

171 FERC ¶ 61,159
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

New York Independent System Operator, Inc.
LS Power Grid New York Corporation I

Docket No. ER20-716-001

ORDER ON FORMULA RATE AND TRANSMISSION RATE INCENTIVES,
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued May 26, 2020)

1. On December 31, 2019, as amended on March 26, 2020, pursuant to sections 205¹ and 219² of the Federal Power Act (FPA) and Part 35 of the Commission's regulations,³ the New York Independent System Operator, Inc. (NYISO) filed a request on behalf of LS Power Grid New York Corporation I (LSPG-NY)⁴ to: (1) utilize a company-specific formula rate template (Template) and protocols (Protocols) (together, Formula Rate) to determine and recover the costs of LSPG-NY's investment in transmission facilities in the NYISO region, and (2) establish certain transmission rate incentives for its portion of a transmission project.

2. As discussed below, we grant LSPG-NY's requests for certain incentives, including (1) authorization to create a regulatory asset to capitalize certain costs that would not otherwise be capitalized (Regulatory Asset Incentive), (2) authorization to use a hypothetical capital structure, consisting of 47% debt and 53% equity, until the project

¹ 16 U.S.C. § 824d (2018).

² *Id.* § 824s.

³ 18 C.F.R. pt. 35 (2019).

⁴ NYISO submits the filing on behalf of LSPG-NY in its role as administrator of the NYISO Open Access Transmission Tariff (OATT). NYISO notes that it takes no position on any substantive aspect of the filing and that the burden of demonstrating that the proposed rate is just and reasonable rests with LSPG-NY. LSPG-NY Transmittal at 1.

achieves full commercial operation (Hypothetical Capital Structure Incentive), (3) a 50 basis-point return on equity (ROE) adder for participating in a regional transmission organization (RTO) or independent system operator (ISO) (the RTO-Participation Incentive), and (4) a 50 basis-point ROE adder to reflect the significant risks and challenges associated with the development of its portion of a transmission project (the ROE Risk Adder). Except for those issues summarily addressed below, we accept LSPG-NY's Formula Rate, suspend it for a nominal period to be effective May 27, 2020, subject to refund, and establish hearing and settlement judge procedures. We also accept LSPG-NY's proposal for a Performance-based Rate Incentive and Cost Cap, suspend them for a nominal period to be effective May 27, 2020, subject to refund, and establish hearing and settlement judge procedures, as discussed below.

I. Background

A. LSPG-NY and the AC Transmission Upgrade

3. LSPG-NY is a transmission-only company organized under the laws of the State of New York whose business is to develop, own, and operate transmission facilities in the NYISO region.⁵

4. LSPG-NY states that the transmission project is an outgrowth of Governor Andrew Cuomo's 2012 "New York Energy Highway" initiative to address many of the energy challenges facing New York State.⁶ In response to this initiative, the New York State Public Service Commission (New York Commission) instituted several proceedings to advance a number of key energy goals, including the proceeding in Case 12-T-0502, to examine the need for alternating current (AC) transmission upgrades in New York.⁷ In 2015, based on the record in Case 12-T-0502, the New York Commission issued an order finding that there is a transmission need driven by public policy requirements for new 345 kV AC transmission facilities to cross the Central East and Upstate New York/Southeast New York interfaces to provide additional transmission capacity to move power from upstate to downstate New York (AC Transmission Need).⁸ The New York Commission directed NYISO to conduct solicitations for transmission upgrades designed to provide a minimum of 350 megawatts (MW) of Central-East transfer capacity (Segment A) and upgrades designed to provide a minimum of 900 MW of upstate-to-southeast New York transfer capacity (Segment B).⁹

⁵ *Id.* at 4.

⁶ *Id.* at 4-5.

⁷ *Id.* at 5.

⁸ New York Commission, *Order Finding Transmission Needs Driven by Public Policy Requirements*, Case 12-T-0502 (Dec. 17, 2015) (December 2015 Order).

5. Subsequently, in 2016, NYISO began its Order No. 1000¹⁰ Public Policy Transmission Planning Process to find a viable solution for the AC Transmission Need.¹¹ Numerous developers submitted separate transmission and non-transmission solutions in response to the solicitations for Segment A and for Segment B. After a lengthy process, LSPG-NY notes, NYISO's Board of Directors selected the AC Projects, comprised of Segments A and B, as the more efficient or cost-effective transmission solution to address the AC Transmission Need.¹² On April 8, 2019, NYISO designated LSPG-NY and the New York Power Authority (NYPA) to build Segment A (Project T027) and Niagara Mohawk Power Corporation (Niagara Mohawk) and the New York Transco, LLC (NY Transco) to build Segment B (Project T019).¹³ The anticipated in-service date for the AC Projects is December 2023.¹⁴

6. Segment A is expected to cost \$750 million. Segment A includes replacement of Niagara Mohawk's two existing 80-mile 230 kV transmission lines with a new 86-mile double-circuit 345 kV line from the Edic substation in Oneida County, New York, to the New Scotland 345 kV substations, and the addition of a new Princetown 345 kV switchyard in between Edic and New Scotland to connect to the Rotterdam substation.¹⁵

⁹ LSPG-NY Transmittal at 6.

¹⁰ *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 (2011) (Order No. 1000), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g & 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).

¹¹ NYISO's Order No. 1000 Public Policy Transmission Planning Process involves six main steps where NYISO, in conjunction with the New York Commission, identifies, competitively solicits, and selects a solution for the development of critically-needed transmission infrastructure. *See* NYISO OATT, Attachment Y, Public Policy Requirements Planning Process (8.0.0), § 31.4.

¹² LSPG-NY Transmittal at 7-9; *see also*, *N.Y. Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,004 (2015) (*NY Transco Order*). In the *NY Transco Order*, the AC Projects comprised of two separate 345kV lines: (1) Edic-to-Pleasant Valley Line and (2) Oakdale-to-Fraser Line. *Id.* PP 11-12. In the later orders, as well as this filing, Segments A and B of the AC Projects encompasses the prior Edic-to-Pleasant Valley Line project and some additional upgrades. *LS Power Grid N.Y. LLC*, 167 FERC ¶ 61,139 (2019); *N.Y. Power Auth.*, 169 FERC ¶ 61,125, at P 5 (2019) (*NYPA Order*).

