

152 FERC ¶ 61,166
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.

Docket No. ER15-2102-000

ORDER ON TRANSMISSION FORMULA RATE,
TRANSMISSION INCENTIVES, AND TARIFF REVISIONS

(Issued August 31, 2015)

1. On July 2, 2015, the New York Independent System Operator, Inc. (NYISO)¹ submitted under section 205 of the Federal Power Act (FPA),² on behalf of the New York Power Authority (NYPA), a proposal by NYPA to replace its existing stated rates for the NYPA Transmission Adjustment Charge in Attachment H of the NYISO Open Access Transmission Tariff (OATT) with a transmission cost-of-service formula rate template (formula rate) and formula rate implementation protocols (protocols) to determine NYPA's annual transmission revenue requirement (revenue requirement).³ NYPA also requests two transmission rate incentives for the Marcy South Series Compensation and Fraser to Coopers Corners Reconductoring project (MSCC Project) pursuant to section 219 of the FPA,⁴ Order No. 679,⁵ and the Commission's 2012 Transmission

¹ NYPA states that "NYISO is submitting this filing in FERC's e-Tariff on NYPA's behalf solely in its role as the Tariff Administrator ... [and] NYISO takes no position on any substantive aspect of the filing." NYPA Transmittal Letter at n.6.

² 16 U.S.C. § 824d (2012).

³ [NYISO OATT, section 14.2, section 14.2.2.2, section 14.2.2.2.2, section 14.2.2.3, and section 14.2.2.4, \(8.0.0\)](#).

⁴ 16 U.S.C. § 824s (2012).

⁵ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

Incentives Policy Statement.⁶ NYPA requests that the Commission grant waiver of certain filing requirements. NYPA also requests that the Commission accept the formula rate, protocols, base return on equity (ROE) of 8.85 percent, and removal of a certain provision in the NYISO OATT to effectuate the change from a stated rate to a formula rate, to be effective September 1, 2015. For the reasons discussed below, we reject NYPA's filing.

I. Background

2. NYPA is a corporate municipal instrumentality and a political subdivision of the State of New York and is a "state instrumentality" within the definition of section 201(f) of the FPA.⁷ NYPA states that, while it is outside of the Commission's rate making jurisdiction, as a New York Transmission Owner in NYISO, NYPA is subject to Commission review with respect to changes to its revenue requirement, which is included in NYISO's OATT. NYPA further states that it is engaged in the generation, sale and transmission of electric power and energy at wholesale and retail in New York.

3. NYPA states that its transmission facilities directly interconnect with the transmission systems of all of the investor-owned utilities in New York, as well as interconnect with adjoining control areas through interconnections to utility systems in Vermont, and the Canadian Provinces of Ontario and Quebec. NYPA explains that it has no distribution facilities — virtually all of NYPA's customers are connected to the transmission and distribution systems of other public utilities.⁸ NYPA further explains that the Commission has recognized that, unlike public utilities, NYPA does not have a defined, integrated service area; instead, "its customers are located in the service areas of other transmission providers, and ... pay for transmission service based on the costs of the transmission providers where the loads are located."⁹

⁶ *Promoting Transmission Investment through Pricing Reform*, 141 FERC ¶ 61,129 (2012 Transmission Incentives Policy Statement).

⁷ 16 U.S.C. § 824f (2012); *see* NYPA Transmittal Letter at 4-5. Accordingly, NYPA states that, as a subdivision of a state, NYPA is exempt from Part II of the FPA and, despite its filing here to comply with NYISO OATT requirements, NYPA does not waive its statutory exemption from Commission jurisdiction. *Id.* at 4, n.10.

⁸ NYPA Transmittal Letter at 5.

⁹ *Cent. Hudson Gas & Elec. Corp.*, 103 FERC ¶ 61,143, at P 30 (2003).

4. NYPA states that, when NYISO was formed, NYPA, NYISO, and the other New York Transmission Owners¹⁰ agreed to establish in the NYISO OATT a NYPA-exclusive charge, the NYPA Transmission Adjustment Charge. It asserts that the purpose of the NYPA Transmission Adjustment Charge is to recover any shortfall in NYPA's revenue requirement that is not recovered under other agreements under which NYPA directly bills its own customers for transmission services.¹¹ NYPA states that, on January 27, 1999, the Commission conditionally accepted the filing by NYPA and the other New York Transmission Owners to establish NYISO¹² and, in conjunction with that filing, on November 17, 1999, the New York Transmission Owners filed a joint settlement agreement resolving all issues set for hearing in that docket. NYPA states that the settlement established the NYPA Transmission Adjustment Charge mechanism as a part of the NYISO OATT to ensure NYPA's recovery of its revenue requirement.¹³

¹⁰ The NYISO OATT defines NYPA and the original signatories to the agreements that formed NYISO as "Member Systems" which are the "eight Transmission Owners that comprise the membership of the New York Power Pool." The New York Power Pool is:

An organization established by agreement (the "New York Power Pool Agreement") made as of July 21, 1966, and amended as of July 16, 1991, by and among Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, and the Power Authority of the State of New York [(NYPA)]. [The Long Island Power Authority (LIPA)] became a Member of the [New York Power Pool] on May 28, 1998 as a result of the acquisition of the Long Island Lighting Company by the Long Island Power Authority.

NYISO OATT, Schedule 1.13 and 1.14 (Definitions). This membership has remained unchanged since 1998.

¹¹ NYPA Transmittal Letter at 2, n.7 (citing *Cent. Hudson Gas & Elec. Corp.*, 86 FERC ¶ 61,062, at 61,212, *order on reh'g*, 88 FERC ¶ 61,138, at 61,403-04 (1999)).

