

187 FERC ¶ 61,110
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Orange and Rockland Utilities, Inc.
New York Independent System Operator, Inc.

Docket No. ER24-1614-000

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

(Issued May 24, 2024)

1. On March 25, 2024, 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 Orange and Rockland Utilities, Inc. (Orange and Rockland),³ revisions to the NYISO Open Access Transmission Tariff (OATT)⁴ to add Orange and Rockland'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 5 to Rate Schedule 19 and new Attachment 5 to Rate Schedule 10 (collectively, Tariff Filing).⁵ The 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

¹ 16 U.S.C. § 824d.

² 18 C.F.R. § 35.13 (2023).

³ NYISO states that it submits the filing on Orange and Rockland's behalf solely in its role as the tariff administrator of the NYISO OATT. 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, § 6.10.11, OATT Schedule, 10 attach. 5 - Rate Mechanism for Recovery (0.0.0) (Attachment 5 to Rate Schedule 10); NYISO OATT, §§ 6.19.10-6.19.10.2.1, Schedule 19 attach. 5 - Rate Mechanism (0.0.0) (Attachment 5 to Rate Schedule 19 and Protocols); NYISO OATT, § 6.19.10.2.2 OATT Schedule 19 - Orange and Rockland Utilities (0.0.0) (Attachment 5 to Rate Schedule 19 and Formula Rate Template).

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 Orange and Rockland's proposed Attachment 5 to Rate Schedule 19 and Protocols, effective May 25, 2024, as requested; (2) accept the proposed Attachment 5 to Rate Schedule 10, effective May 25, 2024, as requested; (3) accept the proposed Formula Rate Template, suspend it for a nominal period, effective May 25, 2024, as requested, subject to refund and to hearing and settlement judge procedures on the proposed base ROEs for projects under Rate Schedule 19 and projects under Rate Schedule 10; and (4) conditionally accept the 50-basis-point RTO Adder for filing, suspend it for a nominal period, to be effective May 25, 2024, as requested, conditioned on the adder being applied to a base ROE under Rate Schedule 10 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, and subject to refund and to the outcome of the paper hearing procedure established herein.

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. Orange and Rockland 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 Orange and Rockland

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). Orange and Rockland 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. (Consolidated Edison), Niagara

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

5. Orange and Rockland states that the costs of these Approved Local Transmission Upgrades have historically been recovered primarily through state-administered, bundled, local transmission and distribution rates that reflect both the New York Commission-approved ROE and associated capital structure.¹⁰ Orange and Rockland 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. Orange and Rockland 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 5 to Rate Schedule 19 and the Formula Rate Template part of this filing for Orange and Rockland.

Mohawk Power Corp., Orange and Rockland, New York State Electric & Gas Corp., Rochester Gas and Electric Corp., and 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. 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 JJJ.

⁹ 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 Transmittal Letter at 3.

6. Orange and Rockland 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. Orange and Rockland 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

II. Filing

7. Orange and Rockland states that, although it currently has a stated rate for its existing transmission facilities in Attachment H of the NYISO OATT (Transmission

¹¹ *Id.* at 4-5 (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 Transmittal Letter at 2, 5 (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.

Service Charge),¹⁵ it does not propose to use this stated rate to recover the cost of certain new transmission investments.¹⁶ Instead, Orange and Rockland 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 5 to Rate Schedule 19; and (2) regulated transmission projects that are eligible for cost recovery under Attachment 5 to Rate Schedule 10 in accordance with NYISO's Comprehensive System Planning Process requirements set forth in Attachment Y of the NYISO OATT.¹⁷ Orange and Rockland 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.¹⁸ Orange and Rockland requests an effective date of May 25, 2024 for the proposed tariff amendments implementing the formula rate for these projects.¹⁹

8. Orange and Rockland further states that it anticipates that it will become a Designated Entity with respect to one or more Designated Public Policy Projects and Designated Network Upgrade Facilities in the future and seeks here to establish a formula rate for purposes of cost recovery on a prospective basis for purposes of certainty and efficiency.²⁰ Orange and Rockland notes that, consistent with the existing cost recovery eligibility for Designated Public Policy Projects that are comprised of new transmission facilities, actual project cost recovery for both Public Policy Transmission Upgrades and Designated Network Upgrade Facilities requires Commission approval under FPA section 205.²¹

¹⁵ NYISO, NYISO Tariffs, NYISO OATT, §§ 14.2.3-14.2.3.1 OATT attach. H - NYPA Formula Rate (10.0.0); NYISO OATT, § 14.1 OATT attach. H. - TSC (29.0.0).

