

185 FERC ¶ 61,217
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Central Hudson Gas and Electric Corporation
New York Independent System Operator, Inc.

Docket No. ER23-2507-001

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

(Issued December 22, 2023)

1. On July 28, 2023, as amended on October 23, 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 Central Hudson Gas and Electric Corporation (Central Hudson),³ revisions to the NYISO Open Access Transmission Tariff (OATT)⁴ to add Central Hudson's proposed formula rate template (Formula Rate Template),⁵ associated formula rate protocols (Formula Rate Protocols), and conforming OATT amendments addressing derivation and recovery of the costs for eligible transmission projects identified and designated under Central Hudson's Attachment 4 to Rate Schedule 19⁶ (collectively, Tariff Filing). The Tariff

¹ 16 U.S.C. § 824d.

² 18 C.F.R. § 35.13 (2022).

³ NYISO states that it submits the filing on Central Hudson's behalf solely in its role as the tariff administrator of the NYISO OATT. Tariff Filing, Transmittal Letter at 1 n.4.

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, § 6.19.9.2.2 OATT (Schedule 19 - Central Hudson Gas and Electric Corporation) (1.0.0).

⁶ NYISO, NYISO Tariffs, NYISO OATT, § 6.19.9-6.19.9.2.1 OATT (Schedule 19 Attachment 4 - Rate Mechanism) (1.0.0) (Attachment 4 to Rate Schedule 19).

Filing further requests a ceiling base return on equity (ROE) for transmission facilities under Rate Schedule 19.

2. In this order, we accept Central Hudson's proposed Attachment 4 to Rate Schedule 19, which includes the Formula Rate Protocols, effective September 27, 2023, as requested. We accept the Formula Rate Template, subject to a further compliance filing, and suspend it for a nominal period, to be effective September 27, 2023, as requested, subject to refund and to the outcome of hearing and settlement judge procedures on the proposed ceiling base ROE.

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 rate schedule at issue in this proceeding is 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.

4. Central Hudson 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 Central Hudson states that 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

⁷ *Consolidated Edison Co. of N.Y., Inc.*, 180 FERC ¶ 61,106 (2022) (CSRA Order). Central Hudson states that the CSRA is a voluntary participant funding agreement among the six New York State-regulated public utility transmission owners (Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corp., Orange and Rockland Utilities, Inc., New York State Electric & Gas Corp., Rochester Gas and Electric Corp., and Central Hudson), 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 2-3.

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 JJJ.

⁹ Tariff Filing, Transmittal Letter at 2-3. Section 7(e) of the AREGCBA defines "local transmission upgrade" to include: (1) a new transmission facility that is identified

5. Central Hudson 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 the New York Commission-approved ROE and associated capital structure.¹⁰ Central Hudson 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. Central Hudson 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 included in the Tariff Filing.

II. Filing

6. Central Hudson states that, although it currently has a stated rate for existing transmission facilities in Attachment H of the NYISO OATT (Transmission Service Charge),¹¹ it does not propose to use this to recover the cost of certain new transmission investments.¹² Instead, Central Hudson proposes to establish incremental formula rates to calculate the revenue requirements of Approved Local Transmission Upgrades under Rate Schedule 19.¹³ Central Hudson 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.¹⁴ Central Hudson requests an effective date of September 27, 2023 for the Tariff Filing.

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 2-3.

¹¹ Tariff Filing, attach. B, Ex. No. CH-001 (Direct Testimony of Dr. Paul A. Dumais) at 6 n.1 (Dumais Test.).

¹² *Id.* at 13.

¹³ Tariff Filing, Transmittal Letter at 1-2.

¹⁴ *Id.* at 3.

A. Rate Schedule 19

7. Central Hudson 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 Central Hudson and each of the other New York transmission owners.¹⁵ Central Hudson 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. Central Hudson 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.¹⁶

8. Central Hudson states that, for Approved Local Transmission Upgrades under Rate Schedule 19, the CSRA Order provides that the Commission will determine the base 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.¹⁷ Central Hudson states that, in the CSRA Order, the Commission found that: (1) 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 (2) the proposed ceiling ROE structure is just and reasonable.¹⁸

III. Notices and Responsive Pleading

9. Notice of Central Hudson's filing was published in the *Federal Register*, 88 Fed. Reg. 55,034 (Aug. 14, 2023), with interventions and protests due on or before August 29, 2023.

