

167 FERC ¶ 61,139
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

LS Power Grid New York, LLC
LS Power Grid New York Corporation I

Docket No. EL19-30-000

ORDER GRANTING ABANDONED PLANT INCENTIVE IN PART
AND REJECTING IN PART

(Issued May 16, 2019)

1. On January 7, 2019, as updated on April 8, 2019, LS Power Grid New York, LLC and LS Power Grid New York Corporation I (together, LSPG-NY)¹ submitted a petition for declaratory order (Petition) requesting incentive rate treatment pursuant to section 219 of the Federal Power Act (FPA),² Rule 207 of the Commission's Rules of Practice and Procedure,³ Order No. 679,⁴ and the Commission's 2012 policy statement on transmission incentives.⁵ LSPG-NY requests authorization to recover 100 percent of all prudently-incurred costs related to its investment in certain transmission facilities that it

¹ LS Power Grid New York, LLC is formerly known as North American Transmission, LLC. LS Power Grid New York Corporation I is formerly known as North American Corporation.

² 16 U.S.C. § 824s (2012).

³ 18 C.F.R. § 385.207 (2018).

⁴ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007); *see Inquiry Regarding the Commission's Electric Transmission Incentives Policy*, 166 FERC ¶ 61,208 (2019).

⁵ *Promoting Transmission Investment through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (2012 Incentives Policy Statement).

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proposed to develop as part of the New York Independent System Operator, Inc.'s (NYISO) AC Transmission Upgrades public policy transmission planning process⁶ (Projects), if the Projects are abandoned or cancelled for reasons beyond LSPG-NY's control (Abandoned Plant Incentive). On April 8, 2019, LSPG-NY filed an update notifying the Commission that NYISO selected LSPG-NY's Segment A Project as the more efficient or cost-effective transmission solution, but did not select LSPG-NY's Segment B Project. As discussed below, we grant in part and reject in part LSPG-NY's request for the Abandoned Plant Incentive, effective as of the date of this order.

I. Background

A. LSPG-NY

2. The two companies that make up LSPG-NY are transmission-only companies whose business is to develop, own, and operate transmission facilities in the NYISO region. LSPG-NY states that both companies are wholly owned by LS Power Grid New York Holdings, LLC, which is wholly owned by LSP Transmission Holdings, LLC. LSP Transmission Holdings, LLC is wholly owned by LSP Generation IV, LLC and all of the membership interests of LSP Generation IV, LLC are owned by LS Power Associates, L.P. (LS Power). LS Power Development, LLC is the general partner and manager of LS Power, and the employer of the majority of the staff that perform duties on behalf of LS Power and those LS Power subsidiaries that are controlled by LS Power. LSPG-NY states that, through various subsidiaries, LS Power develops, owns, and operates electric transmission and independent power projects throughout the United States, such as: (1) the ON Line transmission project, a 231-mile, 500 kV transmission project in service in Nevada (co-owned with Nevada Power Company); and (2) the Harry Allen to Eldorado 500 kV Transmission Project (selected through a competitive process by the California Independent System Operator Corporation), which will connect with the southern terminus of the ON Line transmission project.⁷

B. AC Transmission Upgrades

3. NYISO's Order No. 1000⁸ public policy transmission planning process identifies transmission needs driven by public policy requirements and evaluates and selects the

⁶ See discussion *infra* PP 4-5.

⁷ Petition at 3.

⁸ *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

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more efficient or cost-effective transmission solutions to address those needs. Under this process, stakeholders and other interested parties may submit, or NYISO on its own initiative may identify, proposed transmission needs driven by public policy requirements. NYISO submits those proposed needs to the New York State Public Service Commission (New York Commission) and its staff to identify the transmission needs for which NYISO should solicit and evaluate transmission solutions.⁹

4. LSPG-NY states that, in a December 17, 2015 order, the New York Commission found that there is a transmission need driven by public policy requirements for new 345 kV alternating current transmission facilities to cross the Central East and Upstate New York/Southeast New York (UPNY/SENY) interfaces to provide additional transmission capacity to move power from upstate to downstate New York (AC Transmission Upgrades).¹⁰ The New York Commission found that those transmission interfaces have been persistently congested and this congestion contributes significantly to higher energy costs and reliability concerns.¹¹ LSPG-NY states that the New York Commission generally described the transmission need to include: (1) a minimum of 350 MW of Central East transfer capability (Segment A); and (2) upgrades designed to provide a minimum of 900 MW of Central East and UPNY/SENY transfer capability (Segment B).¹² For Segments A and B, the New York Commission also provided a detailed description of the possible paths for the new 345 kV lines and other upgrades needed to support the new 345 kV lines.¹³ The New York Commission directed NYISO

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).