¹⁶ Tariff Filing, attach. B, Ex. No. O&R-001 (Direct Testimony of Dr. Paul A. Dumais) at 5 n.1, 15 (Dumais Test.).

¹⁷ Transmittal Letter at 1-2.

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 2.

²⁰ *Id.* at 5.

²¹ *Id.* at 5.

A. Rate Schedule 19

9. Orange and Rockland explains that Rate Schedule 19 calculates and allocates to New York Load Serving Entities on a volumetric load-ratio share basis a CLCPA Facilities Charge that is a cost-of-service charge to be derived from formula rates filed by Orange and Rockland and each of the other New York transmission owners.²² Orange and Rockland 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. Orange and Rockland 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.²³

10. Orange and Rockland 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.²⁴ Orange and Rockland 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.²⁵

B. Rate Schedule 10

11. Orange and Rockland 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.²⁶ Orange

²² *Id.* at 3-4. Orange and Rockland explains that there is a specific CLCPA Facilities Charge for LIPA. *See* CSRA Order, 180 FERC ¶ 61,106 at P 14 ("The N[ew] Y[ork] T[ransmission] O[wner]s explain that the C[LCPA] Charge is a cost-of-service charge derived from formula rates that will be filed with the Commission in subsequent, separate submittals that will be attached to Rate Schedule 19.... The N[ew] Y[ork] T[ransmission] O[wner]s explain that both the CSRA and Rate Schedule 19 contain LIPA-specific enabling provisions that accommodate LIPA's statutory and jurisdictional framework under FPA section 201(f).").

²³ *Id.* at 4 (citing CSRA Order, 180 FERC ¶ 61,106 at P 47).

²⁴ *Id.* at 7, n. 26.

²⁵ *Id.* at 4 (citing CSRA Order, 180 FERC ¶ 61,106 at PP 50-51).

and Rockland 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.²⁷ Orange and Rockland 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. Notice and Responsive Pleadings

12. Notice of Orange and Rockland's filing was published in the *Federal Register*, 89 Fed. Reg. 22,400 (Apr. 1, 2024), with interventions and protests due on or before April 15, 2024. The New York Commission filed a notice of intervention and a protest, New Jersey Division of Rate Counsel (New Jersey Rate Counsel) filed a motion to intervene and a protest, and the New York Association of Public Power filed a motion to intervene.

13. On April 30, 2024, Orange and Rockland filed an answer to the New York Commission's protest and New Jersey Rate Counsel's protest.

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2023), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2023), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Orange and Rockland's answer because it has provided information that assisted us in our decision-making process.

²⁶ Tariff Filing, Dumais Test. at 12.

²⁷ 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.

B. Substantive Matters

16. As discussed below, we accept Orange and Rockland's Attachment 5 to Rate Schedule 19 and Protocols and Attachment 5 to Rate Schedule 10, effective May 25, 2024, as requested. We accept Orange and Rockland's proposed Formula Rate Template, suspend it for a nominal period, effective May 25, 2024, 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 accept the requested 50-basis-point RTO Adder for filing, suspend it for a nominal period, effective May 25, 2024, as requested, conditioned on the adder being applied to a base ROE under Rate Schedule 10 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 on Orange and Rockland's ROE under Rate Schedule 10 ordered herein, and subject to refund and to the outcome of the paper hearing procedure established herein.

1. Formula Rate Protocols

17. 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.²⁸ The resulting MISO Protocol Orders have served as the benchmark for proceedings involving the justness and reasonableness of formula rate protocols.²⁹

a. Filing

18. Orange and Rockland 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).³⁰ Section 6.10.11.1 of Attachment 5 to Rate Schedule 19 establishes the CFC Charge for Orange and Rockland. Attachment 5

²⁸ *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).

²⁹ 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 Co.*, 182 FERC ¶ 61,015 (2023).

³⁰ Transmittal Letter at 3.

provides that Orange and Rockland's revenue requirement shall be determined in accordance with the Protocols set forth in § 6.19.10.2.1 of Attachment 5, and the Formula Rate Template set forth in § 6.19.10.2.2. Orange and Rockland states that the proposed Protocols prescribe the proposed annual update process, which establishes the framework for development and review of the formula rates.³¹ Orange and Rockland explains that the proposed Protocols provide that the annual update will be publicly posted on NYISO's website no later than October 15 and that, as part of the annual update process, Orange and Rockland 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).