¹² *Id.*

¹³ NYPA Transmittal Letter at 5 (citing NYISO OATT, Attachment H, section 14.2.2.2.1). NYPA states that it calculates the NYPA Transmission Adjustment Charge

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NYPA explains that its existing revenue requirement of \$175.5 million is a product of a settlement agreement approved by the Commission in Docket No. ER12-2317-000.¹⁴ In its filing at the time, NYPA stated that the 2012 rate increase was “the first in a probable series of proposed increases that will likely culminate in NYPA requesting, in some future filing, authorization to implement a formula rate in order to make annual updates to its transmission [revenue requirement].”¹⁵

II. NYPA’s Filing

A. Formula Rate, Protocols, and Base ROE

5. NYPA proposes tariff revisions to replace its existing stated revenue requirement in Attachment H to the NYISO OATT with a formula rate and protocols to develop its revenue requirement.¹⁶ The proposed formula rate includes a base ROE of 8.85 percent, a capital structure of 60 percent equity and 40 percent debt. NYPA projects its revenue requirement to increase by approximately \$16.9 million in the first year to \$192,388,117 with the formula rates and incentives requested herein.¹⁷ NYPA provides a rate impact analysis demonstrating that the increase in the NYPA Transmission Adjustment Charge

by deducting from its Commission-approved revenue requirement a number of directly-recovered revenue streams, such as revenues from transmission services, the sale of transmission congestion contracts, and congestion rents. That portion of its revenue requirement not recovered from those separate sources is recovered as a monthly surcharge assessed to all customers taking transmission service under the NYISO OATT. NYPA states that the NYPA Transmission Adjustment Charge thus ensures that NYPA is able to recover its Commission-approved revenue requirement by allocating the cost of any unrecovered revenue requirement to transmission customers throughout the state, who benefit from the inclusion of NYPA’s transmission facilities in the NYISO control area.

¹⁴ NYPA Transmittal Letter at 3 (citing *Cent. Hudson Gas & Elec. Corp.*, 86 FERC ¶ 61,062 at 61,212-213).

¹⁵ *N.Y. Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,017 (2013).

¹⁶ See NYISO OATT, Attachment H, section 14.2.2.4 (NYPA Transmission Adjustment Charge Calculation Information).

¹⁷ NYPA Application, Ex. PA-102, Line 12, “Transmission Revenue Requirement Summary.”

would be approximately 9 cents per MWh. For residential customers the typical bill impact would be less than one-tenth of 1 percent or about 6 cents per month.¹⁸

6. NYPA requests that the Commission accept the proposed tariff records, to be effective September 1, 2015, without suspension or hearing. Alternatively, NYPA requests that the Commission limit the issues set for hearing and impose a nominal suspension period. NYPA explains that the Commission should accept NYPA's formula rate without suspension because the Commission has found that, as a non-jurisdictional utility, "NYPA is not subject to the Commission-imposed rate suspension and refund obligations under section 205 of the FPA."¹⁹

7. NYPA explains that it is proposing to convert its current stated revenue requirement into a formula rate because it anticipates the need for significant transmission life extension, upgrade, and maintenance projects on its existing transmission system that will require significant capital expenditures in the next decade.²⁰ NYPA states that some of its existing transmission system facilities are more than 70 years old and that, despite their age, these transmission facilities continue to perform vital transmission functions for New York electricity customers.²¹ NYPA states that, in December 2012, the NYPA Board of Trustees approved a transmission life extension and modernization program, which consists of approximately 20 major projects or tasks to be completed through the late 2020s.²² NYPA anticipates investing approximately

¹⁸ NYPA Application, T. Davis Test., Ex. PA-101 at 26-27.

¹⁹ NYPA Transmittal Letter at 33-34 (citing *N.Y. Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,240, at PP 29, 31 (2012) (*NYISO*)).

²⁰ *Id.* at 11.

²¹ *Id.*

²² Some of these projects include: the Niagara Switchyard life extension and modernization, replacement of the Plattsburgh to Vermont PV-20 Transmission Facility underwater cable connecting the electric systems of New York and Vermont extending under Lake Champlain, and the Moses Adirondack Rebuild Project which involves rebuilding over 80 miles of an existing 230 kV transmission lines constructed in 1942. The PV-20 Transmission Facility is an approximately 9-mile long 115 kV circuit that connects the Plattsburgh Substation in Beekmantown, New York, to the Vermont Electric Company substation in Milton, Vermont. Some of these cables have exceeded their projected 50-year useful life while others are approaching the end of their useful life, and NYPA proposes to replace them, increasing a portion of the existing 115 kV submarine cables with 230 kV cables, increasing transfer capability. The Moses-Adirondack

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\$726 million in the transmission life extension and modernization program needed on the NYPA transmission system through 2025. NYPA explains that it seeks to convert its stated revenue requirement into a formula rate because of this anticipated need for significant transmission investment in the next decade.²³

8. NYPA states that the protocols provide for a July 1 through June 30 Rate Year and are consistent with the Commission's recent pronouncements regarding (i) the scope of participation in the information exchange process; (ii) the transparency of the information exchange; and (iii) the ability of interested parties to challenge NYPA's implementation of the formula rate as a result of the information exchange.²⁴

9. NYPA requests any necessary waivers of section 35.13 of the Commission's regulations, which require public utilities to file cost-of-service statements and rate design information.²⁵ NYPA also requests a waiver of the requirement to file a FERC Form No. 1, asserting that because of its non-jurisdictional utility status, it is not required to file FERC Form No. 1. NYPA argues that the Commission has recognized that NYPA is not subject to section 205 of the FPA and to the Commission filing requirements.²⁶ NYPA further argues that the Commission granted a waiver of the requirement that NYPA submit cost data using the section 35.13(h) cost of service statement, noting

transmission lines consist of two 230 kV circuits that connect the St. Lawrence Hydro Project in Maseca, NY, to the NYPA's Adirondack substation in Lewis County, a distance of approximately 85 miles or 170 circuit miles. Among other things, NYPA proposes to replace the existing 230KV lines with two 345KV lines, which will increase transmission transfer capability throughout the Hudson Valley. *See* NYPA Transmittal Letter at 6-7; T. Davis Test. at 8-9, Ex. No. PA-105 (New York Power Authority Annual Report for 2014) at 28.

²³ *Id.*

²⁴ *Id.* at 27.

²⁵ *See* 18 C.F.R. § 35.13(h) (2015).