⁹ See *N.Y. Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,040, at PP 19-20, *order on compliance*, 153 FERC ¶ 61,341 (2015), *order on reh'g*, 162 FERC ¶ 61,124 (2018); NYISO, Open Access Transmission Tariff (OATT), Attach. Y, § 31.4 (18.0.0).

¹⁰ Petition, Attachment 2, *Order Finding Transmission Needs Driven By Public Policy Requirements*, NYPSC CASE 12-T-0502, et al., at 2 (December 17, 2015).

¹¹ *Id.* at 2-3.

¹² Petition at 7.

¹³ *Id.*, Attachment 2, *Order Finding Transmission Needs Driven By Public Policy Requirements*, NYPSC CASE 12-T-0502, et al., at Appendix A (December 17, 2015).

to conduct a solicitation for Segments A and B pursuant to NYISO's public policy transmission planning process.¹⁴

5. LSPG-NY states that NYISO estimated that the AC Transmission Upgrades would cost \$1.113-\$1.229 billion, including a 30 percent contingency, but not including the cost of certain required upgrades.¹⁵ LSPG-NY claims that the AC Transmission Upgrades represent the largest single transmission investment within New York since the introduction of competitive markets, and also the largest transmission investment resulting from an Order No. 1000 regional transmission planning process.¹⁶ The AC Transmission Upgrades have an anticipated in-service date of December 2023.¹⁷

C. LSPG-NY Projects

6. In its Petition, LSPG-NY states that LSPG-NY and New York Power Authority (NYPA) submitted multiple joint proposals to NYISO for Segments A and B of the AC Transmission Upgrades (i.e., the Projects). LSPG-NY seeks the Abandoned Plant Incentive for its portion of the investment in the Projects that NYISO ultimately selects as the more efficient or cost-effective transmission solutions.¹⁸ NYISO's June 19, 2018 Draft Report recommends selection of a joint proposal by LSPG-NY and NYPA for Segments A and B.¹⁹ On December 27, 2018, NYISO posted a report addendum (Report Addendum) to its June 19, 2018 Draft Report that continues to recommend selection of LSPG-NY and NYPA's Segment A Project, but recommends an alternative proposal for

¹⁴ Petition at 3. LSPG-NY states that the New York Commission distinguished the transmission needs based on each affected interface (i.e., the Central East interface and the UPNY/SENY interface), but noted that the transmission need is for the entire portfolio of projects, which includes both Segments A and B. *Id.* at 7-8.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 20.

¹⁷ *Id.* at 2.

¹⁸ LSPG-NY states that NYPA may seek the Abandoned Plant Incentive in a separate filing for its portion of the investment in the Projects. *Id.* at 2 n.6.

¹⁹ *Id.* at 11 and Attachment 3, NYISO June 19, 2018 Draft Report, AC Transmission Public Policy Transmission Planning Report, at 8. See Appendix 1 of this order for a description of these joint proposals by LSPG-NY and NYPA for Segments A and B.

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Segment B.²⁰ LSPG-NY states that the AC Transmission Upgrades are in the final stage of evaluation and selection by NYISO under NYISO's public policy transmission planning process.²¹ LSPG-NY states that the NYISO Board of Directors (NYISO Board) is expected to consider NYISO's June 19, 2018 Draft Report and Report Addendum at its March board meeting, and then the NYISO Board is expected to issue its final approval of the developers and projects for the AC Transmission Upgrades.²²

7. LSPG-NY states that it expects to request other transmission incentives for the Projects, for example a hypothetical capital structure during construction, at a later time after the NYISO Board makes its final selection and the full scope of the Projects is known.

