

**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**

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, Orange and Rockland Utilities, Inc. (“O&R”), 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 O&R, the “Settling Parties”), submits this Joint Offer of Settlement (“Settlement”) to resolve the matters set for hearing and settlement procedures, and paper hearing, in the above-referenced proceeding.¹ This proceeding involves the return on equity (“ROE”) values to be applied under O&R’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, and paper hearing, in the above referenced proceeding.² This Settlement resolves all issues set for

¹ See *Orange and Rockland Utilities, Inc.*, 187 FERC ¶ 61,110 (2024) (“O&R Hearing 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. NYISO is not a party to the Settlement and takes no position with respect to the substantive issues in the Settlement.

hearing and settlement procedures, and renders moot the issues set for paper hearing, in Docket Nos. ER24-1614-000 and -001.

ARTICLE 1

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 for filing, suspended for a nominal period, effective May 25, 2024, O&R's request under Rate Schedule 10 for a 50 basis-point RTO Participation Adder 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

³ See *O&R Hearing Order*, 187 FERC ¶ 61,110, at PP 2, 16, 44-45.

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.

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

ARTICLE 2

SCOPE OF SETTLEMENT

- 2.1 This Settlement resolves all issues regarding O&R's proposed ROE submitted for purposes of Rate Schedule 10 under Section 205 of the Federal Power Act ("FPA") in Docket Nos. ER24-1614-000, -001 and set by the O&R Hearing Order for hearing and settlement judge procedures. This Settlement also renders moot the issue regarding O&R's application for approval of the RTO Participation Adder, which was conditionally accepted subject to paper hearing, as discussed in the O&R Hearing Order.
- 2.2 In addition, this Settlement resolves all issues regarding O&R's proposed ceiling ROE submitted for purposes of Rate Schedule 19 under Section 205 of the FPA in Docket No. ER24-1614-000, -001 and set for hearing and settlement judge procedures in the O&R Hearing Order.

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).

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 eligible O&R transmission project under Rate Schedule 10 and Rate Schedule 19, as described below.
- 3.2 The following terms shall apply to O&R's eligible transmission projects under Rate Schedule 10:
- (a) ROE. For transmission projects for which 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 or as may be recognized in future Commission orders, 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), a stated all-inclusive ROE of 10.50% shall apply. For other transmission projects where O&R 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 be increased by 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. O&R agrees to waive its right to the RTO

Participation Adder conditionally accepted and made subject to paper hearing by the Commission in the O&R Hearing Order and shall make any necessary filings to effectuate such waiver. O&R agrees not to request any ROE incentive adders from the Commission during the five-year period described in Section 4.1 below, including, but 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. O&R 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”).

3.3 The following financial terms shall apply to O&R’s 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”), as recognized in the Commission’s CSRA Order:⁹

- (a) ROE. A ceiling ROE of 10.60% will apply to O&R’s Schedule 19 Projects, which shall be reflected in O&R’s formula rate template under NYISO OATT Rate Schedule 19.
- (b) No ROE Incentive Adders. None of O&R’s Schedule 19 Projects shall be eligible for, nor shall O&R seek any ROE incentive adders under the FPA. O&R reserves

⁹ See *Consol. Edison Co. of N.Y., Inc. et al.*, 180 FERC ¶ 61,106, at P 50 (2022) (“CSRA Order”). The Cost Sharing and Recovery Agreement (“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 approved by the NYSPSC in furtherance of the Climate Leadership and Community Protection Act, 2019 N.Y. Sess. Laws, ch. 106. See *id.* at n.7.

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 CWIP Incentive, subject to the terms of the CSRA.

- (c) Conditional Applicability of Ceiling ROE. The Settling Parties agree that the ROE that will apply under O&R's formula rate template under NYISO OATT Rate Schedule 19 shall be that established by the NYSPSC by order as applicable to O&R. Notwithstanding the foregoing, if the ROE established by the NYSPSC for O&R 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 this Article 3 until such time as the NYSPSC authorized ROE no longer exceeds the ceiling ROE authorized by the Commission.

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, O&R 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 O&R 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 O&R 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 O&R 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, any Settling Party may notify the other Settling Parties of objections in accordance with the Timely Notice process described in Section 4.3 of this Settlement. If the Settling Parties fail to negotiate a revised Settlement within thirty (30) days after providing Timely Notice and initiating good faith negotiations, this Settlement will be terminated, and O&R 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,¹⁰ 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 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 *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*

¹⁰ 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...”).

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).
- 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.

Orange and Rockland Utilities, Inc.

/s/ Susan J. LoFrumento

Sebrina M. Greene
Susan J. LoFrumento
Joshua A. Kirstein
Orange and Rockland Utilities, Inc.
4 Irving Place
New York, NY 10003

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

Attorneys for Orange and Rockland Utilities, Inc.

New York State Public Service Commission

/s/ Robert Rosenthal

General Counsel
New York State Public Service Commission
3 Empire State Plaza
Albany, NY 12223-1305

*Attorney for the New York State Public
Commission*

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 the
New York Association of Public Power*

Dated: September 20, 2024