10. On September 21, 2023, Commission staff issued a letter informing Central Hudson that its filing was deficient and requested additional information (Deficiency Letter). On October 23, 2023, Central Hudson submitted a response to the Deficiency Letter (Deficiency Response).

¹⁵ *Id.* at 2-3. Central Hudson explains that there is a specific CLCPA Facilities Charge for LIPA.

¹⁶ *Id.* at 3 (citing CSRA Order, 180 FERC ¶ 61,106 at P 47).

¹⁷ *Id.* at 4 (citing CSRA Order, 180 FERC ¶ 61,106 at P 51).

¹⁸ *Id.* at 4 (citing CSRA Order, 180 FERC ¶ 61,106 at PP 50-51).

11. Notice of Central Hudson's Deficiency Response was published in the *Federal Register*, 88 Fed. Reg. 73,837 (Oct. 27, 2023), with interventions and protests due on or before November 13, 2023.

12. On August 10, 2023, New York Association of Public Power (NYAPP) filed a motion to intervene.

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2022), NYAPP's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

14. As discussed below, we accept Central Hudson's proposed Attachment 4 to Rate Schedule 19, which includes the Formula Rate Protocols, to be effective September 27, 2023, as requested. We accept the Formula Rate Template, subject to a further compliance filing, and suspend it for a nominal period, to be effective September 27, 2023, as requested, subject to refund and to the outcome of hearing and settlement judge procedures on the proposed ceiling base ROE.

1. Formula Rate Protocols

15. 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.¹⁹ The resulting MISO Protocol Orders have served as the benchmark for proceedings involving the justness and reasonableness of formula rate protocols.²⁰

¹⁹ *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) (collectively, MISO Protocol Orders).

²⁰ *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); *Ala. Power Co.*, 182 FERC ¶ 61,015 (2023).

a. Filing

16. Central Hudson 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).²¹ Section 6.19.9.1 of Attachment 4 to Rate Schedule 19 establishes the CFC Charge for Central Hudson. Attachment 4 provides that Central Hudson's revenue requirement shall be determined in accordance with the Formula Rate Protocols set forth in § 6.19.9.2.1 of Attachment 4, and the Formula Rate Template set forth in § 6.19.9.2.2. Central Hudson states that the proposed Formula Rate Protocols prescribe the proposed annual update process, which establishes the legal framework for development and review of the formula rates.²² Central Hudson explains that the proposed Formula Rate Protocols provide that the annual update will be publicly posted on NYISO's website not later than October 15 and that, as part of the annual update process, Central Hudson 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 during the preceding January 1 through December 31 rate year (Rate Year).

17. Central Hudson states that the proposed Formula Rate Protocols provide for review procedures that are consistent with the Commission's directives and determinations regarding, among other aspects: (1) 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 Central Hudson formula rate proceeding under the FPA; (2) the transparency of the information exchange; and (3) the ability of interested parties to challenge Central Hudson's implementation of the formula rates as a result of the information exchange.²³ Central Hudson states that the Formula Rate 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 consider recent formula rate protocol show cause orders issued to various transmission owners by the Commission.

b. Deficiency Letter and Response

18. In the Deficiency Letter, Commission staff asked Central Hudson to explain how the proposed Formula Rate Protocols comply with Commission requirements to include certain provisions for the disclosure of information,²⁴ and noted that the Formula Rate

²¹ Tariff Filing, Transmittal Letter at 3.

²² *Id.* at 7-8.

²³ *Id.* at 8; *see, e.g., Empire Dist. Elec. Co.*, 150 FERC ¶ 61,200 (2015).

