

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Consolidated Edison Company of New York, Inc. New York Independent System Operator, Inc.	Docket Nos. ER23-2212-000 ER23-2212-001
New York State Electric & Gas Corp. New York Independent System Operator, Inc.	ER23-1816-001 ER23-1816-002
Rochester Gas and Electric Corp. New York Independent System Operator, Inc.	ER23-1817-001 ER23-1817-002
Central Hudson Gas and Electric Corp. New York Independent System Operator, Inc.	ER23-2507-001 (not consolidated)

**EXPLANATORY STATEMENT
IN SUPPORT OF JOINT OFFER OF SETTLEMENT**

Pursuant to Rule 602 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.602, Central Hudson Gas and Electric Corp. (“Central Hudson”), Consolidated Edison Company of New York, Inc. (“Consolidated Edison”), New York State Electric & Gas Corp. (“NYSEG”), and Rochester Gas and Electric Corp. (“RG&E”) (collectively, the “Transmission Owners” and each a “Transmission Owner”), on behalf of the Settling Parties,¹ submits this explanatory statement in support of the Joint Offer of Settlement (“Settlement”). The Settlement resolves the single issue with respect to Rate Schedule

¹ The Settling Parties include each of the Transmission Owners, the New York State Public Service Commission (“NYSPSC”), Municipal Electric Utilities Association of New York (“MEUA”), New York Association of Public Power (“NYAPP”), and New Jersey Division of Rate Counsel (“NJDRRC”). The Settling Parties attended each of the settlement conferences for the proceedings to which they are a party or participant, including all the settlement conferences convened under the coordinated procedures concerning the ceiling ROE value addressed in the Settlement. The New York Independent System Operator, Inc.’s (“NYISO”) participation in this proceeding is limited solely to its role as Tariff Administrator, and the NYISO takes no position with respect to the substantive issues in the Settlement.

19 under the NYISO Open Access Transmission Tariff (“OATT”) that was set for hearing and settlement procedures in Docket Nos. ER23-2212-000, -001, ER23-1816-001, -002, ER23-1817-001, -002, and ER23-2507-001, while the issue set for hearing and settlement procedures in Docket Nos. ER23-2212-000, -001 with respect to NYISO OATT Rate Schedule 10 is being addressed separately and is not part of this Settlement. The Settlement identifies a stated return on equity (“ROE”) that will act as a “ceiling” ROE applicable to each of the respective Transmission Owners’ formula rate templates under Rate Schedule 19.²

I. BACKGROUND

The NYISO administers and oversees an OATT that includes several rate schedules that allow transmission owners and developers in New York to recover the costs of transmission projects. Each of these proceedings involves the ceiling ROE that will apply for each of the Transmission Owners under NYISO OATT Rate Schedule 19, which facilitates the recovery of invested capital and expenses for certain transmission infrastructure.

Rate Schedule 19 and each of the Transmission Owners’ ceiling ROE proposals set for hearing and settlement procedures in these proceedings stem from an order by the Commission in 2022 accepting Rate Schedule 19 to the NYISO OATT along with a Cost Sharing and Recovery Agreement (“CSRA”) entered into by the Transmission Owners identified above along with other load-serving transmission owners in New York State (i.e., Niagara Mohawk Power Corp., Orange and Rockland Utilities Inc., Long Island Power Authority, and New York Power Authority) and,

² See *Consol. Edison Co. of N.Y., Inc.*, 185 FERC ¶ 61,091 (2023) (“Consolidated Edison Formula Rate Order”); *N.Y. State Elec. & Gas Corp.*, 185 FERC ¶ 61,164 (2023) (“NYSEG/RG&E Formula Rate Order”); *Cent. Hudson Gas & Elec. Corp.*, 185 FERC ¶ 61,217 (2023) (“Central Hudson Formula Rate Order”) (collectively, the Consolidated Edison Formula Rate Order, the NYSEG/RG&E Formula Rate Order, and the Central Hudson Formula Rate Order are referred to collectively as the “Formula Rate Orders”).

for limited purposes, the NYSPSC.³ The CSRA is a voluntary participant funding agreement among all of these transmission owners to share the costs of transmission facility or upgrade projects selected and approved by the NYSPSC for state-wide cost allocation and recovery. More specifically, the CSRA and Rate Schedule 19 were developed to recover the costs of local transmission facilities and facility upgrades determined by the NYSPSC to address New York State climate and renewable energy goals as required by New York State law (“Schedule 19 Projects”).⁴