8. On April 8, 2019, LSPG-NY filed an update to notify the Commission that the NYISO Board selected LSPG-NY and NYPA's Segment A Project (Project ID T027) as the more efficient or cost-effective transmission solution for Segment A of the AC Transmission Upgrades. LSPG-NY states that NYISO estimated that Segment A will cost \$750 million (in 2018 dollars, including 30 percent contingency). LSPG-NY requests that the Commission issue an order on LSPG-NY's Petition as quickly as possible because its project development activities and expenditures for the Segment A Project will ramp up significantly over the next several weeks and months, and the Commission's policy is that the Abandoned Plant Incentive is not available prior to the Commission's order authorizing this incentive.²³

II. Notice of Filing and Responsive Pleadings

9. Notice of LSPG-NY's Petition was published in the *Federal Register*, 84 Fed. Reg. 698 (2019), with interventions and protests due on or before February 11, 2019.

²⁰ Petition at 11 & n.36 (citing NYISO December 27, 2018 AC Transmission Public Policy Transmission Planning Report Addendum at <https://www.nyiso.com/documents/20142/1390750/AC-Transmission-PPTN-Draft-Report-Addendum.pdf/898f1cb0-3f98-a26b-3866-0118dedafaae>). In the Report Addendum, NYISO recommends: (1) for Segment A, "Project ID T027: NAT/NYPA - Segment A Double-Circuit Proposal, which is a joint proposal by LSPG-NY and NYPA; and (2) for Segment B, "Project ID T019: National Grid/ Transco – NYES Segment B," which is a joint proposal by National Grid and New York Transco, LLC.

²¹ Petition at 2.

²² *Id.* at 11.

²³ LSPG-NY April 8, 2019 Update Filing at 2.

NYPA, Consolidated Edison Company of New York, Inc., and Orange and Rockland Utilities, Inc. filed timely motions to intervene.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

11. As discussed below, we grant in part and reject in part LSPG-NY's request for the Abandoned Plant Incentive, effective as of the date of this order. In particular, we find that LSPG-NY's Segment A Project is entitled to the rebuttable presumption that it meets FPA section 219's requirement that the project will ensure reliability and/or reduce congestion because it has been approved through a relevant regional transmission planning process. We further find that there is a nexus between the Abandoned Plant Incentive sought and the investment being made in the Segment A Project. We therefore grant the Abandoned Plant Incentive with regard to the Segment A Project. However, we reject the Abandoned Plant Incentive with regard to the Segment B Project. NYISO did not select LSPG-NY as the developer for Segment B, so LSPG-NY is not entitled to the rebuttable presumption that the Segment B Project satisfies the section 219 requirement to ensure reliability and/or reduce congestion based on being approved through a relevant regional transmission planning process.

1. Section 219 Requirement

12. In the Energy Policy Act of 2005,²⁴ Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in certain transmission infrastructure. The Commission subsequently issued Order No. 679, which sets forth processes by which a public utility may seek transmission rate incentives pursuant to section 219, including the Abandoned Plant Incentive. Additionally, in November 2012, the Commission issued the 2012 Incentives Policy Statement providing additional guidance regarding its evaluation of applications for transmission rate incentives under section 219 and Order No. 679.²⁵

²⁴ Energy Policy Act of 2005, Pub. L. No. 109-58, § 1241, 119 Stat. 594 (2005).

²⁵ 2012 Incentives Policy Statement, 141 FERC ¶ 61,129.

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13. Pursuant to Order No. 679, an applicant may seek to obtain incentive rate treatment for a transmission infrastructure investment that satisfies the requirements of section 219, i.e., the applicant must show that “the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.”²⁶ The Commission established the process for an applicant to demonstrate that it meets this standard, including a rebuttable presumption that the standard is met if: (1) the transmission project results from a fair and open regional planning process that considers and evaluates the project for reliability and/or congestion and is found to be acceptable to the Commission; or (2) a project has received construction approval from an appropriate state commission or state siting authority.²⁷ The Commission also stated that “other applicants not meeting these criteria may nonetheless demonstrate that their project is needed to maintain reliability or reduce congestion by presenting [to the Commission] a factual record that would support such a finding.”²⁸

a. LSPG-NY’s Request

14. LSPG-NY argues that the Projects meet the rebuttable presumption. LSPG-NY states that the Projects will meet the first prong of the rebuttable presumption test because the Projects will be selected through NYISO’s public policy transmission planning process, which the Commission has previously found to be a fair and open regional planning process,²⁹ and the Projects have been identified as significantly decreasing congestion. LSPG-NY asserts that congestion within New York, particularly on the Central East flowgate, is well-documented.³⁰ In particular, LSPG-NY states that NYISO’s 2017 Congestion Assessment and Resource Integration Study process identified Central East as the top congested flowgate with over \$4 billion of congestion

²⁶ Order No. 679, 116 FERC ¶ 61,057 at P 76.

