

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

**Orange and Rockland Utilities, Inc.
New York Independent System Operator, Inc.**

**Docket Nos. ER24-1614-000
ER24-1614-001**

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

Pursuant to Rule 602 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.602, Orange and Rockland Utilities, Inc. (“O&R”), on behalf of the Settling Parties,¹ submits this explanatory statement in support of the Joint Offer of Settlement (“Settlement”). These proceedings involve the return on equity (“ROE”) values to be applied under O&R’s formula rate templates contained in the NYISO Open Access Transmission Tariff (“OATT”) Rate Schedule 10 and Rate Schedule 19, which were set for hearing and settlement procedures, and paper hearing, in the above-referenced proceedings as described more fully below. This Settlement resolves all issues set for hearing and settlement procedures, and for paper hearing, in Docket Nos. ER24-1614-000 and -001.

¹ The Settling Parties include O&R, 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. NYISO is not a party to the Settlement and takes no position with respect to the substantive issues in the Settlement.

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 certain eligible transmission projects.

O&R's formula rate template for transmission projects eligible for cost allocation and recovery under Rate Schedule 10 included a proposed base ROE and a 50 basis-point-adder for participation in a Regional Transmission Organization (i.e., the NYISO) ("RTO Participation Adder"). The formula rate template was accepted for filing, with the proposed ROEs set for hearing and settlement procedures and the question of O&R's eligibility for the ROE Participation Adder under Rate Schedule 10, while conditionally granted, set for paper hearing.²

II. PROCEDURAL HISTORY

On March 25, 2024, the NYISO filed with the Commission, on behalf of O&R, revisions to the NYISO OATT to add: (1) O&R's proposed formula rate template, (2) associated formula rate protocols, and (3) conforming OATT amendments addressing derivation and recovery of the costs for eligible transmission projects under NYISO OATT Rate Schedules 10 and 19, respectively. O&R's filing on March 25, 2024, 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") for Rate Schedule 10 projects. On May 24, 2024, the Commission accepted O&R's proposed attachments to Rate Schedules 10 and 19, effective May 25, 2024, subject to hearing and settlement judge procedures.³ The O&R Hearing Order also conditionally accepted

² See *Orange and Rockland Utilities, Inc.*, 187 FERC ¶ 61,110, at PP 2, 16, 44-45 (2024) ("O&R Hearing Order").

³ See *id.*

for filing, suspended for a nominal period, effective May 25, 2024, O&R's request for a 50 basis-point RTO Participation Adder under Rate Schedule 10 subject to the outcome of paper hearing procedures and conditioned on the resulting ROE being within the applicable zone of reasonableness, as may be determined in the hearing and settlement judge procedures.⁴ In addition, the O&R Hearing Order verified the interventions and party status of the NYSPSC, NYAPP and NJDRC.⁵

On May 30, 2024, the Acting Chief Administrative Law Judge issued an order designating The Honorable Patricia M. French as Settlement Judge in this proceeding.⁶ Judge French issued an order on June 6, 2024, to convene the first settlement conference in this proceeding on June 20, 2024, with second and third settlement conferences held on July 10, 2024, and July 17, 2024.⁷ The Settling Parties achieved a settlement in principle at the July 17, 2024, settlement conference.⁸

III. ITEMS INCLUDED IN SETTLEMENT PACKAGE

Accompanying this Explanatory Statement is the Settlement and revised tariff sheets for O&R's formula rate template for Rate Schedule 10 and Rate Schedule 19 in eTariff format. The tariff records, provided as Appendices A.1 and A.2, are modified to reflect the terms of the Settlement.

⁴ See *id.* at PP 2, 55.

⁵ See *id.* at P 14. The Edison Electric Institute ("EEI") filed a Motion to Intervene on June 3, 2024, which was submitted out of time and after the O&R Hearing Order issued. EEI's motion has not been acted upon and EEI is not a party to the proceeding or to the Settlement.

⁶ See *Order of Chief Judge Designating Settlement Judge*, Docket No. ER24-1614-001 (May 30, 2024).

⁷ See *Order to Convene First Settlement Conference*, Docket No. ER24-1614-001 (Jun. 6, 2024); *Order to Convene Second Settlement Conference*, Docket No. ER24-1614-001 (Jun. 20, 2024); *Order to Convene Third Settlement Conference*, Docket No. ER24-1614-001 (Jul. 11, 2024).

⁸ See *First Status Report of Settlement Judge*, Docket Nos. ER24-1614-001 (Jul. 26, 2024).

IV. SUMMARY OF SETTLEMENT

The Settlement resolves all issues regarding O&R's ROE values in both its Rate Schedule 10 and Rate Schedule 19 formula rate templates. 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 includes O&R's ROEs for application under its Rate Schedule 10 formula rate template, as conditionally accepted subject to settlement judge procedures and a paper hearing concerning O&R's eligibility for the RTO Participation Adder. In addition, the scope of the Settlement includes O&R's ceiling ROE value for application under O&R's Rate Schedule 19 formula rate template.

Article 3 details the Settlement's terms, stipulating that, pending Commission approval, all Settling Parties agree to a stated ROE of 10.50% for transmission projects under Rate Schedule 10 where O&R 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 other ROE incentives under the Commission regulations at 18 C.F.R. § 35.35. O&R expressly waives, as part of the Settlement, its conditional right to the RTO-Participation Adder for eligible transmission projects under Rate Schedule 10.⁹ O&R 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.

⁹ See O&R Hearing Order, 185 FERC ¶ 61,091 at PP 59-60.

Article 3 also sets the ceiling ROE at 10.60% for O&R's Rate Schedule 19 formula rate template. It also clarifies that O&R will not request or receive for any Schedule 19 Project(s) ROE incentive adders to the ceiling ROE, while O&R retains the right to seek non-ROE related transmission incentives under Section 205 of the FPA as described in the CSRA accepted by the Commission in Docket Nos. ER22-2152-000, *et al.*¹⁰ The Settlement therefore resolves the sole issue designated for hearing and settlement procedures concerning Schedule 19 under O&R's formula rate template.

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 Rate Schedule 10 ROE values under FPA Sections 205 or 206. O&R 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 thirty business days to negotiate a resolution. If unresolved within 30 days, the Settlement becomes void and O&R 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.

¹⁰ See *Consol. Edison Co. of N.Y., Inc. et al.*, 180 FERC ¶ 61,106, at P 50 (2022) ("CSRA Order"). The CSRA is a voluntary participant funding agreement among the six New York State-regulated public utility transmission owners, including O&R and for limited purposes the NYSPSC, to share the costs of Approved Local Transmission Upgrades.

Article 6 provides that, consistent with longstanding FERC precedent,¹¹ 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 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.

¹¹ 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).

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 O&R's Rate Schedule 10 and Rate Schedule 19 formula rate templates. 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 as soon as practicable, and without any changes or conditions.

Respectfully submitted,

/s/ Susan J. LoFrumento

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