

Attachment I

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

New York Independent System)	
Operator, Inc.)	
)	Docket Nos. EL17-67-000 &
New York Power Authority)	ER17-1010-000
)	

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

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. § 385.602 (2017), the New York Power Authority (“NYPA”) submits this explanatory statement in support of the Offer of Settlement (“Settlement”) to comprehensively resolve all issues set for hearing in the above-captioned dockets.

I. INTRODUCTION

NYPA is a corporate municipal instrumentality and a political subdivision of the State of New York, organized under the laws of New York, and operates pursuant to Title 1 of Article 5 of the New York Public Authorities Law.¹ NYPA is engaged in the generation, transmission, and sale of electric power and energy at wholesale and retail throughout New York, and is a founding member of the New York Independent System Operator, Inc. (“NYISO”). NYPA’s bulk power transmission system encompasses approximately 1,400 circuit miles and consists of facilities ranging from 115 kilovolts (“kV”) to 765 kV. As the largest state-owned power organization in

¹ NYPA is a “state instrumentality” within the definition of section 201(f) of the Federal Power Act (“FPA”) and therefore is exempt from the requirements of Part II of the FPA. 16 U.S.C. § 824(f).

New York, NYPA has taken responsibility for constructing, owning, and operating critical segments of transmission infrastructure throughout New York State.

In a proceeding initiated by NYPA in 2016 in Docket No. ER16-835-000 (“ER16-835”), FERC authorized amendments to the NYISO Open Access Transmission Tariff (“OATT”) to permit NYPA to recover its transmission system costs through a formula rate (“Formula Rate”). The ER16-835 proceeding was resolved through an uncontested offer of settlement filed by NYPA on September 30, 2016 (“Formula Rate Settlement”)² and approved by the Commission on January 19, 2017.³ In the Formula Rate Settlement, NYPA committed to make a single-issue filing at FERC to update the depreciation rates used in the Formula Rate. In satisfaction of this commitment, NYPA made that filing on February 22, 2017.⁴ Consistent with the Formula Rate Settlement, NYPA’s Depreciation Filing requested a March 1, 2017 effective date to commence booking depreciation accruals in accordance with the new depreciation rates, and further explained that depreciation accruals resulting from the new depreciation rates will first be captured in rates starting in July 2018, when NYPA’s annual transmission revenue requirement (“ATRR”) is revised during the 2018 annual update (“Annual Update”) utilizing 2017 year-end financial statements and accounting records.⁵

The Depreciation Filing was assigned to Docket No. ER17-1010-000. Motions to intervene were filed by: City of New York (“City”); Municipal Electric Utilities Association of New York State (“MEUA”); and New York Association of Public Power (“NYAPP”). On March 15, 2017, the City filed comments and a protest to NYPA’s application. On March 30,

² Offer of Settlement of New York Power Authority, Docket No. ER16-835-000 (filed September 30, 2016).

³ *New York Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,043 (2017).

⁴ New York Power Authority, Request for Acceptance of Updated Depreciation Rates, Docket No. ER17-1010-000 (filed February 22, 2017) (“Depreciation Filing”).

⁵ See Formula Rate Settlement § 3.4.

2017, NYPA filed an answer to the City. No other party filed comments or protests in this proceeding.

On April 21, 2017, the Commission issued a letter order accepting NYPA's updated depreciation rates for filing, effective March 1, 2017, and set them for hearing and settlement judge procedures. Because the Depreciation Filing constituted a rate decrease, the Commission initiated a new proceeding under Section 206 of the FPA to determine whether further decreases in the proposed depreciation accrual rates might be warranted. The Section 206 proceeding was assigned to Docket No. EL17-67-000 ("April 21 Order").⁶

On April 26, 2017, the Chief Administrative Law Judge issued an order appointing Settlement Judge Jennifer M. Long to facilitate settlement discussions.⁷ An initial settlement conference was held before Judge Long on May 24, 2017 in which parties could participate via video or telephone, and a second in-person settlement conference was held on June 19, 2017. Following the initial settlement conference, NYPA responded to informal settlement data requests from Commission Trial Staff. Beginning on May 22, 2017, when NYPA circulated its first settlement offer, and continuing through June 19, 2017, the date of the second settlement conference, NYPA, the intervening parties and Commission Trial Staff worked expeditiously to reach a settlement-in-principle. A third settlement conference was held via telephone conference on July 26, 2017 for review of preliminary draft settlement documents by the parties, Trial Staff and Judge Long. These efforts have culminated in this Settlement.

The Settlement represents the agreement of the parties to resolve all outstanding issues set for hearing in this proceeding, is a fair and reasonable result based on arms-length

⁶ *New York Power Authority, et al.*, 159 FERC ¶ 62,075 at p. 3 (2017) (slip op.).

