain unallowable costs (e.g., regulatory commission expenses on line 42) to arrive at adjusted A&G expenses, which are then allocated to Rate Schedule 19 projects and Rate Schedule 10 projects on line 45 using those respective projects' wage and salary allocator, consistent with how A&G is treated in most transmission formula rates.

42. Next, after the formula rate allocates adjusted A&G expenses, it allocates any general transmission regulatory expenses using a Rate Schedule 19 plant allocator or a Rate Schedule 10 plant allocator, as appropriate, on line 46.⁵⁸ The formula rate directly assigns any regulatory expenses incurred directly for Rate Schedule 19 projects or Rate Schedule 10 projects on line 47. Column (2) of lines 46 and 47 states that the inputs are sourced from FERC Form No. 1, pages from 350-351, with additional detail provided in footnotes. Because regulatory commission expenses have been removed from the initial calculation of adjusted A&G expenses on line 42 and may be added back on either a direct or plant allocator basis, as appropriate, on lines 46 and/or 47, we find that the formula rate allocates A&G expenses appropriately. Notwithstanding the foregoing, we accept, subject to further compliance as directed below, Consolidated Edison's proposal to add a clarifying footnote to line 37 to expressly state that any regulatory transmission expenses allocated to Rate Schedule 19 or Rate Schedule 10 projects occur only after deducting any directly assigned regulatory expenses.

43. We also disagree with NYAPP that the Formula Rate Template's ADIT workpapers are unjust and unreasonable. We find that the ADIT workpapers provide sufficient transparency for an interested party to identify the source of the data. Lines 1-11 of tab 2a19 ADIT current year, for example, list the relevant ADIT account, allocator, or other information in column (b). Columns (c), (d), (e), and (g) list the following: Rate Schedule 19 projects; plant related amounts; labor related amounts; and, total ADIT, respectively.⁵⁹ Finally, column (h) provides additional detail as to the source of the data. We find that these ADIT workpapers provide sufficient transparency and are therefore just and reasonable.

⁵⁷ Tariff Filing, Dumais Test. at 23.

⁵⁸ *Id.* at 23-24.

⁵⁹ There are no amounts listed in column (f) for lines 1-11: that column is utilized elsewhere on the worksheet.

44. We agree with Consolidated Edison that the way the formula rate is structured, Workpapers 2c19 and 2c10 will be populated with either projected data or actual data for the appropriate year.

45. With respect to Consolidated Edison's proposal to maintain prorationing during the true-up period (i.e., the prorationing of actual ADIT amounts), we agree that Consolidated Edison's prorationing methodology is reasonable to comply with IRS normalization requirements. The Commission has previously found that, in this situation, "the depreciation normalization rules of the Internal Revenue Code and the IRS regulations (Normalization Rules) mandate the use of a very specific proration procedure in measuring the amount of test period ADIT that can reduce rate base."⁶⁰

46. NYAPP states that it is unclear why Consolidated Edison has included workpapers 3a19 EADIT and 3b10 EADIT in the formula rate template, and argues that they lack transparency because they do not link to Appendix A.⁶¹ As an initial matter, we note that these workpapers are necessary to comply with the requirements of Order No. 864 – a final rule addressing excess and deficient ADIT resulting from tax rate changes.⁶² Among other things, the Commission required public utility transmission providers with transmission formula rates under an OATT, a transmission owner tariff, or a rate schedule to revise their transmission formula rates to address excess and deficient ADIT by incorporating a new permanent ADIT worksheet that will annually track information related to excess or deficient ADIT (ADIT Worksheet).⁶³ We find that worksheets 3a19 EADIT and 3b10 EADIT meet the ADIT Worksheet requirements of Order No. 864. Regarding NYAPP's transparency argument, we note that Appendix A, line 26, column (2) "Form No. 1 or Transmission Formula Rate Reference," appropriately lists "3a19 or

⁶⁰ *PJM Interconnection, L.L.C.*, 181 FERC ¶ 61,097, at P 32 (2022) (citing *Pub. Serv. Co. of Col.*, 155 FERC ¶ 61,028 (2016), *Ameren Ill. Co.*, 163 FERC ¶ 61,200, at P 3, *on paper hearing*, 165 FERC ¶ 61,234 (2018), citing Treas. Reg. § 1.167(l)-1(h)(6)(ii) (as amended in 1974) (Normalization Rule). Section 1.167(l)-1(h)(6)(ii) of the IRS regulations requires that, if a utility uses solely a future period (projected test year) to determine depreciation, "the amount of the reserve account for the period is the amount of the reserve at the beginning of the period and a pro rata portion of the amount of any projected increase to be credited or decrease to be charged to the account during such period."