II. PROCEDURAL HISTORY

On May 3, 2023, NYISO filed with the Commission, on behalf of NYSEG and RG&E, proposed revisions to the NYISO OATT to add formula rate templates, associated informational protocols, and conforming OATT amendments addressing the derivation and recovery of the costs of eligible transmission projects under NYISO OATT Rate Schedule 19, including a proposed ceiling ROE. On December 4, 2023, the Commission accepted each of NYSEG and RG&E’s proposed Rate Schedule 19 formula rate templates, associated informational protocols, and conforming OATT amendments, with their proposed formula rate templates subject to further compliance⁵ and setting the proposed ceiling ROEs for hearing and settlement judge procedures.⁶ In addition, the NYSEG/RG&E Formula Rate Order granted motions to intervene submitted by the NYSPSC, MEUA and NYAPP in each of Docket Nos. ER23-1816 and ER23-1817.⁷

³ *Consol. Edison Co. of N.Y., Inc. et al.*, 180 FERC ¶ 61,106 (2022) (“CSRA/Schedule 19 Order”).

⁴ Such laws include the Accelerated Renewable Energy Growth and Community Benefit Act and the Climate Leadership and Community Protection Act. *See* 2019 N.Y. Sess. Laws, ch. 106; 2020 N.Y. Sess. Laws, ch. 58, Part JJJ.

⁵ *See* NYSEG/RG&E, Compliance Filing, Docket Nos. ER23-1816 and ER23-1817 (filed Jan. 23, 2024).

⁶ *See* NYSEG/RG&E Formula Rate Order, at PP 2, 30, 48, and 55-56.

⁷ *See id.*, at P 15.

On June 22, 2023, NYISO filed with the Commission, on behalf of Consolidated Edison, revisions to the NYISO OATT to add Consolidated Edison's proposed formula rate template, associated informational protocols, and conforming OATT amendments addressing the derivation and recovery of the costs for eligible transmission projects, including a ceiling ROE relating to NYISO OATT Rate Schedule 19 and a base ROE relating to NYISO OATT Rate Schedule 10. On October 31, 2023, the Commission accepted Consolidated Edison's proposed amendments to Rate Schedules 19 and 10, effective August 23, 2023, as well as the associated informational protocols, subject to ministerial compliance filings,⁸ which have been submitted and are pending.⁹ With respect to ROE, the Commission established hearing and settlement judge procedures for the proposed ceiling ROE (under Rate Schedule 19) and base ROE (under Rate Schedule 10). In addition, the Consolidated Edison Formula Rate Order granted motions to intervene submitted by NYAPP and NJDRC.¹⁰ On January 31, 2024, the Chief Judge granted, pursuant to 18 C.F.R. § 385.214, an unopposed motion to intervene filed by the NYSPSC.¹¹

On July 28, 2023, NYISO filed with the Commission, on behalf of Central Hudson, proposed revisions to the NYISO OATT to add Central Hudson's proposed formula rate template, associated informational protocols, and conforming OATT amendments addressing the derivation and recovery of the costs of eligible transmission projects under NYISO OATT Rate Schedule 19, including a proposed ceiling ROE. On December 22, 2023, the Commission accepted Central

⁸ See Consolidated Edison Formula Rate Order, at PP 2, 55 and 62.

⁹ See Consolidated Edison, Revisions to OATT Rate Schedules 19 and 10, Docket No. ER23-2212-002 (filed Jan. 4, 2024).

¹⁰ See Consolidated Edison Formula Rate Order, at P 13.

¹¹ See *Order of Chief Judge Granting Late Motion to Intervene of NYSPSC*, Docket No. ER23-2212-000 (Jan. 31, 2024).