⁷ *New York Indep. Sys. Operator, Inc.*, Order of Chief Judge Designating Settlement Judge at P 2, Docket No. EL17-67-000 (issued April 26, 2017) (unpublished order).

negotiations of the parties, and based on all indications received by NYPA, is supported or not opposed by the parties in this proceeding.

II. ITEMS INCLUDED IN THIS SETTLEMENT PACKAGE

Along with this Explanatory Statement, NYPA is submitting the Settlement and Exhibits A, B, C, and D to the Settlement. Exhibit A contains a revised, clean version of the Formula Rate template (“Template”) contained in Section 14.2.3.1 of Attachment H of the NYISO OATT reflecting the agreed-upon changes to Schedule B3 – Depreciation and Amortization Rates (“Schedule B3”) that are described in the Settlement. Exhibit B contains a red-line version of the aforementioned Template, marked against the currently effective version of the Template to depict the agreed upon changes to Schedule B3.⁸ Exhibit C contains a worksheet in Native Excel File Format showing how certain service lives and salvage factors, which were changed as part of this Settlement, produce the revised depreciation rates that are included the revised Schedule B3. Exhibit D contains a clean, unpopulated version of NYPA’s Formula Rate Template in Native Excel File Format, as revised in accordance with this Settlement. Collectively, these items represent the complete settlement package.

III. SUMMARY OF SETTLEMENT

NYPA offers this Settlement, which comprehensively settles the issues set for hearing in this proceeding. Once accepted by the Commission, the Settlement binds each of the Parties⁹ to the terms and conditions included in the Settlement, a summary of which is included below:

Article I sets forth the procedural history of this proceeding.

⁸ As described in the Settlement nn. 7 & 8, Exhibits A and B also include additional OATT sections containing NYPA’s Formula Rate Implementation Protocols to facilitate the filing of an *errata* to correct a non-substantive, administrative error in Section 14.2.3.2.2(c) of Attachment H of the OATT.

⁹ The following entities that intervened in this proceeding have indicated to NYPA that they either support or do not oppose this Settlement: the City; MEUA; and NYAPP (each a “Party,” and together with NYPA, the “Parties”). Participation by the NYISO in this proceeding is limited solely to its role as Tariff Administrator. The NYISO takes no position with respect to the Settlement.

Article II describes the scope of the settlement. The settlement is a negotiated package consisting of the Settlement and Exhibits A, B, C and D to the Settlement. The Settlement represents a complete and final resolution of all issues set for hearing in this proceeding.

Article III sets forth the terms and conditions of the Settlement.

Section 3.1 – Service Lives for NYPA Assets. As part of this Settlement, the Parties agree that for certain indicated asset classes, the service lives shall be set forth as follows, and that these service lives be used in determining the applicable depreciation rates contained in the revised Schedule B3 of the Template:

FERC Account	Settlement Service Life (Years)
358	60
390	60
391	18
392	10

The Excel worksheet in Exhibit C provides back-up showing how the revised, settlement service lives produce revised depreciation rates for these FERC accounts. The Settlement states that the service lives for all other FERC accounts shall remain at the levels contained in the Depreciation Filing.

Section 3.2 – Net Salvage Factors for NYPA Assets. As part of this Settlement, the Parties agree that for certain indicated asset classes, the net salvage factors shall be set forth as follows, and that these net salvage factors be used in determining the applicable depreciation rates contained in the revised Schedule B3 of the Template:

Settlement Net

FERC Account	Salvage Factor
352	-20%
353	-12%
354	-65%
355	-65%
356	-50%

The Excel worksheet in Exhibit C provides back-up showing how the revised, net salvage factors produce revised depreciation rates for these FERC accounts. The Settlement states that the net salvage factors for all other FERC accounts shall remain at the levels contained in the Depreciation Filing. The Settlement further provides that NYPA will utilize a zero net salvage factor for FERC Accounts 392, 394 and 396. In consideration for using this zero net salvage factor for these accounts, NYPA shall continue its existing practice of crediting to its rate base the auction proceeds for the vehicles and equipment sold by NYPA and attributable to FERC Accounts 392, 394 and 396. NYPA will continue to credit its FERC Account 108.4 (Accumulated Depreciation-Salvage) balances with the value of those auction proceeds.