²⁷ *Id.*

²⁸ *Id.* P 57; *see also* Order No. 679-A, 117 FERC ¶ 61,345 at P 41.

²⁹ Petition at 19 & n.61 (citing *NextEra Energy Transmission New York, Inc.*, 162 FERC ¶ 61,196, at P 17 (2018) (“[T]he Empire Project is the product of NYISO’s Order No. 1000 Public Policy [Transmission] Planning Process, which the Commission has previously found to be a fair and open regional planning process, and the Empire Project will enhance reliability and reduce congestion in Western New York. Therefore, we find that the Empire Project is entitled to the rebuttable presumption that it meets this requirement of section 219.”)).

³⁰ *Id.* at 12.

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costs in the five-year period from 2012 to 2016.³¹ LSPG-NY states that the New York Independent Market Monitor's 2017 State of the Market Report identified: (1) over \$150 million in Central East congestion in the day-ahead and real-time markets in 2016-2017; and (2) approximately \$20-30 million in UPNY/SENY congestion between the Capital and Hudson Valley in 2016-2017.³²

15. LSPG-NY states that, based on NYISO's June 19, 2018 Draft Report, the AC Transmission Upgrades will reduce congestion and provide production cost savings, capacity procurement benefits, and avoided refurbishments benefits in the range of \$1,720 million to \$2,868 million over a twenty-year period depending on future conditions.³³ Based on NYISO's June 19, 2018 Draft Report, LSPG-NY's Projects would provide between \$331 million and \$1.12 billion in production cost savings over a twenty-year period,³⁴ and between \$2.3 billion and \$9.3 billion in demand congestion change savings over a twenty-year period.³⁵ NYISO's June 19, 2018 Draft Report also states that all of the project combinations within its Tier 1 and Tier 2 project list resulted in increases ranging from 1,150 MW to 1,400 MW in emergency transfer capability at the UPNY/SENY interface.³⁶

³¹ *Id.* at 13.

³² *Id.* at 14.

³³ *Id.* at 19.

³⁴ *Id.*, Attachment 3, NYISO June 19, 2018 Draft Report, AC Transmission Public Policy Transmission Planning Report, at 71 ("Table 3-22: NYCA Production Cost Savings in 2018 M\$"). In Table 3-22, NYISO estimates for the LSPG-NY Projects, over a twenty-year period, \$331 million in production cost savings under the baseline scenario, and \$1.12 billion in production cost savings based on additional criteria, such as generation retirements.

³⁵ *Id.* at 76 ("Table 3-27: NYCA 20-Year Total Demand Congestion Change in 2018 M\$"). In Table 3-27, NYISO estimates for the LSPG-NY Projects, over a twenty-year period, \$2.3 billion in demand congestion change savings under the baseline scenario, and \$9.3 billion in demand congestion change savings based on additional criteria, such as generation retirements.

³⁶ *Id.* at 78.

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16. LSPG-NY also asserts that the Projects will satisfy the second prong of Order No. 679's rebuttable presumption because the Projects will require construction approval from the New York Commission before construction can begin.³⁷

b. Commission Determination

17. The Commission has previously found that projects approved through a regional transmission planning process that evaluated whether the identified transmission projects will enhance reliability and/or reduce congestion are entitled to the rebuttable presumption established under Order No. 679.³⁸ In this case, NYISO's public policy transmission planning process, through which NYISO selected LSPG-NY's Segment A Project as the more efficient or cost-effective transmission solution, evaluated whether this transmission project will enhance reliability and/or reduce congestion. Therefore, we find that LSPG-NY's Segment A Project is entitled to the rebuttable presumption that it meets this requirement of section 219.

