

190 FERC ¶ 61,150
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Mark C. Christie, Chairman;
Willie L. Phillips, David Rosner,
Lindsay S. See, and Judy W. Chang.

New York Transco LLC
New York Independent System Operator, Inc.

Docket No. ER25-885-000

ORDER ACCEPTING AND SUSPENDING TARIFF REVISIONS, SUBJECT TO
REFUND, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued March 11, 2025)

1. On January 10, 2025, 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), on behalf of New York Transco LLC (New York Transco), submitted proposed revisions to New York Transco's formula rate (Formula Rate) included in Attachment DD, section 36 of the NYISO Open Access Transmission Tariff (OATT)³ to: (1) include certain additional operation and maintenance expense accounts from the Commission's Uniform System of Accounts (USofA) to allow for the recovery of prudently incurred transmission-related expenses; (2) establish a company-wide base return on equity (ROE) of 10.9%; and (3) utilize the depreciation rates in Attachment 9 to the Formula Rate.
2. As discussed below, we accept New York Transco's proposed revisions to include Accounts 561.1 through 561.8⁴ of the USofA in its Formula Rate and its proposal to

¹ 16 U.S.C. § 824d.

² 18 C.F.R. § 35.13 (2024).

³ NYISO, NYISO Tariffs, NYISO OATT, § 36 (attach. DD – Rules to Allocate the Cost of NY Transco LLC Transmission Facilities and Formula Rates) (7.0.0).

⁴ 18 C.F.R. pt. 101 §§ 561.1 – 561.8 (2024). These accounts are used to record Transmission Expenses for: Load Dispatch – Reliability (Account 561.1), Load Dispatch – Monitor and operate transmission system (Account 561.2), Load Dispatch – Transmission service and scheduling (Account 561.3), Scheduling, system control and dispatch services (Account 561.4), Reliability planning and standards development

utilize its existing depreciation rates in Attachment 9 of its Formula Rate, effective March 12, 2025. We accept the proposed base ROE for filing, suspend it for a nominal period, effective March 12, 2025, subject to refund and to the outcome of hearing and settlement judge procedures. In addition, we grant New York Transco's request for waiver of the Commission's filing requirements regarding the need to submit additional cost-of-service statements.

I. Background

A. New York Transco

3. New York Transco is a New York limited liability company that develops high voltage bulk transmission facilities and maintains those projects under the functional control of NYISO.⁵ New York Transco is owned by Consolidated Edison Transmission, LLC; Grid NY LLC; Avangrid Networks New York TransCo, LLC; and Central Hudson Electric Transmission LLC (New York Transco Owners). New York Transco is a transmission-owning member of NYISO and recovers its revenue requirements in accordance with its Formula Rate and the New York Transco Facilities Charge⁶ under Rate Schedule 13 of the Tariff.

B. Description of Formula Rate

4. New York Transco states that its formula rate and formula rate implementation protocols were first established in Docket No. ER15-575-000.⁷ New York Transco states that, at the time of that filing, it intended to own and operate the Transmission Owner Transmission Solution (TOTS) portfolio of projects and potentially develop and own the proposed solutions (AC Transmission Projects) to relieve transmission congestion that was identified in the New York State Public Service Commission (New York Commission) regulatory process. New York Transco asserts that it entered into one settlement agreement to recover costs associated with its investment in the TOTS projects, which provided for the general formula that would apply to New York Transco's investment in all electric transmission facilities, a TOTS-specific base ROE

(Account 561.5), Transmission service studies (Account 561.6), Generation interconnection studies (Account 561.7), and Reliability planning and standards development services (Account 561.8).

⁵ Filing, Transmittal Letter at 5.

⁶ Capitalized terms not defined herein shall have the meaning set forth in the NYISO OATT.

⁷ Filing, Transmittal Letter at 3.

of 9.5%, and incentive rate ROE adders specific to the TOTS cost recovery.⁸ New York Transco states that it entered into a second settlement agreement concerning the AC Transmission Project that would apply if New York Transco was awarded aspects of the AC Transmission Projects consistent with the NYISO's Public Planning Transmission Planning Process (PPTPP) and a competitive solicitation administered by NYISO in accordance with the PPTPP.⁹ New York Transco states that the parties agreed to an AC Transmission Project-specific ROE of 9.65% and incentive rate ROE adders specific to the AC Transmission Project cost recovery. New York Transco contends that, as a result of the settlements, New York Transco's base ROE values are project-specific and New York Transco is required to submit a new filing and propose a base ROE value for each transmission investment and project that it develops.