²⁶ NYPA Transmittal Letter at 17 (citing *City of Vernon, Cal.*, Opinion No. 479, 111 FERC ¶ 61,092, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006), *aff'd in part and vacated in part*, *Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663 (*City of Vernon*)).

however, that NYPA is required to develop a sufficient record in order to permit the Commission to make its required just and reasonable determination.²⁷

10. NYPA states that instead of filing a FERC Form No. 1, it proposes to use its audited Annual Report, including NYPA's financial statements, and supplemental work papers to populate the inputs for its formula rate. NYPA represents that the financial statements are prepared in conformity with U.S. Generally Accepted Accounting Principles.²⁸ NYPA claims its audited financial statements conform to the Commission's Uniform System of Accounts, and that NYPA's financial statements reconcile to "information contained in conformance with the Commission's numbered accounting system."²⁹ NYPA states that the information in the audited financial statements, in tandem with supplementary data in the form of supporting work papers, will provide interested parties with sufficient information concerning NYPA's costs and accounting to demonstrate that the formula rate is just and reasonable.³⁰

11. NYPA proposes to use its actual capital structure, comprised of long-term debt and its net position, updated each year in NYPA's financial statements, capped at 60 percent equity.³¹ NYPA explains that, based on 2014 calendar year data, NYPA's capital structure has a 76.4 percent equity based on its ratio of long-term debt to net position. NYPA states that its long-term capitalization target, which it intends to achieve through the issuance of long-term debt to finance capital expansion, is 65 percent equity. However, NYPA is proposing to voluntarily cap the equity component of its capital structure at 60 percent to minimize rate impacts to NYISO customers during a period of anticipated capital spending over the coming years. NYPA notes that the Commission has expressly accepted voluntary proposals by an entity to cap the equity component of its capital structure in *Transource Wisconsin, LLC*.³²

²⁷ *Id.* (citing *NYISO*, 140 FERC ¶ 61,240 at n.85).

²⁸ NYPA Application, Ex. PA-101, T. Davis Test. at 13.

²⁹ NYPA Transmittal Letter at 19.

³⁰ *Id.* at 17-20 & n.93 (citing Ex. PA-101, T. Davis Test. at 13).

³¹ NYPA explains that its net position is equivalent to a private entity's retained earnings.

³² *Transource Wis., LLC*, 149 FERC ¶ 61,180 at P 34 (2014).

B. Transmission Incentives and the MSSC Project

12. NYPA requests two transmission rate incentives for the MSSC Project: a 50 basis point return on equity adder for participation in the NYISO (RTO participation adder) and the opportunity to recover costs in the event of abandonment due to circumstances beyond NYPA's control for its portion of the MSSC Project. NYPA explains that the MSSC Project is one of the Transmission Owner Transmission Solutions Projects (TOTS Projects) of the New York Transmission Company, LLC (NY Transco),³³ and is being co-developed by NYPA and NYSEG. NYPA states that the Commission recently found that the MSSC Project qualifies for Order No. 679's rebuttable presumption because it was selected in the NY Commission proceeding.³⁴ NYPA also maintains that there is a nexus between the regulatory and financial risks it will face in developing the MSSC Project and NYPA's request to mitigate those risks through the use of the abandonment incentive.³⁵

13. NYPA explains that the MSSC Project will add three switchable series capacitor banks to increase power transfer by reducing series impedance over the existing 345 kV Marcy South lines.³⁶ NYPA maintains that, in addition to the reliability benefits of the

³³ NYPA Transmittal Letter at 7-8. *See N.Y. Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,004, at P 3 (2015) (*NY Transco Order*) (indicating that the Transmission Owner members of NY Transco comprise Central Hudson Gas & Elec. Corp., Consolidated Edison Co. of New York, Inc. (Con Edison), Niagara Mohawk Power Corp., New York State Elec. & Gas Corp. (NYSEG), Orange and Rockland Utilities, Inc. (O&R), and Rochester Gas and Electric Corp. (RG&E)).

³⁴ *See NY Transco Order*, 151 FERC ¶ 61,004 at P 34.

³⁵ NYPA Transmittal Letter at 4.

³⁶ *Id.* at 8; *see* NY Commission Order Accepting IPEC Reliability Contingency Plans, Establishing Cost Allocation and Recovery, and Denying Requests for Rehearing, Case 12-E-0503, at 17 (Nov. 4, 2013). NYPA will install two capacitor banks; one 915 MVAR capacitor bank on the Marcy-Coopers Corners 345 kV line and one 315 MVAR capacitor bank on the Edic-Fraser 345 kV line. NYSEG will install a third capacitor bank near the Fraser Substation, reconductor approximately 21.8 miles of the Fraser to Coopers Corners 345kV line using existing towers, and upgrade relay protection and communication systems to several substations. NYPA states that this project will contribute substantially to relieving North-South transmission congestion by increasing thermal transfer limits across the congested Total East and upstate New York / southeast New York interfaces, with a 449 megawatt increase across the Total East interface and a

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MSSC Project, congestion-reduction benefits will accrue from the project. NYPA states that the NY Commission found the MSSC Project, among others, will provide ratepayers with millions of dollars in congestion-related savings and net benefits.³⁷

14. NYPA states that the RTO participation adder is just and reasonable because NYPA is a member of NYISO and NYPA has stated that it will turn over operational control of the MSSC Project to NYISO after the project has been placed in service. NYPA further states that its requested RTO participation adder³⁸ for the project would be within the zone of reasonableness³⁹ established by the Commission.⁴⁰

15. NYPA proposes a return of its base ROE of 8.85 percent plus the RTO participation adder for a total of 9.34 percent for capitalized project costs so long as the costs stay below a 10 percent deadband. For costs that exceed the estimate by 10 percent or more, NYPA will earn one half of the RTO participation adder (24.5 basis points). NYPA proposes to forego entirely the RTO participation adder and earn the base ROE of 8.85 percent for capitalized project costs that exceed the estimate by 20 percent or more. NYPA explains that the formula rate is designed to produce a project-specific revenue requirement that, if necessary, reflects a project-specific ROE for the MSSC project that is below the 9.34 percent total ROE that NYPA proposes to apply to its existing assets.

16. NYPA proposes that with respect to future congestion-reducing projects that are competitively awarded to NYPA through Attachment Y of the OATT, NYPA will seek incentives in excess of the base ROE of 8.85 percent in a future filing under FPA sections 205 or 219, as appropriate.

17. NYPA believes these commitments appropriately allocate risks among NYPA and NYISO ratepayers and hopes other competitors in NYISO's competitive developer solicitations would similarly offer appropriate risk-sharing commitments in competitive

287 MW increase across the upstate southeast interface. NYPA Transmittal Letter at 8-9, T. Davis Test. Ex. PA-101 at 48.

³⁷ NYPA Transmittal Letter at 8-9, T. Davis Test. Ex. PA-101 at 28-31.

³⁸ NYPA states that its nominally requested 50 point basis adder for RTO participation would be in this instance reduced to 49 basis points to keep the ROE within the upper end of the zone of reasonableness. *See* NYPA Transmittal Letter at 2, n.5.

³⁹ *See NY Transco Order*, 151 FERC ¶ 61,004 at P 91.

⁴⁰ NYPA Transmittal Letter at 21-22.

bids for congestion-reducing projects by limiting the application of ROE incentives to performance-based adders.

