

**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
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)

JOINT OFFER OF 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, Central Hudson Gas and Electric Corp. (“Central Hudson”), Consolidated Edison Co. 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”), joined by 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”) (together with the Transmission Owners, the “Settling Parties”), submit this Joint Offer of Settlement (“Settlement”) to resolve matters set for hearing and settlement procedures in

the above-referenced proceedings.¹ The matters addressed in this Settlement are limited to the Transmission Owners' respective formula rate templates under the New York Independent System Operator, Inc. ("NYISO") Open Access Transmission Tariff ("OATT") Rate Schedule 19. More specifically, this Settlement addresses only the single issue with respect to Rate Schedule 19 that was set for hearing and settlement procedures: the 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

This Settlement does not resolve any other issues regarding NYISO OATT Rate Schedule 19 nor does it resolve any issues regarding NYISO OATT Rate Schedule 10 that have been set for hearing and settlement procedures regarding Consolidated Edison in Docket Nos. ER23-2212-000, -001 and are addressed separately. Thus, if accepted, this Offer of Settlement will constitute only a partial settlement as to the Consolidated Edison dockets referenced above because it resolves only the Rate Schedule 19 ceiling-ROE issue.

The Settling Parties agree that the circumstances giving rise to this Settlement, including the requirements of recent New York State legislation,³ are unique and noteworthy. Therefore, consistent with well-established Commission precedent that settlements have no precedential

¹ 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. 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 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"). As discussed below, the other rate component set for hearing in the Consolidated Edison Formula Rate Order (*viz.*, NYISO OATT Rate Schedule 10) remains under discussion among the parties and participants in that proceeding.

³ The state laws presently include the Climate Leadership and Community Protection Act ("CLCPA") and the Accelerated Renewable Energy Growth and Community Benefit Act ("AREGCBA"). See 2019 N.Y. Sess. Laws, ch. 106 (CLCPA); 2020 N.Y. Sess. Laws, ch. 58, Part JJJ (AREGCBA).

value, this settlement shall not, under any circumstances, be considered (i) a “precedent” under any interpretation or use of that word, or (ii) an exemplar, model, methodology or point of reference for any purpose other than interpreting this Settlement.⁴

ARTICLE 1

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

⁴ 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 *Kelly*, 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).

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 22, 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, pursuant to 18 C.F.R. § 385.214, the Chief Judge granted 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

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).

accepted Central 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 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 Parties¹⁶ and Commission Trial Staff engaged in several settlement discussions starting in December 2023 (in Docket Nos. ER23-2212-000, -001) and continued on a coordinated basis through April 26, 2024, when a settlement in principle was reached.

ARTICLE 2

SCOPE OF SETTLEMENT

- 2.1 This Settlement resolves all issues among the Settling Parties regarding the Transmission Owners' respective ceiling ROE proposals submitted for purposes of NYISO OATT Rate Schedule 19, filed under Section 205 of the Federal Power Act ("FPA") in Commission Docket Nos. ER23-2212-000, -001, ER23-1816-001, -002, ER1817-001, -002, ER23-2507-001 and set for hearing and settlement procedures.
- 2.2 Applicability to Schedule 19 Project Cost Recovery. Unless specified otherwise, this Settlement applies to Transmission Owners local transmission facilities or upgrades determined by the NYSPSC to be necessary to meet New York State climate and renewable energy goals under New York State law ("Schedule 19 Projects").¹⁷ The CSRA Order authorized the Transmission Owners to submit for filing, under FPA Section 205, a formula rate template and associated informational procedures to be applicable to NYSPSC-approved Schedule 19 Projects. The above-captioned dockets involve each of the Transmission Owners' respective submittals of such tariff records.
- 2.3 Conditional Applicability of Ceiling ROE. The Settling Parties agree that the ROE that will apply under each formula rate template under NYISO OATT Rate Schedule 19 shall

¹⁶ 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 fixed ceiling ROE value addressed in this Settlement.

¹⁷ See *Consol. Edison Co. of N.Y., Inc. et al.*, 180 FERC ¶ 61,106 (2022) ("CSRA Order").

be that established by the NYSPSC by order as applicable to each of the Transmission Owners, respectively. Notwithstanding the foregoing, if the ROE established by the NYSPSC for an applicable Transmission Owner exceeds the ceiling ROE under Rate Schedule 19, then the ceiling ROE shall be applied under the applicable Transmission Owner's formula rate template pursuant to Article 3.

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 of the Transmission Owners' Schedule 19 Projects.
- 3.2 The following financial terms shall apply to the Transmission Owners' respective Schedule 19 Projects:
- (a) ROE. A ceiling ROE of 10.60% will apply to each Transmission Owner's Schedule 19 Projects, which shall be reflected in each Transmission Owner's formula rate template under NYISO OATT Rate Schedule 19.
 - (b) No ROE Incentive Adders. No Schedule 19 Projects shall be eligible for, nor shall any such Projects seek, any incentive ROE adders.