II. Notice of Filing and Responsive Pleadings

5. Notice of New York Transco's filing was published in the *Federal Register*, 90 Fed. Reg. 4733 (Jan. 16, 2025), with interventions and comments due on or before January 31, 2025.

6. The New York Commission filed a notice of intervention. City of New York; Multiple Intervenors;¹⁰ Consolidated Edison Company of New York, Inc.; New York Association of Public Power (NYAPP); and Municipal Electric Utilities Association of New York filed timely motions to intervene. On January 31, 2025, City of New York and Multiple Intervenors (collectively, Consumer Advocates), NYAPP, and the New York Commission filed protests. On February 18, 2025, New York Transco filed an answer to the protests.

7. On February 28, 2025, New York Power Authority (NYPA) filed an out-of-time motion to intervene.

⁸ *Id.* at 3. See *N.Y. Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,196 (2016) (TOTS Settlement).

⁹ *Id.* at 4. See *N.Y. Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,161 (2017) (AC Transmission Settlement). New York Transco states that it was awarded development rights to the Segment B and Segment B Additions components of the AC Transmission Projects through a NYISO competitive solicitation. Filing, Transmittal Letter at 4 n.12.

¹⁰ Multiple Intervenors is an unincorporated association of approximately 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State.

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2024), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

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

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹¹ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept New York Transco's answer because it has provided information that assisted us in our decision-making process.

B. Formula Rate

1. Filing

11. New York Transco states that Accounts 561.1 through 561.8 of the USofA are used to record costs for general transmission operation and maintenance expenses related to reliability, planning, standards development, transmission service studies, and generation interconnection studies.¹² New York Transco states that its Formula Rate currently excludes Accounts 565, 561,¹³ and 561.1 through 561.8, which are listed as operational transmission expense accounts in the Commission's USofA. New York Transco contends that it did not foresee engaging in the types of transactions contemplated in these accounts when it first submitted its Formula Rate proposal in 2014 and so did not include the accounts in its initial revenue requirement.

12. New York Transco states that, since it initially submitted its Formula Rate proposal in 2014, it has become responsible for the development and physical ownership of increasing electric transmission investment and performs the requirements of a NYISO

¹¹ 18 C.F.R. § 385.213(a)(2) (2024).

¹² Filing, Transmittal Letter at 4-5.

¹³ Although the USofA does not include an Account 561, New York Transco uses this reference to cover all of the subaccounts under Account 561. Filing, Transmittal Letter at 6 n.17.

transmission-owning member. New York Transco contends that, therefore, it has become clear that New York Transco will incur costs appropriately booked to Accounts 561.1 through 561.8, recovery of which is not permitted under the current Formula Rate.¹⁴

13. New York Transco explains that it is now responsible for performing the tasks enumerated in Account 561.1 for its electric transmission assets that are not included in the Bulk Power System and comprising its 115 kV and 138 kV transmission and substation assets and now responsible for Account 561.2 work items for its 115 kV and 138 kV transmission and substation assets.¹⁵ New York Transco explains that it currently engages third parties to perform these functions and assigns those costs to Account 923 of the USofA (Outside Services Employed). However, New York Transco states that its significant growth suggests that it may be more efficient and cost effective if New York Transco were to open its own control center and utilize its own employees to perform these and other tasks. New York Transco contends that if New York Transco were to do so, it would no longer be appropriate to book the costs in Account 923 and would instead be appropriate to book these and other prudently incurred transmission operation and maintenance expenses in the Account 561.1 through 561.8 series of accounts for recovery under the Formula Rate.

14. New York Transco states that other transmission owners in New York currently have Accounts 561.1 through 561.8 as part of their Commission-approved formula rates and that New York Transco's request is consistent with that precedent.¹⁶

15. New York Transco states that the inclusion of Accounts 561.1 through 561.8 will not result in a rate increase or any double recovery of costs.¹⁷ New York Transco explains that, in the event any costs associated with the tasks and services described in Accounts 561.1 through 561.8 are reimbursable to New York Transco under a separate bilateral agreement with any third party, New York Transco will maintain detailed records for each cost item undertaken and for all reimbursements received for conducting such cost items as required by the instructions to Accounts 561.1 through 561.8 so that there is no duplicative recovery of costs.

¹⁴ Filing, Transmittal Letter at 6.