⁶¹ NYAPP Protest at 6.

⁶² *Pub. Util. Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, Order No. 864, 84 Fed. Reg. 65,281, 169 FERC ¶ 61,139 (2019), *order on reh'g and clarification*, Order No. 864-A, 171 FERC ¶ 61,033 (2020).

⁶³ Order No. 864, 169 FERC ¶ 61,139 at P 62.

3b10-EDIT” as the source for Rate Schedule 19 projects in column (5), or Rate Schedule 10 projects, respectively. We find line 26 and its associated reference to be sufficiently transparent for interested parties to understand the source of the data and its location in the Formula Rate Template. Additionally, we find that line 26 complies with the Order No. 864 requirement to have a mechanism to deduct any excess ADIT from or add any deficient ADIT to rate base (Rate Base Adjustment Mechanism) and is therefore just and reasonable.⁶⁴ In addition to the requirements discussed above, we find that the Formula Rate Template otherwise complies with Order No. 864.

47. With respect to the 29 ministerial corrections or explanations requested by NYAPP and reiterated in Appendix A of Consolidated Edison’s answer: we agree with Consolidated Edison’s proposed corrections for items 1-8; we find that item 9 is correct as originally proposed (i.e., the FERC Form No. 1 reference is correct); and for remaining items 10 – 29, we agree with all proposed corrections that Consolidated Edison identified in its answer. We also accept Consolidated Edison’s additional clarifications (e.g., item 21, “[w]hen doing actual ATRR calculations, the ADIT Actual Proration Amount will be included on Workpaper 2a10- ADIT Current Year, line 10, col. g.”), and find that no additional changes are required. Accordingly, we direct Consolidated Edison to make all the corrections and clarifications proffered in its Answer in a compliance filing no later than January 5, 2024, as ordered below. We otherwise find that the proposed Formula Rate Template is just, reasonable, and not unduly discriminatory or preferential, with the exception of the proposed base ROEs as discussed below.

b. Depreciation

i. Filing

48. Consolidated Edison states that the Formula Rate Template directly assigns depreciation expenses related to Rate Schedule 19 projects and Rate Schedule 10 projects, as tracked by Consolidated Edison in its fixed asset system.⁶⁵ Consolidated Edison states that Workpaper 8-Depreciation Rates contains the depreciation rates to be used to determine transmission, general, intangible, and common depreciation and amortization expenses included in ATRRs.⁶⁶ Consolidated Edison explains that the depreciation rates are approved by the New York Commission and that Consolidated Edison will continue to use those depreciation rates until the New York Commission orders any changes and Consolidated Edison receives Commission approval to use the changed depreciation rates.

⁶⁴ *Id.* P 28.

⁶⁵ Tariff Filing, Dumais Test. at 24.

⁶⁶ *Id.* at 34.

ii. Deficiency Letter and Response

49. In the Deficiency Letter, Commission staff asked Consolidated Edison to provide depreciation studies and supporting documentation to support the proposed depreciation rates.⁶⁷ Consolidated Edison responded that it included the depreciation rate testimony along with the depreciation study and other related exhibits filed by Consolidated Edison in its most recently completed rate case proceedings before the New York Commission.⁶⁸ Consolidated Edison states that the depreciation rates were approved by the New York Commission on July 20, 2023 in Case Nos. 22-E-0064 and 22-G-0065. Consolidated Edison states that the depreciation rates included in the original filing are not the most recently approved rates, and it updated the depreciation rates in its Deficiency Response.

iii. Commission Determination

50. We accept Consolidated Edison's proposed depreciation rates, as updated and supported in its Deficiency Response, as just and reasonable.

c. Base ROE

i. Filing

51. Consolidated Edison states that, for projects under Rate Schedule 19, it is proposing a ceiling ROE of 10.87% as a fixed value in the formula rate, subject to a lower ROE authorized by the New York Commission.⁶⁹ Consolidated Edison states that, for Rate Schedule 10 projects, it is proposing a separate base ROE of 10.6%. Consolidated Edison explains that both the proposed ROEs have been developed using the methods accepted by the Commission for transmission cost-of-service revenue requirement purposes.⁷⁰ Consolidated Edison states that, for Rate Schedule 19 projects,

⁶⁷ Deficiency Letter at 1-2.

⁶⁸ Deficiency Response, attach. 1 at 1-2.

