

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

**Consolidated Edison Co. of New York, Inc.
New York Independent System Operator, Inc.**

**Docket Nos. ER23-2212-000
ER23-2212-001**

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

Pursuant to Rule 602 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.602, Consolidated Edison Company of New York, Inc. (“Consolidated Edison”), on behalf of the Settling Parties,¹ submits this explanatory statement in support of the Joint Offer of Partial Settlement (“Settlement”). These proceedings involve the return on equity (“ROE”) values to be applied under Consolidated Edison’s formula rate templates contained in the NYISO Open Access Transmission Tariff (“OATT”) Rate Schedule 10, as well as NYISO OATT Rate Schedule 19, which were set for hearing and settlement procedures in the above referenced proceedings. However, this Settlement only addresses the ROE values to be stated in the formula rate template applicable under Rate Schedule 10. The other issue set for hearing and settlement procedures regarding Rate Schedule 19 is the subject of a different joint offer of settlement to be filed separately for certification. This Settlement, together

¹ The Settling Parties include Consolidated Edison, the New York State Public Service Commission (“NYSPSC”), New York Association of Public Power (“NYAPP”), and New Jersey Division of Rate Counsel (“NJDRRC”). 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.

with the settlement of the Rate Schedule 19 issue, resolves all issues set for hearing and settlement procedures in Docket Nos. ER23-2212-000 and -001.

I. BACKGROUND

The NYISO administers and oversees an OATT, which includes several rate schedules that allow transmission owners and developers in New York to recover the costs of transmission projects. The focus of the Settlement is the FERC-approved ROE for Consolidated Edison's formula rate template under NYISO OATT Rate Schedule 10.

Consolidated Edison's formula rate template for transmission projects eligible for cost allocation and recovery under Rate Schedule 10 included a proposed base ROE. The formula rate template was accepted for filing, subject to compliance filing, with the proposed base ROE set for hearing and settlement procedures.² The required compliance filing has been tendered for Commission review in Docket No. ER23-2212-002 and is pending.

II. PROCEDURAL HISTORY

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, in part, a base ROE relating to NYISO OATT Rate Schedule 10. Consolidated Edison also proposed the inclusion of a 50-basis-point-adder for participation in a Regional Transmission Organization (*i.e.*, the NYISO) ("RTO Participation Adder"). On October 31, 2023, the Commission accepted Consolidated Edison's proposed attachments to Rate Schedules 19 and 10, effective August 22, 2023, as well as

² See *Consolidated Edison Company of New York, Inc., et al.*, 185 FERC ¶ 61,091, at PP 2, 55 and 62 (2023) ("Consolidated Edison Formula Rate Order").

the associated informational protocols, subject to hearing and settlement procedures on the proposed ROE levels and a compliance filing³ (which has been submitted and is pending).⁴ With respect to the proposed 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). The Commission also, with respect to Rate Schedule 10, accepted the inclusion of the proposed RTO Participation Adder, conditioned on “the adder being applied to a base ROE that has been shown to be just and reasonable, and subject to the resulting ROE being within the applicable zone of reasonableness, as may be determined in the hearing and settlement judge procedures.”⁵ In addition, the Consolidated Edison Formula Rate Order granted motions to intervene submitted by NYAPP and NJDRC.⁶ On January 31, 2024, pursuant to 18 C.F.R. § 385.214, the Commission’s Chief Administrative Law Judge (“Chief Judge”) granted an unopposed motion to intervene filed by the NYSPSC.⁷

On November 9, 2023, the Chief Judge issued an order designating Judge Patricia M. French as Settlement Judge in this proceeding.⁸ Judge French issued an order to convene the first settlement conference in this proceeding on November 30, 2023,⁹ with subsequent settlement

³ See *id.* at PP 40, 47 and 62.

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

⁵ See Consolidated Edison Formula Rate Order, 185 FERC ¶ 61,091 at P 60.

⁶ See *id.* at P 13.

⁷ See *Order of Chief Judge Granting Late Motion to Intervene of NYSPSC*, Docket No. ER23-2212-000, -001 (Jan. 31, 2024).

⁸ See *Order of Chief Judge Designating Settlement Judge*, Docket No. ER23-2212-000, -001 (Nov. 9, 2023).

⁹ See *Order to Convene First Settlement Conference*, Docket Nos. ER23-2212-000, -001 (Nov. 16, 2023).

conferences set and convened on April 22, May 28, June 14, and June 20, 2024, and a settlement in principle achieved at the June 20, 2024, settlement conference.¹⁰

III. ITEMS INCLUDED IN SETTLEMENT PACKAGE

Accompanying this Explanatory Statement is the Settlement and revised tariff sheets for Consolidated Edison's Rate Schedule 10 formula rate template in eTariff format. The tariff records are modified to reflect the terms of the Settlement.

IV. SUMMARY OF SETTLEMENT

The Settlement resolves all issues regarding Consolidated Edison's ROE values in its Rate Schedule 10 formula rate template. A summary of the provisions of the Settlement is provided below.

Article 1 sets forth the procedural history of these proceedings.

