

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

New York Transco, LLC)	
)	ER24-232-000
)	ER24-232-001
)	

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

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or the “Commission”),¹ New York Transco LLC (“Transco”), on behalf of the active Settling Parties (each a “Settling Party” and collectively the “Settling Parties”),² submits this explanatory statement in support of an Uncontested Offer of Settlement (“Settlement” or “Settlement Agreement”) to resolve all of the issues set for hearing or pending in requests for rehearing and/or Petitions for Review in Docket No. ER24-232-000, et al., with respect to Transco’s development of the Propel New York Energy Alternate Solution 5 Project (“Propel NY Energy Project” or “Project”).

¹ 18 C.F.R. § 385.602.

² The Settling Parties include the following: Transco; New York State Public Service Commission (“NYSPSC”); City of New York; Multiple Intervenors (an unincorporated association of approximately 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located in New York State) and its members; New York Association of Public Power and New York Power Authority. Long Island Power Authority participated in the settlement procedures and does not oppose the settlement. In accordance with their customary way of participating in settlements, FERC Staff is not a “Settling Party,” but participated in the proceeding. The participation of the New York Independent System Operator, Inc. (“NYISO”) 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

I. INTRODUCTION

Transco is a New York limited liability company that develops high voltage bulk transmission facilities and maintains those projects under the functional and operational control of the New York Independent System Operator, Inc. (“NYISO”).³ Since Transco’s inception, New York State has and continues to implement initiatives to encourage the development of clean energy to meet the New York “Clean Energy Standard” and the New York Climate Leadership and Community Protection Act (“CLCPA”) requirements, and development of new transmission facilities to support the State’s goals are an integral part of that effort. Transco’s corporate objective is to plan, develop and own new high-voltage electric transmission projects designed to reduce energy prices for consumers, facilitate the growth of renewable generation resources, and provide long-term grid reliability and resiliency. Transco is a transmission-owning member of NYISO and recovers its revenue requirements in accordance with the formula rate and formula rate implementation protocols included in Attachment DD (“Formula Rate”) and the Transco Facilities Charge under Rate Schedule 13 of the NYISO Open Access Transmission Tariff (“OATT”).

This proceeding was initiated by Transco to establish the comprehensive rate recovery mechanism and procedures for Transco’s investment in the Propel NY Energy Project. The Propel NY Energy Project is a complex and multi-component \$2.8 billion FERC Order No. 1000⁴ electric

³ Transco is owned by the following affiliates of the “New York Transmission Owners”: Consolidated Edison Transmission, LLC, Grid NY LLC; Avangrid Networks New York TransCo, LLC; and Central Hudson Electric Transmission LLC.

⁴ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, III FERC Stats. & Regs., Regs. Preambles ¶ 31,323 (2011), *order on reh’g and clarification*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *pets. for review denied sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (per curiam); *see also New York Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059 (2013), *order on reh’g*, 151 FERC ¶ 61,040 (2015) (“Order No. 1000”).

transmission project selected by the NYISO to fulfill New York State policy initiatives for offshore wind generation development and to address the need to bolster transmission capacity and reliability and reduce congestion. Specifically, on October 27, 2023, Transco submitted a filing pursuant to sections 205 and 219 of the Federal Power Act (“FPA”),⁵ Part 35 of the Commission’s regulations,⁶ Order No. 679,⁷ and the Commission’s November 15, 2012 policy statement on transmission incentives,⁸ requesting the following: (i) approval of a proposed cost allocation methodology associated with its investment in the Project; (ii) approval of a proposed cost containment mechanism for recovery of Included Capital Costs that was part of the Project solicitation submission; (iii) approval to establish a base return on equity (“ROE”) of 10.7% for the Propel NY Energy Project to be applied in the Transco formula rate set forth in Attachment DD (Section 36) of the NYISO OATT; (iv) approval of certain electric transmission rate incentive treatments for charges associated with its investment in the Propel NY Energy Project; and, (v) acceptance of additional minor revisions to Rate Schedule 13 (Section 6.13) and Attachment DD (Section 36) of the NYISO OATT to include the Project as an eligible transmission asset for cost recovery purposes (“Application”).