Articles IV, V, VI, and VII address procedural aspects of the Settlement. Article IV identifies when the Settlement will become effective. This Settlement shall become effective on the date of a final order of the Commission accepting or approving this Settlement without material condition or modification, or, if approved with material condition or modification, if no Party files notice with the Commission in accordance with Article IV (“Settlement Effective Date”). The Settlement shall bind the Parties as of the Settlement Effective Date. However, upon the Settlement Effective Date, the revisions to the depreciation rates described in Article III of the Settlement shall become effective as of March 1, 2017.¹⁰ If the Commission by order

¹⁰ With respect to the *errata* filing to correct the non-substantive, administrative error in Section 14.2.3.2.2(c) of Attachment H of the OATT, an effective date of April 1, 2016 is requested for this revision. This is consistent with

approves the Settlement with material condition or modification, a Party must notify the other Parties within 15 business days of the issuance of such order if it does not agree to the Settlement as so conditioned or modified. In such event, the Parties shall meet or confer within 15 business days after such notification is provided to negotiate in good faith to reach a revised agreement or otherwise address the concerns of the Parties. If a revised agreement cannot be reached and the concerns of the Parties cannot otherwise be adequately addressed within 15 business days of such meeting or conference (unless mutually extended by the Parties), the Settlement shall be of no force and effect and the objecting Party shall so inform the Commission.

Article V provides that the Settlement represents an agreement for the purpose of the settlement of the captioned dockets and that no Party shall be deemed to have approved, accepted, agreed, or consented to any fact, concept, theory, principle, or method in this proceeding. Further, the Commission's approval of this Settlement shall not constitute precedent nor be used to prejudice any otherwise available rights or arguments of any party in a future proceeding, other than to enforce the terms of this Settlement, and shall not be used as evidence that a particular method is a "long-standing practice" as that term is used in *Columbia Gas Transmission Corp. v. FERC*, 628 F.2d 578 (D.C. Cir. 1975), or a "settled practice" as that term is used in *Public Service Commission of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980).

Article VI describes the standard of review to be applied for any proposed modification to the Settlement. The Settlement provides that the standard of review the Commission shall apply when acting on modifications to this Settlement proposed by a Party is the "public interest" application of the just and reasonable standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v.*

the effective date previously accepted by the Commission for the tariff revisions submitted as part of the February 2, 2017 compliance filing in Docket No. ER16-835-001, which the *errata* filing seeks to correct.

Sierra Pacific Power Co., 350 U.S. 348 (1956) (the *Mobile-Sierra* doctrine), as clarified in *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. 527 (2008), and refined in *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. 165, 174-75 (2010). The standard of review for any modifications to the Settlement requested by a non-Party, or initiated by the Commission acting *sua sponte* will be the ordinary just and reasonable standard of review. *See Morgan Stanley Capital Group Inc.*, 554 U.S. 527. Notwithstanding the foregoing, Article VI provides that nothing in the Settlement is intended to modify or restrict in any way the rights of any Party, non-Party, or the Commission, acting under Section 205 or 206 of the FPA, to propose future changes to the depreciation rates stated in NYPA's Template.

Article VII includes certain miscellaneous provisions and reservations of rights.

IV. DISCUSSION

This Settlement resolves all issues set for hearing in this proceeding in a fair and reasonable manner and is in the public interest.¹¹ Commission approval of the Settlement will spare the Parties and the Commission the expense, risks and time associated with litigation. NYPA respectfully requests that the presiding Settlement Judge certify the Settlement to the Commission as soon as possible and that the Commission accept the Settlement as soon thereafter as possible.

¹¹ 18 C.F.R. § 385.602(g)(3).

V. RESPONSE TO QUESTIONS

By order dated December 15, 2016, the Chief Administrative Law Judge requires that four questions be answered as part of every Explanatory Statement submitted in support of a proposed settlement. The questions and specific responses applicable to this Settlement are as follows:

1. Does the settlement affect other pending cases?

The Settlement does not affect any other pending case.

2. Does the settlement involve issues of first impression?

The Settlement does not involve issues of first impression.

3. Does the settlement depart from Commission precedent?

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 VI of the Settlement establishes the applicable standard of review for modifications to the Settlement. The Settlement provides that the standard of review the Commission shall apply when acting on any proposed modification to this Settlement that is sought by any Party that is not agreed to by all other Parties shall be subject to the public interest standard of review. Changes proposed by a non-Party, or initiated by the Commission acting *sua sponte* shall be the ordinary just and reasonable standard of review. Article VI provides that notwithstanding the foregoing, nothing in the Settlement restricts the rights of any Party, non-Party or the Commission, acting under Section 205 of 206 of the FPA, to propose future changes to the depreciation rates stated in NYPA's Template.

VI. CONCLUSION

For all of these reasons, NYPA respectfully requests that the presiding Settlement Judge certify the Settlement to the Commission as soon as possible following the comment period, and the Commission approve the Settlement without condition or modification at the earliest possible date following certification.

Respectfully submitted,

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