⁶⁹ Tariff Filing, Transmittal Letter at 7, 10.

⁷⁰ *Id.*, attach. C (Testimony of Adrien M. McKenzie, CFA) at 3, 21. Consolidated Edison states that it relied on the Commission's guidance in *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,129 (2019), *order on reh'g*, Opinion No. 569-A, 171 FERC ¶ 61,154, *order addressing reh'g arguments and setting aside prior order in part*, 173 FERC ¶ 61,159 (2020), *vacated and remanded sub nom. MISO Transmission Owners v. FERC*, 45 F.4th 248 (D.C. Cir. 2022). For Rate Schedule 19, the ceiling ROE was determined using the two-step "Discounted Case Flow" methodology and the "Capital Asset Pricing Model." For Rate Schedule 10, the analysis was done using the two-step "Discounted Case Flow"

the formula rate will use the capital structure applicable to Consolidated Edison for retail ratemaking purposes, as established and revised from time to time by the New York Commission.

ii. NYAPP Protest

52. NYAPP argues that Consolidated Edison must adopt the ROE and capital structure approved by the New York Commission in the most recent retail case for Consolidated Edison, rather than proposing a new ceiling base ROE for Rate Schedule 19 projects and separate base ROE for Rate Schedule 10 projects.⁷¹ NYAPP states that, for 2024, the ROE for Consolidated Edison is 9.25% and the capital structure is 48% equity and 52% debt and customer deposits.

iii. Consolidated Edison Answer

53. In its answer, Consolidated Edison rejects NYAPP's suggestion that the New York Commission approved ROE must be used for all projects whose costs would be recovered using the Formula Rate Template, including Rate Schedule 10 projects.⁷² Consolidated Edison states that NYAPP fails to appreciate the difference between Rate Schedule 19 projects and Rate Schedule 10 projects. Consolidated Edison states that, consistent with the voluntary CSRA, Rate Schedule 19 projects will use the lower of a Commission determined ROE or the prevailing ROE determined by the New York Commission for retail ratemaking. Consolidated Edison states that the parties to the CSRA recognized that absent such agreement, the costs of Approved Local Transmission Facilities would otherwise have to be approved in utility State rate cases.⁷³

54. Consolidated Edison states that, in contrast to the use of a prevailing rate for Rate Schedule 19 projects, the base ROE for Rate Schedule 10 projects is "a more typical fixed value reviewed and approved solely by the [Commission]."⁷⁴ Consolidated Edison states that it would be unjust and unreasonable to apply state determinations to Rate Schedule 10 projects, which are not subject to the terms of a voluntary agreement.

methodology, the "Capital Asset Pricing Model," the "Risk Premium Model," and the "Expected Earnings" approach.

⁷¹ NYAPP Protest at 4.

⁷² Answer at 7.

⁷³ *Id.* at 7-8.

⁷⁴ *Id.* at 8.

iv. Commission Determination

55. Our preliminary analysis indicates that Consolidated Edison's proposed base ROEs for Rate Schedule 19 and Rate Schedule 10 have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.⁷⁵ We find that Consolidated Edison's two proposed base ROEs raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Therefore, we accept Consolidated Edison's proposed Formula Rate Template subject to the further compliance discussed herein and ordered below, suspend it for a nominal period, effective August 22, 2023, as requested, subject to refund, and establish hearing and settlement judge procedures on the proposed base ROEs.

56. While we are setting the proposed base ROEs for a trial-type evidentiary hearing,⁷⁶ 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.⁷⁷ 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.⁷⁸ 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 the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assignment of the case to a presiding judge.

⁷⁵ In particular, Consolidated Edison has not provided a basis for deviating from long-standing Commission precedent providing for a single base ROE to reflect the general risk profiles of all of a utility's transmission assets and businesses. *See, e.g., FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944); *see also Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679, 692-93 (1923).

⁷⁶ Trial Staff is a participant in the hearing and settlement judge procedures. *See* 18 C.F.R. § 385.102(b), (c) (2022).

⁷⁷ 18 C.F.R. § 385.603 (2022).