19. Orange and Rockland states that the proposed 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 an Orange and Rockland formula rate proceeding under the FPA; (2) the transparency of the information exchange; and (3) the ability of interested parties to challenge Orange and Rockland's implementation of the formula rates as a result of the information exchange.³² Orange and Rockland 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 consider recent formula rate protocol show cause orders issued to various transmission owners by the Commission.

20. Orange and Rockland proposes as part of its filing a provision that specifies that information requests shall not solicit information concerning costs or allocations that have been determined by the Commission, or resolved by a settlement accepted by the Commission, for annual true-up adjustments for other rate years, unless such information requests seek to determine if there has been a material change in Orange and Rockland's circumstances.³³

b. Protest

21. New Jersey Rate Counsel argues that the proposed Protocols include an unjust and unreasonable limit on soliciting information regarding costs or allocations that have been

³¹ *Id.* at 10.

³² *Id.* at 11 (citing *Empire Dist. Elec. Co.*, 150 FERC ¶ 61,200 (2015)).

³³ Protocols § 6.b.

resolved by a settlement accepted by the Commission.³⁴ New Jersey Rate Counsel claims that the Commission's acceptance of a settlement does not create precedent indicating that the contents of the settlement are just and reasonable, that it is unclear what is meant by Commission approved costs or allocations, and that Orange and Rockland would improperly apply restrictions on the Commission's ability to revisit ratemaking issues. New Jersey Rate Counsel states that the provision may therefore limit rights for those who may not be a party to the settlement referenced in this provision and may serve as a disincentive to Interested Parties to settle issues in Formal and Informal Challenges.

22. Next, New Jersey Rate Counsel argues that Orange and Rockland seeks to impose an unreasonable deadline for discovery regarding the annual update because 45 days is not adequate for Interested Parties to analyze and formulate questions regarding Orange and Rockland's rate projections for the following year, especially when Orange and Rockland will be hosting its customer meeting within 30 days after the annual update is posted.³⁵ New Jersey Rate Counsel contends that 90 days should be the minimum period of time required for discovery on the annual update.

23. Additionally, New Jersey Rate Counsel argues that Orange and Rockland inappropriately requests authorization for single issue ratemaking with respect to the provision in the protocols authorizing a limited FPA section 205 filing to change its ceiling or base ROE, or to reflect incentive rate of return adders, which New Jersey Rate Counsel claims is against longstanding Commission policy.³⁶

24. Finally, New Jersey Rate Counsel argues that Orange and Rockland proposes that extraordinary property losses should be treated as stated values until changed by the Commission even though the Commission requires that public utilities receive Commission permission to include regulatory assets in rates, even where accrual of the regulatory asset has already been authorized.³⁷ New Jersey Rate Counsel states that it is unclear why these extraordinary property losses would be considered stated values when the Commission would presumably approve the amount of extraordinary property losses and determine a specific amount of time these amounts should be amortized over, meaning the amount of loss would not remain in rates stated in perpetuity.

25. New Jersey Rate Counsel states that the Commission should set these proceedings for hearing and settlement proceedings.³⁸

³⁴ New Jersey Rate Counsel Protest at 1-2 (citing Protocols § 6.b).

³⁵ *Id.* at 3 (citing Protocols § 3.e).

³⁶ *Id.* at 3-4 (citing Protocols § 3.k).

³⁷ *Id.* at 4 (citing *Pioneer Transmission, LLC*, 168 FERC ¶ 61,055, at P 13 (2019)).

c. Answer

26. Orange and Rockland argues that its proposed protocols are identical to those that the Commission approved for application to the same NYISO OATT Rate Schedules by Consolidated Edison, and substantially the same as those the Commission approved for use by other New York utilities for Rate Schedule 19.³⁹

27. Orange and Rockland disputes New Jersey Rate Counsel’s objection to the Protocol’s restriction on information requests where the desired cost or allocation information has been determined by the Commission (or resolved by a settlement accepted by the Commission) for Annual True-up Adjustments for other Rate Years, except where the information is to determine if there has been a material change in Orange and Rockland’s circumstances.⁴⁰ Orange and Rockland argues that, consistent with the principles of *res judicata* and collateral estoppel, this provision is designed to ensure that formula rate issues that have been settled by a Commission order are not reinvestigated in subsequent stakeholder processes.