18. However, NYISO did not select LSPG-NY as the developer for Segment B, so LSPG-NY is not entitled to the rebuttable presumption that the Segment B Project satisfies the section 219 requirement to ensure reliability and/or reduce congestion based on being approved through a relevant regional transmission planning process.³⁹ The

³⁷ Petition at 20. NYISO's OATT requires Developers who propose public policy transmission projects to include a schedule or plan for obtaining permits and the final permits when available. NYISO, OATT, Att. Y, § 31.4.5 (18.0.0). Section 31.4.12, "Developer's Responsibilities Following Selection of its Public Policy Transmission Project," governs the execution of the Developer Agreement and the milestones under which the Developer will "begin the necessary approval process to the (sic) site, construct, and operate the project." *Id.* § 31.4.12.

³⁸ See, e.g., *TransCanyon DCR, LLC*, 152 FERC ¶ 61,017, at P 17 (2015) (*TransCanyon*); *Pacific Gas and Elec. Co.*, 148 FERC ¶ 61,195, at P 14 (2014); *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,246, at P 15 (2015); *Southern Indiana Gas & Elec. Co.*, 125 FERC ¶ 61,124, at P 28 (2008).

³⁹ We take official notice of the fact that, on April 8, 2019, the NYISO Board issued a press release and executive summary, which publicly announced its selections for the developers and projects for the AC Transmission Upgrades, and it selected the joint proposal by National Grid and New York Transco, LLC (Project ID T019) as the more efficient or cost-effective solution for Segment B. 18 C.F.R. § 385.508(d) (2018) (allowing the Commission to "take official notice of any matter that may be judicially

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Segment B Project likewise is not entitled to the rebuttable presumption based on having received construction approval from an appropriate state commission or state siting authority.⁴⁰ The Commission also has stated, as noted above, that “other applicants not meeting these criteria may nonetheless demonstrate that their project is needed to maintain reliability or reduce congestion by presenting [to the Commission] a factual record that would support such a finding.”⁴¹ Here, however, LSPG-NY does not argue that it satisfies the requirements of section 219 on this basis. Thus, we reject the request for the Abandoned Plant Incentive for the Segment B Project because LSPG-NY has not demonstrated that the Segment B Project is entitled to the rebuttable presumption. .

2. Order No. 679 Nexus

19. In addition to satisfying the section 219 requirement of ensuring reliability and/or reducing the cost of delivered power by reducing congestion, Order No. 679 requires an applicant to demonstrate that there is a nexus between the incentive sought and the investment being made.⁴² In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is “tailored to address the demonstrable risks or challenges faced by the applicant.”⁴³ The Commission requires a project-specific demonstration of the nexus between the requested incentives and the risks and challenges of the project.⁴⁴ Applicants must provide sufficient support to allow the Commission to evaluate each element of the package and the interrelationship of all elements of the package.⁴⁵ The Commission noted that this

noticed by the courts of the United States”). For the NYISO Board’s executive summary, see <https://www.nyiso.com/documents/20142/1390750/Board-Decision-AC-Transmission-2019-04-08.pdf/32323d32-f534-a790-1b03-2cb110033320>.

⁴⁰ Order No. 679, 116 FERC ¶ 61,057 at P 76.

⁴¹ *Id.* P 57; see also Order No. 679-A, 117 FERC ¶ 61,345 at P 41.

⁴² Order No. 679, 116 FERC ¶ 61,057 at P 48.

⁴³ Order No. 679-A, 117 FERC ¶ 61,345 at P 40.

⁴⁴ See 18 C.F.R. § 35.35(d) (2018).

⁴⁵ 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at P 10 (quoting Order No. 679-A, 117 FERC ¶ 61,345 at P 27).

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nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.⁴⁶