Hudson’s proposed Rate Schedule 19 formula rate template, associated informational protocols, and conforming OATT amendments, with its proposed formula rate template subject to further compliance and setting the proposed ceiling ROE for hearing and settlement judge procedures.¹² In addition, the Central Hudson Formula Rate Order granted a motion to intervene submitted by NYAPP.¹³

On January 16, 2024, the Transmission Owners filed with the Chief Judge an *Unopposed Joint Motion for Coordinated Settlement Proceedings* requesting appointment of a common Settlement Judge for each of their respective proceedings. In support of the motion, the Transmission Owners as the Joint Movants explained that each of their respective settlement judge proceedings “have near-complete participant overlap, share a common issue referred for settlement procedures, and [involve] each of the Joint Movants rely[ing] on substantially identical expert testimony from the same expert witness.”¹⁴ An *Order of Chief Judge Partially Granting motion and Making Substitute Designation of Settlement Judge* was issued on January 25, 2024, designating Judge Patricia M. French as the Settlement Judge for each of the above-captioned settlement proceedings, noting that the individual matters are not formally consolidated under 18 C.F.R. § 385.503, and may be coordinated for purposes of settlement proceedings.¹⁵

¹² See Central Hudson Formula Rate Order, at PP 2, 24, 29-30, 33 and 35.

¹³ See *id.*, at P 15.

¹⁴ New York State Electric & Gas Corp., *et al.* Motion for Joint Proposed Protective Order to Facilitate Coordinated Settlement Proceedings, Docket Nos. ER23-2212-000, et seq. (March 29, 2024).

¹⁵ See *Order of Chief Judge Partially Granting Motion and Making Substitute Designation of Settlement Judge*, Docket Nos. ER23-2212-000, -001, ER23-1816-001, -002, ER23-1817-001, -002 and ER23-2507-001 (Jan. 25, 2024). Judge French was already the designated Settlement Judge for ER23-2212 (Consolidated Edison) and ER23-2507 (Central Hudson) and replaced Judge Joel deJesus in ER23-1816 and ER23-1817 (NYSEG and RG&E). See *Order of Chief Judge Designating Settlement Judge*, Docket Nos. ER23-2212-000, 001 (Nov. 9, 2023) (designating Settlement Judge French); *Order of Chief Judge Designating Settlement Judge*, Docket No. ER23-2507-001 (Jan. 3, 2024); *Order of Chief Judge Designating Settlement Judge*, Docket Nos. ER23-1816-000, -001 (Dec. 12, 2023) (designating Settlement Judge deJesus).

The Settling Parties and Commission Trial Staff engaged in several settlement discussions starting in December 2023 (in Docket Nos. ER23-2212-000, -001) and continuing on a coordinated basis in January 2024, continuing to April 26, 2024, when a settlement in principle was reached, with the Offer of Settlement now fully executed.

III. ITEMS INCLUDED IN SETTLEMENT PACKAGE

Accompanying this Explanatory Statement are the Settlement and its Appendices A.1 through A.4 that include indicative revised tariff records in clean and marked format for implementing the Settlement under each of the Transmission Owner's Rate Schedule 19 formula rate templates. The tariff records attached to the Settlement show in clean and marked format the terms of the Settlement.

IV. SUMMARY OF SETTLEMENT

The Settlement represents a complete and final settlement on all issues regarding the Transmission Owners' respective ceiling ROE values to be fixed in their Schedule 19 formula rate templates that were accepted, subject to hearing and settlement procedures by the Commission. A summary of the provisions of the Settlement is provided below. The Settlement binds each of the Settling Parties to the terms and conditions included therein.

Article 1 sets forth the procedural history of these proceedings.

Article 2 outlines the Settlement's scope, clarifying that it only applies to Transmission Owners' formula rate templates under Schedule 19, as approved by the Commission in the Formula Rate Orders. Consolidated Edison's filing in Docket Nos. ER23-2212-000, -001 includes a formula rate template under NYISO OATT Rate Schedule 10, but the Settlement specifies that it does not resolve or address the issues set for hearing and settlement related to Rate Schedule 10. By contrast, the "ceiling" ROE in the NYISO OATT Rate Schedule 19 is only effective if the

NYSPSC-authorized ROE were to exceed the “ceiling” value approved by the Commission for a given Transmission Owners’ Schedule 19 Projects.

Article 3 details the Settlement’s terms and conditions. Section 3.2 sets the ceiling ROE at 10.60% for each Transmission Owner’s Rate Schedule 19 formula rate templates. It also clarifies that Schedule 19 Projects will not request or receive any incentive adders to the ceiling ROE. The Settlement resolves the sole issue designated for hearing and settlement procedures concerning Schedule 19 formula rate templates in the referenced proceedings.