28. With respect to New Jersey Rate Counsel’s argument that Orange and Rockland proposes an unreasonable discovery timeline of 45-days, Orange and Rockland argues that New Jersey Rate Counsel misunderstands the proposed timeline.⁴¹ Orange and Rockland states that discovery begins with the posting of the Actual ATRR and Annual True-Up Adjustment on June 15 and discovery ends on December 1. As such, Orange and Rockland explains that the timeline for review is actually 165 days, from June 15 to December 1, and that the time the proposed protocols allow for the stakeholder process is substantial and consistent with Commission precedent.⁴²

29. Orange and Rockland objects to New Jersey Rate Counsel’s characterization of the provision in the protocols authorizing a limited FPA section 205 filing to change its ceiling or base ROE, or to reflect incentive rate of return adders, as “single issue ratemaking.”⁴³ Orange and Rockland asserts that the substantive issue will already have

³⁸ *Id.* at 4-5.

³⁹ Orange and Rockland Answer at 9-10 (citing *Consolidated Edison Co. of N.Y., Inc.*, 185 FERC ¶ 61,091 (2023)).

⁴⁰ *Id.* at 10.

⁴¹ *Id.* at 10.

⁴² *Id.* at 10-11 (citing *Consolidated Edison Co. of N.Y., Inc.*, 185 FERC ¶ 61,091).

⁴³ *Id.* at 11.

been determined by Commission order and that the authorization is merely to administratively effectuate that order through the formula rate.

30. Orange and Rockland argues that New Jersey Rate Counsel misunderstands Orange and Rockland's proposal that extraordinary property losses be treated as stated values and mistakenly presumes that Orange and Rockland seeks recovery of such values "in perpetuity."⁴⁴ Orange and Rockland explains that if recovery for extraordinary property losses is permitted by a Commission order, the value would be fixed to comply with the Commission order granting such recovery and that, unlike other items in the formula rate, the input value is not updated from year-to-year but is established as a fixed value, consistent with the Commission order approving such value.⁴⁵

d. Commission Determination

31. We find that Orange and Rockland's proposed Attachment 5 to Rate Schedule 19 and Protocols is just and reasonable and complies with Commission precedent in the MISO Protocol Orders and related orders.⁴⁶ We therefore accept Orange and Rockland's Attachment 5 to Rate Schedule 19 and Protocols effective May 25, 2024, as requested.

32. Regarding New Jersey Rate Counsel's concerns that the Protocols may place a limit on soliciting information regarding costs or allocations that have been resolved by a settlement accepted by the Commission, we agree with Orange and Rockland that such language ensures that formula rate issues that have been settled by a Commission order are not reinvestigated in subsequent stakeholder processes. In addition, we note that interested parties may still request information concerning costs or allocations if there has been a material change in Orange and Rockland's circumstances.⁴⁷

33. With respect to the discovery period following the annual update, we agree with Orange and Rockland that its Protocols provide for a 165-day discovery period, which is longer than discovery timeframes accepted by the Commission in prior proceedings,⁴⁸

⁴⁴ *Id.* (quoting New Jersey Rate Counsel Protest at 4).

⁴⁵ *Id.* at 11-12.

⁴⁶ See, e.g., *Black Hills Power, Inc.*, 150 FERC ¶ 61,198; *UNS Elec., Inc.*, 153 FERC ¶ 61,132; *The Empire Dist. Elec. Co.*, 153 FERC ¶ 61,127; *Kan. City Power & Light Co.*, 153 FERC ¶ 61,150; *Louisville Gas & Elec. Co.*, 153 FERC ¶ 61,126; *Westar Energy, Inc.*, 153 FERC ¶ 61,143; *Ala. Power Co.*, 182 FERC ¶ 61,015.

⁴⁷ Protocols § 6.b.

⁴⁸ See, e.g., *Westar Energy, Inc.*, 153 FERC ¶ 61,143 at P 18.

and that there is ample time for interested parties to request information regarding the annual update during the following rate year.