Protocols require Central Hudson to disclose this information in the Actual Annual Revenue Requirements (ATTR)²⁵ and Annual True Up Adjustments²⁶ posting, but do not require the disclosure of the information in the Annual Update posting for Projected ATTRs.²⁷ Central Hudson responded that it has amended the Formula Rate Protocols to require that the above-required information also will be provided with the posting of its Projected ATTRs.²⁸ Central Hudson states that, with the posting of their Projected ATTRs, it will provide information required for accounting changes; specifically, for any item for which the amount recorded differs from original cost and for any reorganization or merger transactions. Central Hudson states that it will also provide a narrative explanation of the individual impact of any such changes on the Projected ATTRs.

²⁴ For example, the Commission has found that formula rate protocols must require transmission owners to disclose any change in accounting during the rate period that affects inputs to the formula rate or the resulting charges billed under the formula rate. Specifically, a change in accounting may involve: (1) the initial implementation of an accounting standard or policy; (2) the initial implementation of accounting practices for unusual or unconventional items where the Commission has not provided specific accounting direction; (3) corrections of errors and prior period adjustments; (4) the implementation of new estimation methods or policies that change prior estimates; and (5) changes to income tax elections. The formula rate protocols must also provide for identification of items included in the formula rate at an amount other than on a historical cost basis (e.g., fair value adjustments). *See* Deficiency Letter at 3 (citing MISO Investigation Order, 143 FERC ¶ 61,149 at P 87).

²⁵ The Formula Rate Protocols, section 1.d., define Actual ATTRs as “the actual annual revenue requirement of [the utility’s] CLCPA Eligible Projects for a Rate Year calculated in accordance with the Formula Rate and posted on the ISO website no later than June 15 following the end of such Rate Year.”

²⁶ The Formula Rate Protocols, section 1.e., define Annual True-Up Adjustments as “the difference between the revenues collected for that Rate Year under the Formula Rate based upon the Projected ATTR (not including the True-up Adjustment or Corrections) and the Actual ATTR for the same Rate Year. The Annual True-up Adjustment is included in the Annual Update for the next Rate Year.”

²⁷ The Formula Rate Protocols, section 1.p. defines Projected ATTRs as “the projected annual revenue requirement of [the utility’s] CLCPA Eligible Projects for the upcoming Rate Year calculated in accordance with the Formula Rate and posted on the ISO website no later than the Posting Date.”

²⁸ Deficiency Response, attach. 1 at 3-4.

19. In addition, Commission staff asked Central Hudson to explain how the proposed Formula Rate 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 Annual Update postings.²⁹ Central Hudson responded that it has amended the Formula Rate Protocols to eliminate the materiality threshold from accounting change disclosures provided in both the Actual ATRR and Projected ATRR sections of the Formula Rate Protocols, and to include this information with the posting of Projected ATRR.³⁰

20. Commission staff also asked Central Hudson 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).³¹ Central Hudson responded that subparagraph (ii) in section 3.g. of the proposed Formula Rate Protocols addresses actual information, not projected, so the requirement regarding providing information on projected capital additions does not apply to this section.³² Central Hudson states that subparagraph (ii) in section 3.h of the proposed Formula Rate Protocols requires Central Hudson to “[p]rovide supporting documentation and workpapers for all Schedule 19 Projects being added to operating property in the upcoming Rate Year that are used in the respective Projected ATRRs, including projected costs of each project, expected construction schedule and in-service dates.” Central Hudson explains that it believes that this satisfies the requirement 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.” Central Hudson states that it will post such information with its Projected ATRR, but that it agrees to add the requirement to provide this information in its informational filing.

21. In addition, Commission staff asked Central Hudson to explain how the proposed Formula Rate Protocols comply with Commission requirements to provide certain cost

²⁹ Deficiency Letter at 3-4 (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.* (citing MISO Compliance Order, 146 FERC ¶ 61,212 at P 65).

³⁰ Deficiency Response, attach. 1 at 5.

³¹ Deficiency Letter at 4 (citing MISO Compliance Order, 146 FERC ¶ 61,212 at PP 22, 62).