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 8-9 (citing NYISO OATT, § 6.10.7.2.1 (Schedule 10 – Formula Rate Template) (5.0.0), § attach. 1; *id.* § 6.10.9.2.1 (Schedule 10 – NextEra Energy Transmission New York, Inc. Formula Rate Template) (5.0.0), § attach. 3).

¹⁷ *Id.* at 9.

16. New York Transco also proposes to utilize the depreciation rates that are currently included in Attachment 9 of its Formula Rate.¹⁸ New York Transco notes that it committed in its initial Formula Rate filing in 2014 to submit a new depreciation study within five years of the in-service date of the first project to be placed in service. However, New York Transco states that it entered into two settlement agreements, only one of which addressed depreciation rates. New York Transco states that it met individually with the parties to the TOTS Settlement and AC Transmission Settlement to confirm its interpretation that the settlements require New York Transco to perform a depreciation study and submit any modifications by January 1, 2026.¹⁹ New York Transco states that the settling parties agreed with this interpretation of the settlement agreements and states that it intends to make such a filing in advance of the January 1, 2026 date.

17. New York Transco requests waiver of the Commission's filing requirements, including the need to submit additional cost-of-service statements, which New York Transco states is consistent with the Commission's precedent in formula rate-related proceedings.²⁰

2. Protests

18. Consumer Advocates state that it is not appropriate to account for expenses that should have been recorded in Accounts 561.1 through 561.8 and 565 (collectively, Transmission Operating Expenses) in Account 923.²¹ Consumer Advocates state that Account 923 is used to record the fees and expenses of professional consultants and others for general services that are not applicable to a particular operating function or to other accounts. Consumer Advocates contend that New York Transco has been improperly booking Transmission Operating Expenses to Account 923 and, therefore, has been improperly collecting Transmission Operating Expenses via its Formula Rate.²²

¹⁸ *Id.* at 16.

¹⁹ *Id.* at 16-17.

²⁰ *Id.* at 17 (citing *Okla. Gas & Elec. Co.*, 122 FERC ¶ 61,071, at P 41 (2008)).

²¹ Consumer Advocates Protest at 11 (citing app. A, Testimony of Michele Chait Testimony (Chait Test.) at 4-5).

²² *Id.* at 11-12.

19. Consumer Advocates claim that it is not clear that New York Transco employees can perform the activities expensed in Accounts 561.4 and 561.8, as language in the USofA indicates that these costs are “billed” to the transmission owner.²³ Consumer Advocates request that New York Transco be ordered to discontinue improperly booking Transmission Operating Expenses in Account 923 and that New York Transco’s Formula Rate be revised to include the operation and maintenance accounts so that properly incurred Transmission Operating Expenses have an opportunity to be transparently collected in the Formula Rate.

20. New York Commission argues that New York Transco has failed to demonstrate that the inclusion of Accounts 561.1 through 561.8 in the formula rate will not result in increased rates for customers.²⁴ New York Commission requests that the Commission conduct a hearing to evaluate New York Transco’s proposed revisions to its formula rate.

3. Answer

21. According to New York Transco, Consumer Advocates do not provide justification for the assertion that New York Transco has been improperly booking costs to Account 923.²⁵ New York Transco asserts that its use of Account 923 is consistent with Commission accounting methods and Consumer Advocates have not presented evidence to the contrary.²⁶

4. Commission Determination

22. We find that New York Transco’s proposal to include Accounts 561.1 through 561.8 in its Formula Rate is just and reasonable because it allows New York Transco to recover prudently incurred transmission operation and maintenance expenses. With regard to the New York Commission’s concerns about the inclusion of Accounts 561.1 through 561.8 in New York Transco’s Formula Rate resulting in increased rates, we note that New York Transco is only proposing to add Accounts 561.1 through 561.8 to its Formula Rate template and is not through this filing seeking to recover specific costs through those accounts. Moreover, New York Transco indicates that it intends to book costs in Accounts 561.1 through 561.8 that are currently associated with activities performed by third parties and booked in Account 923. We find no evidence in this record to conclude that this change will necessarily lead to cost increases and we also

²³ *Id.* at 12.

²⁴ New York Commission Protest at 2.

²⁵ New York Transco Answer at 13-14.

²⁶ *Id.* at 14.

note that the prudence of such costs are subject to review during the Formula Rate annual update process. We further note that New York Transco has committed to ensuring that there will be no double recovery of costs due to its use of Accounts 561.1 through 561.8 instead of Account 923.²⁷ Therefore, we decline the New York Commission's request for hearing on the matter.