¹³ LSPG-NY Transmittal at 9; LSPG-NY Filing, Attachment B, Ex. LSPG-NY-107.

¹⁴ LSPG-NY Transmittal at 2-3.

The double-circuit line will use rights-of-way currently owned by Niagara Mohawk. Niagara Mohawk's existing 230 kV lines will be decommissioned as part of the project.

7. Segment B is the Upstate New York and Southeast New York portion of the AC Projects. Segment B includes, among other things, a new double-circuit 345/115 kV line from a new Knickerbocker 345 kV switching station to the existing Pleasant Valley Substation, including a rebuild of the Churchtown 115 kV switching station, an upgrade of the existing Pleasant Valley 345/115 kV Substation, and 50% series compensation on the Knickerbocker to Pleasant Valley 345 kV line.¹⁶

8. Combined, Segment A and Segment B are estimated to cost a total of \$1.230 billion, and are expected to provide a combined production cost savings of up to \$1.191 billion and \$4.08 billion depending on future system conditions¹⁷ and \$9.633 billion in total reduced demand congestion charges over the 20-year study period. The AC Projects are projected to result in an avoided transmission refurbishment cost savings of approximately \$839 million and capacity benefits of approximately \$1.936 billion.¹⁸ LSPG-NY explains that, with regard to congestion relief, NYISO conducts economic planning over a biennial cycle in its Congestion Assessment and Resource Integration Study (CARIS) process. LSPG-NY states that the most recent CARIS cycle, 2017, identifies Central East as the top congested flowgate, and historic Demand Congestion on Central East as being over \$4 billion in the five-year period from 2012 to 2016, representing 64% of the total Demand Congestion in New York.¹⁹ LSPG-NY also points to NYISO's Public Policy Transmission Planning Report, which, over a 20-year production cost analysis, identified the selected projects as providing \$2.576 billion in Demand Congestion Change in 2018 dollars in a baseline analysis, with the potential to reach \$9.633 billion in Demand Congestion Change under a clean energy standard scenario.²⁰

¹⁵ LSPG-NY Filing, Attachment B, Ex. LSPG-NY-107 at 32.

¹⁶ *Id.* at 4.

¹⁷ LSPG-NY Transmittal at 3; LSPG-NY Filing, Attachment B, Ex. LSPG-NY-107, at 51, 71, Addendum at 21, 24.

¹⁸ LSPG-NY Transmittal at 9-13.

¹⁹ *Id.* at 10; LSPG-NY Filing, Attachment B, Ex. LSPG-NY-100 at 21 (explaining the benefits of Segments A and B combined).

²⁰ LSPG-NY Filing, Ex. LSPG-NY-107 at 76 (NYISO's finding of congestion benefits for Segments A and B combined).

B. LSPG-NY's Filing

1. Requests for Transmission Rate Incentives

9. As discussed below in greater detail, LSPG-NY requests five incentives pursuant to section 219 of the FPA, Order No. 679,²¹ and in accordance with the Commission's 2012 policy statement on transmission incentives²² for its portion of investment in Segment A: (1) the Regulatory Asset Incentive; (2) the Hypothetical Capital Structure Incentive; (3) a 50 basis point RTO-Participation Incentive; (4) a 50 basis point ROE Risk Adder Incentive; and (5) a performance-based rate incentive inclusive of tiered ROE premiums with a cost cap provision. LSPG-NY states that Order No. 679 establishes a rebuttable presumption that proposed transmission facilities either ensure reliability and/or reduce transmission congestion if the transmission project results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion.²³ LSPG-NY further asserts that these incentives are rationally related to address the risks and challenges that Segment A faces, including financial risks, regulatory risks, and construction risks.²⁴

2. Formula Rate

10. LSPG-NY requests that the Commission accept its proposed Formula Rate for filing and incorporation into the NYISO OATT. LSPG-NY states that the Formula Rate consists of a combination of projected cost data and historical cost data through a series of workpapers supporting main cost components, as discussed below. As part of its Formula Rate, LSPG-NY requests approval of a base ROE of 10%, upon which the incentive ROE premiums and adders would apply. LSPG-NY states that its proposed Protocols govern the specific procedures for notice, requests for information, and review and challenges related to LSPG-NY's Annual Update and Annual Projection.²⁵ LSPG-

²¹ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057 (Order No. 679), *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006) (Order No. 679-A), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

²² LSPG-NY Transmittal at 30, 35-37, 40 (citing *Promoting Transmission Investment through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (2012 Incentives Policy Statement)).

²³ *Id.* at 23-24 (citing Order No. 679, 116 FERC ¶ 61,057 at PP 57-58; Order No. 679-A, 117 FERC ¶ 61,345 at P 49).

²⁴ *Id.* at 24. LSPG-NY also provides an advanced technology statement required by Order No. 679. *See id.* at 28-30.

²⁵ LSPG-NY Filing, Attachment F, Ex. LSPG-NY-500 at 5.

NY states that its proposed Formula Rate provides a means for reflecting competitive bid concessions offered for its transmission projects, which could reduce or increase its annual transmission revenue requirement.

II. Notice of Filing and Responsive Pleadings

11. Notice of LSPG-NY's Filing was published in the *Federal Register*, 85 Fed. Reg. 706 (2020), with interventions and protests due on or before January 21, 2020. On January 10, 2020, LSPG-NY filed a supplement to include the Excel version of its Template. Timely motions to intervene were filed by The City of New York, New York (New York City), Indicated Transmission Owners,²⁶ Multiple Intervenors,²⁷ Municipal Electric Utilities Association of New York (Municipal Utilities Association),²⁸ NY Transco, and the Utility Intervention Unit of New York State Department of State. The New York Commission filed a notice of intervention and protest. New York City and the Municipal Utilities Association filed protests.²⁹ The New York Power Authority (NYPA) filed a timely motion to intervene and comments in support of LSPG-NY's filing. On February 10, 2020, LSPG-NY filed an answer (LSPG-NY Answer).