³² Deficiency Response, attach. 1 at 5.

allocation methodologies and details for the “prior Rate Year,” and not the “applicable rate year.”³³ Central Hudson responded that it has amended the Formula Rate Protocols to change the language in section 3.g.x of the Formula Rate Protocols from “prior Rate Year” to “applicable rate year.”³⁴

22. Commission staff next asked Central Hudson to explain how the proposed Formula Rate 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.³⁵ Central Hudson responded that it has amended sections 6.a.vii. and ix. of the Formula Rate Protocols to identify procurement approaches and cost control methodologies as information that interested parties can request.³⁶

23. Commission staff asked Central Hudson to explain how the proposed Formula Rate Protocols comply with Commission requirements that formula rate protocols cannot define the scope of various types of future section 205 filings.³⁷ Central Hudson responded that they have amended the proposed Formula Rate Protocols to remove the relevant language.³⁸

c. Commission Determination

24. We find that Central Hudson’s amended Attachment 4 to Rate Schedule 19, including the amended Formula Rate Protocols, is just and reasonable and complies with Commission precedent in the MISO Protocol Orders and related orders.³⁹ We therefore

³³ Deficiency Letter at 4 (citing *Commonwealth Edison Co.*, 182 FERC ¶ 61,156, at P 28 (2023)).

³⁴ Deficiency Response, attach. 1 at 7.

³⁵ Deficiency Letter at 4-5 (citing MISO Investigation Order, 143 FERC ¶ 61,149 at P 90).

³⁶ Deficiency Response, attach. 1 at 6.

³⁷ Deficiency Letter at 5 (citing, e.g., *ATX Sw., LLC*, 152 FERC ¶ 61,193, at P 85 (2015)).

³⁸ Deficiency Response, attach. 1 at 7.

³⁹ 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); *Kan. 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); *Ala. Power*

accept Central Hudson's Attachment 4 to Rate Schedule 19, including the Formula Rate Protocols, effective September 27, 2023, as requested.

2. Formula Rate Template

a. Overall Structure

i. Filing

25. Central Hudson states that it anticipates being designated to build and own projects eligible for cost recovery under Rate Schedule 19, which will require a formula rate to be on file to effectuate the annual revenue requirement and applicable cost allocation and to implement associated cost recovery for any such projects.⁴⁰ Central Hudson 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.

26. Central Hudson states that the proposed Formula Rate Template adheres to established cost-of-service principles for electric utilities, enabling recovery of ATRR on a forward-looking basis using projected data for a Rate Year, with annual true-up adjustments.⁴¹ Central Hudson 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,⁴² will be reflected as a true-up adjustment to the applicable forecasted ATRR for the next applicable Rate Year.

27. Central Hudson states that projected input data will be obtained from internal budgeting processes, while actual input data will be derived from FERC Form No. 1, consistent with Commission precedent.⁴³ Central Hudson notes that the Formula Rate Template contains several worksheets needed to determine ATRR and can calculate project-specific costs with unique columns covering each Rate Schedule 19 project. Central Hudson 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 (A&G) expense, less any revenue credits. Central Hudson

Co., 182 FERC ¶ 61,015 (2023).

⁴⁰ Tariff Filing, Transmittal Letter at 5.

⁴¹ *Id.* at 5.

⁴² 18 C.F.R. § 35.19a (2022).

⁴³ Tariff Filing, Transmittal Letter at 5-7.

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 a 13-month balance average. In the case of accumulated deferred income taxes (ADIT), the Formula Rate Template uses the average of beginning and end of year balances or a prorated balance, in accordance with Internal Revenue Service regulations, and also include an income tax allowance.

28. Finally, Central Hudson states that Appendix A of the Formula Rate Template will produce the aggregate ATRR for Rate Schedule 19 projects and confirms that Central Hudson will exclude such charges from retail rates or otherwise provide an appropriate credit to retail customers for the recovery of any Rate Schedule 19 costs under the NYISO OATT.⁴⁴

ii. Commission Determination

29. In general, we find that the amended proposed Formula Rate Template is just, reasonable, and not unduly discriminatory or preferential, with the exception of the proposed ceiling base ROE, as discussed below.