23. We are not persuaded by Consumer Advocates' concerns about whether New York Transco employees can perform the activities included in Accounts 561.4 and 561.8.²⁸ Consumer Advocates have not offered any explanation as to why New York Transco is not capable of performing the relevant activities and only states that there is a lack of clarity because of the use of the word "billed." The Commission here accepts New York Transco's proposal to include in its Formula Rate and use certain Accounts in the USofA for the intended purpose of those Accounts, nothing more.

24. We further find that Consumer Advocates' argument that New York Transco has been improperly booking Transmission Operating Expenses to Account 923 is beyond the scope of this proceeding on New York Transco's proposal to establish Accounts 561.1 through 561.8 in its Formula Rate. Challenges to costs included in the Formula Rate may be raised in the annual update process in accordance with New York Transco's Formula Rate protocols.

25. Through this filing, New York Transco does not propose changes to the depreciation rates that are currently included in Attachment 9 of its Formula Rate and states that it will continue to use those depreciation rates.²⁹ We recognize New York Transco's commitment, consistent with settlement agreements in the proceeding establishing the depreciation rates, that New York Transco will perform a depreciation study and file an FPA section 205 filing implementing modified depreciation rates by January 1, 2026.³⁰

²⁷ Filing, Transmittal Letter at 9.

²⁸ Consumer Advocates Protest at 12.

²⁹ *Id.* at 16.

³⁰ *Id.* at 16-17.

26. We grant New York Transco's request for waiver of the need to submit additional cost-of-service statements, consistent with the Commission's prior acceptance of formula rates.³¹ However, to the extent that participants at the hearing ordered below can show the relevance of additional information needed to evaluate New York Transco's proposed base ROE, the Administrative Law Judge can provide for appropriate discovery of such information.

C. Base Rate of Return of Equity

1. Filing

27. New York Transco requests a company-wide base ROE value of 10.9%.³² New York Transco explains that this base ROE would apply to the TOTS projects and the AC Transmission Projects rate recovery, as well as any future electric transmission assets that New York Transco develops and owns.³³ New York Transco notes that the proposed base ROE value would not apply to its cost recovery for the Propel NY Project, as the cost recovery for that project is the subject of a settlement agreement prohibiting modification of that project's base ROE value, or any other settlement provision prior to May 31, 2030.³⁴

28. New York Transco states that its need to establish a company-wide base ROE value is based on two primary factors.³⁵ First, New York Transco explains that it may need to construct a Designated Public Policy Project in accordance with the NYISO OATT. New York Transco states that it would be permitted to recover the costs of such facilities in accordance with Rate Schedule 10 of the NYISO OATT, and the company-wide base ROE would apply to those projects in determining the transmission asset revenue requirements. Second, New York Transco contends that a company-wide base ROE value for its transmission projects would put New York Transco on equal footing with other transmission developers, including other developers in NYISO's competitive transmission solicitations. New York Transco asserts that a company-wide base ROE would provide rate certainty, consistency, and better clarity for current and future

³¹ See *Sw. Pub. Serv. Co.*, 190 FERC ¶ 61,046, at P 24 (2025); *Pac. Gas & Elec. Co.*, 189 FERC ¶ 61,229, at P 28 (2024); *Okla. Gas & Elec. Co.*, 122 FERC ¶ 61,071 at P 41.

³² Filing, Transmittal Letter at 5, 11.

³³ *Id.* at 10.

³⁴ *Id.* at 2, 10.

³⁵ *Id.* at 10.

development activities. New York Transco states that the Commission has routinely accepted company-wide base ROEs for existing and new transmission investment in NYISO.³⁶

29. New York Transco provides the testimony of Mr. Adrien M. McKenzie in support of its proposed company-wide base ROE.³⁷ New York Transco states that Mr. McKenzie's evaluation of a just and reasonable base ROE relies on the results of four different financial models: the two-step discounted cash flow (DCF) model, the capital asset pricing model (CAPM), the risk premium method, and the expected earnings approach.³⁸ Mr. McKenzie states that the Commission's two-step DCF method assumes that investors differentiate between near-term growth forecasts and some notion of longer-term growth extending into the distant future using Institutional Brokers' Estimate System (IBES) growth rates.³⁹ Mr. McKenzie explains that the CAPM model is also a forward looking model based on the future and must be applied using estimates that reflect the expectations of actual investors in the market.⁴⁰ Mr. McKenzie also states that the risk premium approach extends the risk-return tradeoff observed with bonds to estimate investors' required rate of return on common stocks.⁴¹ Additionally, Mr. McKenzie states that the expected earnings approach focuses on the projected earned returns on book equity supporting investors' expectation underlying the market price of a stock.⁴²

30. New York Transco states that Mr. McKenzie employed a national proxy group composed of 31 risk comparable electric utilities and utilized that proxy group in each one of the four methods described above.⁴³ New York Transco explains that Mr. McKenzie's analysis resulted in a composite ROE zone of reasonableness of 8.35% to 13.16%, with a median of 10.79% and midpoint of 10.75%. New York Transco further explains that Mr. McKenzie's analysis, applying the Commission's

³⁶ *Id.* at 11.