12. On February 27, 2020, Commission staff informed LSPG-NY that its filing was deficient and additional information was necessary to evaluate its submission.³⁰ On March 26, 2020, LSPG-NY submitted a response and also amended the filing to change the effective date to May 27, 2020 (Amendment). Notice of LSPG-NY's Amendment was published in the *Federal Register*, 85 Fed. Reg. 18,571 (2020), with interventions and protests due on or before April 16, 2020. None was filed.

²⁶ Indicated Transmission Owners are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, Long Island Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

²⁷ Multiple Intervenors is an unincorporated association of approximately 60 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout the State of New York.

²⁸ Municipal Utilities Association is an unincorporated association of 40 municipal electric utilities in the State of New York who operate municipal electric utility systems engaged in the distribution and sale of electricity.

²⁹ New York City's comments and protests were filed one day late due to technical issues with the Commission's website; Municipal Utilities Association's protest was timely.

³⁰ LSPG-NY, Deficiency Letter, Docket No. ER20-716-001 (Feb. 27, 2020) (delegated order).

III. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We accept New York City's late-filed comments given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept LSPG-NY's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Transmission Incentives

a) Section 219 Requirement

15. In the Energy Policy Act of 2005,³¹ Congress added section 219 to the FPA,³² 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 incentives requested here by LSPG-NY. 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. 679.³³

16. 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."³⁴ 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:

³¹ Energy Policy Act of 2005, Pub. L. No. 109-58, § 1241, 119 Stat. 594 (2005).

³² 16 U.S.C. § 824s.

³³ 2012 Incentives Policy Statement, 141 FERC ¶ 61,129.

³⁴ Order No. 679, 116 FERC ¶ 61,057 at P 76.

(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.³⁵ 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.”³⁶

(1) LSPG-NY’s Request

17. LSPG-NY states that Segment A meets the rebuttable presumption under section 219 because the project was selected through the NYISO Public Policy Transmission Planning Process, which is part of NYISO’s Commission-approved Order No. 1000 public policy transmission planning process, and the Commission has previously found it to be a fair and open regional transmission planning process.³⁷ LSPG-NY notes that NYISO approved both Segments A and B pursuant to this process after considering the projects’ reliability and congestion reduction benefits. Specifically, NYISO found that both Segments A and B would provide “significant increases in Central East transfer capability, increased production cost savings, and excellent operability and expandability.”³⁸ LSPG-NY states that the Commission has previously held that a project approved by the NYISO Order No. 1000 public policy transmission planning process satisfies the rebuttable presumption established in Order No. 679, and as such, Segment A qualifies for Order No. 679’s rebuttable presumption.³⁹

(2) Commission Determination

18. 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. 679.⁴⁰ In this case, NYISO, through its public

³⁵ *Id.* P 58.

³⁶ *Id.* P 57; *see also* Order No. 679-A, 117 FERC ¶ 61,345 at P 41.

³⁷ LSPG-NY Transmittal at 24.

³⁸ *Id.* at 8-13.

³⁹ *Id.*

⁴⁰ *See, e.g., TransCanyon DCR, LLC*, 152 FERC ¶ 61,017, at P 17 (2015) (*TransCanyon*); *Pac. Gas & Elec. Co.*, 148 FERC ¶ 61,195, at P 14 (2014); *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,246, at P 15 (2015); *S. Ind. Gas & Elec. Co.*,

policy transmission planning process, selected Segment A as the more efficient or cost-effective transmission solution to enhance reliability and/or reduce congestion. Therefore, we find that Segment A is entitled to the rebuttable presumption that it meets this requirement of section 219.

b) 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.⁴¹ 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.”⁴² The Commission requires a project-specific demonstration of the nexus between the requested incentives and the risks and challenges of the project.⁴³ 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.⁴⁴ The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.⁴⁵ We address the nexus test below for each incentive requested and for the total package of incentives requested.

c) Regulatory Asset Incentive

(1) LSPG-NY’s Request

20. LSPG-NY requests deferred recovery of all prudently-incurred pre-commercial, start-up and development costs not capitalized. Rather than expense the costs in rates in the period incurred, LSPG-NY requests approval to defer the amounts from inception of Segment A through commercial operation.⁴⁶ LSPG-NY states that these costs include,

125 FERC ¶ 61,124, at P 28 (2008).

⁴¹ Order No. 679, 116 FERC ¶ 61,057 at P 48.

⁴² Order No. 679-A, 117 FERC ¶ 61,345 at P 40.

⁴³ See 18 C.F.R. § 35.35(d) (2019).

⁴⁴ 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at P 10 (quoting Order No. 679-A, 117 FERC ¶ 61,345 at P 27).

⁴⁵ Order No. 679, 116 FERC ¶ 61,057 at P 43.

⁴⁶ LSPG-NY Transmittal at 30.

for example, costs to participate in the regional transmission planning process, project formation, or regulatory commission expense.⁴⁷ LSPG-NY also requests authorization to create a regulatory asset account for costs related to submission of its proposal for Segment B, if necessary, in order to similarly defer recovery of such costs until such time as the costs can be recovered in rates.⁴⁸ LSPG-NY states that the Segment B costs are the types of costs permitted for recovery under the NYISO OATT.⁴⁹ LSPG-NY also requests permission to accrue carrying charges, compounded semi-annually, on the regulatory asset balance beginning on the effective date of the Commission's approval of this incentive until the regulatory asset is included in rate base.⁵⁰ LSPG-NY represents that, consistent with Commission precedent, it will ensure the compounding of interest does not result in a higher amount of interest than is allowed for computations of Allowance for Funds Used During Construction (AFUDC).⁵¹ LSPG-NY requests authorization to amortize the regulatory asset over ten years beginning in the period when the costs are charged to customers in rate base.⁵²

21. LSPG-NY claims that the regulatory asset treatment will address several risks and challenges, including risks associated with LSPG-NY not having existing rates on file, and therefore, the regulatory asset treatment would address that financial risk.⁵³ LSPG-NY also states that the regulatory asset incentive will address LSPG-NY's regulatory risks and challenges of the numerous permits and approvals at the federal, state and local level, passing through five different counties, 19 townships, and one village. LSPG-NY states that the project has already been put on hold to allow thousands of additional comments on the AC Projects.⁵⁴

22. No party protests this aspect of the filing.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 31 (citing NYISO OATT, Attachment Y, Project Eligibility Cost Allocation, § 31.5.5.3).