30. However, the Commission identified the following necessary ministerial corrections: (1) Workpaper 7-True-Up Adjustment does not provide enough information as to the purpose of having both estimated and actual interest calculations, and should include a clarifying note that Central Hudson intends that this Workpaper be used to initially estimate the interest amount related to the Annual True-up Adjustment and then true-up the estimated interest amount to actual once the interest rates are known; (2) Workpaper 9-Corrections is incomplete and should provide the underlying, corrected formula rate template, and should include a footnote clarifying that Central Hudson intends to provide the underlying corrected formula rate template to stakeholders; (3) Workpaper 6-Project Cost of Capital contains incorrect references, including that line 17 headings for columns H and I should reference FERC Form No. 1 pp. 110-111, and must be corrected; (4) Appendix A, line 35, cols. 5 and 7 do not include line 24 in the total (Abandoned Plant), and must be edited to include line 24; (5) Workpaper 1-RB Items, column b, includes improper FERC Form No. 1 references, and must be corrected; and (6) references to “Abandonned [sic] Plant” must be corrected throughout the Formula Rate Template. Accordingly, we direct Central Hudson to submit a compliance filing, within 60 days of the date of issuance of this order, to address these ministerial errors in its proposed Formula Rate Template.

⁴⁴ *Id.* at 7.

b. Depreciation

i. Filing

31. Central Hudson states that the Formula Rate Template directly assigns depreciation expenses related to Rate Schedule 19 projects, as tracked by Central Hudson in its fixed asset systems.⁴⁵ Central Hudson 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.⁴⁶ Central Hudson explains that the depreciation rates are approved by the New York Commission and that Central Hudson will continue to use those depreciation rates until the New York Commission orders any changes and Central Hudson receives Commission approval to use the changed depreciation rates.

ii. Deficiency Letter and Response

32. In the Deficiency Letter, Commission staff asked Central Hudson to provide depreciation studies and supporting documentation to support the proposed depreciation rates for the Formula Rate Template.⁴⁷ Central Hudson responds with numerous documents supporting the depreciation rates included in Workpaper 8 – Depreciation Rates of Central Hudson’s proposed Formula Rate Template, including the depreciation rate testimony filed by Central Hudson in its last New York Commission rate case filed in 2020 and the depreciation study from the 2020 rate case, along with an Excel spreadsheet that includes the depreciation rate calculations, and the New York Commission order in the 2020 rate case.⁴⁸ In addition, Central Hudson explains that the depreciation rate for Account 356.3, Smart Grid Device, resulted from a settlement in Docket No. ER20-715 addressing Central Hudson’s proposal for cost recovery of its Hurley Avenue System Deliverability Upgrade pursuant to Rate Schedule 12 of the NYISO OATT. Lastly, Central Hudson states that it amended its filing to make incremental changes to Workpaper 8 – Depreciation Rates of the Formula Rate Template to reflect more granularity in the proposed depreciation rates and to add several intangible asset accounts not included in the New York Commission rate case.

⁴⁵ Tariff Filing, Dumais Test. at 23.

⁴⁶ *Id.* at 30.

⁴⁷ Deficiency Letter at 1.

⁴⁸ Deficiency Response, attach. 1 at 1-2.

iii. Commission Determination

33. We accept Central Hudson's proposed depreciation rates for the Formula Rate Template as just and reasonable.

c. Ceiling Base ROE

i. Filing

34. Central Hudson states in the transmittal letter submitted with its filing that, for projects under Rate Schedule 19, it is proposing a ceiling base ROE of 10.87 percent as a fixed value in the formula rate, subject to a lower ROE authorized by the New York Commission.⁴⁹ Elsewhere in its filing, Central Hudson references a proposed ceiling base ROE of 11.27 percent.⁵⁰ Central Hudson explains that the proposed ceiling base ROE has been developed using the methods accepted by the Commission for transmission cost-of-service revenue requirement purposes.⁵¹ Central Hudson states that the formula rate will use the capital structure applicable to Central Hudson for retail ratemaking purposes, as established and revised from time to time by the New York Commission.

ii. Commission Determination

35. Our preliminary analysis indicates that Central Hudson's proposed ceiling base ROE for Rate Schedule 19, whether it be 10.87 percent or 11.27 percent, has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that Central Hudson's proposed ceiling base ROE raises 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 Central Hudson's proposed Formula Rate Template, subject to a further compliance filing discussed herein and ordered below,

⁴⁹ Tariff Filing, Transmittal Letter at 4-7.