⁷⁸ 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 (<https://www.ferc.gov/available-settlement-judges>).

d. Incentives

i. RTO Adder

(a) Filing

57. Consolidated Edison requests, pursuant to Order No. 679,⁷⁹ a 50 basis point RTO Adder for transmission projects under Rate Schedule 10 to reflect Consolidated Edison's continued membership and participation in NYISO.⁸⁰ Consolidated Edison states that the Commission has consistently granted requests for the RTO Adder in similar circumstances with respect to other NYISO member transmission owners' jurisdictional transmission facilities that were turned over to NYISO's operational control.⁸¹

58. Consolidated Edison proposes to add the RTO Adder only to the base ROE approved by the Commission for use under the proposed formula rate for Rate Schedule 10 projects and is not requesting the RTO Adder with respect to Rate Schedule 19 projects.⁸² Consolidated Edison states that Order No. 679 provides that an entity will be presumptively eligible for the incentive if it is a member of an RTO or comparable transmission organization.⁸³ Consolidated Edison states that the Commission has explained that NYISO, like other independent system operators and RTOs, manages an evolving and complex transmission grid and rapidly evolving power market and thus the same benefits the Commission found compelling in Order No. 679 continue to remain relevant.⁸⁴

(b) Commission Determination

59. We conditionally grant the request for a 50-basis point adder to the base ROE for Rate Schedule 10 for Consolidated Edison's participation in NYISO. In the Energy

⁷⁹ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁸⁰ Tariff Filing, Transmittal Letter at 7.

⁸¹ *Id.* at 7-8 (citing *See N.Y. Indep. Sys. Operator, Inc.*, 171 FERC ¶ 61,119, at PP 19-20 (2020)).

⁸² *Id.* at 8.

⁸³ *Id.* at 7 (citing Order No. 679, 116 FERC ¶ 61,057 at P 327).

⁸⁴ *Id.* at 7-8 (citing *N.Y. Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,266, at P 14 (2020)).

Policy Act of 2005,⁸⁵ Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefiting consumers by ensuring reliability or reducing the cost of delivered power by reducing transmission congestion.⁸⁶ The Commission subsequently issued Order No. 679, which sets forth processes by which a public utility may seek transmission rate incentives, pursuant to section 219 of the FPA.

60. We find that, as conditioned herein, the requested 50-basis point adder is consistent with section 219 of the FPA and Commission precedent. Order No. 679 provides that an entity will be presumptively eligible for the incentive if it is a member of an RTO and its membership is ongoing.⁸⁷ Consolidated Edison satisfies these criteria through its ongoing membership in NYISO. We condition our approval on the adder being applied to a base ROE that has been shown to be just and reasonable, and subject to the resulting ROE being within the applicable zone of reasonableness, as may be determined in the hearing and settlement judge procedures ordered herein.

ii. CWIP/Abandonment Placeholders

(a) Filing

61. Consolidated Edison states that the rate base in Appendix A of the Formula Rate Template consists of several items, including Construction Work in Progress (CWIP) and Abandoned Plant Incentives.⁸⁸ Section 5 of Consolidated Edison's Protocols also addresses the rate treatment of CWIP in rate base. Consolidated Edison is not requesting these incentives at this time. Instead, Consolidated Edison proposes calculations in the formula rates that may be populated in the future, should Consolidated Edison request and the Commission authorize these incentives in the future.⁸⁹

(b) Commission Determination

62. We reject Consolidated Edison's proposal to include calculations for CWIP and Abandoned Plant Incentives as placeholders in the Formula Rate Template because it is premature.⁹⁰ Order No. 679 requires a project-specific demonstration when an applicant

⁸⁵ Pub. L. No. 109-58, § 1241, 119 Stat. 594 (2005).

⁸⁶ 16 U.S.C. § 824s.

⁸⁷ Order No. 679, 116 FERC ¶ 61,057 at P 327.

⁸⁸ Tariff Filing, Dumais Test. at 17.

⁸⁹ *Id.*, Dumais Test. at 18-19, 34, 38.

requests CWIP or Abandoned Plant Incentives, which Consolidated Edison cannot make at this time.⁹¹ It is also not clear in the record before us how the currently-proposed abandoned plant calculations credit revenues from the closing out of transactions as a result of abandoning the plant.⁹² Accordingly, we direct Consolidated Edison to submit a compliance filing, no later than January 5, 2024, to remove the placeholders in the Formula Rate Template that include calculations for CWIP and Abandoned Plant Incentives (e.g., lines 23 and 24) from Rate Schedule 10 and Rate Schedule 19.