⁵⁰ LSPG-NY Filing, Attachment E, Ex. LSPG-NY-400 at 10.

⁵¹ LSPG-NY Transmittal at 31.

⁵² *Id.*

⁵³ *Id.* at 40.

⁵⁴ *Id.* at 25-26, 40.

(2) Commission Determination

23. We grant LSPG-NY's request for the Regulatory Asset Incentive for Segment A, and authorize deferred recovery of all prudently-incurred pre-commercial, start-up, and development costs not capitalized. We also authorize LSPG-NY to create a regulatory asset account for costs related to its proposal for Segment B.⁵⁵ We find that there is a nexus between the incentive sought and the investment being made because the expense and recovery of these deferred costs would reduce LSPG-NY's interest expense, assist with financing for its portion of the investment, and improve coverage ratios used by rating agencies to determine credit quality. Further, considering the size, scope, and lead time of the AC Projects, we find that this incentive will assist in the construction of this new transmission facility.⁵⁶

24. While we authorize LSPG-NY to record its prudently incurred costs as a regulatory asset, LSPG-NY must make an FPA section 205 filing to demonstrate that the pre-commercial, start-up, and development costs are just and reasonable before it includes them in rates. In that filing, LSPG-NY must establish that the costs included in the regulatory asset are costs that otherwise would have been chargeable to expense in the period incurred but were deferred consistent with the authorization granted herein.

d) Hypothetical Capital Structure Incentive

(1) LSPG-NY's Request

25. LSPG-NY requests authorization to use a hypothetical capital structure consisting of 53% equity and 47% debt until Segment A is fully placed in service.⁵⁷ LSPG-NY states that its actual capital structure will replace the hypothetical one when Segment A becomes fully commercially operational. LSPG-NY notes that portions of Segment A may become operational and placed into service on a rolling basis; nevertheless, LSPG-NY requests authorization to continue using the hypothetical capital structure until the project is completed to provide regulatory certainty and improve its access to capital.

⁵⁵ NYISO OATT, Attachment Y, §§ 31.4.3.2, 31.5.5.3, 31.5.6 (permitting developers to recover the costs associated with rejected proposals where the New York Commission requests appropriate developers to propose solutions to a Public Policy Transmission Need).

⁵⁶ *ITC Great Plains, LLC*, 150 FERC ¶ 61,226 (2015) (approving a ten-year amortization).

⁵⁷ LSPG-NY also commits to capping its equity at 53%. LSPG-NY Transmittal at 22.

26. LSPG-NY explains that permitting this treatment will result in lower debt costs for the company, while also permitting it to vary its financing vehicles to the needs of the construction process, including such issues as timing of expenditures, regulatory developments, and changes in financial market conditions. Moreover, the use of a hypothetical capital structure during the construction period is a pragmatic approach to address LSPG-NY's fluctuating capital structure.⁵⁸

(2) Protests

27. The New York Commission protests the hypothetical capital structure, arguing that 45% equity is more than sufficient to attract capital investments and that the current low interest rates support the likelihood of favorable financing terms. The New York Commission asserts that this alternative level is based on its own proxy group of 31 companies selected by the New York Commission, which it argues is based on the Commission's criteria, that will support a strong credit profile for LSPG-NY while maintaining its ability to access capital on reasonable terms.⁵⁹ The New York Commission argues that, in the event the Commission requires additional information, an evidentiary hearing is necessary to allow interested parties the opportunity to contest LSPG-NY's claim that a 53% equity ratio is necessary.⁶⁰

(3) Commission Determination

28. We grant LSPG-NY's request to utilize a hypothetical capital structure consisting of 53% equity and 47% debt until Segment A is fully placed in service. The Commission allows a nonincumbent transmission developer to use a particular hypothetical capital structure if it is within the range of prior approved hypothetical capital structures for nonincumbent transmission developers, which is the case for LSPG-NY's proposed capital structure.⁶¹ We find that there is a nexus between the incentive sought and the investment being made as this incentive provides regulatory certainty to nonincumbent transmission developers.⁶² While the New York Commission protests the proposed incentive, arguing that a lower equity ratio of 45% is sufficient to attract capital, it has submitted no evidence in support of that argument. We therefore find that LSPG-NY's

⁵⁸ *Id.* at 32-33.

⁵⁹ New York Commission Protest at 3-4.

⁶⁰ *Id.* at 4.

⁶¹ See *NextEra Energy Transmission N.Y., Inc.*, 161 FERC ¶ 61,138, at P 34. (2017) (*NEET NY*) (citing *S. Cent. MNC LLC*, 153 FERC ¶ 61,099, at P 37 (2015)).

⁶² See, e.g., *id.* PP 31, 34 (permitting the use of a hypothetical capital structure until its first project enters service).

request is consistent with Commission precedent and policies, and grant LSPG-NY's request.

e) RTO-Participation Incentive

(1) LSPG-NY's Request

29. LSPG-NY also requests the RTO-Participation Incentive, a 50 basis point ROE adder, for participating in a Commission-approved Transmission Organization (i.e., NYISO).⁶³ LSPG-NY asserts that its request for an RTO-Participation Incentive is consistent with section 219(c) of the FPA, Order No. 679, and Commission precedent. LSPG-NY explains that it will become a member of NYISO and commits to transferring operational control of its transmission facilities to NYISO once placed into service. LSPG-NY requests that the Commission authorize the RTO-Participation Incentive, subject to the overall ROE being within the zone of reasonableness.⁶⁴

(2) Protests

30. The New York Commission opposes the RTO-Participation Incentive and argues that LSPG-NY is required to turn over operational control of its transmission facilities to NYISO under applicable regulatory requirements, thereby making the incentive unwarranted and irrational.⁶⁵ New York City similarly argues that the RTO-Participation Incentive is not appropriate here because LSPG-NY will recover its costs via a NYISO rate schedule and must therefore be a member of NYISO to avail itself of the ability to recover its cost through a rate schedule.⁶⁶ New York City argues that in *CPUC v. FERC*, the Ninth Circuit held that the RTO-Participation Incentive should be applied only when it is justified and the incentive cannot be applied on a generic basis. New York City argues that there is no justifiable basis for the RTO Participation Incentive here.⁶⁷

(3) Answer

31. LSPG-NY replies that protesters' arguments are misplaced because the Commission has already addressed the application of the RTO Participation adder to

⁶³ LSPG-NY Transmittal at 3, 32.