ARTICLE 4

IMPLEMENTATION

- 4.1 As necessary, each of the Transmission Owners will make appropriate filings ("Implementation Filings") to the Commission pursuant to FPA Section 205 to implement the foregoing terms of this Settlement, which shall include a filing with the Commission through the Commission's eTariff system to implement the changes to each

Transmission Owners' Rate Schedule 19 formula rate template to reflect the settlement ROE.

- 4.2 The Settling Parties shall support, or not oppose, each of the Transmission Owner's Implementation Filings reflecting the terms of this settlement. Should the Commission decline to accept any substantive aspect(s) of a Transmission Owners' respective Implementation Filings reflecting the terms of the Settlement or impose additional terms as a condition to approving this Settlement, any Settling Party may notify the other Settling Parties within fifteen (15) days of the issuance of the Commission order that it does not agree to this Settlement ("Timely Notice"). Any Settling Party that does not provide Timely Notice shall be deemed to have waived all objections. Within ten (10) business days after a Settling Party provides Timely Notice, the Settling Parties shall meet or confer to negotiate in good faith to reach a revised settlement agreement or otherwise address the concerns of Settling Parties. If a revised settlement agreement cannot be reached and the concerns of the Settling Parties cannot otherwise be adequately addressed within thirty (30) days after such meeting or conference, this Settlement shall be of no force and effect and the objecting Settling Party shall file a written notice of its objection with the Commission.
- 4.3 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: (i) on which a Commission Order approving this Settlement becomes final and non-appealable; or (ii) such alternative date that is agreed to by the Settling Parties if this Settlement is not approved by the Commission without material modification or condition (“Settlement Effective Date”). The Settlement shall bind the Settling Parties as of the Settlement Effective Date.

ARTICLE 6

NO PRECEDENTIAL EFFECT

- 6.1 Consistent with well-established precedent that settlements have no precedential value,¹⁸ 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 and shall not be reported or treated by the Settling Parties as a base ROE approved by the Commission. 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. Cir. 1975), or a “settled practice” as that term is used in *Pub. Service Comm’n of N.Y. v. FERC*, 642 F.2d 1335, 1342 (D.C. Cir. 1980).

¹⁸ See *Kelley*, 96 F.3d at 1489-90 (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 at 1489-90 (“It is well-established that settlements have no precedential value...”).

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 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 Cap. Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 554 U.S. 527 (2008) (“*Morgan Stanley*”), and refined in *NRG Power Mktg., LLC v. Maine Pub. Utilities Comm’n*, 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* 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 ceiling 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 to (i) enforce any of the provisions of this Settlement, or (ii) 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 legal counsel or representative, has caused this Settlement to be executed as of August 20, 2024.

Consolidated Edison Co. of New York, Inc.

/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

Lyle D. Larson
Balch & Bingham, LLP
1710 Sixth Ave., North
Birmingham, AL 35203

Attorneys for Consolidated Edison Co. of New York, Inc.

New York State Electric & Gas Corp.

/s/ Catherine P. McCarthy
Catherine P. McCarthy
Josh R. Robichaud
Bracewell LLP
2001 M Street NW, Suite 900
Washington, D.C. 20036-3310

Attorneys for New York State Electric & Gas Corporation

/s/ Andrea Vanluling
Andrea Vanluling
Vice President and Controller
Avangrid Networks, Inc

Central Hudson Gas and Electric Corp.

/s/ Paul A. Colbert
Paul A. Colbert
Central Hudson Gas and Electric Corp.
284 South Avenue
Poughkeepsie, NY 12601

Attorney for Central Hudson Gas and Electric Corp.

Rochester Gas and Electric Corp.

/s/ Catherine P. McCarthy
Catherine P. McCarthy
Josh R. Robichaud
Bracewell LLP
2001 M Street NW, Suite 900
Washington, D.C. 20036-3310

Attorneys for Rochester Gas and Electric Corporation

/s/ Andrea Vanluling
Andrea Vanluling
Vice President and Controller
Avangrid Networks, Inc

New York State Public Service Commission

/s/ David G. Drexler

David G. Drexler
Deputy General Counsel
New York State Public Service Commission
3 Empire State Plaza
Albany, NY 12223-1305

*Attorney for the New York State Public
Commission*

Mun. Elec. Utilities Assoc. of New York

/s/ James W. Brew

James W. Brew
Laura W. Baker
Joseph R. Briscar
Stone Mattheis Xenopoulos & Brew, PC
1025 Thomas Jefferson Street, N.W.
Suite 800 West
Washington, DC 20007-5201

*Attorneys for
Municipal Electric Utilities Assoc. of New York*

New Jersey Division of Rate Counsel

/s/ Robert Glover

Brian O. Lipman, Director
Robert Glover, Assistant Deputy Rate Counsel
New Jersey Division of Rate Counsel
140 East Front Street, 4th Floor
PO Box 003
Trenton, NJ 08625

*Attorneys for the
New Jersey Division of Rate Counsel*

New York Association of Public Power

/s/ Thomas L. Rudebusch

Thomas L. Rudebusch
Duncan, Weinberg, Genzer & Pembroke, P.C.
1666 K Street, NW, Suite 700
Washington, DC 20006

*Attorney for
New York Association of Public Power*

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