20. In the 2012 Incentives Policy Statement, the Commission reaffirmed that among the financial and regulatory risk-reducing transmission incentives available pursuant to Order No. 679 were the Abandoned Plant Incentive.⁴⁷ The Commission explained that when considering the award of abandonment recovery, “in addition to the challenges presented by the scope and size of a project, factors like various federal and state siting approvals introduce a significant element of risk.”⁴⁸

a. LSPG-NY’s Request

21. LSPG-NY contends that the requested Abandoned Plant Incentive is tailored to address the Projects’ demonstrable risks and challenges because LSPG-NY faces substantial abandonment risk. LSPG-NY states that the Segment A Project remains subject to multiple layers of regulatory review, permits and approvals at the federal, state, and local levels, and there has been significant public opposition to past proposals.⁴⁹ LSPG-NY states that, to obtain a Certificate of Environmental Capability and Public Need from the New York Commission for the Segment A Project, there will be significant additional public consultation, as well as participation by the New York Department of Agriculture and Markets and the New York Department of Conservation.⁵⁰ LSPG-NY states that it is creating a new transmission utility, has no tariff to expense current development activities, and will not be able to recover costs unless the Segment A Project is placed into service.⁵¹ LSPG-NY states that should the Segment A Project be cancelled for a reason beyond LSPG-NY’s control, such as the re-evaluation of the Segment A Project by NYISO, the re-evaluation of the public policy transmission need by the New York Commission, or the denial of an approval or permit,

⁴⁶ Order No. 679, 116 FERC ¶ 61,057 at P 43.

⁴⁷ 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at P 11.

⁴⁸ *Id.* P 14.

⁴⁹ Petition at 24.

⁵⁰ *Id.* at 22-23.

⁵¹ *Id.* at 23.

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LSPG-NY would not have any way to recover its prudently-incurred development costs without the Abandoned Plant Incentive.⁵²

22. LSPG-NY also states that it would be difficult to commit its investor's equity and resources without assurance from the Commission that it could recover its investment in the event the Segment A Project was cancelled for reasons outside LSPG-NY's control.⁵³ LSPG-NY notes that it currently has no revenue or rate base; therefore, the initial investments in the development and construction of the Segment A Project will represent negative cash flow for LSPG-NY and the Segment A Project will represent 100 percent of LSPG-NY's plant in service.⁵⁴ LSPG-NY further states that the Segment A Project has substantial financial risk because it will be approved based primarily on the basis of economic benefits, and significant changes in those benefits could result in efforts to cancel the Projects.⁵⁵

23. LSPG-NY states that its recovery of specific abandoned costs would be subject to a future FPA section 205 filing.⁵⁶

b. Commission Determination

24. We grant LSPG-NY's request for the Abandoned Plant Incentive for LSPG-NY's Segment A Project, effective as of the date of this order.⁵⁷ In Order No. 679, the Commission found that the Abandoned Plant Incentive is an effective means of encouraging transmission development by reducing the risk of non-recovery of costs in the event that a project is abandoned for reasons outside the control of management.⁵⁸

⁵² *Id.*

⁵³ *Id.* at 24.

⁵⁴ *Id.* at 20-21.

⁵⁵ *Id.* at 21.

⁵⁶ *Id.* at 24 & n.74 (citing Order No. 679, 116 FERC ¶ 61,057 at P 166).

⁵⁷ *San Diego Gas & Elec. Co. v. FERC*, 913 F.3d 127 (D.C. Cir. Jan. 15, 2019) (upholding the Commission's policy to make the Abandoned Plant Incentive effective for those costs incurred after the effective date of the order approving the Abandoned Plant Incentive).

⁵⁸ Order No. 679, 116 FERC ¶ 61,057 at P 163; *see also, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,296, at P 28 (2015); *TransCanyon*, 152 FERC ¶ 61,017 at P 41.

We agree that LSPG-NY's Segment A Project faces certain regulatory and financial risks that are beyond the control of management and which could lead to abandonment of this project. LSPG-NY explains that the Segment A Project remains subject to multiple layers of regulatory review, permits, and approvals at the federal, state, and local levels, and there has been significant public opposition to past proposals. LSPG-NY also explains that it is creating a new transmission utility, has no tariff to expense current development activities, and will not be able to recover costs unless the Segment A Project is placed into service. LSPG-NY states that should the Segment A Project be cancelled for a reason beyond LSPG-NY's control, such as the re-evaluation of the Segment A Project by NYISO, the re-evaluation of the public policy transmission need by the New York Commission, or the denial of an approval or permit, LSPG-NY would not have any way to recover its prudently-incurred development costs without the Abandoned Plant Incentive. Therefore, we find that LSPG-NY has demonstrated that approval of the Abandoned Plant Incentive will protect LSPG-NY if LSPG-NY's Segment A Project is cancelled for reasons beyond LSPG-NY's control, thereby establishing the nexus required by Order No. 679.