3. Rate Schedule 10 Cost Allocation

a. Filing

63. Consolidated Edison requests to add Attachment 4 to Rate Schedule 10 to include Consolidated Edison's Long Island Transmission Projects.⁹³ Consolidated Edison explains that § 6.10.10.2 of Rate Schedule 10 states that the revenue requirement for Consolidated Edison's Long Island Transmission Projects will be determined using the Formula Rate Template and Worksheet 10b.⁹⁴ Consolidated Edison further explains that § 6.10.10.3 of Rate Schedule 10 states that the eligible costs of Consolidated Edison's Long Island Transmission Projects will be allocated in accordance with the approved cost allocation method for the Public Policy Transmission Project selected by NYISO to address the "Long Island Offshore Wind Export Public Policy Transmission Need."

b. NYAPP Protest

64. NYAPP argues that neither the Commission nor the New York Commission have approved statewide load-ratio share cost allocation for Rate Schedule 10.⁹⁵ NYAPP states that the CSRA Order approved statewide load-ratio share allocation through Rate Schedule 19 for projects approved by the New York Commission to meet state public policy mandates (i.e., Approved Local Transmission Upgrades). NYAPP states that the

⁹⁰ See *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017) (discussing the Commission's authority to propose modifications to a utility's FPA section 205 rate proposal).

⁹¹ Order No. 679, 116 FERC ¶ 61,057 at P 20.

⁹² See, e.g., *Potomac-Appalachian Transmission Highline, LLC*, 158 FERC ¶ 61,050 (2017).

⁹³ Tariff Filing, Transmittal Letter at 2, 5.

⁹⁴ Tariff Filing, Dumais Test. at 32-33.

⁹⁵ NYAPP Protest at 4.

CSRA Order does not rule on the cost allocation and recovery of projects selected in NYISO's Order No. 1000 Comprehensive System Planning Process that are eligible for cost allocation under Rate Schedule 10.⁹⁶

65. Additionally, NYAPP states that the March 2022 Order ruled on an incumbent transmission owner's ability to exercise its right of first refusal to construct upgrades for a Developer's Public Policy Transmission Project.⁹⁷ NYAPP states, however, that the March 2022 Order does not say that Consolidated Edison may use its formula rate under Rate Schedule 10 to impose statewide load ratio share cost allocation for upgrades for which it has been selected as the Developer.⁹⁸ NYAPP acknowledges that Consolidated Edison states that actual cost recovery for Public Policy Transmission Upgrades and Designated Network Upgrade Facilities requires Commission approval under FPA section 205, but argues that Commission approval of any cost allocation method must depend on the actual cost recovery sought for a specific project.⁹⁹

c. Consolidated Edison Answer

66. Consolidated Edison states in its answer that NYAPP mistakenly claims that Consolidated Edison is proposing a statewide load-ratio cost allocation under Rate Schedule 10.¹⁰⁰ Consolidated Edison states that it is not attempting to apply the CSRA Order to Rate Schedule 10 projects as NYAPP suggests.¹⁰¹ Consolidated Edison states that it proposes no deviation from the NYISO OATT with respect to cost allocation procedures under Rate Schedule 10 and Attachment Y.¹⁰²

67. Consolidated Edison states that § 6.10.10.3 of Consolidated Edison's proposed Attachment 4 to Rate Schedule 10 provides that costs shall be allocated "in accordance with the approved cost allocation methodology for the Public Policy Transmission Project selected by the [NYISO] to address the 'Long Island Offshore Wind Export Public Policy Transmission Need.'"¹⁰³

⁹⁶ *Id.* at 3, n. 6.

⁹⁷ *Id.* at 3.

⁹⁸ *Id.* at 3.

⁹⁹ NYAPP Protest at 3 (citing Tariff Filing, Transmittal Letter at 3).

¹⁰⁰ Answer at 4.

¹⁰¹ *Id.* at 4-5.

¹⁰² *Id.* at 5.

68. Consolidated Edison explains that § 6.10.3.1 of Rate Schedule 10 also states that the cost allocation for such Public Policy Transmission Projects is pursuant to § 31.5.5 of Attachment Y.¹⁰⁴ Consolidated Edison states that § 31.5.5 of Attachment Y sets out procedures through which costs of eligible projects are allocated. Consolidated Edison states that the process requires NYISO to file a cost allocation with the Commission if the cost allocation is prescribed by the New York Commission. Consolidated Edison states that Attachment Y also allows the Transmission Owner, Other Developer, NYISO, and any other entity to propose a different cost allocation method under FPA section 205, bearing the burden of demonstrating that its proposed cost allocation complies with Order No. 1000's Regional Cost Allocation Principles. Consolidated Edison states that within 60 days of project selection by NYISO, a Designated Entity may also propose a cost allocation method and file it with the Commission (if agreed to by the New York Commission), among other provisions.¹⁰⁵ Consolidated Edison explains that only where the Commission does not accept a cost allocation method under any of these prior methods does the NYISO OATT provide for using a load-ratio share cost allocation.¹⁰⁶

