

**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**

JOINT OFFER OF PARTIAL SETTLEMENT

**To: Honorable Patricia M. French
Settlement Judge**

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”), joined by the New York State Public Service Commission (“NYSPSC”), New York Association of Public Power (“NYAPP”), and New Jersey Division of Rate Counsel (“NJDR”) (together with Consolidated Edison, the “Settling Parties”), submits this Joint Offer of Partial Settlement (“Settlement”) to resolve a portion of the matters set for hearing and settlement procedures in the above-referenced proceedings.¹ These proceedings involve the return on equity (“ROE”) values to be applied under Consolidated Edison’s formula rate templates contained in the New York Independent System Operator, Inc. (“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.²

¹ Consolidated Edison Company of New York, Inc., et al., 185 FERC ¶ 61,091 (2023) (“Consolidated Edison Formula Rate Order”). The views expressed herein are not intended to represent those of any individual member of the NYSPSC. Pursuant to Section 12 of the New York Public Service Law, N.Y. Pub. Serv. L. §12, the NYSPSC Chair is authorized to participate in this filing on behalf of the NYSPSC.

² The NYISO’s participation in these proceedings is limited solely to its role as Tariff Administrator, and the NYISO takes no position with respect to the substantive issues in the Settlement.

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 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.

ARTICLE 1

PROCEDURAL HISTORY

On June 22, 2023, the 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 fifty (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 the associated informational protocols, subject to a compliance filing,³ which has been submitted and is pending.⁴ With respect to proposed ROEs, the Commission established hearing and settlement judge procedures for the proposed ceiling ROE (under Rate Schedule 19) and the base ROE (under Rate Schedule 10). The Commission also,

³ See Consolidated Edison Formula Rate Order, 185 FERC ¶ 61,091 at PP 2, 55 and 62.

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

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

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 (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).

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 Con Ed 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.

ARTICLE 2

SCOPE OF SETTLEMENT

- 2.1 This Settlement resolves all issues regarding Consolidated Edison's ROE submitted for purposes of Rate Schedule 10, filed under Section 205 of the Federal Power Act ("FPA") in Docket Nos. ER23-2212-000, -001 and set for hearing and settlement procedures.
- 2.2 Applicability to Schedule 10 Project Cost Recovery. Unless specified otherwise, this Settlement applies solely to Rate Schedule 10.

ARTICLE 3

TERMS OF SETTLEMENT

- 3.1 The Settling Parties agree, subject to Commission approval, to be bound by the terms of this Settlement with respect to each Consolidated Edison transmission project under Rate Schedule 10.
- 3.2 The following terms shall apply to Consolidated Edison's transmission projects under Rate Schedule 10:
- (a) ROE. For transmission projects for which 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, and as recognized in: *N.Y. Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,179 (2022), *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER23-1151-000 (Apr. 5, 2023) (delegated letter order), and Consolidated Edison Formula Rate Order, 185 FERC ¶ 61,091 at P 9, a stated

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).

all-inclusive ROE of 10.60% shall apply. For other transmission projects where Consolidated Edison has been selected by the NYISO Board of Directors to develop a project to meet a Public Policy Transmission Need, a fixed all-inclusive ROE of 10.85% shall apply.

- (b) No ROE Incentive Adders. The stated ROE values specified in Section 3.2(a), above are all inclusive, and shall not include any ROE incentive adders, including, but not limited to, the RTO-Participation Incentive, as defined in *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Supplemental Notice of Proposed Rulemaking, 175 FERC ¶ 61,035 (2021) or any other ROE incentive adder under 18 C.F.R. § 35.35, adopted pursuant to Section 219 of the FPA, 16 U.S.C. § 824s. Consolidated Edison agrees to waive its right to the RTO Participation Adder conditionally accepted by the Commission in the Consolidated Edison Formula Rate Order and to make any necessary filings to effectuate such waiver. Consolidated Edison agrees not to request any further ROE incentive adders from the Commission during the five-year period described in Section 4.1 below, which includes, but is not limited to, ROE incentive adders such as the RTO Participation Adder and the Risks and Challenges Adder, for any projects subject to Schedule 10 cost recovery.
- (c) Other Transmission Incentives. Consolidated Edison reserves the right to seek transmission incentives that do not involve an ROE incentive adder under the Commission's regulations, including but not limited to the Abandoned Plant Incentive and Construction Work in Progress (commonly referred to as "CWIP Incentive").

ARTICLE 4

IMPLEMENTATION

- 4.1 For a period of five (5) years after the Commission's approval of this Settlement, the Settling Parties agree not to make any filings pursuant to Sections 205 and/or 206 of the FPA that seek to change or challenge the all-inclusive ROE values set forth in Section 3.2(a), above.
- 4.2 As necessary, Consolidated Edison will coordinate with NYISO to make appropriate filings ("Implementation Filing(s)") to the Commission pursuant to FPA Section 205 to implement the foregoing terms of this Settlement.
- 4.3 The Settling Parties shall support, or not oppose, the Consolidated Edison Implementation Filing(s) reflecting the terms of this Settlement. Should the Commission fail to approve, or materially modify or condition approval of this Settlement, or any material aspect(s) of the Implementation Filing(s), any Settling Party may notify the other Settling Parties within fifteen (15) days of the Commission order ("Timely Notice") of any objections to the Settlement. Absence of such Timely Notice constitutes a waiver of objections. Should any objections be raised as part of a Timely Notice, the Settling Parties shall meet or confer to negotiate in good faith to amend the Settlement. If unresolved within thirty (30) days after Timely Notice, this Settlement shall be of no force and effect and Consolidated Edison shall file a written notice of termination of this Settlement with the Commission.
- 4.4 The Settling Parties agree not to take any position adverse to the terms of this Settlement before the Commission or the NYSPSC. Notwithstanding the foregoing, this Settlement shall not bind the NYSPSC with respect to any NYSPSC proceedings.