⁶⁴ *Id.* at 32.

⁶⁵ New York Commission Protest at 4-5 (citing *Cal. Pub. Utils. Comm'n v. FERC*, 879 F.3d 966 (9th Cir. 2018) (*CPUC v. FERC*)).

⁶⁶ New York City Protest at 7.

⁶⁷ *Id.*

other transmission developers in New York and protesters do not identify why LSPG-NY should be treated differently.⁶⁸ LSPG-NY argues that it would go against the Commission's intent in Order No. 1000 to encourage nonincumbent participation as a mechanism to ensure just and reasonable rates, should the Commission grant the RTO Participation Adder only to the incumbent transmission owners responding to NYISO's competitive solicitation. LSPG-NY adds that the New York Commission could have made waiver of these adders part of the public policy criteria in the competitive solicitation, but chose not to do so.⁶⁹

(4) Commission Determination

32. We grant LSPG-NY's request for the RTO-Participation Incentive. Our approval of this incentive is contingent on LSPG-NY's commitment to become a member of NYISO and transfer operational control of the transmission project to NYISO once it has been placed in service.

33. We are not persuaded by the protests of the New York Commission and New York City, both of which argue that applicable regulations require LSPG-NY to participate in NYISO. Order No. 679 provides that a utility will be presumed eligible for the RTO-Participation Incentive so long as it can demonstrate that it has joined a Commission-approved Transmission Organization and that its membership is ongoing.⁷⁰ Interested parties may seek to rebut this presumption, by presenting evidence to the contrary.⁷¹ Neither the New York Commission nor New York City cite relevant provisions of New York law that require participation in NYISO, nor do they offer other evidence to rebut the presumption that Order No. 679 establishes. We therefore are not persuaded by those arguments and grant LSPG-NY's request.

⁶⁸ LSPG-NY Answer at 8 (citing *NEET NY*, 161 FERC ¶ 61,138; *NY Transco Order*, 151 FERC ¶ 61,004).

⁶⁹ *Id.* at 8-9.

⁷⁰ Order No. 679, 116 FERC ¶ 61,057 at P 327; Order No. 679-A, 117 FERC ¶ 61,345 at P 86.

⁷¹ See Order No. 679, 116 FERC ¶ 61,057 at P 327 (stating that any public utility receiving the RTO-Participation Incentive that withdraws from the transmission organization is no longer eligible for the incentive); *CPUC v. FERC*, 879 F.3d at 974-75 (finding that whether a utility's membership in a transmission organization is voluntary or not is a relevant consideration when determining whether a utility is eligible for the RTO-Participation Incentive).

f) ROE Risk Adder Incentive

(1) LSPG-NY's Request

34. LSPG-NY requests a 50-basis point ROE Risk Adder to address the risks and challenges in developing its portion of Segment A. LSPG-NY asserts that it satisfies the four showings required under the Commission's 2012 Incentives Policy Statement to obtain the ROE Risk Adder: (1) an explanation of the specific risks and challenges to Segment A; (2) a demonstration that the applicant is taking appropriate steps and using appropriate mechanisms to mitigate risks during project development; (3) a demonstration that alternatives to Segment A have been, or will be, considered in the relevant transmission planning process; and (4) an explanation of whether the applicant is committed to limiting the application of the ROE Risk Adder for risks and challenges to a cost estimate.⁷²

35. For the first showing of risks and challenges, LSPG-NY states that Segment A faces possible challenges through the New York Commission Article VII certification and other permitting processes and the uncertainty in obtaining existing rights-of-way from incumbent public utilities, governmental entities, and private landowners. LSPG-NY states that Segment A will replace incumbent utilities' existing 230 kV transmission lines at various points, and not within a traditional point A to point B plan. LSPG-NY states that Segment A will have nine interconnections with Niagara Mohawk. Additional complexities include: one of the Princetown area connections involves rebuilding a six-mile segment of Niagara Mohawk's Edic to New Scotland line; the removal of portions of Niagara Mohawk's existing Rotterdam to New Scotland 115 kV line; and other changes to existing facilities.⁷³

36. Additionally, LSPG-NY asserts that the AC Projects are the largest single transmission investment in New York since the introduction of competitive markets, and the AC Projects are the largest single transmission investment project to be undertaken pursuant to any Order No. 1000 competitive transmission planning process to date in the United States, with Segment A requiring estimated capital expenditures of \$750 million.⁷⁴ Lastly, LSPG-NY states that because it has no rate base and no revenue, its initial investment in development and construction of Segment A will represent negative cash flow for LSPG-NY, and Segment A will constitute all of LSPG-NY's plant in service. LSPG-NY states that Segment A faces competition for investment with other projects

⁷² LSPG-NY Transmittal at 28-38; 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at PP 20-30.

⁷³ LSPG-NY Filing, Attachment C, Ex. LSPG-NY-200 at 6-8.