⁵⁰ Tariff Filing, attach. C (Testimony of Adrien M. McKenzie, CFA) at 3 (McKenzie Test.) and Formula Rate Template, Workpaper 6.

⁵¹ Tariff Filing, McKenzie Test. at 2-3, 21. Central Hudson states that, to develop the ceiling base ROE, 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*, 171 FERC ¶ 61,154 (2020), *order addressing reh'g arguments & 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). Central Hudson states that the ceiling base ROE was determined using the two-step "Discounted Cash Flow" methodology and the "Capital Asset Pricing Model."

and suspend it for a nominal period, to be effective September 27, 2023, as requested, subject to refund and to the outcome of hearing and settlement judge procedures on the proposed ceiling base ROE.

36. While we are setting the proposed ceiling base ROE for a trial-type evidentiary hearing,⁵² 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.⁵³ 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.⁵⁴ 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.

d. CWIP/Abandonment Placeholders

i. Filing

37. Central Hudson 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.⁵⁵ Section 5 of Central Hudson's Formula Rate Protocols addresses the rate treatment of CWIP in rate base. Central Hudson is not requesting these incentives at this time. Instead, Central Hudson proposes calculations in the Formula Rate Template that may be populated in the future, should Central Hudson request and the Commission authorize these incentives in the future.⁵⁶

⁵² Trial Staff is a participant in the hearing and settlement judge procedures. *See* 18 C.F.R. § 385.102(b), (c) (2022).

⁵³ 18 C.F.R. § 385.603 (2022).

⁵⁴ 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>).

⁵⁵ Tariff Filing, Dumais Test. at 16-18.

⁵⁶ *Id.* at 30-31.

ii. Commission Determination

38. We reject Central Hudson's proposal to include calculations for CWIP and Abandoned Plant Incentives as placeholders in the Formula Rate Template because they are premature.⁵⁷ Order No. 679 requires a project-specific demonstration when an applicant requests CWIP or Abandoned Plant Incentives, which Central Hudson cannot make at this time.⁵⁸ It also is 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.⁵⁹ Accordingly, we direct Central Hudson to submit a compliance filing, within 60 days of the date of issuance of this order, to remove the placeholders in the Formula Rate Template that include calculations for CWIP and Abandoned Plant Incentives (e.g., lines 23 and 24).

The Commission orders:

(A) Central Hudson's proposed Attachment 4 to Rate Schedule 19, which includes the Formula Rate Protocols, is hereby accepted, effective September 27, 2023, as requested, as discussed in the body of this order.

(B) Central Hudson's proposed Formula Rate Template is hereby accepted, subject to a further compliance filing, and suspended for a nominal period, to be effective September 27, 2023, as requested, subject to refund and to the outcome of hearing and settlement judge procedures on the proposed ceiling base ROE, as discussed in the body of this order.

(C) Central Hudson is hereby directed to submit a compliance filing to correct the ministerial errors identified herein and to remove the CWIP Incentive and Abandoned Plant Incentive placeholders in the Formula Rate Template within 60 days of the date of issuance of this order, as discussed in the body of this order.

⁵⁷ 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).

⁵⁸ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, at P 20, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁵⁹ See, e.g., *Potomac-Appalachian Transmission Highline, LLC*, 158 FERC ¶ 61,050 (2017), *order on compliance*, 166 FERC ¶ 61,035 (2019), *order on reh'g*, 170 FERC ¶ 61,050 (2020).

(D) 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 Central Hudson's proposed ceiling base ROE in Rate Schedule 19, 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 (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2022), 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.

(F) 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.

(G) 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. Commissioner Danly is not participating.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.