18. NYPA states that the MSSC Project satisfies the rebuttable presumption that it increases reliability and reduces congestion because it has received construction approval by the NY Commission in a process which considered whether the project ensured reliability or reduced congestion.⁴¹

19. Second, NYPA contends that the abandonment incentive is just and reasonable because the MSSC Project faces a number of environmental, regulatory, and siting risks in order to complete the project.⁴² First, NYPA must successfully secure numerous regulatory permits and approvals, and must achieve compliance with the conditions imposed on them, as “[f]ailure to get these approvals or related compliance [issuances] could delay the start of construction and potentially jeopardize the MSSC Project’s slated in-service date of June 1, 2016.”⁴³ Second, NYPA must receive approval of its application before the New York State Department of Environmental Conservation for a State Pollutant Discharge Elimination System Permit. This permit is also subject to the approval of the New York City Department of Environmental Protection. NYPA states that failure to obtain the necessary permits and approvals or inability to comply with the conditions imposed on them could lead to cancellation of the MSSC Project.

20. NYPA also states that there is a risk if construction is delayed due to a highly complicated outage schedule imposed by NYISO. The MSSC Project is a joint effort between NYPA and NYSEG, with NYSEG responsible for re-conductoring the 21.8 mile transmission line from the Fraser Substation to Coopers Corners Substation and for installing one of the series capacitor banks.

21. NYPA states that if NYSEG were forced to abandon its part of the MSSC Project, NYPA’s share of investment would be adversely impacted as the beneficial aspects of the series compensators would be compromised. As a result, if NYSEG abandons its portion of the MSSC Project, NYPA could be exposed to the risk that certain parties may argue that NYPA’s subsequent investment in the MSSC Project was not prudent and is not used

⁴¹ *Id.* at 29.

⁴² *Id.* at 31.

⁴³ *Id.*

and useful in the provision of transmission service by NYISO. This risk could lead to abandonment of NYPA's portion of the MSSC Project.⁴⁴

22. NYPA states that the Commission recently granted the abandonment incentive to the NY Transco for recovery of 100 percent of prudently incurred costs for the TOTS Projects, including the MSSC Project, because it will attract financing for the projects and protect NY Transco from losses if any of the projects is cancelled for reasons outside of NY Transco's control.⁴⁵

C. Cost Recovery Provision

23. NYPA proposes to amend Attachment H of the NYISO OATT to remove a provision that would otherwise limit NYPA's ability to recover costs through the NYPA Transmission Adjustment Charge (cap provision). Specifically, NYPA proposes to delete the following provision:

NYPA's recovery pursuant to [The NYPA Transmission Adjustment Charge] initially is limited to expenses and return associated with its transmission system as that system exists at the time of FERC approval of the [The NYPA Transmission Adjustment Charge] ("base period revenue requirement"). Additions to its system may be included in the computation of [The NYPA Transmission Adjustment Charge] only if: a) upgrades or expansions do not exceed \$5 million on an annual basis; or b) such upgrades or expansions have been unanimously approved by the Transmission Owners. Notwithstanding the above, NYPA may invest in transmission facilities in excess of \$5 million annually without unanimous Transmission Owners' authorization outside the [The NYPA Transmission Adjustment Charge] recovery mechanism. In that case, NYPA cannot recover any expenses or return associated with such additions under [The NYPA Transmission Adjustment Charge] and any TCC or other revenues associated with such additions will not be considered NYPA transmission revenue for purposes of developing the [The NYPA Transmission Adjustment Charge] nor be used as a credit in the allocation

⁴⁴ *Id.* at 31-33.

⁴⁵ *Id.* (citing *NY Transco Order*, 151 FERC ¶ 61,004 at P 86).

of [The NYPA Transmission Adjustment Charge] to transmission system users.⁴⁶

24. NYPA maintains that this provision was incorporated into the NYISO OATT at the time of NYISO's formation as an accommodation to other New York Transmission Owners to whom the NYPA Transmission Adjustment Charges are assessed. As such, NYPA explains that the provision predates the Commission's regional planning reforms under Order No. 890⁴⁷ and Order No. 1000,⁴⁸ and asserts that it is no longer a necessary or appropriate check on NYPA's capital spending.⁴⁹

25. NYPA states that there are now additional checks in place for NYPA's capital spending. For instance, NYPA states that, "consistent with Attachment Y of the NYISO OATT, NYPA provides its transmission planning documents to NYISO for inclusion and evaluation as part of NYISO's Reliability Needs Assessment, which allows NYISO to determine if there are regional solutions to identified reliability needs."⁵⁰ Also, NYPA asserts that the protocols provide additional checks on NYPA's capital spending because they afford customers a discovery period and formal challenge rights with respect to each annual update of the template.⁵¹ Finally, NYPA argues that the transmission developer reforms implemented by the Commission under Order No. 1000 create a dynamic where affording other New York Transmission Owners veto authority on NYPA capital

⁴⁶ NYISO OATT, Attachment H, section 14.2.2.2.3.

⁴⁷ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁴⁸ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁴⁹ NYPA Transmittal Letter at 14.

⁵⁰ *Id.* (internal footnote omitted).

⁵¹ *Id.* at 14-15.

expenditures exceeding \$5 million per year, as set forth in Attachment H, section 14.2.2.2.3, is inappropriate and unduly discriminatory.⁵²

26. NYPA asserts that its formula rate will also be able to determine any project-specific revenue requirements if the costs of such transmission project should be allocated and recovered through an alternative mechanism other than the NYPA Transmission Adjustment Charge. As an example, NYPA states that if ongoing negotiations by the NY Transco and other parties in Docket No. ER15-572-000 culminate in a comprehensive settlement that includes a cost allocation for the TOTS Projects, including NYPA's share of the MSSC Project, the formula rate would produce a distinct revenue requirement for the MSSC Project that would be excluded from the total revenue requirement to arrive at the NYPA Transmission Adjustment Charge revenue requirement.⁵³ NYPA argues that this feature also could be used if NYISO directs NYPA to build an Order No. 1000 project for which there is a beneficiaries-pay cost allocation specified in the NYISO OATT or identified through the regional planning and developer selection process. NYPA further argues that this formula rate mechanism imposes no double recovery risk, because all of NYPA's costs will be recovered through a single formula rate and any costs assigned to specific projects will be automatically deducted from NYPA's calculations of the NYPA Transmission Adjustment Charge.

III. Notice of Filing and Responsive Pleadings

27. Notice of the filing was published in the *Federal Register*, 80 Fed. Reg. 40,055 (2015), with interventions and comments due on or before July 23, 2015.