Article 2 specifies that the scope of the Settlement is limited to Consolidated Edison's formula rate template under Rate Schedule 10 as accepted by the Commission in the Consolidated Edison Formula Rate Order, contingent upon a compliance filing. It excludes issues related to the

¹⁰ See *Order to Convene Second Settlement Conference*, Docket Nos. ER23-2212-000, -001 (Nov. 30, 2023) (setting February 8, 2024); *First Status Report of Settlement Judge*, Docket Nos. ER23-2212-000, -001 (Jan. 8, 2024) (recommending settlement process continue); *Order Cancelling Second Settlement Conference*, Docket Nos. ER23-2212-000, -001 (Feb. 2, 2024) (noting commencement of coordinated settlement conference process concerning common Rate Schedule 19 issues with Docket Nos. ER23-2212-000, -001, ER23-1816-001, -002, ER23-1817-001, -002, and ER23-2507-001); *Second Status Report of Settlement Judge*, Docket Nos. ER23-2212-000, -001 (Mar. 4, 2024) (recommending settlement process continue); *Order Scheduling First Consolidated Edison Rate Schedule 10-Only Settlement Conference*, Docket Nos. ER23-2212-000, -001 (April 12, 2024) (setting April 22, 2024) (emphasis in original); *Third Status Report of Settlement Judge*, Docket Nos. ER23-2212-000, -001 (May 2, 2024) (recommending settlement process continue); *Order Scheduling Third and Fourth Rate Schedule 10-Only Settlement Conferences*, Docket Nos. ER23-2212-000, -001 (May 10, 2024) (setting May 28, 2024 and June 14, 2024, respectively); *Order Scheduling Fifth Rate Schedule 10-Only Settlement Conferences*, Docket Nos. ER23-2212-000, -001 (May 28, 2024) (setting June 20, 2024); *Fourth Status Report of Settlement Judge*, Docket Nos. ER23-2212-000, -001 (June 20, 2024) (reporting agreement to settle Rate Schedule 10 matters set for hearing and recommending settlement process continue).

Consolidated Edison formula rate template for use under NYISO OATT Rate Schedule 19, which is the subject to a separate settlement, with certification pending.

Article 3 details the Settlement's terms, stipulating that, pending Commission approval, all Settling Parties agree to a stated ROE of 10.60% for transmission projects where Consolidated Edison has exercised its federal right of first refusal as provided by NYISO OATT Sections 31.6.4 and 22.9.6, as such sections may be amended from time to time. All other transmission projects eligible for cost recovery under Rate Schedule 10 will have an ROE of 10.85%. The stated ROE values do not and shall not include ROE incentive adders, such as the RTO Participation Adder or others ROE incentives under the Commission regulations at 18 C.F.R. § 35.35. Consolidated Edison expressly waives as part of the Settlement, its right to the RTO-Participation Adder that was conditionally accepted in the Consolidated Edison Formula Rate Order.¹¹ Consolidated Edison retains the right to seek from the Commission under Section 205 of the FPA non-ROE related transmission incentives, including incentives for abandoned plant and construction work in progress (“CWIP”) on a project-by-project basis.

Article 4 addresses implementation matters and establishes that for five years following the Settlement’s approval by the Commission, the Settling Parties are prohibited from challenging or changing the agreed upon ROE values under FPA Sections 205 or 206. Consolidated Edison will coordinate with NYISO to submit necessary filings to implement the terms of the Settlement (“Implementation Filings”) under FPA Section 205. The Settling Parties must support or not oppose these filings. If the Commission fails to approve the Settlement or the Implementation Filings without material modification or conditions, a Settling Party must express any objections within 15 days or be deemed to have waived objection. Following such a notice, the parties have

¹¹ See Consolidated Edison Formula Rate Order, 185 FERC ¶ 61,091 at PP 59-60.

thirty business days to negotiate a resolution. If unresolved within 30 days, the Settlement becomes void and Consolidated Edison shall file a written notice of termination of this Settlement with the Commission. Although the Settling Parties agree not to oppose the Settlement in Commission or NYSPSC proceedings, such agreement does not bind the NYSPSC regarding its proceedings.

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 FERC precedent,¹² the Settlement will not constitute precedent in any future proceedings.

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*

¹² 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 *Office of Consumers’ Counsel 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.”); *New York Power Authority, 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 & Electric Co. v. Sellers of Energy and Ancillary Services, et al.*, 130 FERC ¶ 61,197, at P 13 (2010) (same); *Northwest Pipeline Corp.*, 27 FERC ¶ 61,339, at P 61,657 (1984) (same).

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. 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.

VI. CONCLUSION

The Settlement conclusively addresses the ROE for Consolidated Edison's Rate Schedule 10 formula rate template. Approval of the Settlement by the Commission would eliminate the costs and uncertainties associated with ongoing hearings and potential litigation. Therefore, the Settling Parties respectfully request that the Settlement Judge certify the Settlement to the Commission promptly after the comment period. Following this certification, the Settling Parties urge the Commission to approve the Settlement Agreement by October 1, 2024, or otherwise as soon as practicable, and without any changes or conditions.

Respectfully submitted,

/s/ Susan J. LoFrumento

Sebrina M. Greene

Susan J. LoFrumento

Joshua A. Kirstein

Consolidated Edison Co. of New York, Inc.

4 Irving Place

New York, NY 10003

greenes@coned.com

lofrumentos@coned.com

kirsteinj@coned.com

Lyle D. Larson

Balch & Bingham LLP

1901 Sixth Ave., North

Birmingham, AL 25201

llarson@balch.com

*Counsel for Consolidated Edison Company
of New York, Inc.*

August 19, 2024