

EXECUTION VERSION

August 8, 2024

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

)	
New York Transco LLC)	ER24-232-000
New York Independent System Operator,)	ER24-232-001
Inc.)	

UNCONTESTED OFFER OF SETTLEMENT

**To: The Honorable Patricia M. French
Presiding Administrative Law Judge**

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 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”).³

¹ 18 C.F.R. § 385.602 (2023).

² The Settling Parties include: 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 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.

³ 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.

**ARTICLE I
BACKGROUND**

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”). 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 the 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 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

Pub. Serv. L. §12, the NYSPSC Chair is authorized to participate in this filing on behalf of the NYSPSC.

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”).

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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: (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 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

⁵ 16 U.S.C. §§ 824d and 824s.

⁶ 18 C.F.R. Part 35 (2023).

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; Ordering Paragraph (A) (2023) (“December 26 Order”).

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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

On 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 exchanged several rounds of counter-proposals up to and including June 17, 2024. On June 17,

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.

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the Settling Parties agreed to a settlement in principle as reflected in this Uncontested Offer of Settlement.¹⁵

On January 25, 2024, the 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. 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 Court 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?¹⁶ 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 FERC in the Briefing Order.¹⁷ The Second Circuit Court of Appeals granted this motion on June 12, 2024.¹⁸ On June 18, 2024, Transco submitted an Emergency Motion to Hold the Proceeding

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.*, 187 FERC ¶ 61,108 (2024) ("Briefing Order").

¹⁷ *Unopposed Motion of Respondent Federal Energy Regulatory Commission to Hold Case in Abeyance Pending Further Agency Proceedings*, Case 24-1126, filed May 31, 2024.

¹⁸ *Order Granting Motion*, Case 24-1126, issued June 12, 2024.

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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.

ARTICLE II
SCOPE OF SETTLEMENT

2.1 This Settlement resolves all outstanding issues pertaining to Transco's Propel NY Energy Project in Docket No. ER24-232-000, *et al.*, including the issues conditionally accepted and/or set for hearing in Ordering Paragraphs (C), (D), and (E) of the Commission's December 26, 2023, *Order on Transmission Rate Incentives and Tariff Filing, and Establishing Hearing and Settlement Judge Procedures*,¹⁹ and pending in requests for rehearing and/or Petitions for Review in the United States Court of Appeals for the Second Circuit, including the Briefing Order.

ARTICLE III
TERMS OF SETTLEMENT

3.1 The Settling Parties agree, subject to Commission approval, to be bound by the terms of this Settlement Agreement.

3.2 Base ROE – 10.3%. The Base ROE that will apply solely for the Project is 10.3%. The Base ROE will remain in effect for the period commencing on December 27, 2023, and continuing through May 31, 2030. After May 31, 2030, the Base ROE shall continue in effect unless and until modified by FERC pursuant to Sections 205 or 206 of the FPA.

¹⁹ 185 FERC ¶ 61,222 (2023).

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3.3 ROE Incentive Adders. The Settling Parties request that a total of 100-basis-points in ROE incentives be applied to the Project, consistent with the Commission’s ROE incentive rate policy (18 C.F.R. §§ 35.35(d)(1)(i) and 35.35(d)(1)(viii)). The December 26 Order approved a 75-basis-point ROE incentive adder for the risks and challenges in developing the Project (“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 agreed to settle the pending review²⁰ 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, the Risks and Challenges Adder and the Grid Enhancement Adder 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

²⁰ See Request for Rehearing of the New York State Public Service Commission under ER24-232 (filed Jan. 25, 2024); Petition for Review in the U.S. Court of Appeals for the Second Circuit of the New York State Public Service Commission, Case No. 24-1126 (filed Apr. 25, 2024).

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Participation Adder should or should not apply, at any time, with respect to the Propel NY Energy Project.

3.4 Effective ROE Value – 11.3%. The effective ROE value for the Project is 11.3%. The Settling Parties agree that the effective ROE value addresses the FERC’s directive that the “resulting ROE inclusive of all granted incentives [shall be] within the applicable zone of reasonableness.”