28. Notices of intervention and timely motions to intervene were filed by the NY Commission; the City of New York; the New York Association of Public Power (NYAPP); Boundless Energy NE, LLC; Municipal Electric Utilities Association of New York; LIPA; Indicated Transmission Owners;⁵⁴ and Multiple Intervenors.⁵⁵ On

⁵² *Id.* at 15.

⁵³ See *NY Transco Order*, 151 FERC ¶ 61,004.

⁵⁴ NY Transco, Central Hudson Gas & Electric Corp., Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corp., NYSEG, Orange & Rockland Utilities, Inc., and Rochester Gas and Electric Corp.

⁵⁵ Multiple Intervenors is an unincorporated association of 60 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout the State of New York.

July 23, 2015, the NY Commission, Indicated Transmission Owners, City of New York, NYAPP, LIPA, and Multiple Intervenors filed comments and/or protests to the filing.

29. On July 29, 2015, LIPA filed a motion to answer and answer to the Indicated Transmission Owners' comments in support of the filing. On August 5, 2015, Indicated Transmission Owners filed a motion for leave to answer and answer to LIPA's July 29, 2015 answer. On August 6, 2015, LIPA filed an answer opposing Indicated Transmission Owners motion for leave to answer and answer. On August 7, 2015, NYPA filed an answer to the protests.

A. Formula Rate, Protocols, and Base ROE

1. Comments and Protests

30. Several parties argue that the Commission should require NYPA to provide a supplemental filing detailing how it will extract information from its financial statements to populate its formula rate, assumptions and procedures used to do so and how such extractions can be independently verified.⁵⁶ Several protesters emphasize that NYPA's internal records used for its formula rates are not subject to audit and review by NYPA's public accountants, nor are they verifiable or transparent.⁵⁷ Several parties protest NYPA's depreciation rates, construction work in progress, employee pensions and benefits, base return on equity of 8.85 percent.⁵⁸ Additionally, several parties urge the Commission to establish hearing and settlement judge procedures for the formula rate and protocols.⁵⁹

31. NYAPP argues that NYPA's protocols fail to provide: remote access to its open meetings, a process for joint meetings, procedures for the correction of errors and prior-period adjustments, or information requests. NYAPP also objects to language allowing

⁵⁶ Multiple Intervenors Comments at 7; City of New York Protest at 2 (citing *NYISO*, 140 FERC ¶ 61,240 at P 32).

⁵⁷ City of New York Protest at 3-4; Multiple Intervenors Comments at 7; NYAPP Comments at 21.

⁵⁸ NYAPP Comments at 10-13, 24 (citing NYPA Transmittal Letter at 25 and *Nantahala Power & Light Co. v. FERC*, 727 F.2d 1342, 1351 (4th Cir. 1984)); *see also* 16 U.S.C. § 824d (2012); City of New York Protest at 8.

⁵⁹ *E.g.*, Multiple Intervenors Comments at 5; NYAPP Comments at 25; City of New York Comments at 11-12; NY Commission Protest at 7.

NYPA to limit, in part, what constitutes “accounting changes” through application of its “reasonable judgment.”⁶⁰

32. The NY Commission argues that the Commission should reject NYPA’s proposed actual capital structure capped at 60 percent equity as excessive and unnecessary, or in the alternative, set it for hearing. The NY Commission acknowledges that NYPA’s actual equity ratio is 76.4 percent and NYPA has chosen a future long-term target of 65 percent equity.⁶¹

33. The NY Commission argues that the national average actual equity ratio for utility operations throughout the country is approximately 50 percent, and the actual equity ratio for the consolidated companies in NYPA’s proxy group was 52 percent in 2014. The NY Commission argues that as recently as 2015, the Commission approved a 50 percent equity ratio of WPPI Energy, a not-for-profit regional municipal joint action agency.⁶²

2. NYPA’s Answer

34. NYPA argues that its protocols ensure enough transparency regarding NYPA’s use of any data that is not drawn from NYPA’s Financial Report; therefore, there is no need for NYPA to make a supplemental filing.⁶³ NYPA disagrees with the protesters’ concern that NYPA’s formula rate spending for the 2015-2025 period for the transmission life extension and modernization program is not sufficiently justified. NYPA argues that protesters incorrectly state that NYPA is seeking approval of all of its potential costs over a 10-year period when, in fact, NYPA is seeking approval of the justness and reasonableness of its formula rate.⁶⁴

35. NYPA disagrees with the protesters’ allegations that its proposed protocols do not comply with the Commission’s precedent with regard to a scope of participation,

⁶⁰ NYAPP Comments at 23.

⁶¹ NY Commission Protest at 4-5.

⁶² *Id.* at 6, App. B (containing excerpts from the SNL Financial Focus report, “Quality Measures: Utility Subsidiaries Calendar Years 2011-2014, and 12 months Ended March 31, 2015,” dated June 24, 2015 and citing NYPA Application, Ex. PA-307, and *Midcontinent Sys. Operator, Inc. and WPPI Energy*, 151 FERC ¶ 61,246 (2015)).

⁶³ NYPA Answer at 26.

⁶⁴ *Id.* at 26-28.

transparency, and challenge procedures. NYPA argues that the issues identified by protestors are minor and, if deemed necessary by the Commission, can be fixed via a compliance filing.⁶⁵

36. NYPA states that the Commission should reject NYAPP's and the City of New York's arguments on NYPA's requested ROE because they ignore and undermine the Commission's decision in Opinion No. 531.⁶⁶ NYPA urges the Commission to find that NYPA's proxy analysis is a just and reasonable adaptation of the Commission's approved proxy analysis and produces a just and reasonable ROE.⁶⁷ NYPA states that neither the City of New York nor NYAPP has provided any evidence demonstrating that NYPA's base ROE of 8.85 percent which is 172 points lower than the ROE recently litigated before the Commission in Opinion No. 531 is not just and reasonable.

B. Transmission Incentives and the MSCC Project

1. Comments and Protests

37. The NY Commission and the City of New York argue that an ROE adder for participation in NYISO is unnecessary and unwarranted under the particular circumstances presented here, where NYPA is already a member of NYISO and awarding an adder will have no effect on NYPA's behavior.⁶⁸

38. The NY Commission requests that the Commission defer the risk-sharing and performance-based measures of NYPA's requested RTO participation adder as premature as this adder is subject to further discussion between NYPA and the NY Commission.