³⁷ Filing, attach. D, Testimony of Adrien M. McKenzie (McKenzie Test.).

³⁸ Filing, Transmittal Letter at 11.

³⁹ Filing, attach. D, McKenzie Test. at 30-31.

⁴⁰ *Id.* at 36.

⁴¹ *Id.* at 47.

⁴² *Id.* at 68.

⁴³ Filing, Transmittal Letter at 12.

approach of using the two-step DCF model and an application of the CAPM using IBES growth rates to determine the market risk premium, resulted in a composite ROE zone of reasonableness of 9.08% to 12.72%, with a median of 11.17% and midpoint of 10.90%.⁴⁴

31. New York Transco concludes that a generally applicable 10.9% base ROE is just and reasonable because it: (1) is well within the composite zone of reasonableness in all four of Mr. McKenzie's preferred financial model approaches, as well as the financial approach that the Commission accepted in the Order on Remand; (2) is consistent with the metrics produced by a DCF model as applied to a select group of low-risk companies to the non-utility sectors of the economy; and (3) is below the 11.17% median value derived through a strict application of the dual-model approach in the Order on Remand.⁴⁵

32. New York Transco states that the new company-wide base ROE value would result in a minor increase in the yearly revenue requirement for the TOTS Project of \$1.67 million, and an increase of \$6.65 million for the AC Transmission Projects.⁴⁶

2. Protest

33. Consumer Advocates and the New York Commission contend that a determination of a just and reasonable ROE requires more than just assessing whether the proposed rate falls within the zone of reasonableness.⁴⁷ Consumer Advocates, the New York Commission, and NYAPP state that Commission has been clear that utility rate regulation must adequately balance both consumer and investor interests.⁴⁸ The New

⁴⁴ *Id.* at 11 n.33, 12 (citing *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 189 FERC ¶ 61,036 (2024) (Order on Remand)). The Commission did not adopt the risk premium model in the Order on Remand, based on the record before it, but stated that it did not foreclose the use of a risk premium model in future proceedings if parties addressed relevant concerns. Order on Remand, 189 FERC ¶ 61,036 at P 24.

⁴⁵ *Id.* at 13.

⁴⁶ *Id.* at 15-16.

⁴⁷ Consumer Advocates Protest at 5 (citing *Bangor Hydro-Elec. Co.*, 122 FERC ¶ 61,038, at PP 12, 14 (2008)); New York Commission Protest at 2 (citing to *Bangor Hydro-Elec. Co.*, 122 FERC ¶ 61,038 at P 12).

⁴⁸ *Id.* at 6 (citing *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, at P 21 (Order No. 679), *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007));

York Commission also states that the need for any ROE incentive adders should be revisited in light of New York Transco's request to increase its base ROE, which could result in the total ROE falling outside the zone of reasonableness.⁴⁹ Consumer Advocates, the New York Commission, and NYAPP argue that the Commission should set this matter for hearing so that the assumptions and analyses underpinning New York Transco's proposed base ROE can be investigated further, a more complete record can be developed for the Commission's consideration, and interested parties can cross-examine New York Transco's expert witness on the factual claims with respect to the requested ROE.⁵⁰

34. Consumer Advocates and NYAPP argue that New York Transco's CAPM analyses are flawed.⁵¹ According to Consumer Advocates, New York Transco's CAPM analyses fail to account for New York Transco's target 47% - 53% debt-equity capital structure for transmission assets.⁵² Specifically, Consumer Advocates criticize New York Transco's use of unadjusted beta values reported by the Value Line company for the selected proxy companies, which Consumer Advocates assert each have leverage well in excess of 47%.⁵³ Consumer Advocates contend that New York Transco's use of these unadjusted beta values inflated the results produced by the CAPM.⁵⁴ Consumer Advocates state that they corrected New York Transco's CAPM calculations by (1) deriving the asset beta for each proxy group company, (2) re-levering that asset beta using the target 47%-53% New York Transco capital structure, and then (3) employing the re-levered beta in the CAPM formula to yield the ROE ranges applicable to the target 47%-53% capital structure, which results in an ROE range of 7.29% to 10.98%, a median CAPM ROE of 8.36%, and a midpoint ROE of 9.13%.⁵⁵

New York Commission Protest at 3 (citing Order No. 679, 116 FERC ¶ 61,057 at P 21); NYAPP Protest at 4-5 (citing *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591 at 604, 612 (1944)).