On December 26, 2023, the Commission issued an order accepting the cost allocation methodology and cost containment proposal.⁹ With respect to Transco’s request for incentive rate

⁵ 16 U.S.C. §§ 824d and 824s.

⁶ 18 C.F.R. Part 35 (2022).

⁷ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 Fed. Reg. 43,294 (July 31, 2006) FERC Stats. & Regs. ¶ 31,222, *order on reh’g*, Order No. 679-A, 72 Fed. Reg. 1152 (Jan. 10, 2007) FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007).

⁸ *Promoting Transmission Investment through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (“Policy Statement”).

⁹ *New York Transco LLC, et al.*, 185 FERC ¶ 61,222 at PP 20, 28 (2023); Ordering Paragraph (A) (2023) (“December 26 Order”).

treatments, the Commission granted Transco’s request to recover 100% of prudently incurred costs in the event the Project must be cancelled or abandoned for reasons beyond Transco’s control and its request to include 100% of construction work in progress in ratebase during the development and construction phase of the Project.¹⁰ The Commission also granted the ability for Transco to apply a 75 basis-point adder to its base ROE component for its investment in the Project to compensate for the significant risks and challenges associated with the development of the Project (“Risks and Challenges Adder”); and to apply a 50 basis-point adder to its base ROE component for its investment in the Project for Transco’s voluntary participation in NYISO (“RTO Participation Adder”).¹¹ Finally, the Commission also accepted Transco’s requested 10.7% base ROE value for the Project, subject to refund and the outcome of hearing and settlement judge procedures.¹²

By order dated January 4, 2024, Acting Chief Administrative Law Judge Andrew Satten issued an order designating Judge Patricia M. French as the Settlement Judge.¹³ Virtual settlement conferences were held before Judge French on January 31, April 23, June 5, June 12, and June 17, 2024.¹⁴ During the period from January 31 through March 15, 2024, informal data requests and discovery were exchanged between the participants in the proceeding. The Settling Parties

¹⁰ *Id.* at PP 46, 51; Ordering Paragraph (B).

¹¹ *Id.* at PP 70, 57; Ordering Paragraphs (C) and (D). The Risks and Challenges Adder and the RTO Participation Adder were approved on the condition that the resulting ROE (base ROE plus all granted incentives) be within the applicable zone of reasonableness as may be determined in the hearing and settlement judge procedures.

¹² *Id.* at PP 38-39; Ordering Paragraphs (E), (F) and (G).

¹³ *See, Order of Chief Judge Designating Settlement Judge*, Docket No. ER24-232-000 (January 4, 2024).

¹⁴ *See, Order to Convene First Settlement Conference*, issued January 10, 2024; *Order to Convene Second Settlement Conference*, issued February 2, 2024; *Order Scheduling Third and Fourth Settlement Conferences*, issued April 23, 2024; *Order Scheduling Fifth Settlement Conference*, issued June 13, 2024.

exchanged several rounds of counter-proposals up to and including June 17, 2024. On June 17, the Settling Parties agreed to a settlement in principle as reflected in the Uncontested Offer of Settlement.¹⁵

On January 25, 2024, NYSPSC submitted a Request for Rehearing of the December 26 Order seeking rehearing of the Commission's determination to grant the RTO Participation Adder. Transco submitted a Motion for Leave to Answer and Answer to the NYSPSC Request for Rehearing on February 16, 2024. On February 26, 2024, the Commission issued a *Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration* in which the Commission noted that it will address the request for rehearing in a future order.¹⁶ On April 25, 2024, the NYSPSC filed a Petition for Review in the United States Court of Appeals for the Second Circuit. Transco submitted a Motion For Leave to Intervene in the Second Circuit action on May 24, 2024.

Also on May 24, 2024, FERC issued an *Order Establishing Briefing Procedures* establishing a briefing schedule to address the following limited question: What is the effect, if any, of section 70 of the New York Public Service Law on New York Transco's eligibility for the RTO Participation Adder under Order No. 679?¹⁷ On May 31, 2024, FERC submitted an unopposed motion with the Second Circuit Court of Appeals requesting that the proceeding be held in abeyance pending the outcome of and subsequent FERC Order on the issue established by

¹⁵ In accordance with Ordering Paragraph (H) of the December 26 Order, Administrative Law Judge French submitted Status Reports to the Commission and the Chief Judge on March 4, 2024; May 2, 2024; and June 20, 2024.