⁶⁵ *Id.* at 28-30.

⁶⁶ *See Coakley, Mass. Attorney Gen. v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234; *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014); *reh'g denied*, Opinion No. 531-B, 150 FERC ¶ 61,165 (2015).

⁶⁷ NYPA notes that even after expanding the proxy to include the highest-rated utilities that are more than one notch below its own rating, NYPA's status as an "AA" entity disadvantages NYPA under FERC's proxy group method because the range of returns in the resulting array is much tighter than the returns produced by proxy groups that include riskier utilities, such as those analyzed in Opinion No. 531.

⁶⁸ NY Commission Protest at 3-4, City of New York Protest at 10 (citing the Transmission Owners Agreement requiring NYISO to exercise operational control of the transmission facilities owned by the Transmission Owners).

Likewise, since NYPA presents that it will include the same performance-based incentive components that are ultimately agreed to by the NY Transco in Docket No. ER15-572-000, the NY Commission requests that the Commission defer consideration of the RTO participation adder and its performance-based components, subject to a compliance filing based on the outcome of the NY Transco proceeding in Docket No. ER15-572-000.⁶⁹

39. With regard to the abandonment incentive, the City of New York argues that NYPA's assertions that it faces significant risks in completing its portion of the MSSC Project are not supported by the facts, and its requested abandonment incentive should be rejected absent a valid concern.⁷⁰

2. NYPA's Answer

40. In response, NYPA argues that it would be a significant departure from well-settled Commission policy and precedent to deny NYPA the RTO participation adder, as the Commission has consistently held that it will approve the RTO participation adder for utilities that join or continue to be members of an independent system operator, RTO, or other Commission-approved Transmission Organization.⁷¹

41. NYPA opposes the NY Commission's request to defer the Commission's decision in this proceeding on risk-sharing or performance-based incentives until after there is a settlement in the NY Transco proceeding. NYPA argues that the MSSC project cost containment commitment limiting its RTO participation adder is in no way contingent on the NY Transco proceeding and any of NYPA's future voluntary risk-sharing commitments relate to incentives that NYPA may request with respect to future competitive projects.⁷²

C. Cost Recovery Provision

1. Comments and Protests

42. LIPA requests that the Commission either reject NYPA's proposal to remove the \$5 million cap on transmission upgrades or set it for hearing because NYPA has not demonstrated that the resulting application of the NYPA Transmission Adjustment

⁶⁹ NY Commission Protest at 7-8.

⁷⁰ City of New York Protest at 10-11.

⁷¹ NYPA Answer at 13-14.

⁷² *Id.* at 15-17.

Charge's load ratio share cost allocation on all NYPA upgrades would be commensurate with the benefits and would deny LIPA and the other New York Transmission Owners their existing right to reject such charges.⁷³

43. LIPA argues that nothing in section 3.06 of the Transmission Owner Agreement "suggests or implies that NYISO, or the other signatory New York Transmission Owners, intended to grant NYPA authority to propose changes to the [NYPA Transmission Adjustment Charge] mechanism."⁷⁴ Rather, LIPA states that the limiting provision in the NYPA Transmission Adjustment Charge indicates the contrary, that "[notwithstanding the limitation above], NYPA may invest in transmission facilities in excess of \$5 million annually without unanimous Transmission Owners' authorization *outside of the [NYPA Transmission Adjustment Charge] mechanism.*"⁷⁵ As LIPA argues, "[a]llowing NYPA to delete this limitation would render superfluous the parties' agreement to a limitation on NYPA's revenue recovery rights" and "would lead to unreasonable results."⁷⁶

⁷³ LIPA Protest at 2-7, 17.

⁷⁴ *Id.* at 12. Section 3.06 of the NYISO Transmission Owners Agreement references a limitation on the NYPA Transmission Adjustment Charge that is set forth in Attachment H of NYISO's OATT (emphasis added):

This Agreement is premised on NYPA recovering its full annual transmission revenue requirement. This is to be achieved through a mechanism known as the [NYPA Transmission Adjustment Charge]. NYPA will submit its annual revenue requirement for FERC approval. NYPA will be entitled to receive from the ISO the difference between its FERC-approved revenue requirement and the sum of the revenues it collects from contracts and from [Transmission Service Charges] associated with its current transmission system. The ISO will credit any [Transmission Congestion Contract] revenues associated with NYPA's facilities and allocate the remainder on a kWh basis to all transmission Load the ISO serves. *NYPA's recovery pursuant to [NYPA Transmission Adjustment Charge] is limited as described in Attachment H to the ISO OATT.*

⁷⁵ NYISO OATT, Attachment H, section 14.2.2.2 (emphasis added).

⁷⁶ LIPA Protest at 13.

44. LIPA argues that any time NYPA undertakes any upgrade over \$5 million on its system, each upgrade or project should be evaluated on its own merits to determine whether the benefits that upgrade produces are commensurate with the NYPA Transmission Adjustment Charge load ratio share cost allocation. LIPA argues that to do otherwise would be inconsistent with the Commission's findings in the *NY Transco Order*.⁷⁷

45. The Indicated Transmission Owners argue that it is fair, just, and reasonable for NYPA to use the same cost allocation method for NYPA's share of the MSSC Project as the one used for NY Transco's share of the MSCC Project (and the other TOTS Projects), and request that the Commission accept NYPA's cost allocation proposal "until such time as the cost allocation method [for all of the TOTS Projects] is determined through settlement or litigation in Docket No. ER15-572-000."⁷⁸

46. The Indicated Transmission Owners state that NYPA may invest in transmission facilities in excess of \$5 million annually without unanimous New York Transmission Owners' authorization, but such investment is not permitted to be flowed through the NYPA Transmission Adjustment Charge. The Indicated Transmission Owners argue that NYPA may file pursuant to section 205 to propose a new cost recovery mechanism for new investment outside of the NYPA Transmission Adjustment Charge.⁷⁹ However, the Indicated Transmission Owners assert that the consent requirement for any NYPA investment above \$5 million is integral to the Transmission Owners Agreement accepted

⁷⁷ We note that, in the *NY Transco Order*, the Commission found that NY Transco (a stand-alone transmission company formed by six of the eight Transmission Owner Members of New York – but not including either NYPA or LIPA – to develop NYISO transmission projects within each of their franchised service territories) could establish a formula rate revenue requirement, but that a subset of New York Transmission Owners, i.e., NY Transco, may not require LIPA and NYPA to pay the costs of the transmission projects outside of an existing rate schedule allowing regional cost allocation for the projects. The Commission rejected NY Transco's proposed regional cost allocation method, which was not developed through a NYISO stakeholder process, finding that (1) "it imposes costs on LIPA and NYPA that they did not voluntarily agree to pay" and (2) "there is no provision in the NYISO OATT that would permit a subset of New York Transmission Owners or a non-incumbent Transco with no existing customers to require LIPA and NYPA to pay the costs of the TOTS and AC Projects." *NY Transco Order*, 151 FERC ¶ 61,004 at P 188.

