

153 FERC ¶ 61,181
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

New York Transco, LLC

Docket No. ER15-572-003

ORDER GRANTING MOTION FOR TEMPORARY AND LIMITED WAIVER

(Issued November 19, 2015)

1. On September 28, 2015, New York Transco, LLC (NY Transco) filed a motion for a temporary and limited waiver of the transmission formula rate implementation protocols (Protocols) contained in section 36 of Attachment DD of the New York Independent System Operator, Inc. (NYISO) Open Access Transmission Tariff (Tariff) to temporarily suspend the obligation to post the annual projection of the Net Adjusted Revenue Requirement (NARR) by September 30, 2015. In this order, we grant NY Transco's motion for a waiver.

I. Background

2. On December 4, 2014, NYISO submitted, on behalf of NY Transco and the indicated New York Transmission Owners,¹ a proposed transmission cost-of-service formula rate template (Formula Rate) and Protocols for NY Transco to recover costs associated with five transmission projects that NY Transco intended to develop and own. On April 2, 2015, the Commission issued an order accepting and suspending for a nominal period, subject to refund and the outcome of hearing and settlement judge procedures, NY Transco's proposed Formula Rate, the Protocols and the base return on equity.²

¹ The New York Transmission Owners comprise Central Hudson Gas & Elec. Corp., Consolidated Edison Co. of New York, Inc., Niagara Mohawk Power Corp., New York State Elec. & Gas Corp., Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corp.

² *N.Y. Indep. Sys. Operator, Inc., et al.*, 151 FERC ¶ 61,004 (2015) (April 2 Order).

3. On April 9, 2015, the Chief Administrative Law Judge issued an order designating a settlement judge and establishing settlement judge procedures.³ Since then and in compliance with the April 2 Order, NY Transco states that it has been engaged in settlement discussions with interested parties.⁴

4. According to NY Transco, the preamble and section 1 of NY Transco's Protocols require NY Transco to calculate its NARR for a given calendar year (Rate Year) and file its projected NARR no later than September 30 preceding a Rate Year. Additionally, NY Transco is required to post its projected NARR on NYISO's website.⁵

II. NY Transco's Motion for a Waiver

5. NY Transco seeks a temporary and limited waiver of the Protocols contained in section 36 of Attachment DD of NYISO's Tariff to temporarily suspend its obligation to post an Annual Projection of the NARR by September 30, 2015. NY Transco asserts that unless a waiver is granted, NY Transco will be required to post its projected NARR and all supporting documents on NYISO's website based on values included in its December 4, 2014 filing. NY Transco states that these values would include certain inputs that the Commission set for hearing, including NY Transco's return on equity.⁶

6. NY Transco states that in order to avoid the unnecessary expenditure of resources by the Commission and the settlement parties, NY Transco requests a temporary and limited waiver of the September 30, 2015 deadline to file the projected NARR pursuant to section 1 of section 36.3.1.2 of the Attachment DD of the NYISO Tariff. NY Transco states that, following extensive settlement negotiations with the interested parties and Commission Trial Staff, NY Transco believes it has reached an agreement in principle concerning the matters that the Commission set for settlement and hearing procedures.⁷ Thus, according to NY Transco, a waiver will allow NY Transco to incorporate the terms of any anticipated settlement into the calculation of the projected NARR. NY Transco requests the Commission to grant a waiver until the earlier of 30 days after the filing of the settlement agreement or November 30, 2015.

³ Order of Chief Judge Designating Settlement Judge and Scheduling Settlement Conference, Docket No. ER15-572-000 (April 9, 2015).

⁴ NY Transco September 28, 2015 Motion at 3.

⁵ *Id.* at 3.

⁶ *Id.* at 3.

⁷ *Id.* at 2.

7. NY Transco states that the Commission has granted similar requests where the waiver: (1) is of limited scope; (2) remedies a concrete problem; and (3) will not have undesirable consequences, such as harming third parties.⁸ NY Transco states that the waiver is of limited scope because it will only apply for a period until no later than November 30, 2015. NY Transco asserts that the waiver will remedy a concrete problem because it will allow NY Transco to avoid preparing the supporting documentation for a projected NARR based on inputs that are the subject of a pending proceeding before the Commission. Finally, NY Transco states that the waiver will not have undesirable consequences because it does not affect any other aspects of the Formula Rate or Protocols and would not alter any existing review, challenge, true-up, refund, or surcharge allowed under the Protocols. NY Transco states that the parties active in the settlement proceeding support or do not oppose the instant motion for a waiver.⁹

III. Notice of Filing and Responsive Pleading

8. Notice of NY Transco's filing was published in the *Federal Register*, 80 Fed. Reg. 60,663 (2015), with interventions, protests, and comments due on or before October 19, 2015. None was filed.

IV. Discussion

9. For good cause shown we grant NY Transco's motion for a waiver of the Protocols contained in section 36 of Attachment DD of the NYISO Tariff to suspend temporarily NY Transco's obligation to post the projected NARR pursuant to the Protocols by September 30, 2015. The Commission has granted waiver of tariff provisions when the requesting party has shown that the waiver: (1) is of limited scope; (2) remedies a concrete problem; and (3) will not have undesirable consequences, such as harming third parties.¹⁰ We find that these conditions have been satisfied here.

⁸ *Id.* at 4 (citing *Entergy Services, Inc.*, 151 FERC ¶ 61,165, at P 11 (2015); *Southwest Power Pool, Inc. and Tri-County Electric Coop., Inc.*, 145 FERC ¶ 61,115, at P 17 (2013)).

⁹ *Id.* at 4, n.8. The parties in settlement are the New York Public Service Commission, City of New York, New York Utilities Intervention Unit, New York Association of Public Power, Municipal Electric Utilities Association of New York, Multiple Intervenors, New York Power Agency, and Long Island Power Authority.

¹⁰ *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,067 (2015). *See also, e.g.*, *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004 (2010); *ISO New England Inc. - EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008); *Central Vermont Pub. Serv. Corp.*, 121 FERC ¶ 61,225 (2007).

10. First, the waiver is limited in scope because it is temporary and only until the earlier of 30 days after the filing of the settlement agreement or November 30, 2015. Second, granting the waiver will remedy a concrete problem by ensuring that NY Transco will not need to divert resources away from settlement negotiations in order to prepare supporting documentation for its projected NARR based on inputs that are the subject of pending settlement proceeding before the Commission. Finally, the waiver will not have undesirable consequences, such as harming third parties, because it does not affect any other aspects of the Formula Rate or Protocols and will not alter any existing review, challenge, true-up, refund, or surcharge allowed under the Protocols.

The Commission orders:

NY Transco's motion for a waiver is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.