

186 FERC ¶ 61,184
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

March 15, 2024

In Reply Refer To:
New York Independent System
Operator, Inc.
New York Power Authority
Docket Nos. ER23-491-002
ER23-491-000

Van Ness Feldman, LLP
1050 Thomas Jefferson Street, NW
Washington, DC 20007

Attention: Gary D. Bachman, Esq.
Counsel for New York Power Authority

Dear Gary Bachman:

1. On December 8, 2023, New York Independent System Operator, Inc. (NYISO) filed, on behalf of New York Power Authority (NYPA), an Offer of Settlement (Settlement) addressing NYPA's proposal to update its allocation methodology for Administrative and General costs and expenses as well as depreciation expense and net plant costs for General and Intangible Plant in its Formula Rate Template set forth in section 14.2.3.1 of Attachment H to NYISO's Open Access Transmission Tariff. On December 28, 2023, Commission Trial Staff filed comments in support of the Settlement. No other comments were filed. On January 19, 2024, the Settlement Judge certified the Settlement to the Commission as an uncontested settlement.¹

2. Article VI of the Settlement provides that:

Unless the Parties otherwise agree in writing, the standard of review for any modification to this Settlement proposed by a Party is the "public interest" application of the just and reasonable standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the *Mobile-Sierra* doctrine), as clarified

¹ *Certification of Uncontested Offer of Settlement*, 186 FERC ¶ 63,005 (2024).

in *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. 527 (2008), and refined in *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. 165, 174-75 (2010). The standard of review for any modifications to this Settlement requested by a non-Party or initiated by the Commission acting *sua sponte* will be the ordinary just and reasonable standard of review. See *Morgan Stanley Capital Group Inc.*, 554 U.S. 527.²

3. The Settlement resolves all issues set for hearing in Docket No. ER23-491.³ The Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

4. The Commission accepts the proposed tariff records, effective January 24, 2023, as requested.⁴

By direction of the Commission. Commissioner Christie is concurring with a separate statement attached.

Debbie-Anne A. Reese,
Acting Secretary.

² Settlement at art. VI.

³ *N.Y. Indep. Sys. Operator*, 182 FERC ¶ 61,028 (2023).

⁴ NYISO, NYISO Tariffs, NYISO OATT, § 14 (Attach. H), §§ 14.2.3-14.2.3.1 (NYPA Formula Rate) (10.0.0).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.
New York Power Authority

Docket Nos. ER23-491-000
 ER23-491-002

(Issued March 15, 2024)

CHRISTIE, Commissioner, *concurring*:

1. This is a settlement—an uncontested settlement as certified by the Settlement Judge. As today’s order recognizes: “The Commission’s approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.”¹

2. As noted by the Settlement Judge, the proposed use of the so-called “Modified Massachusetts Method” in the formula rate template and protocols reflected in the settlement may be inconsistent with Commission precedent.² The New York Power Authority (NYPA) recognizes that the use of this modified method is related to the transmission buildout necessary to implement New York’s state policies mandating renewable generation.³ Consumers in New York will, of course, pay these costs, but they have recourse to the ballot box if they object.⁴ Consumers in other states do not have

¹ Order at P 3.

² *N.Y. Indep. Sys. Operator, Inc.*, 186 FERC ¶ 63,005, at PP 3, 25, 28-31 (2024) (certification of uncontested offer of settlement).

³ NYPA, Dec. 8, 2023 Settlement Transmittal, Attach. A: Explanatory Statement at 7-8 (footnote omitted) (emphasis added) (“In response to New York State’s climate change initiatives, which require substantial construction of new transmission to accommodate large increases in renewable and other clean generation for the benefit of customers, NYPA reevaluated how it allocates A&G costs that are not directly assigned to transmission in order to ensure that costs are properly recovered on a cost-causation basis and that rates remain fair and reasonable. . . . Given the changes to NYPA’s cost structure, as explained above, NYPA found that a Modified Massachusetts Method using net plant, net revenue, and direct labor factors provided a more representative cost-causation based allocator than labor alone for NYPA’s indirect A&G costs. *The move from a single labor allocation method to this three-factor allocation mechanism in the development of its transmission Formula Rate better reflects NYPA’s business and investment in New York’s climate initiative.*”).

⁴ See, e.g., *N.Y. Power Auth.*, 185 FERC ¶ 61,102 (2023) (Christie, Comm’r,

such recourse, which is why these costs must be confined to New York, as they will be. This is just one more example of why the costs of public policy driven transmission projects must only be allocated to consumers in states that have consented to pay them.

For these reasons, I respectfully concur.

Mark C. Christie
Commissioner

concurring at P 2 and n.3) (available at <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-concerning-nypas-abandoned-plant-incentive-el23>) (quoting *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,102 (2022) (Christie, Comm'r, concurring at P 3) (available at <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-nyiso-tariff-revisions-re-marginal-capacity>) (quoting *N.Y. Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,101 (2022) (Christie, Comm'r, concurring at PP 4-6) (available at <https://www.ferc.gov/news-events/news/item-e-2-commissioner-mark-c-christie-concurrence-regarding-new-york-independent>)).