⁷⁸ Indicated Transmission Owners Comments at 2.

⁷⁹ *Id.* at 6-7.

by the Commission and, as a negotiated contract rate, is subject to *Mobile-Sierra* protection.⁸⁰

47. NYAPP supports removal of the cap provision. NYAPP agrees that giving the other New York Transmission Owners veto authority is inappropriate given the new competitive landscape for transmission development under Order No. 1000. NYAPP argues that NYPA's transmission facilities directly interconnect with the transmission systems of all of the state's investor-owned utilities, meaning any NYPA transmission system upgrades are likely to provide regional benefits.⁸¹

48. NYAPP argues that the reliable operation of the NYPA system is important to NYPA customers such as NYAPP. As such, NYAPP contends that NYPA should not be disincentivized from required upgrades to its transmission system by virtue of its inability to recover its cost of service necessary to maintain reliability of its transmission system due to lack of unanimous authorization by the other New York Transmission Owners, including those that compete for the development of such projects.⁸² However, NYAPP requests the Commission reject NYPA's proposed protocol provision allowing NYPA to make a limited section 205 filing that "at its discretion and at a time of its choosing, make a limited filing pursuant to Section 205 to change its FERC-approved amortization/depreciation rates, add new amortization/depreciation rates, or file changes to PBOPs expense." NYAPP argues that this proposal appears to affect the amount of recovery, which should constitute a reopener of the entire formula rate.

2. Answers

49. In response to LIPA, NYPA argues that section 3.06 of the Transmission Owners Agreement makes no reference to the \$5 million cap or the ability of other New York Transmission Owners to veto NYPA's investments and places no limitation on NYPA's right to make section 205 filings to amend Attachment H of the NYISO OATT. Rather, NYPA states that LIPA acknowledges that section 3.10 of the Transmission Owners Agreement expressly reserves NYPA's "right at any time to unilaterally file pursuant to Section 205 of the Federal Power Act to change the ISO OATT, a Service Agreement

⁸⁰ *Id.* at 7, n.19 (citing *ISO New England, Inc.*, 150 FERC ¶ 61,209, at P 155 (2015); *Morgan Stanley Capital Group, Inc., v. Pub. Util. Dist. No. 1 of Snohomish County, et al.*, 554 U.S. 527 (2008); *United Gas Pipeline Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956)).

⁸¹ NYAPP Protest at 24-25.

⁸² *Id.*

under the ISO OATT, or the ISO Agreement to the extent necessary... to recover all of its incurred costs, plus a reasonable return on investment related to services under the ISO OATT....”⁸³

50. NYPA argues that section 6.14 of the Transmission Owners Agreement explicitly identifies which provisions of the agreement the signatories intended *Mobile-Sierra* protection to apply, and which could not be modified or abrogated absent a showing of harm to the public interest:

Absent mutual agreement of the Parties, it is the intent of Section 6.14 that, to the maximum extent permitted by law, the terms and conditions set forth in Sections 2.01, 3.03, 3.04, 3.09, 3.10, 3.11, 4.01, 4.02, 5.01, 5.02, 5.03, 5.04, 5.05, 5.06, 6.01, 6.02, 6.09, and 6.14 of this Agreement shall not be subject to change, regardless of whether such change is sought (a) by the Commission acting *sua sponte* on behalf of a Party or third party, (b) by a Party, (c) by a third party, or (d) in any other manner; subject only to an express finding by FERC that such change is required under the public interest standard under the *Mobile-Sierra* doctrine.

51. NYPA argues that, contrary to LIPA’s assertions, section 3.06 of the Transmission Owners Agreement is not in this list and, *a fortiori*, section 14.2.2.2.3 of Attachment H may be changed under the ordinary just and reasonable standard. NYPA argues that the Commission should reject Indicated Transmission Owners’ argument that section 3.06 of the Transmission Owners Agreement is subject to *Mobile-Sierra* protection because it is not one of the identified provisions that the signatories agreed would have such protection.⁸⁴

52. NYPA answers that, unlike the cost allocation in the *NY Transco* proceedings, NYPA did not propose a project-specific cost allocation for the MSSC Project in its filing. Rather, NYPA only asks the Commission to accept as just and reasonable its proposed formula rate, tariff changes, and incentives. NYPA explains that its proposed

⁸³ NYPA Answer at 37-38 (citing Transmission Owners Agreement, section 3.10a).

⁸⁴ *Id.* at 39.

formula rate is capable of producing project-specific revenue requirements no matter how projects are allocated.⁸⁵

53. NYPA asserts that it has no other mechanism to recover its costs, and LIPA's position in this proceeding provides an example of exactly the type of untenable position NYPA would be placed in absent the elimination of the veto rights of the other New York Transmission Owners. NYPA argues that it is an express condition of the NYISO Transmission Owner Agreement that NYPA recover its cost of service and properly recognizes that NYPA has a statewide service territory, in stating "[t]his Agreement is premised on NYPA recovering its full annual transmission revenue requirement. This is to be achieved through a mechanism known as the [NYPA Transmission Adjustment Charge]." NYPA argues that unlike other New York Transmission Owners, it does not have captive retail customers or a local transmission service charge through which it can recover its transmission cost of service and, therefore, the NYPA Transmission Adjustment Charge revenue requirement is, and should remain, NYPA's backstop cost recovery mechanism under the NYISO OATT.⁸⁶

54. Further, NYPA argues that the costs of the MSSC Project will not go into rates until July 1, 2017 because NYPA's proposed formula rate uses historical data and the project will not go into service until 2016. Therefore, NYPA's proposal does not require the Commission to address the question of cost allocation for the MSSC Project in this proceeding.

55. LIPA reiterates that section 14.2.2.2.3 of Attachment H to NYISO's OATT expressly allows NYPA to recover upgrades and expansions to its system costing in excess of \$5 million under the NYISO OATT only if they have been "*unanimously* approved by the Transmission Owners." LIPA argues that by the Indicated Transmission Owners suggesting that NYPA has met this requirement the Indicated Transmission Owners misleadingly imply that they alone constitute the universe of Transmission Owners.