⁷⁴ LSPG-NY Transmittal at 2, 24-25; LSPG-NY Filing, Attachment C, Ex. LSPG-NY-200 at 6, n. 1.

from third party investors and lenders, particularly since LSPG-NY has agreed to cost containment provisions and these other projects do not have cost containment provisions. LSPG-NY states that the Commission has recognized these factors as presenting risk in other cases.⁷⁵

37. For the second showing, LSPG-NY states its steps to minimize risks and challenges include building Segment A in existing rights-of-way and designing Segment A to minimize visual impacts and structure height. LSPG-NY also states that the 2012 Incentives Policy Statement identified joint ownership ventures as a measure to mitigate siting and environmental risks, while diversifying financial risks across multiple owners.⁷⁶ LSPG-NY states that it has taken this risk mitigation step in its joint ownership of Segment A with NYPA, which takes advantage of the relative strengths of each company. LSPG-NY has the primary responsibility for project development and construction management, while NYPA's primary responsibility is project operations and maintenance.

38. With regard to the third showing that alternatives to the project were considered in the relevant transmission planning process, LSPG-NY states that Segment A was a culmination of five different sets of transmission processes. LSPG-NY explains that after each of these submittals, alternatives were considered and evaluated prior to moving to the next stage.⁷⁷

39. Lastly, LSPG-NY states that, consistent with the fourth showing from the 2012 Incentives Policy Statement,⁷⁸ it is committed to limiting the application of the ROE Risk Adder for risks and challenges to a cost estimate. Specifically, LSPG-NY states that "the application of any incentive ROE will be limited to Segment A's cost estimate and goes a step further. Under the 80/20 Cost Containment LSPG-NY will receive no return on equity for 20% of costs that are greater than the cost estimate."⁷⁹

40. LSPG-NY further claims that Segment A meets the three types of projects that the Commission anticipated may face the types of risks and challenges that would not be

⁷⁵ LSPG-NY Transmittal at 25, 33 (citing the 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at P 12); *see also PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068 at P 43, *reh'g denied*, 124 FERC ¶ 61,229 (2008). LSPG-NY states that Segment A will initially be funded through parent company equity contributions.

⁷⁶ LSPG-NY Transmittal at 35-36 (citing 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at P 24).

⁷⁷ *Id.* at 5-9, 36-37.

⁷⁸ *Id.* at 37 (citing 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at P 24).

⁷⁹ *Id.*

addressed by either the base ROE or risk-reducing incentives, because Segment A is designed to: (1) relieve chronic or severe grid congestion that has demonstrated cost impacts to customers; and (2) unlock location constrained generation resources that previously had limited or no access to the wholesale electricity markets; and (3) apply new technologies to facilitate more efficient and reliable usage and operation of existing or new facilities.⁸⁰ Specifically, LSPG-NY states that the AC Projects will relieve chronic and severe grid congestion on the Central East interface that has long been present in the NYISO-operated markets. LSPG-NY further asserts that the AC Projects will help unlock existing and planned renewable generation resources in upstate New York, allowing those to be deliverable to load in southeast New York, where the summer peak load exceeds the downstate generation resources. It adds that the New York Commission also found that Southeast New York needs increased transmission capacity to make additional renewable resources deliverable across the state, reducing carbon emissions by 10.7 million tons under certain scenarios.⁸¹ And lastly, LSPG-NY states that Segment A applies new technologies, including innovative construction techniques, advanced substation equipment, and optical ground wires and digital fault recorders, to facilitate more efficient and reliable usage and operation of existing or new facilities through its use of existing rights-of-way.

41. No party protests this aspect of the filing.

(2) Commission Determination

42. We grant the requested 50-basis point ROE Risk Adder for risks and challenges for Segment A. The Commission stated in Order No. 679-A that it would authorize incentive ROEs to new transmission projects that demonstrate particular risks and challenges. In the 2012 Incentives Policy Statement, the Commission offered additional guidance for applicants seeking an incentive ROE adder based on a project's risks and challenges and identified four showings an applicant is expected to make to justify the need for an incentive ROE adder based on a project's risks and challenges. First, an applicant is expected to demonstrate that the proposed project faces risks and challenges that are not either already accounted for in the applicant's base ROE or addressed through the risk-reducing incentives. The Commission elaborated on types of projects that it anticipated may face the types of risks and challenges that would not be addressed by either the base ROE or risk-reducing incentives:

- 1) projects that relieve chronic or severe congestion that has had demonstrated cost impacts to consumers;

⁸⁰ *Id.* at 28-38 (citing 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at P 21).

⁸¹ LSPG-NY Filing, Attachment B, Ex. LSPG-NY-100 at 26-28; LSPG-NY Transmittal at 12-13.

- 2) projects that unlock location constrained generation resources that previously had limited or no access to the wholesale electricity markets;
- 3) projects that apply new technologies to facilitate more efficient and reliable usage and operation of existing or new facilities.

43. Second, an applicant is expected to demonstrate that it has taken appropriate steps and implemented appropriate mechanisms to minimize its risks during project development. Third, an applicant is expected to demonstrate that alternatives to the project have been, or will be, considered in either a relevant transmission planning process or another appropriate forum. Fourth, an applicant is expected to commit to limit the application of such incentive ROE adder to a cost estimate.⁸²

44. We find that LSPG-NY satisfies each of these expectations. As to the first showing, we find that the AC Projects are an example of the first type of project that the Commission identified in the 2012 Incentive Policy Statement. The AC Projects will be constructed to relieve chronic and severe grid congestion that has had demonstrated cost impacts to consumers. Specifically, NYISO's analysis found that NYPA and LSPG-NY's Segment A proposal consistently performed best regardless of which variation of Segment B it was paired with, in part because of its double circuit design and replacement of the most aging infrastructure, providing the highest production cost savings of all alternatives considered.⁸³ NYISO has reported more than \$4.5 billion of congestion costs from 2012 to 2016 over the Central East interface—representing more than 72% of the total demand congestion in the state.⁸⁴ NYISO's independent market monitoring unit - Potomac Economics - performed a separate analysis from the NYISO analysis, confirming significant production cost savings benefits.⁸⁵

45. We also find that LSPG-NY has satisfied the other three showings expected under the 2012 Incentives Policy Statement. As to the second showing, we find that, by committing to use best practices in project management and procurement, LSPG-NY has demonstrated that it is taking appropriate steps and using appropriate mechanisms to minimize risk during project development.⁸⁶ As to the third showing on the consideration of alternatives, Segment A was evaluated against alternatives in both a competitive New

⁸² 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at PP 20-30.