ARTICLE 5

SETTLEMENT EFFECTIVE DATE

- 5.1 This Settlement shall be effective on the date the Commission approves the Consolidated Edison Implementation Filing(s) without material modifications or conditions (“Settlement Effective Date”). If the Commission's approval includes any material modifications, conditions, or is not granted, and the Settling Parties fail to negotiate a revised Settlement within thirty (30) days after initiating good faith negotiations, this Settlement will be terminated, and Consolidated Edison shall file a notice of termination with the Commission.

ARTICLE 6

NO PRECEDENTIAL EFFECT

- 6.1 Consistent with well-established precedent that settlements have no precedential value,¹¹ this settlement shall not serve as precedent for any purpose and may not be used prospectively as a point of reference or for any other purpose outside the context of this proceeding. Except as expressly provided for in this Settlement, this Settlement will not constitute precedent in any current or future proceedings regarding ROE. The Settlement 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, 586 n.31 (D.C.

¹¹ See *Kelley v. FERC*, 96 F.3d at 1489-90 (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 at 1489-90 (“It is well-established that settlements have no precedential value...”)).

Cir. 1975), or a “settled practice” as that term is used in *Public Service Commission of New York v. FERC*, 642 F.2d 1335, 1342 (D.C. Cir. 1980).

ARTICLE 7

STANDARD OF REVIEW FOR SETTLEMENT MODIFICATION

- 7.1 The standard of review for any changes to this 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 Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), 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 ordinary just and reasonable standard of review (rather than the “public interest” standard), as clarified in *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. 527 (2008) shall apply to any changes to this Settlement sought by the Commission acting *sua sponte* or at the request of a non-Settling Party or a non-party to any of these proceedings.

ARTICLE 8

MISCELLANEOUS

- 8.1 Final Resolution. This Settlement shall be a final and complete resolution of the ROE to be applied pursuant to Article 3 hereof.
- 8.2 Binding. This Settlement is binding upon and for the benefit of the Settling Parties and their successors and assigns.

- 8.3 Entire Agreement. This Settlement constitutes the entire agreement among the Settling Parties with respect to the subject matter addressed herein, and supersedes all prior or contemporaneous understandings or agreements, oral or in writing, among the Settling Parties with respect to the subject-matter hereof.
- 8.4 Interpretation. All Settling Parties participated in the drafting of this Settlement. No Settling Party shall be deemed the drafter of this Settlement. This Settlement shall not be construed against any Settling Party as the drafter.
- 8.5 Conflict. In the event of a conflict between the terms contained in this Settlement and those of the attached Explanatory Statement, the terms of this Settlement shall control.
- 8.6 Admissibility of Settlement. This Settlement is submitted pursuant to Rule 602(e) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(e). Unless and until this Settlement becomes effective pursuant to its terms, the Settlement shall be of no effect. The Settlement shall not be admissible in evidence or in any way described or discussed in any proceeding before any court or regulatory body (except in comments on the Settlement in these proceedings). In addition, the discussions that resulted in this Settlement were conducted with the explicit understanding, pursuant to Rule 602(e), that all offers of settlement, and any discussions relating thereto, are and shall be privileged, shall be without prejudice to the position of any Settling Party, and are not to be used in any manner in connection with this or any other proceeding, except as specifically noted in this Settlement or in an action to enforce this Settlement.
- 8.7 Titles and Headings. The titles and headings of the Settlement are for reference and convenience purposes only. They are not to be considered in construing the Settlement and do not qualify, modify, or explain the effects of the Settlement.

- 8.8 Enforceability and Waiver. Any failure of any Settling Party (i) to enforce any of the provisions of this Settlement, or (ii) to require compliance with any of its terms at any time during the term of this Settlement, shall in no way affect the validity of this Settlement, or any part hereof, and shall not be deemed a waiver of the right of such Settling Party thereafter to enforce any such provision(s). Commission approval of this Settlement shall constitute a grant of any waivers of the Commission's regulations that may be necessary to effectuate all the provisions of this Settlement.
- 8.9 Waiver. No provision of this Settlement may be waived as to any Settling Party, except through a writing signed by an authorized representative of the waiving Settling Party. Waiver of any provision of this Settlement by a Settling Party shall not be deemed to waive any other provision or to be a waiver of the other Settling Parties.
- 8.10 Authorization. Each person executing this Settlement on behalf of a Settling Party represents and warrants that she or he is duly authorized and empowered to act on behalf of, and to authorize this Settlement to be executed on behalf of, the Settling Party that she or he represents.
- 8.11 Ambiguity. This Settlement is the result of negotiations among the Settling Parties and has been subject to review by each Settling Party and its respective legal counsel. Therefore, this Settlement shall be deemed the product of each Settling Party and no ambiguity in this Settlement shall be construed in favor of, or against, a Settling Party.
- 8.12 Counterparts. This Settlement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

IN WITNESS WHEREOF, the Settling Parties, each acting on its own behalf or through an authorized representative, had caused this Settlement to be executed.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, the Settling Parties, each acting on its own behalf or through an authorized legal counsel or representative, has caused this Settlement to be executed.

Consolidated Edison Co. of New York, Inc.

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Dated: August 19, 2024