3.5 Stay-Out Provision. The Settling Parties agree not to make any filings pursuant to sections 205 or 206 of the FPA that seeks to change the base ROE value of 10.3%, the effective ROE value of 11.3% or any other term that is inconsistent with the terms of the Settlement before May 31, 2030.

3.6 Agreement to Support. The Settling Parties agree to support or not oppose this Settlement before the Commission and agree not to take any position adverse to the terms of this Settlement in any proceedings before the Commission or before the NYSPSC that relate to this Settlement and Transco. This Settlement does not restrict any Settling Party’s 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.

3.7 Withdrawal of Request for Rehearing/Petition for Review. Within thirty (30) days of the Commission’s approval of this Settlement, the NYSPSC agrees to withdraw the pending request for rehearing in Docket No. ER24-232 and the Petition for Review filed in the United States Circuit Court of Appeals for the Second Circuit.

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3.8 Commission Acceptance. To the extent the Commission does not approve all aspects of this Settlement, any Settling Party will have thirty (30) days from the date the Commission issues an order on this Uncontested Offer of Settlement to withdraw its support for the Settlement.

**ARTICLE IV
SETTLEMENT EFFECTIVE DATE**

4.1 This Settlement shall be effective on the date on which a Commission order approving this Settlement without modification is issued (“Settlement Effective Date”). The Settlement shall bind the Settling Parties as of the Settlement Effective Date.

**ARTICLE V
NO PRECEDENTIAL EFFECT**

5.1 Except as expressly provided for in this Settlement, this Settlement will not constitute a precedent in any future proceeding. This Settlement Agreement 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. 1979), or as a “settled practice” as that term is used in *Public Service Comm. Of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980).

**ARTICLE VI
STANDARD OF REVIEW**

6.1 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.,*

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Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty., Wash., 554 U.S. 527 (2008), applies to any changes to the settlement sought by the FERC acting *sua sponte*, the Settling Parties acting unanimously, or at the request of a non-settling party or a non-party to this proceeding.

**ARTICLE VII
MISCELLANEOUS**

7.1 Final Resolution. This Settlement Agreement shall be a final and complete resolution of all issues concerning the Project in this proceeding.

7.2 Binding. This Settlement Agreement is binding upon and for the benefit of the Settling Parties and their successors and assigns.

7.3 Entire Agreement. This Settlement Agreement constitutes the entire agreement between the Settling Parties with respect to the subject matter addressed herein, and supersedes all prior or contemporaneous understandings or agreements, oral or written, between the Settling Parties with respect to the subject matter of this Settlement.

7.4 Interpretation. All Settling Parties participated in the drafting of this Settlement Agreement. No Settling Party shall be deemed the drafter of this Settlement Agreement, and this Settlement Agreement shall not be construed against any Settling Party as the drafter.

7.5 Conflict. In the event of a conflict between the terms contained in this Settlement Agreement and those of the attached Explanatory Statement, the terms of this Settlement Agreement shall control.

7.6 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)(2024). Unless and until

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the Settlement becomes effective pursuant to its terms, the Settlement shall have no effect. The Settlement Agreement shall not be admissible in evidence before any court or regulatory body (except as related to enforcement of its terms). 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.

7.7 Titles and Headings. The titles and headings of the Settlement Agreement are for reference and convenience purposes only. They are not to be construed or taken into account in interpreting the Settlement Agreement and do not qualify, modify, or explain the effects of the Settlement Agreement.

7.8 Enforceability and Waiver. Any failure of any Settling Party (i) to enforce any of the provisions of this Settlement Agreement or (ii) to require compliance with any of its terms at any time during the term of this Settlement Agreement shall in no way affect the validity of this Settlement Agreement, or any part thereof, and shall not be deemed a waiver of the right of such Settling Party thereafter to enforce any and each such provision. Commission approval of this Settlement Agreement shall constitute a grant of any waivers of the Commission's regulations that may be necessary to effectuate all of the provisions of this Settlement Agreement.