⁸³ LSPG-NY Filing, Attachment B, Ex. LSPG-NY-107.

⁸⁴ *Id.*

⁸⁵ LSPG-NY Filing, Attachment B, Ex. LSPG-NY-100-LSPG-NY-107.

⁸⁶ LSPG-NY Transmittal at 35-36.

York Commission proceeding and NYISO's regional Public Policy Transmission Planning Process.⁸⁷ Finally, as to the fourth showing, as clarified above, we find that LSPG-NY has committed to limiting the application of the ROE incentive to the Project's cost estimate.⁸⁸

g) Performance-based Rate Incentive

(1) LSPG-NY's Request

46. LSPG-NY proposes a cost containment mechanism for Segment A consisting of "Eligible Project Costs" and a "Cost Cap", as defined in LSPG-NY's Transmittal and testimony.⁸⁹ LSPG-NY proposes to earn a Performance-based Rate Incentive based on the amount of savings below a cost cap based on an independent cost estimate developed for NYISO plus a 30% contingency. The cost cap is based on Eligible Project Costs. The cost cap can be raised by the Handy Whitman inflation index, "Third-party Costs" and "LSPG-NY AFUDC," which are terms that are defined in LSPG-NY's Transmittal and testimony, but not in the proposed tariff.⁹⁰ LSPG-NY states that the scope of Eligible Project Costs includes the "costs to place Segment A in-service excluding 'Unforeseeable Costs' and costs associated with operations and maintenance."⁹¹ According to LSPG-NY, if Eligible Project Costs exceed the Cost Cap, then LSPG-NY will receive no ROE for 20% of the Eligible Project Costs that exceed the Cost Cap, and will recover no incentive ROEs on the remaining 80% of Eligible Project Costs that exceed the Cost Cap. LSPG-NY states that it will recover the depreciation and debt costs on its share of all Eligible Project Costs, irrespective of the Cost Cap. If LSPG-NY's Eligible Project Costs are below the Adjusted Cost Cap then LSPG-NY will add additional ROE premiums onto the base ROE and ROE incentives through a sliding scale based on a table provided in its testimony.⁹²

⁸⁷ *Id.* at 5-9, 36-37.

⁸⁸ *See id.* at 37 ("LSPG-NY agrees that application of any incentive ROE will be limited to the Project's cost estimate . . .").

⁸⁹ LSPG-NY Transmittal at n.148 and n.149; LSPG-NY Filing, Attachment B, Ex. LSPG-NY-100.

⁹⁰ LSPG-NY Transmittal at n.148 and n.149; LSPG-NY Filing, Attachment B, Ex. LSPG-NY-100.

⁹¹ LSPG-NY Transmittal at n.148. Unforeseeable Costs in an amount of up to five percent of the "Cost Cap" will be considered Eligible Project Costs. Unforeseeable Costs are costs associated with modifications to the scope of work, as imposed by a government entity, or changes in applicable laws, among other things. LSPG-NY Filing, Attachment B, Ex. LSPG-NY-100 at 27.

(2) Protests and Comments

47. The New York Commission argues that the mechanics of the cost containment mechanism, such as the use of a particular cost estimate, raise various issues that warrant further examination. The New York Commission requests that the Commission conduct a hearing to evaluate the reasonableness of the mechanism to the extent parties cannot otherwise reach a settlement.⁹³

48. NYPA states that it is a joint developer with LSPG-NY of Segment A, and that it has already been granted the following transmission incentives for its portion of Segment A: (i) 100% of prudently-incurred costs if the project is abandoned for reasons outside of NYPA's control; (ii) 100% Construction Work in Progress in rate base; (iii) expensing of pre-commercial operations expenses during the development and construction phase of the project; and (iv) a 50 basis point ROE Risk Adder.⁹⁴ NYPA explains that in requesting the ROE Risk Adder for its portion of Segment A, NYPA committed to adopting cost containment consistent with the 2012 Incentives Policy Statement. NYPA states that it also committed that such cost containment it would adopt would be the risk sharing or cost cap mechanism that would be established by LSPG-NY in this proceeding, subject to the needed adjustments to incorporate the results of the LSPG-NY proceeding into its formula rate.⁹⁵ NYPA states therefore, it will incorporate any cost containment established in this proceeding into its formula rate through a future filing.⁹⁶

(3) Amendment

49. In response to the deficiency letter request for support behind the differences between the proposed 80/20 cost containment provision and the one proposed to NYISO when NYISO selected the project, LSPG-NY asserts that its proposal does not differ in any material or substantial way.⁹⁷ However, LSPG-NY provides further details on the differences between the 80/20 cost containment mechanism proposed to NYISO and the one proposed here. LSPG-NY states that its proposal provides for no ROE on 20% of

⁹² LSPG-NY Filing, Attachment B, Ex. LSPG-NY-100 at 30.

⁹³ New York Commission Protest at 3, 5.

⁹⁴ NYPA Comments at 2-3.

⁹⁵ *Id.* at 3 (citing *NYPA Order*, 169 FERC ¶ 61,125 at PP 36, 42).

⁹⁶ *Id.*

⁹⁷ LSPG-NY Amendment Transmittal Letter at 4-7 (LSPG-NY's explanation of the history of the 80/20 cost containment construct over the course of NYISO's competitive process and how it evolved over time).

cost overruns, while the one described during the NYISO process required the developer to bear 20% of cost overruns. For cost savings below the cap, LSPG-NY states that the mechanism described during the NYISO process allowed the developer to retain 20% of those savings, while LSPG-NY's instant proposal awards it with an incentive ROE adder based on the amount of savings under the cap.⁹⁸

50. In response to the deficiency letter requesting support for how the ROE adder levels were derived, LSPG-NY explains that its proposed 80/20 cost containment provisions and ROE adder levels are based on the settlements approved in the NY Transco and NextEra Energy Transmission New York, Inc. (NEET NY) proceedings in Docket Nos. ER15-572 and ER16-2719, respectively.⁹⁹