34. Similarly, we accept Orange and Rockland's proposed protocol language authorizing a limited FPA section 205 filing to change its ceiling or base ROE to reflect incentive rate of return adders, upon the Commission's order authorizing those incentives, if any. We disagree with New Jersey Rate Counsel's characterization that this is inconsistent with the Commission's precedent of disfavoring "single-issue ratemaking." The appropriateness of any incentive adders would be determined in the proceeding requesting the incentives. A subsequent filing to merely update the Formula Rate Template with the revised ROE does not implicate the Commission's policy concerning single-issue ratemaking.

35. Finally, with respect to using stated values for extraordinary property losses, we agree with Orange and Rockland that stated values are appropriate for such inputs where the value does not change on an annual basis. These stated values are only permitted where authorized by Commission order, and the value and period of amortization would be set by the Commission order authorizing recovery of such losses.

2. Formula Rate Template

a. Overall Structure

i. Filing

36. Orange and Rockland 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.⁴⁹ Orange and Rockland 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. Orange and Rockland states that the proposed formula rate would be placed in the NYISO OATT under Attachment 5 to Rate Schedule 19, with appropriate cross references pertaining to Rate Schedule 10 projects under Attachment 5 to Rate Schedule 10. Orange and Rockland 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.

37. Orange and Rockland proposes a common Formula Rate Template for both Rate Schedule 10 projects and Rate Schedule 19 projects.⁵⁰ Orange and Rockland states that

⁴⁹ Transmittal Letter at 5.

⁵⁰ *Id.* at 8.

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 for the Rate Year, with annual true-up adjustments. Orange and Rockland 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,⁵¹ will be reflected as a true-up adjustment to the applicable forecasted ATRR for the next applicable Rate Year.

38. Orange and Rockland 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.⁵² Orange and Rockland 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. Orange and Rockland 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. Orange and Rockland 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.

39. Finally, Orange and Rockland 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.⁵³

ii. Commission Determination

40. We find that the overall structure of the proposed Formula Rate Template and all other aspects of Orange and Rockland's filing not specifically addressed below are just, reasonable, and not unduly discriminatory or preferential.

⁵¹ 18 C.F.R. § 35.19a (2023).

⁵² Transmittal Letter at 8.

⁵³ *Id.* at 10.

b. Base ROE

i. Filing

41. Orange and Rockland states that, for projects under Rate Schedule 19, it is proposing a ceiling ROE of 11.2% as a fixed value in the formula rate, subject to a lower ROE authorized by the New York Commission.⁵⁴ Orange and Rockland states that, for Rate Schedule 10 projects, it is proposing a separate base ROE of 10.7%. Orange and Rockland explains that both the proposed ROEs have been developed using the methods accepted by the Commission for transmission cost-of-service revenue requirement purposes.⁵⁵ Orange and Rockland states that, for Rate Schedule 19 projects, the formula rate will use the capital structure applicable to Orange and Rockland for retail ratemaking purposes, as established and revised from time to time by the New York Commission.⁵⁶

ii. Protest

42. The New York Commission argues that Orange and Rockland's requested base ROE and incentive ratemaking treatment under Rate Schedule 10 appear excessive and may therefore result in unjust and unreasonable rates.⁵⁷ The New York Commission argues that because Orange and Rockland may request additional incentive ratemaking treatment in the future, including ROE basis point adders, it is unclear whether the resulting ROE would be within the zone of reasonableness.

⁵⁴ *Id.* at 7, 9-10.

⁵⁵ *Id.* at 10, attach. C, Ex. No. ORU-100 (Testimony of Adrien M. McKenzie, CFA) at 3, 21. Orange and Rockland 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" methodology, the "Capital Asset Pricing Model," the "Risk Premium Model," and the "Expected Earnings" approach.

⁵⁶ Transmittal Letter at 9-10.

⁵⁷ New York Commission Protest at 2.

iii. Answer

43. Orange and Rockland argues that though the New York Commission claims its proposed ROE appears excessive, the New York Commission does not refute that Orange and Rockland's ROE proposal was developed consistent with accepted Commission ratemaking practices, using the ROE methodologies that have been accepted by the Commission.⁵⁸ With respect to the New York Commission's concerns that its base ROE for Rate Schedule 10 projects could exceed the zone of reasonableness if Orange and Rockland pursues other ROE incentives, Orange and Rockland argues this is not an issue because the Commission requires that its ROE does not exceed the zone of reasonableness.⁵⁹

iv. Commission Determination

44. Our preliminary analysis indicates that Orange and Rockland'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.⁶⁰ We find that Orange and Rockland'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 Orange and Rockland's proposed Formula Rate Template, suspend it for a nominal period, effective May 25, 2024, as requested, subject to refund, and establish hearing and settlement judge procedures on the proposed base ROEs.