¹⁶ *New York Transco, LLC, et al.*, 186 FERC ¶ 62,089 (2024).

¹⁷ *New York Transco LLC, et al.*, 187 FERC ¶ 61,108 (2024) ("Briefing Order").

FERC in the Briefing Order.¹⁸ The Second Circuit Court of Appeals granted this motion on June 12, 2024.¹⁹ On June 18, 2024, Transco submitted an Emergency Motion to Hold the Proceeding in Abeyance with FERC in Docket No. ER24-232 noting that the Settling Parties had agreed to a settlement in principle and requesting that the briefing schedule be held in abeyance pending the filing and Commission action on the settlement. On June 21, 2024, the Commission granted the motion.²⁰

II. SUMMARY OF SETTLEMENT AGREEMENT

The Settling Parties have engaged in settlement negotiations resulting in a Settlement Agreement that comprehensively resolves all issues in this proceeding. A summary of the provisions of the Settlement Agreement is included below. The Settlement Agreement binds each of the Settling Parties to the terms and conditions included therein.

Article I sets forth the procedural history of this proceeding.

Article II describes the scope of the Settlement Agreement. Article 2.1 clarifies that the Settlement Agreement resolves all outstanding issues pertaining to Transco and the Propel NY Energy Project in Docket No. ER24-232-000, *et al.*, including those conditionally accepted and/or set for hearing in Ordering Paragraphs (C), (D), and (E) of the Commission's December 26 Order as well as pending in requests for rehearing and/or petitions for review before the United States Court of Appeals for the Second Circuit.

¹⁸ *Unopposed Motion of Respondent Federal Energy Regulatory Commission to Hold Case in Abeyance Pending Further Agency Proceedings*, Case 24-1126, filed May 31, 2024.

¹⁹ *Order Granting Motion*, Case 24-1126, issued June 12, 2024.

²⁰ As noted in the Settlement Agreement, the Settling Parties have agreed to a comprehensive settlement in this proceeding and, therefore, the issue referenced by the Commission in the Briefing Order is now moot.

Article III sets forth the terms and conditions of the Settlement Agreement. Article 3.1 confirms that the Settling Parties agree to be bound by the terms of the Settlement Agreement. Article 3.2 establishes that the Base ROE that will apply solely for the Propel NY Energy Project is 10.3% which will remain in effect for the period of December 27, 2023 through May 31, 2030. After May 31, 2030, the Base ROE shall continue in effect unless or until modified by the Commission pursuant to Sections 205 or 206 of the FPA.

Article 3.3 describes the ROE incentive rate treatments that will apply to the Project. Specifically, the Settling Parties have agreed that a total of 100 basis points in ROE incentives shall apply to the Project. The December 26 Order approved a 75-basis-point Risks and Challenges Adder and a 50-basis-point ROE incentive adder for Transco's voluntary participation in NYISO ("RTO Participation Adder"). The Settling Parties agree to apply the 75-basis-point Risks and Challenges Adder to Transco's cost recovery. The Settling Parties have also agreed to settle the pending review of the RTO Participation Adder and request that the Commission apply a 25-basis-point ROE incentive adder ("Grid Enhancement Adder") to reflect the Project's benefits in ensuring and enhancing reliability; relieving chronic congestion; and, reducing the cost of delivered power by providing additional transfer capability and operating flexibility, as well as the increase in capacity benefits and avoided capital costs as enumerated in the June 13, 2023 Long Island Offshore Wind Export Public Policy Transmission Plan. Together, these two ROE incentive adders (the Risks and Challenges Adder and the Grid Enhancement Adder ("ROE Incentive Adders")) shall constitute the total 100-basis-point ROE incentives applied to the Project. After May 31, 2030, in accordance with FERC's incentive rate policies, the ROE Incentive Adders shall continue in effect unless and until modified by FERC pursuant to Section 206 of the FPA; provided, however, the Settling Parties agree not to seek any modification of the ROE Incentive

Adders on the basis of any argument that an RTO Participation Adder should or should not apply, at any time (including after May 31, 2030) with respect to the Propel NY Energy Project. These ROE incentive rate treatments are consistent with the Commission's ROE incentive rate policy as reflected in 18 C.F.R. § 35.35, including, without limitation, 18 C.F.R. §§ 35.35(d)(1)(i) and 35.35(d)(1)(viii)).