69. Consolidated Edison also explains that in the March 2022 Order, the Commission approved NYISO's proposed OATT revisions to allow a Transmission Owner that becomes a Designated Entity for a Public Policy Transmission Upgrade to allocate costs under § 31.5 of Attachment Y.¹⁰⁷

d. Commission Determination

70. We accept Consolidated Edison's Attachment 4 to Rate Schedule 10. We disagree with NYAPP's argument that Consolidated Edison is attempting to apply the CSRA Order to Rate Schedule 10. Rather, Consolidated Edison is relying on existing tariff provisions that were previously accepted by the Commission in other proceedings and are thus outside of the scope of this section 205 proceeding. The Commission has previously accepted the Attachment Y and Rate Schedule 10 cost allocation framework for Public Policy Transmission Projects, including the default load-ratio share cost allocation method as the *ex-ante* cost allocation method, as well as the deadline by which the default load-ratio share cost allocation method would apply.¹⁰⁸ We agree with Consolidated

¹⁰³ *Id.* at 6.

¹⁰⁴ *Id.* at 5. *See* Attachment Y, §§ 31.5.5.4.1-31.5.5.4.3.

¹⁰⁵ *Id.* at 5.

¹⁰⁶ *Id.* at 5-6. *See* Attachment Y § 31.5.5.4.3.

¹⁰⁷ Answer at 6 (citing the March 2022 Order, 178 FERC ¶ 61,179).

¹⁰⁸ *N.Y. Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059 (2013); *N.Y. Indep. Sys.*

Edison that the Public Policy Transmission Project selected by NYISO in response to the “Long Island Offshore Wind Export Public Policy Transmission Need” must follow this cost allocation framework.

71. Similarly, we reject NYAPP’s concern related to upgrades to existing facilities that are part of, or needed by, another Developer’s Public Policy Transmission Project as outside the scope of this section 205 proceeding. We agree with Consolidated Edison that the March 2022 Order accepted the revisions to Attachment Y to allow upgrades to existing facilities that are a part of another Developer’s Public Policy Transmission Project to use the same cost allocation method as the Public Policy Transmission Project. The March 2022 Order accepted the definition of Public Policy Transmission Upgrade to include any portion of a Public Policy Transmission Project that satisfies the definition of upgrade in § 31.6.4 of Attachment Y.¹⁰⁹ The March 2022 Order also accepted tariff revisions to § 31.5.5.1 of Attachment Y, which defines the projects subject to the *ex-ante* default load-ratio share cost allocation method to include a Public Policy Transmission Project or part of a Public Policy Transmission Project.¹¹⁰ Additionally, the Commission accepted the NYISO OATT revisions to Attachment Y providing that upgrades to existing facilities that are needed by another Developer’s Public Policy Transmission Project may use the cost allocation method for the Public Policy Transmission Project.¹¹¹

The Commission orders:

(A) Consolidated Edison’s proposed Attachment 3 to Rate Schedule 19 and Protocols and Attachment 4 to Rate Schedule 10 are accepted, as discussed in the body of this order, effective August 22, 2023, as requested.

(B) Consolidated Edison’s proposed Formula Rate Template is accepted for filing subject to further compliance as discussed herein, suspend it for a nominal period, effective August 22, 2023, as requested, subject to refund and to hearing and settlement procedures, as discussed in the body of this order, for the proposed base ROEs for Rate Schedule 19 and Rate Schedule 10.

(C) Consolidated Edison is hereby directed to submit a compliance filing, to address the ministerial corrections and clarifications and to remove the CWIP Incentive

Operator, Inc., 148 FERC ¶ 61,044 (2014); *N.Y. Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,040 (2015).

¹⁰⁹ March 2022 Order, 178 FERC ¶ 61,179 at PP 1, 4, 50.

¹¹⁰ *Id.* P 1, app. 1.

¹¹¹ *Supra*, footnote 19.

and Abandoned Plant Incentive placeholders in the Formula Rate Template no later than January 5, 2024, as discussed in the body of this order.

(D) Consolidated Edison's request for a 50 basis point RTO Adder is conditionally granted, as discussed in the body of this order, effective August 22, 2023, as requested.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Consolidated Edison's proposed ROEs in Rate Schedule 19 and Rate Schedule 10, as discussed in the body of this order. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (F) and (G) below.

(F) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603, 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.

(G) 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.

(H) 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.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.