45. While we are setting the proposed base ROEs for a trial-type evidentiary hearing,⁶¹ 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.⁶² If parties desire, they may, by mutual agreement, request a specific judge as the

⁵⁸ Orange and Rockland Answer at 3.

⁵⁹ *Id.* at 3-4.

⁶⁰ In particular, Orange and Rockland 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).

⁶¹ Trial Staff is a participant in the hearing and settlement judge procedures. *See* 18 C.F.R. § 385.102(b), (c) (2023).

⁶² 18 C.F.R. § 385.603 (2023).

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.⁶³ 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.

c. RTO Adder

i. Filing

46. Orange and Rockland requests, pursuant to Order No. 679,⁶⁴ a 50-basis-point RTO Adder for transmission projects under Rate Schedule 10 to reflect Orange and Rockland's continued membership and participation in NYISO.⁶⁵ Orange and Rockland 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.⁶⁶

47. Orange and Rockland 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.⁶⁷ Orange and Rockland 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

⁶³ 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>).

⁶⁴ *Promoting Transmission Inv. 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).

⁶⁵ Transmittal Letter at 7. Orange and Rockland states that it has conveyed operational control of its bulk electric retransmission facilities to NYISO, which provides transmission services over Orange and Rockland's transmission facilities pursuant to the NYISO OATT. *Id.* at 3.

⁶⁶ *Id.* (citing *See N.Y. Indep. Sys. Operator, Inc.*, 171 FERC ¶ 61,119, at PP 19-20 (2020)).

⁶⁷ *Id.*

comparable transmission organization.⁶⁸ Orange and Rockland 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.⁶⁹

ii. Protest

48. The New York Commission argues that Orange and Rockland's request for the RTO Adder should not be approved because Orange and Rockland has already joined NYISO and cannot voluntarily leave NYISO.⁷⁰ The New York Commission states that Orange and Rockland's membership in NYISO is not voluntary because Orange and Rockland would not be authorized to withdraw from NYISO or transfer operational control without the New York Commission's approval under section 70 of the New York State Public Service law.⁷¹ The New York Commission states that Orange and Rockland would not be permitted to unilaterally withdraw from the NYISO and, therefore, Orange and Rockland's continued participation in NYISO is not voluntary.⁷²

49. The New York Commission argues that the situation is analogous to the situation in California where the Commission recently found that the Pacific Gas and Electric Company is not eligible for an RTO Adder.⁷³ The New York Commission states that the Commission should similarly find that Orange and Rockland is not eligible for the RTO Adder.

iii. Answer

50. Orange and Rockland argues that the New York Commission's assertion that Orange and Rockland cannot voluntarily leave NYISO is incorrect and that section 70 of the New York Public Service law has no bearing on Orange and Rockland's ability to return to itself operational control over its high voltage transmission facilities that it

⁶⁸ *Id.* (citing Order No. 679, 116 FERC ¶ 61,057 at P 327).

⁶⁹ *Id.* at 7-8 (citing *N.Y. Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,266, at P 14 (2020)).

⁷⁰ New York Commission Protest at 5.

⁷¹ N.Y. Pub. Serv. Law § 70.

⁷² New York Commission Protest at 6.

⁷³ *Id.* (citing *Pac. Gas & Elec. Co.* 185 FERC ¶ 61,243, at PP 35-43 (2023) (*PG&E*)).

previously voluntarily transferred to NYISO in connection with NYISO's formation.⁷⁴ Orange and Rockland asserts that the New York Commission's analogy to the California state law raised in *PG&E* cannot be drawn because New York law has no similar membership mandate and that the New York Commission's assertion it cannot voluntarily leave NYISO is incorrect. Furthermore, Orange and Rockland argues that it has not transferred ownership of its transmission facilities to NYISO, and any withdrawal from NYISO would not result in a transfer under New York State Public Service Law section 70.

51. Orange and Rockland argues that it is NYISO's foundational documents – the ISO Agreement and the ISO-Transmission Owners Agreement – that govern its withdrawal rights.⁷⁵ Orange and Rockland asserts that it and each of the founding members of NYISO expressly retained, as a condition of forming NYISO and turning over operational control of certain of their systems to NYISO, the clear and unambiguous right to unilaterally withdraw from NYISO.⁷⁶ Orange and Rockland argues that the New York Commission is not a party to NYISO's foundational agreements and possesses no right under them or under law to block any incorporating Transmission Owner's exercise of its rights to voluntarily withdraw from NYISO.