7.9 Waiver. No provisions of this Settlement Agreement may be waived as to any Settling Party, except through a writing signed by an authorized representative of the waiving

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Settling Party. Waiver of any provision of this Settlement Agreement by a Settling Party shall not be deemed to waive any other provision or to be a waiver of the other Settling Parties.

7.10 Authorization. Each person executing this Settlement Agreement on behalf of a Settling Party represents and warrants that he or she is duly authorized and empowered to act on behalf of, and to authorize this Settlement Agreement to be executed on behalf of, the Settling Party that he or she represents.

7.11 Ambiguity. This Settlement Agreement is the result of negotiations among the Settling Parties and has been subject to review by each Settling Party and its respective counsel. Therefore, this Settlement Agreement shall be deemed the product of each Settling Party and no ambiguity in this Settlement Agreement shall be construed in favor of, or against, either Settling Party.

7.12 Counterparts. This Settlement Agreement 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, have caused this Agreement to be executed.

{SIGNATURE PAGES FOLLOW}

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SETTLEMENT AGREEMENT

SIGNATURE PAGES

NEW YORK TRANSCO LLC

By: *Victor Mullin*

Name: Victor Mullin

Title: President

NEW YORK STATE PUBLIC SERVICE
COMMISSION

By: _____

Name: _____

Title: _____

CITY OF NEW YORK

By: _____

Name: _____

Title: _____

MULTIPLE INTERVENORS and its
MEMBERS

By: _____

Name: _____

Title: _____

NEW YORK ASSOCIATION OF PUBLIC
POWER

By: _____

Name: _____

Title: _____

NEW YORK POWER AUTHORITY

By: _____

Name: _____

Title: _____

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NEW YORK TRANSCO LLC

By: _____

Name: _____

Title: _____

NEW YORK STATE PUBLIC SERVICE
COMMISSION

By: Robert Rosenthal

Name: Robert Rosenthal

Title: General Counsel

CITY OF NEW YORK

By: _____

Name: _____

Title: _____

MULTIPLE INTERVENORS and its
MEMBERS

By: _____

Name: _____

Title: _____

NEW YORK ASSOCIATION OF PUBLIC
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NEW YORK POWER AUTHORITY

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NEW YORK TRANSCO LLC

By: _____

Name: _____

Title: _____

NEW YORK STATE PUBLIC SERVICE
COMMISSION

By: _____

Name: _____

Title: _____

CITY OF NEW YORK

By: Amanda Trinsey

Name: Amanda De Vito Trinsey, Esq.

Title: Counsel

MULTIPLE INTERVENORS and its
MEMBERS

By: Amanda Trinsey

Name: Amanda De Vito Trinsey, Esq.

Title: Counsel

NEW YORK ASSOCIATION OF PUBLIC
POWER

By: _____

Name: _____

Title: _____

NEW YORK POWER AUTHORITY

By: _____

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CITY OF NEW YORK

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MULTIPLE INTERVENORS and its
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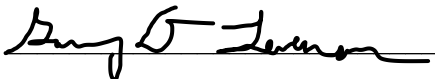
NEW YORK ASSOCIATION OF PUBLIC
POWER

By: _____

Name: _____

Title: _____

NEW YORK POWER AUTHORITY

By: 

Name: Gary D. Levenson

Title: Principal Attorney

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SETTLEMENT AGREEMENT

SIGNATURE PAGES

NEW YORK TRANSCO LLC

By: _____

Name: _____

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NEW YORK STATE PUBLIC SERVICE
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CITY OF NEW YORK

By: _____

Name: _____

Title: _____

MULTIPLE INTERVENORS and its
MEMBERS

By: _____

Name: _____

Title: _____

NEW YORK ASSOCIATION OF PUBLIC
POWER

By:  _____

Name: DAVID L. LEATHERS

Title: PRESIDENT

NEW YORK POWER AUTHORITY

By: _____

Name: _____

Title: _____