⁴⁹ New York Commission Protest at 2

⁵⁰ *Id.* at 3; Consumer Advocates Protest at 6; NYAPP Protest at 5.

⁵¹ Consumer Advocates Protest at 6; NYAPP Protest at 3.

⁵² Consumer Advocates Protest at 6.

⁵³ *Id.* at 6-7.

⁵⁴ *Id.* at 7.

⁵⁵ *Id.* (citing Chait Test. at 8).

35. Consumer Advocates support the Value Line approach over the IBES approach because: (1) the DCF analysis already incorporates IBES growth rates, so reflecting them again in CAPM is unnecessary; and (2) the Commission has determined that there is a benefit to using Value Line growth estimates and that considering both IBES and Value Line is appropriate in determining ROE.⁵⁶

36. NYAPP criticizes New York Transco's use of Value Line beta values over Bloomberg betas, the latter of which are based on the S&P 500 and used by the Commission.⁵⁷ NYAPP contends that Mr. McKenzie argues, without evidence, that Bloomberg betas are subject to manipulation.⁵⁸ NYAPP also criticizes New York Transco's averaging of the results of CAPM analyses using both Value Line and IBES earnings growth rates. NYAPP states that the Commission has established a clear preference for the use of IBES growth rates, and that there is no Commission precedent that allows averaging the market risk premium estimates by using both Value Line and IBES earnings growth rates.⁵⁹ Similarly, the New York Commission also questions the validity of relying on IBES-determined growth rate estimates, reportedly obtained from YahooFinance.com, asserting that Yahoo Finance no longer provides such information, and that there are alternative sources with more reliable growth rate estimates.⁶⁰

37. NYAPP further states that, contrary to Commission precedent, New York Transco relies on the midpoint values of the ranges of results rather than the median values.⁶¹ NYAPP also argues that New York Transco has not provided evidence that New York Transco should receive a base ROE that is almost 100-basis points higher than the recently approved 9.98% base ROE for Midcontinent Independent System Operator (MISO) transmission owners.⁶²

⁵⁶ *Id.*; Chait Test. at 22 (citing *Inquiry Regarding the Comm'n's Pol'y for Determining Return on Equity*, Policy Statement on Determining Return on Equity for Natural Gas and Oil Pipelines, Docket No. PL19-4-000, at 56 (2020)).

⁵⁷ NYAPP Protest at 3 (citing *Constellation Mystic Power, LLC*, 176 FERC ¶ 61,019, at PP 77, 85 (2021)).

⁵⁸ *Id.* (citing McKenzie Test. at 41).

⁵⁹ *Id.* at 3-4.

⁶⁰ New York Commission Protest at 4.

⁶¹ NYAPP Protest at 4.

⁶² *Id.* at 5 (citing Order on Remand, 189 FERC ¶ 61,036 at P 42).

38. Consumer Advocates contend that New York Transco's DCF analyses are flawed.⁶³ Consumer Advocates state that New York Transco does not provide sufficient evidence of its assumption that it qualifies for investment grade ratings equivalent to the average Baa2 Moody's issuer rating and BBB + S&P corporate crediting rate. Consumer Advocates state that, although New York Transco asserts that these ratings are supported by the credit profiles of the New York Transco Owners, it does not provide sufficient evidence to validate this claim.⁶⁴ Consumer Advocates argue that New York Transco's DCF approach is not reasonable because it does not include credit ratings for all of the New York Transco Owners or their holding companies. Consumer Advocates recommend establishing a comparable risk band one notch around A-/Baa2 ratings to better reflect the credit ratings of the New York Transco's owners or their holding companies. According to Consumer Advocates, this produces DCF ROE results of a zone of reasonableness of 7.37% to 11.00%, with a median ROE of 9.79% and a midpoint ROE of 9.19%. Additionally, NYAPP contends that New York Transco has not provided evidence to support its argument that DCF methodology imparts a downward-bias to the Commission's ROE methodology.⁶⁵ NYAPP also contends that the Commission has never accepted the use of non-utility DCF analyses to confirm the results of its DCF methodology.