52. Further, Orange and Rockland argues that Commission precedent presumes eligibility for an RTO Adder “if it can demonstrate that it is a member of an RTO ... and its membership is ongoing.”⁷⁷ Thus, Orange and Rockland argues that it satisfies these criteria through its ongoing membership in NYISO and turning operational control of its high voltage transmission facilities over to NYISO.

iv. Commission Determination

53. In the Energy Policy Act of 2005,⁷⁸ 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.⁷⁹ The Commission subsequently issued Order

⁷⁴ Orange and Rockland Answer at 4-5.

⁷⁵ *Id.* at 6.

⁷⁶ *Id.*

⁷⁷ *Id.* at 9 (citing Order No. 679, 116 FERC ¶ 61,057 at P 327).

⁷⁸ Pub. L. No. 109-58, § 1241, 119 Stat. 594 (2005).

⁷⁹ 16 U.S.C. § 824s.

No. 679, which sets forth processes by which a public utility may seek transmission rate incentives, pursuant to section 219 of the FPA.

54. The Commission's decision to grant an RTO Adder pursuant to section 219 of the FPA and Order No. 679 is intended to encourage public utilities' continued involvement in an RTO. A utility is presumed eligible for an RTO Participation Adder "if it can demonstrate that it is a member of an RTO . . . and its membership is ongoing."⁸⁰ As the Commission has previously stated, the basis for the RTO Adder is a recognition of the benefits that flow from membership in an RTO and that continuing membership is generally voluntary.⁸¹

55. Based upon a review of the filing, we find that the requested 50-basis-point RTO Adder has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Specifically, we believe that the issue raised by the New York Commission regarding section 70 of the New York Public Service Law warrants further consideration by the Commission and we set the matter for paper hearing to address the following question: What is the effect, if any, of section 70 of the New York Public Service Law on Orange and Rockland's eligibility for the RTO Adder under Order No. 679?⁸² Accordingly, we conditionally accept this part of the proposal for filing and suspend it for a nominal period, effective May 25, 2024, as requested, conditioned 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 on Orange and Rockland's ROE ordered herein, and subject to refund and the outcome of a paper hearing to explore whether Orange and Rockland has shown that its participation in NYISO is voluntary,⁸³ as required for it to be eligible for the RTO Adder.

⁸⁰ Order No. 679, 116 FERC ¶ 61,057 at P 327.

⁸¹ *Id.* P 331.

⁸² See *Promoting Transmission Inv. through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, at P 326, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345, *order on reh'g*, 119 FERC ¶ 61,062; see also *Cal. Pub. Utils. Comm'n v. FERC*, 879 F.3d 966, 978-79 (9th Cir. 2018) (explaining Order No. 679's "case-by-case analysis requirement"), *order on remand*, *Pac. Gas & Elec. Co.*, 168 FERC ¶ 61,038, at PP 42-52 (2019) (considering PG&E's RTO Adder request under Order No. 679 and applicable state law), *order on reh'g*, 170 FERC ¶ 61,194 (2020), *aff'd*, *Cal. Pub. Utils. Comm'n v. FERC*, 29 F.4th 454 (9th Cir. 2022).

⁸³ Order No. 679, 116 FERC ¶ 61,057 at P 331.

56. Initial briefs on the paper hearing question are due within 30 days of the date of this order and reply comments to the initial briefs are due within 21 days of the deadline for initial briefs.

The Commission orders:

(A) Orange and Rockland's proposed Attachment 5 to Rate Schedule 19 and Protocols and Attachment 5 to Rate Schedule 10 are accepted, as discussed in the body of this order, effective May 25, 2024, as requested.

(B) Orange and Rockland's proposed Formula Rate Template is accepted for filing, suspended for a nominal period, effective May 25, 2024, 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) Orange and Rockland's request for a 50-basis-point RTO Adder is conditionally accepted for filing, suspended for a nominal period, effective May 25, 2024, as requested, 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 on Orange and Rockland's ROE ordered herein, and subject to refund and the outcome of the paper hearing procedure discussed in the body of the order.