Article 4 addresses the implementation filings that the Transmission Owners may make to implement the terms of the Settlement. The Settling Parties agree to support or not oppose those implementation filings reflecting the terms of the Settlement.

Article 5 provides that the Settlement shall become effective and binding on the Settling Parties on the date of Commission approval of the Settlement without modification or condition.

Article 6 provides that, consistent with longstanding Commission precedent,¹⁶ the Settlement will not constitute precedent in any future proceedings. In addition, the Settling Parties commit that the agreed-to ceiling ROE shall not be represented by the Settling Parties as involving a base ROE, and that the Settlement shall not be used as evidence that a particular method is a “long standing practice” or a “settled practice.”

¹⁶ See *Flambeau Paper Corp.*, 53 FERC ¶ 61,063, at P 61,202 (1990) (“Settlements do not constitute precedents for any purpose, and are inappropriate to use as benchmarks, standards, or points of reference or departure.”); *Kelley v. FERC*, 96 F.3d 1482, 1489-90 (D.C. Cir. 1996) (citing *Off. of Consumers’ Couns. v. FERC*, 783 F.2d 206, 235 (D.C.Cir.1986)) (“We have previously admonished FERC for attempting to use uncontested settlements as precedent in later cases. . . . The converse follows: if FERC cannot use uncontested settlements as precedent, neither can its adversaries.”); *N.Y. Power Auth., et al.*, 105 FERC ¶ 61,102 (2003) (citing *Kelley*, 96 F.3d 1489-90 (1996)) (“It is well-established that settlements have no precedential value . . .”); see also *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services, et al.*, 130 FERC ¶ 61,197, at P 13 (2010) (same); *Nw. Pipeline Corp.*, 27 FERC ¶ 61,339, at P 61,657 (1984) (same).

Article 7 provides the standard of review to be applied for any proposed modification to the Settlement itself. The standard of review for any change to the Settlement proposed by a Settling Party, not the Commission, shall be the “public interest” application of the just and reasonable standard set forth by the Supreme Court of the United States.

Article 8 provides certain miscellaneous provisions and reservations of rights.

V. RESPONSE TO REQUIRED QUESTIONS

In accordance with the Chief Administrative Law Judge’s December 15, 2016, *Amended Notice to the Public on Information to be Provided with Settlement Agreements and Guidance on the Role of Settlement Judges*, the Settling Parties provide the following responses to the questions identified by the Chief Administrative Law Judge:

1. Does the settlement affect other pending cases?

No. The Settlement does not affect other pending cases. As noted above, Consolidated Edison also filed a proposed base ROE under its formula rate template amendments relating to NYISO OATT Rate Schedule 10 in the same submittal in Docket Nos. ER23-2212-000, -001, which was also set for hearing and settlement procedures. The Settlement does not resolve any issue in that Consolidated Edison proceeding with respect to Rate Schedule 10, which is proceeding under separate hearing and settlement judge procedures.

2. Does the settlement involve issues of first impression?

No. The Settlement does not involve issues of first impression.

3. Does the settlement depart from Commission precedent?

No. The Settlement does not depart from Commission precedent.

4. Does the settlement seek to impose a standard of review other than the ordinary just and reasonable standard with respect to any changes to the settlement that might be sought by either a third party or the Commission acting *sua sponte*?

No, the Settlement provides that any changes sought by a third party of the Commission acting *sua sponte* are subject to the ordinary just and reasonable standard of review.

VI. CONCLUSION

The Settlement fully resolves all the issues set for hearing and settlement procedures in Commission Docket Nos. ER23-1816-001, -002, ER1817-001, -002 and ER23-2507-001. The Settlement also fully resolves all the issues set for hearing and settlement procedures in Commission Docket Nos. ER23-2212-000, -001 with respect to the ceiling ROE for use in Consolidated Edison's formula rate tariff under NYISO OATT Rate Schedule 19. Commission approval of the Settlement will avoid the expense and risk associated with hearing proceedings and subsequent litigation. For these reasons, the Settling Parties respectfully request that the Settlement Judge certify the Settlement to the Commission as soon as possible following the comment period and that the Commission approve the Settlement without condition or modification as soon as possible following certification.

Respectfully submitted,

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