39. Consumer Advocates and the New York Commission argue that New York Transco's proxy companies used for its ROE analyses are flawed and that the majority of utilities in the proxy group are vastly dissimilar and constitute much riskier investments.⁶⁶ Consumer Advocates state that, among other things, while many of the companies in New York Transco's proxy group are holding companies with assets in many different states and are regulated by various regulatory commissions, New York Transco's transmission assets are located only within New York.⁶⁷ Similarly, the New York Commission states that New York Transco's expert witness used a proxy group with an average credit rating of Baa2/BBB+, which appears to be riskier than New York Transco's actual risk profile.⁶⁸ The New York Commission also argues that New York Transco's inclusion of Fortis Inc., which is headquartered in Canada, within its proxy group raises concerns with respect to Commission's requirement for proxy groups to

⁶³ Consumer Advocates Protest at 8-9.

⁶⁴ *Id.* at 9.

⁶⁵ NYAPP Protest at 4.

⁶⁶ Consumer Advocates Protest at 9; New York Commission Protest at 4.

⁶⁷ Consumer Advocates Protest at 10.

⁶⁸ New York Commission Protest at 3-4.

consist of domestic publicly traded utilities.⁶⁹ Additionally, NYAPP states that New York Transco fails to consider its risks relative to the proxy group and assumes, without evidence, that New York Transco is of average risk.⁷⁰

40. NYAPP further disputes New York Transco's argument that the risk premium methodology is not circular.⁷¹ NYAPP states that New York Transco's risk premium methodology is based on ROE values based on settlements and there is no evidence that any such settlement ROE values are based on market conditions. Additionally, NYAPP argues that New York Transco's risk premium methodology is based on past, not current, market conditions.⁷² NYAPP also states that the expected earnings approach has been consistently rejected by the Commission because it is not market-based.⁷³

3. Answer

41. New York Transco responds to concerns raised by the New York Commission and Consumer Advocates about the proxy group including companies that have higher risk profiles.⁷⁴ New York Transco contends that the Commission has rejected the notion that narrow company specific attributes are meaningful criteria in evaluating comparable risk⁷⁵ and assertions that the relative risks faced by wholesale transmission owners are lower than those of publicly traded utilities used to estimate the cost of equity.⁷⁶

⁶⁹ *Id.* at 4.

⁷⁰ NYAPP Protest at 4.

⁷¹ *Id.* at 2.

⁷² *Id.* at 2-3.

⁷³ *Id.* at 3.

⁷⁴ New York Transco Answer at 5.

⁷⁵ *Id.* at 6 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 100 FERC ¶ 61,292, at P 12 (2002), *reh'g denied*, 102 FERC ¶ 61,143 (2003), *order on remand*, 106 FERC ¶ 61,302 (2004), *aff'd in part sub nom. Pub. Serv. Co. of Ky. v. FERC*, 397 F.3d 1004 (D.C. Cir. 2005); *Bangor Hydro-Elec. Co., Opinion No. 489*, 117 FERC ¶ 61,129, at PP 17, 19, 26 (2006) *order on reh'g*, 122 FERC ¶ 61,265; *Pepco Holdings, Inc.*, 124 FERC ¶ 61,176, at P 118 (2008); *see also Pepco Holdings, Inc.*, 125 FERC ¶ 61,130, at P 93 (2008)).

⁷⁶ *Id.* at 6 (citing Opinion No. 551, 156 FERC ¶ 61,234 at P 250).

42. New York Transco also argues that it has provided sufficient support of its proxy group determination.⁷⁷ New York Transco states that, because it does not have a S&P or Moody's credit rating, New York Transco assumes it qualifies for rating equivalent to the average Baa2 Moody's issuer ratings and BBB+ S&P corporate rating maintained by firms in Value Line's electric utility industry groups.⁷⁸ New York Transco states that Consumer Advocates seem to endorse New York Transco's use of the Baa2 Moody's rating, but suggest that a S&P rating of A- is more appropriate.⁷⁹ According to New York Transco, this is flawed because (1) Consolidated Edison, Inc., has an S&P credit rating of A-, not A+ as suggested by Consumer Advocates, (2) Central Hudson Electric & Gas Company has its own stand-alone S&P rating of BBB+, the same rating used by New York Transco, and (3) Consumer Advocates inappropriately rely on the rating of Central Hudson Electric & Gas Company's parent company Fortis Inc.⁸⁰

43. New York Transco contends that Consumer Advocates improperly rely solely on Value Line beta values in their CAPM analysis and propose a theoretical leverage adjustment resulting in unreasonably low CAPM cost of equity estimates.⁸¹ New York Transco argues that Consumer Advocates provided no support for re-levering the asset beta using the target 47%-53% New York Transco capital structure.⁸² New York Transco also states that Consumer Advocates provide no reference to Commission precedent that endorsed such an approach.⁸³ On the contrary, New York Transco argues that the Commission has consistently relied on credit ratings as an objective indicator of risk and has not highlighted one risk measure like capital structure over other risk measures.