(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 Orange and Rockland'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 (E) and (F) below.

(E) 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.

(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 Christie is dissenting in part with a separate statement attached.

(S E A L)

Debbie-Anne A. Reese,
Acting Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Orange and Rockland Utilities, Inc.
New York Independent System Operator, Inc.

Docket No. ER24-1614-000

(Issued May 24, 2024)

CHRISTIE, Commissioner, *dissenting in part*:

1. I dissent to the decision in today’s order conditionally accepting and suspending the RTO Adder for a nominal period and initiating a hearing related to the same. As I previously have made clear:

[T]he Order conditionally grants . . . a 50-basis point RTO participation adder on top of the existing . . . ROE, which, by definition, already represents the market cost of equity capital. So the adder is, by definition, a subsidy, as any ROE adder is — more “FERC candy” taken directly from consumers and redistributed to transmission owners.

In April 2021 two of my colleagues, including [then-Chairman Glick], joined me in voting to limit the RTO participation adder — the exact type granted herein — to three years after joining. [Now, over three years later], we have yet to take a final vote to implement that limit. As long as we do not, consumers will continue to pay these adders at a time when consumers are already facing rapidly rising monthly power bills.¹

2. As I have stressed in multiple separate statements since, there has been no movement by the Commission to address the RTO Adder incentive or the other incentives routinely awarded by this Commission.² For some time I have emphasized that “revisiting all these incentives is imperative at a time of rapidly rising customer power bills.”³

¹See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 181 FERC ¶ 61,094 (2022), (Christie, Comm’r, concurring at PP 1-2) (citing *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Supplemental Notice of Proposed Rulemaking, 175 FERC ¶ 61,035 (2021)) (emphasis added) (available at <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-urging-action-re-rto-participation-adder-docket>).

² See, e.g., *Viridon New England LLC*, 186 FERC ¶ 61,205 (2024) (Christie, Comm’r, concurring at PP 2-5).

3. Most recently, I have dissented to orders awarding incentives noting that “it is far past time for me to begin dissenting from these orders.”⁴ I drew this conclusion after noting:

[D]espite the appearance of action by the Commission to address unfair and excessive transmission costs to consumers from incentives and other Commission policies, the record of the past three years shows nothing has been accomplished to reform these incentives. Indeed, this order is another graphic example of why I have repeatedly argued that the Commission needs to revisit the array of incentives offered to transmission developers, including the Abandoned Plant Incentive . . . as well as the [Construction Work in Progress (CWIP)] Incentive, Hypothetical Capital Structure Incentive, *and the RTO participation adder*.⁵

4. So too here. I dissent. As I have written, “[T]he RTO participation adder, which increases the transmission owner’s ROE above the market cost of equity capital, is an involuntary gift from consumers.”⁶

5. Moreover, I note the argument made by the New York State Public Service Commission (NYSPSC) against the award of the RTO Adder and point out the NYSPSC neither asked that the RTO Adder be conditionally accepted nor set for hearing.⁷ It requested that it be denied.

³ *Id.* P 5.

⁴ *Baltimore Gas & Elec. Co.*, 187 FERC ¶ 61,030 (2024) (Christie, Comm’r, dissenting at P 5) (Christie Exelon Dissent) (available at <https://www.ferc.gov/news-events/news/commissioner-christies-dissent-award-incentives-exelon-er24-1313>). *See Midcontinent Indep. Sys. Operator, Inc.*, 187 FERC ¶ 61,072 (2024) (Christie, Comm’r, dissenting at P 6) (Christie ALLETE Dissent) (available at <https://www.ferc.gov/news-events/news/commissioner-christies-dissent-award-incentives-allete-er24-1473>) (“It is far past time for me to dissent from these orders.”).

⁵ Christie Exelon Dissent at P 5 (footnotes omitted) (emphasis added). *See* Christie ALLETE Dissent at P 6.

⁶ Christie Exelon Dissent at P 7 (footnote omitted); Christie ALLETE Dissent at P 8 (footnote omitted).

⁷ I also note that the NYSPSC argues that the requested ROE must be set for hearing, including noting that in addition to the RTO Adder, Orange and Rockland may request future additional incentive ratemaking treatment. Order at P 42. The requested ROE has been set for hearing in today’s order. I note that no other request for incentives appear to be before the Commission at this time.

For these reasons, I respectfully dissent in part.

Mark C. Christie
Commissioner