

159 FERC ¶ 62,075
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF ENERGY MARKET REGULATION

New York Power Authority,
Docket Nos. ER17-1010-000
and EL17-67-000

New York Independent System Operator, Inc.,
Docket No. EL17-67-000

Issued: April 21, 2017

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

New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144

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

Robert E. Fernandez
Counsel for the New York Independent System Operator, Inc.

Reference: Order Accepting Updated Depreciation Rates Filing and Establishing
Hearing and Settlement Judge Procedures

Dear Mr. Bachman and Mr. Fernandez:

On February 22, 2017, the New York Independent System Operator, Inc. (NYISO) submitted, on behalf of the New York Power Authority (NYPA), and pursuant to section 205 of the Federal Power Act (FPA),¹ updated depreciation rates for NYPA to be used in calculating transmission charges in NYPA's formula rate under NYISO's Open Access

¹ 16 U.S.C. § 824d (2012).

Transmission Tariff (OATT).² You explain that this single-issue section 205 filing is consistent with Commission precedent and the terms of NYPA's recent uncontested Offer of Settlement approved in Docket No. ER16-835-000 (Settlement).³ You explain that the proposed change in depreciation rates would produce an overall decrease of \$4.6 million in annual depreciation expense for all accounts compared to rates currently in effect, if the proposed rates were used to compute the 2015 annual depreciation accruals.⁴ You request waiver of the Commission's 60 day notice requirement⁵ to allow the proposed depreciation rates to take effect on March 1, 2017, consistent with the terms of the Settlement.⁶

NYPA's filing was noticed on February 22, 2017, with interventions and protests due on or before March 15, 2017. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁷ any notices of intervention and timely filed, unopposed motions to intervene serve to make the filer a party to this proceeding.⁸

The City of New York challenges the service lives and salvage factors that NYPA selected for some accounts arguing that they are either not consistent with NYPA's empirical data or not consistent with relevant industry experience. The City of New York asserts that the proposed tariff revisions may result in rates that are not just and reasonable.

Preliminary analysis indicates that NYPA's updated depreciation rates, which are included in NYISO's OATT and are subject to the Commission's FPA section 206 authority,⁹ have not been shown to be just and reasonable and may be unjust,

² New York Independent System Operator, Inc., NYISO Tariffs, [NYISO OATT, 14.2.3-14.2.3.1 OATT Att H - NYPA Formula Rate, 2.0.0.](#)

³ Transmittal Letter at 1 & n.5 (citing *New York Independent System Operator, Inc.*, 158 FERC ¶ 61,043, at P 4 (2017) (citing Section 3.4 of the Settlement)).

⁴ *Id.* at 4.

⁵ 18 C.F.R. § 35.3(a) (2016).

⁶ Transmittal Letter at 7.

⁷ 18 C.F.R. § 385.214 (2016).

⁸ The Chief Administrative Law Judge or presiding officer, as appropriate, may rule on any late and opposed motions to intervene. *See* 18 C.F.R. §§ 375.304(a), 385.102(a), 385.214(c) and (d), and 385.504(b)(12) (2016). *See also Cities of Anaheim*, 101 FERC ¶ 61,392, at P 13 (2002) (Chief Administrative Law Judge may, but settlement judges may not, rule on motions to intervene).

unreasonable, unduly discriminatory or preferential, or otherwise unlawful. NYPA's updated depreciation rates thus raise issues of material fact that cannot be resolved based on the existing record, and are more appropriately addressed in hearing and settlement judge procedures. Additionally, a further rate decrease may be appropriate. Accordingly, 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 under the FPA (18 C.F.R. Chapter I), and pursuant to the authority delegated to the Director, Division of Electric Power Regulation – East, Office of Energy Market Regulation, in the Commission's February 3, 2017 Order Delegating Further Authority to Staff in Absence of Quorum,¹⁰ because NYPA is proposing a change in depreciation rates resulting in a rate reduction, NYPA's updated depreciation rates are accepted for filing, to become effective March 1, 2017, as requested,¹¹ but because a further rate decrease may be warranted, an FPA section 206 proceeding is instituted and public hearing shall be held in Docket No. EL17-67-000 with respect to the justness and reasonableness of NYPA's depreciation rates and NYISO's OATT, which includes those updated depreciation rates.¹² Because NYPA is not subject to the Commission's refund authority under section 206 of the FPA, a refund obligation is not established in this proceeding.¹³