44. New York Transco argues that Consumer Advocates misstate Commission policy as it relates to Value Line growth estimates in that the Commission has never solely relied on the use of Value Line growth rates.⁸⁴ According to New York Transco, while Consumer Advocates oppose the inclusion of IBES growth rates, this position

⁷⁷ *Id.* at 6.

⁷⁸ *Id.* at 6-7.

⁷⁹ *Id.* at 7.

⁸⁰ *Id.* at 7-8.

⁸¹ *Id.* at 4.

⁸² *Id.* at 8-9.

⁸³ *Id.* at 9.

⁸⁴ *Id.* at 10.

mischaracterizes the Commission's findings that (1) approve the use of IBES growth rates in evaluating CAPM market rate of return while (2) simultaneously recognizing that Value Line growth rates may also be considered for this purpose.⁸⁵ New York Transco contends that, while NYAPP argues that Bloomberg values should be used instead, Bloomberg-derived beta values are dependent on criteria specified by an individual user, subject to manipulation, and available to only a select subset of investors that can afford subscription fees.⁸⁶

45. New York Transco states that its use of four financial models and the composition of the proxy group used to support its proposed base ROE value are adequately supported by Mr. McKenzie's testimony.⁸⁷ New York Transco asserts that its DCF and CAPM analyses were performed consistently with the Commission's Order on Remand, and that Mr. McKenzie's testimony showing that the risk premium method is widely relied upon to determine cost equity by the academic and investment communities in addition to regulatory proceedings supports the use of the risk premium method.⁸⁸ New York Transco further argues that NYAPP did not provide any evidence, beyond asserting that ROE values determined through settlement negotiations are not based on market conditions, that would foreclose the use of the risk premium method. Additionally, New York Transco rejects NYAPP's concerns with the expected earnings approach, stating that the approach is well-supported and widely relied upon to evaluate investors' required returns.⁸⁹ New York Transco further rejects NYAPP's comparison of the proposed base ROE to the rate granted to MISO transmission owners in the Order on Remand as inappropriate, stating that an ROE should be determined based on the facts specific to each proceeding, and that there is a vast difference between the Order on Remand and the instant proceeding.⁹⁰

4. Commission Determination

46. Our preliminary analysis indicates that New York Transco's proposed base ROE of 10.9% has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that New York

⁸⁵ *Id.* at 10-11.

⁸⁶ *Id.* at 11.

⁸⁷ *Id.*

⁸⁸ *Id.* at 12 (citing Order on Remand, 189 FERC ¶ 61,036).

⁸⁹ *Id.* at 13.

⁹⁰ *Id.* at 14 (citing McKenzie test. at 3).

Transco's proposed 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 the proposed base ROE for filing, suspend it for a nominal period, to be effective March 12, 2025, subject to refund and to the outcome of hearing and settlement judge procedures.

47. While we are setting the proposed base ROE for a trial-type evidentiary hearing,⁹¹ 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.⁹² 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.⁹³ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge on the status of settlement discussions. Based on this report, the Chief Judge shall provide additional time to continue settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) New York Transco's proposed Formula Rate revisions are hereby accepted, to be effective March 12, 2025, as discussed in the body of this order.

(B) New York Transco's proposed base ROE is hereby accepted for filing, and suspended for a nominal period, to be effective March 12, 2025, subject to refund, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations

⁹¹ Trial Staff is a participant in the hearing and settlement judge procedures. See 18 C.F.R. § 385.102(b), (c) (2024).

⁹² 18 C.F.R. § 385.603 (2024).

⁹³ If 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>).

under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of New York Transco's proposed base ROE, 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 (D) and (E) below.

(D) 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.

(E) Within 30 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 the 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.

(F) If settlement judge procedures fail and trial-type evidentiary hearings are 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 prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426, or remotely (by telephone or electronically), as appropriate. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.