25. We will not determine the justness and reasonableness of LSPG-NY's recovery of costs for abandoned electric transmission facilities, if any, until LSPG-NY seeks such recovery in a future FPA section 205 filing. Order No. 679 specifically reserves the prudence determination for the later FPA section 205 filing that every utility is required to make if it seeks abandoned plant recovery. At such time, LSPG-NY will need to demonstrate in its FPA section 205 filing that the abandonment of LSPG-NY's Segment A Project was beyond its control, provide for rate authorization allowing for the recovery of prudently incurred abandonment costs, and propose a rate and amortization period to recover its costs in a just and reasonable manner, pursuant to the NYISO OATT.⁵⁹

⁵⁹ Order No. 679, 116 FERC ¶ 61,057 at PP 165-166. The Commission accepted regional cost allocation for the AC Transmission Upgrades, which allocates 75 percent of the costs to the load zones that will benefit from the congestion relief (in downstate New York), and allocates the remaining 25 percent of the costs regionally on a load-share ratio basis. *N.Y. Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,160, at PP 27-29 (2017). The Commission noted that this method allocates approximately 90 percent of the selected transmission project's costs to ratepayers in the downstate region, and about 10 percent of those costs to upstate ratepayers. *Id.* P 28. The Commission also noted that the NYISO OATT allows transmission developers to propose a different cost allocation method or request that NYISO use the default cost allocation method (i.e., the load-share ratio). *Id.* P 26.

The Commission orders:

(A) LSPG-NY's request for the Abandoned Plant Incentive for LSPG-NY's Segment A Project is hereby granted, effective as of the date of this order, as discussed in the body of this order.

(B) LSPG-NY's request for the Abandoned Plant Incentive for LSPG-NY's Segment B Project is hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix 1

Segment A

The joint proposal by LSPG-NY and NYPA for Segment A (referred to as “Project ID T027: NAT/NYPA - Segment A Double-Circuit Proposal” in the NYISO June 19, 2018 Draft Report) consists of:

- a new 345 kV double circuit line of approximately 86 miles from the existing Edic 345 kV substation to the existing New Scotland 345 kV substation;
- two new 345 kV lines of approximately five miles single-circuit looping the existing 345 kV Edic to New Scotland #14 line into and out of a new Rotterdam 345 kV Substation, and the Rotterdam 230 kV substation will be retired;
- two new 345/115 kV lower impedance transformers connecting the existing Rotterdam 115 kV switchyard to the new 345 kV switchyard, and one new 345/230 kV transformer connecting the existing 230 kV Rotterdam to Eastover Road #38 line to the new Rotterdam 345 kV switchyard;
- rebuilding approximately six miles of the Rotterdam to New Scotland 345 kV transmission line to accommodate the new double-circuit line beginning from Princetown junction;
- removing the Rotterdam to New Scotland 115 kV transmission line;
- a new Princetown 345 kV switchyard by tapping the newly proposed Edic-New Scotland lines and Rotterdam-New Scotland transmission lines;
- terminal upgrades at Edic and Marcy 345 kV substations; and
- decommissioning of the Porter to Rotterdam 230 kV lines #30 and #31.⁶⁰

Segment B

The joint proposal by LSPG-NY and NYPA for Segment B (referred to as “Project ID T029: NAT/NYPA - Segment B Base Proposal” in the NYISO June 19, 2018 Draft Report) consists of:

- multiple retirements and reconfigurations on 115 kV lines between Greenbush – Pleasant Valley;
- a new 345 kV Knickerbocker switchyard along the New Scotland - Alps 345 kV line;
- looping the existing 345 kV New Scotland to Alps transmission line into Knickerbocker Switchyard;

⁶⁰ Petition, Attachment 3, NYISO June 19, 2018 Draft Report, AC Transmission Public Policy Transmission Planning Report, at 31.

- a new double-circuit 345/115 kV line from a new Knickerbocker 345 kV switching station to Pleasant Valley 345 kV substation (double-bundled 345 kV line);
- a new Churchtown 115 kV substation; and
- Shoemaker – Shoemaker Tap – Middletown 345/138 kV transformer and 138 kV facilities upgrades.⁶¹

⁶¹ *Id.* at 37.