56. Indicated Transmission Owners argue that they made no such assertion.⁸⁷ The Indicated Transmission Owners argue that separate and apart from the NYPA Transmission Adjustment Charge provision requiring consent from all New York

⁸⁵ *Id.* at 41-42.

⁸⁶ *Id.* (citing Transmission Owners Agreement, section 3.06).

⁸⁷ Indicated Transmission Owners Answer at 3 (quoting Indicated Transmission Owners Comments at 8).

Transmission Owners, NYPA and the Indicated Transmission Owners have section 205 filing rights, consistent with the Commission's "beneficiary pays" principles that LIPA now recognizes as the controlling legal standard.⁸⁸ The Indicated Transmission Owners argue that LIPA has, on the one hand, conceded it benefits from the MSSC Project, while on the other hand, refused to pay any portion of the cost of the project providing those benefits.⁸⁹

IV. Discussion

A. Procedural Matters

57. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁹⁰ the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

58. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁹¹ prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept the answers because they have provided information that assisted us in our decision-making process.

B. Commission Determination

59. We reject NYPA's filing. As discussed below, we find that NYPA has not demonstrated that its proposal to eliminate the cap provision is just and reasonable and, therefore, we reject NYPA's proposed revisions in Attachment H of the NYISO OATT. Because we reject this fundamental aspect of NYPA's filing, we also find it appropriate to reject NYPA's filing in its entirety.

60. We recognize the importance of transmission investment in NYISO, as well as the challenges that NYPA faces in making some such investments in light of the cap provision and related aspects of NYISO's OATT and Transmission Owners Agreement. Eliminating the cap provision could alleviate those challenges by allowing NYPA to include in the NYPA Transmission Adjustment Charge the costs of any transmission

⁸⁸ *Id.* (citing LIPA Protest at 5, which references *Ill. Commerce Comm'n v. FERC*, 756 F.3d 556, 560 (2014)).

⁸⁹ *Id.* at 3-4.

⁹⁰ 18 C.F.R. § 385.214 (2015).

⁹¹ 18 C.F.R. § 385.213(a)(2) (2015).

facilities it develops and constructs in excess of the \$5 million cap. Nonetheless, NYPA has not demonstrated how it is just and reasonable to allow NYPA to recover all such costs beyond the \$5 million cap from all load in NYISO through the NYPA Transmission Adjustment Charge.

61. We are not persuaded by NYPA's conclusion that the Commission's nonincumbent transmission developer reforms in Order No. 1000 "create a dynamic" that necessitates a finding that NYPA's proposal to eliminate the cap provision is just and reasonable.⁹² Order No. 1000 required certain reforms with respect to participation by nonincumbent transmission developers in regional transmission planning processes. However, in Order No. 1000, the Commission did not address all potential obstacles to such participation, including the existence of such a cap provision in a transmission planning region. The NYISO OATT provides a regional transmission planning and cost allocation process that provides nonincumbent transmission developers and incumbent transmission owners with the same eligibility to use the regional cost allocation method or methods for any sponsored transmission facility selected in the regional transmission plan for purposes of cost allocation.⁹³

62. In addition, we do not agree with NYPA's premise that the cap provision must be eliminated for NYPA to recover the costs of its planned transmission investment. Rather, the NYISO OATT provisions with respect to the NYPA Transmission Adjustment Charge specifically provide that NYPA may recover additions to its system exceeding \$5 million/year *with the unanimous consent of the New York Transmission Owners*. Consistent with the provision's requirement regarding "the unanimous consent of the [transmission owners]," NYPA may seek to negotiate with the other New York Transmission Owners to reach an agreement by which NYPA could recover the costs of such investments, either on an individualized basis or more generally, through the NYPA Transmission Adjustment Charge.

63. Further, contrary to NYPA's assertion that the NYPA Transmission Adjustment Charge is a necessary default backstop cost recovery vehicle, the express terms of the NYISO OATT provisions with respect to the NYPA Transmission Adjustment Charge indicate that NYPA may seek alternative cost recovery mechanisms for costs that do not qualify under the cap provision's limitation. The cap provision states, that "notwithstanding the above, NYPA may invest in transmission facilities in excess of \$5 million annually without unanimous Transmission Owners' authorization *outside the [NYPA Transmission Adjustment Charge] recovery mechanism*. In that case, NYPA

⁹² See NYPA Transmittal Letter at 15.

⁹³ See *N.Y. Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,044, at P 281 (2014).

cannot recover any expenses or return associated with such additions under [the NYPA Transmission Adjustment Charge]...”⁹⁴ For example, the NYISO OATT provides at least one such mechanism. Pursuant to NYISO’s effective Order No. 1000 regional transmission planning process, NYPA may propose transmission solutions to address identified needs, and, if such transmission solutions are selected in the regional transmission plan for purposes of cost allocation, NYPA would be eligible to use the regional cost allocation method for such transmission facilities.⁹⁵

64. We note that our rejection of NYPA’s filing is without prejudice to NYPA filing appropriate voluntary arrangements with the other Transmission Owners for cost recovery for projects or expenditures exceeding \$5 million, or otherwise presenting to the Commission alternative means to address its concerns. Further, our rejection of NYPA’s filing is without prejudice to NYPA filing to request transmission rate incentives for the MSCC Project or to replace its existing stated rate for the NYPA Transmission Adjustment Charge with a formula rate.

65. While the Commission is rejecting this filing today, we recognize the long-standing need for transmission development in New York. Chronic constraints in the state’s transmission system add substantially to New Yorkers’ energy costs each year. The issues raised in this proceeding, the recent *NY Transco*⁹⁶ proceeding, and others highlight the difficulties faced by NYPA, the other New York Transmission Owners, and other transmission developers in developing much needed infrastructure. In particular, the unique ownership structures in the region and the restrictions on public power entities appear to impose unique barriers to development. The Commission will continue to monitor these issues, and to the extent that cost recovery and allocation issues continue to hinder transmission development efforts in New York, the Commission will consider further action, including convening a technical conference to explore the pertinent issues.

⁹⁴ NYISO OATT, Attachment H, section 14.2.2.2.3 (emphasis added).

⁹⁵ See *N.Y. Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,044 at P 281.

⁹⁶ 151 FERC ¶ 61,004 (2015).

The Commission orders:

NYPA's proposed tariff revisions and requested transmission rate incentives are hereby rejected, as discussed above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.