⁹ 6 U.S.C. § 824e (2012). *ISO New England Inc.*, 153 FERC ¶ 61,343 (2015), *order on reh'g*, 154 FERC ¶ 61,230, at PP 3-6 (2016). *Accord Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1114 (D.C. Cir. 2002) (stating that "FERC may analyze and consider the rates of non-jurisdictional utilities to the extent that those rates affect jurisdictional transactions") (citing *S.C. Pub. Serv. Auth.*, 75 FERC ¶ 61,209, at 61,696 & n.7 (1996); *Pub. Utils. Comm'n v. FERC*, 660 F.2d 821, 826 (D.C. Cir. 1981)); *Transmission Agency of Northern California v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*) (upholding FERC's evaluation of each component of non-jurisdictional entity's transmission revenue requirement under the FPA section 205 just and reasonable standard to ensure that the California Independent System Operator, Inc.'s rate is just and reasonable).

¹⁰ *Agency Operations in the Absence of a Quorum*, 158 FERC ¶ 61,135 (2017).

¹¹ NYPA is granted waiver of the Commission's 60-day notice requirement. 18 C.F.R. § 35.11 (2016).

¹² NYPA's entire filing is set for hearing. Issues to be explored at hearing are not limited to those noted here.

¹³ *TANC*, 495 F.3d at 673-74. *See New York Independent System Operator, Inc.*, 140 FERC ¶ 61,240, at PP 29-31 (2012).

Section 206(b) of the FPA requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision. As the section 206 proceeding in Docket No. EL17-67-000 is being set for hearing and settlement judge procedures, it is expected that, if the proceeding does not settle, the Commission would be able to render a decision within eight months of the date of filing of briefs opposing exceptions to the Initial Decision. Thus, if the Presiding Judge were to issue an Initial Decision by April 30, 2018, if the proceeding does not settle, the Commission would be able to render a decision by February 28, 2019.

While this matter is set for a trial-type evidentiary hearing, parties are encouraged to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, the hearing will be held in abeyance, and pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, the Chief Administrative Law Judge is directed to appoint a settlement judge in these proceedings within fifteen (15) 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 the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding.¹⁴ The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability. If the participants decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

Within thirty (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 the 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 sixty (60) days thereafter, informing the Commission and the Chief Judge of the participants' progress toward settlement.

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 fifteen (15) 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,

¹⁴ 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 the Commission's judges and a summary of their background and experience at <http://www.ferc.gov/about/offices/oaljdr/oalj-dj.asp>.

NE, Washington, DC 20426. 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.

The Secretary shall promptly publish in the Federal Register a notice of the initiation of the proceeding under section 206 of the FPA in Docket No. EL17-67-000.

Any interested person desiring to be heard in Docket No. EL17-67-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure,¹⁵ within 21 days of the date of issuance of this order.

The acceptance for filing herein shall not be construed as constituting approval of the referenced filing or of any rate, charge, classification, or any rule, regulation, or practice affecting such rate or service contained in your filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against NYPA or NYISO.

Consistent with Rule 1902 of the Commission's Rules of Practice and Procedure,¹⁶ requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order.¹⁷

Sincerely,

Kurt M. Longo, Director
Division of Electric Power
Regulation – East

¹⁵ 18 C.F.R. § 385.214 (2016).

¹⁶ 18 C.F.R. § 385.1902 (2016).

¹⁷ 18 C.F.R. § 385.713 (2016).