Article 3.4 establishes that the effective ROE value for the Project is 11.3% and the agreement among the Settling Parties that the effective ROE is within the applicable zone of reasonableness. Article 3.5 describes the stay-out period, during which the Settling Parties agree not to make any filing pursuant to sections 205 or 206 of the FPA that seeks to change the base ROE value of 10.3%, effective ROE value of 11.3%, or any other term inconsistent with the terms of the Settlement before May 31, 2030.

In Article 3.6, the Settling Parties agree either to support or not to oppose the Settlement Agreement and not to take any position adverse to the express terms of the Settlement Agreement in any proceedings before the Commission or before the NYSPSC that relate to the Settlement and Transco. Article 3.6 also recognizes that the Settlement Agreement does not restrict Settling Parties' ability to question Transco's application of the formula rate template or implementation protocols or the actual costs proposed to be recovered and related to the Project, whether through annual updates to Transco's formula rates or otherwise, in accordance with Transco's Formula Rate Implementation Protocols.

Article 3.7 requires NYSPSC to withdraw its pending request for rehearing in Docket No. ER24-232 and the Petition for Review filed in the United States Court of Appeals for the Second Circuit in Case 24-1126 within 30 days of the Commission's approval of the Settlement.

Article 3.8 provides that to the extent the Commission does not approve all aspects of this Settlement Agreement, the Settling Parties will have 30 days to withdraw their support for the Settlement Agreement.

Articles IV, V, VI, and VII address the general provisions of the Settlement Agreement including effective date, precedential effect and standard of review. Article 4.1 states that the Settlement shall be effective on the date on which the Commission issues an order approving the Settlement without modification. Article 5.1 provides that the Settlement shall not constitute a precedent in any future proceeding.

Article 6.1 establishes that the standard of review for any change to the Settlement proposed by a Settling Party shall be the “public interest” application of the just and reasonable standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956), and *Fed. Power Comm’n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified in *Morgan Stanley Capital Grp., Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty., Wash.*, 554 U.S. 527 (2008), and refined in *NRG Power Mktg. v. Maine Pub. Utils. Comm’n*, 558 U.S. 165 (2010). The ordinary just and reasonable standard of review (rather than the “public interest” standard), as clarified in *Morgan Stanley Capital Grp., Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty., Wash.*, 554 U.S. 527 (2008), shall apply for changes to the Settlement sought by FERC acting *sua sponte*, the Settling Parties acting unanimously, or at the request of any non-settling party or a non-party to this proceeding.

Article VII contains certain miscellaneous provisions and reservations of rights.

III. RESPONSES 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.

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. Article 6.1 of the Settlement provides that any changes sought by a third party or the Commission acting *sua sponte* are subject to the ordinary just and reasonable standard of review (rather than the “public interest” standard) as clarified in *Morgan Stanley Capital Grp., Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty., Wash.*, 554 U.S. 527 (2008).

IV. CONCLUSION

The Settlement Agreement fully resolves all issues regarding Transco’s Propel NY Energy Project that were set for hearing or are the subject of pending requests for rehearing or in a Petition for Review of Commission orders in Docket No. ER24-232-000, et al., in a fair and reasonable manner that is in the public interest. Commission approval of the Settlement will avoid the expense and risk associated with hearing proceedings and any subsequent litigation. For these reasons, Transco respectfully requests that the presiding Administrative Law Judge certify the Settlement Agreement to the Commission as soon as possible following the comment period and that the

Commission approve the Settlement Agreement without condition or modification at the earliest possible date following certification.

Respectfully submitted,

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