51. LSPG-NY further explains that the New York Commission's December 2015 Order¹⁰⁰ required cost estimates to be based on raw costs, without AFUDC, but LSPG-NY explains, it has included AFUDC as an exception to its proposed cost containment provision.¹⁰¹

52. Regarding the Adjusted Cost Cap, LSPG-NY states that the concept was also taken from the settlements approved in the NY Transco and NEET NY proceedings in Docket Nos. ER15-572 and ER16-2719.¹⁰² LSPG-NY explains that the nature of the Adjusted Cost Cap is to create a deadband for the purpose of the cost containment, in order to not include the full amount of contingency.¹⁰³ LSPG-NY states that it is proposing to limit the incentive ROE to the cost estimate utilized at the time of RTO approval, with adjustments known at the time of such approval.¹⁰⁴

(4) Commission Determination

53. We find that LSPG-NY's proposed Performance-based Rate Incentive and Cost Cap have not been shown to be just and reasonable, and may be unjust, unreasonable, or unduly discriminatory or preferential, or otherwise unlawful. LSPG-NY's request for a

⁹⁸ *Id.* at 8.

⁹⁹ *Id.* at 7-8.

¹⁰⁰ New York Commission, December 2015 Order, Case 12-T-0502 at 60.

¹⁰¹ LSPG-NY Amendment Transmittal Letter at 9.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 9-10, 40.

Performance-based Rate Incentive and cost cap raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures as discussed and ordered below. Such issues include, but are not limited to, the eligible and ineligible costs to be included in the proposed Performance-based Rate Incentive, such as the “other unforeseeable costs,” as well as whether and how the varying rates are appropriately calibrated to risks and challenges of being over or under the cost cap. Therefore, we accept the Performance-based Rate Incentive and Cost Cap, suspend them for a nominal period to be effective May 27, 2020, subject to refund, and establish hearing and settlement judge procedures.

h) Total Package of Incentives

(1) LSPG-NY’s Request

54. LSPG-NY contends that the total package of incentives requested for Segment A is narrowly tailored to address the demonstrable risks and challenges of Segment A. LSPG-NY states that the hypothetical capital structure incentive mitigates the impact of changes to the capital structure during financing for a newly established utility, without any existing rate base. The RTO-Participation Incentive encourages continued participation in regional markets, which enables the congestion relief and many other benefits that arise from Segment A. The Regulatory Asset Incentive will allow LSPG-NY to record pre-commercial expenses that cannot be capitalized and addresses the fact that it has no formula rate in place to recover Construction Work In Progress.

55. LSPG-NY further states that the Performance-based Rate Incentive addresses the additional risk associated with Segment A that is not adequately addressed by the other incentives or the base ROE. LSPG-NY claims that authorization of this incentive is merited given Segment A’s significant scope and complexity, as well as its ability to relieve costs associated with severe and chronic congestion, consistent with the 2012 Incentive Policy Statement. LSPG-NY asserts that the Performance-based Rate Incentive will help to mitigate against the risk of non-recovery of any investments that may be deemed non-recoverable in an abandonment filing with the Commission, such as pre-filing Project costs, in the event LSPG-NY is forced to abandon all or part of Segment A. LSPG-NY further asserts that the Commission has already approved ROE risk incentive adders for substantially similar major transmission projects, including competing proposals.

(2) Comments

56. NYPA states that it fully supports the requests made by LSPG-NY as the incentives are narrowly tailored to the risks faced in the development and construction of Segment A, and will allow LSPG-NY to attract the capital necessary to move forward in the most efficient and cost-effective manner. NYPA further states that the incentive rate

treatments LSPG-NY requests are consistent with the incentive rate treatments that the Commission has granted NYPA for NYPA's share of Segment A.¹⁰⁵

(3) Commission Determination

57. In Order No. 679-A, the Commission stated that, in determining whether an applicant has met the nexus test, "the Commission will examine the total package of incentives being sought, the inter-relationship between any incentives, and how any requested incentives address the risks and challenges faced by the project."¹⁰⁶ We find that the requested incentives, consistent with the discussion above, address different risks and challenges as specified by LSPG-NY.

2. Formula Rate

a) LSPG-NY's Request

58. LSPG-NY proposes a Formula Rate that is derived and populated from three sources depending on the component of the rates. Some components are proposed to be stated, such as the ROE. Other components of the LSPG-NY Formula Rate would be derived from company records, such as the calculation of an acquisition adjustment.¹⁰⁷ The remaining amounts are populated based on the Commission's Uniform System of Accounts (USofA) numbers (FERC Accounts) from LSPG-NY's FERC Form No. 1.¹⁰⁸ LSPG-NY proposes to post a Formula Rate Annual Update by June 30 of each year. This Annual Update is the sum of the estimated revenue requirement ("Annual Projection") for the immediately forthcoming year plus a "True-up Adjustment"¹⁰⁹ for the immediately preceding Rate Year. LSPG-NY also proposes to post to the NYISO website an "Annual Projection" by September 30 of the upcoming year.¹¹⁰

¹⁰⁵ NYPA Comments at 4.

¹⁰⁶ Order No. 679-A, 117 FERC ¶ 61,345 at P 21.

¹⁰⁷ NYISO OATT, 6.10.6-6.10.6.2 OATT Schedule 10 - Attachment 1 – Rate Mecha, 1.0.0 (Formula Rate), Attachment 2, Lines 153-166, "Acquisition Adjustment Worksheet."

¹⁰⁸ The FERC Form No. 1 is an annual financial report of a public utility providing detailed accounting information used primarily to support the development of rates and is prepared in conformance with the Commission's Uniform System of Accounts in 18 C.F.R. Part 101.

¹⁰⁹ NYISO OATT, 6.10.6.2.2 OATT Schedule 10 - Formula Rate Implementation Pr, 1.0.0, (Protocols), Sections 2 - Calculation of True-Up Adjustment, and 3 - Annual Update.

59. As part of its Formula Rate, LSPG-NY requests approval of a base ROE of 10%, upon which the RTO incentive adders and the Performance-based Rate Incentive would apply. LSPG-NY provides several financial models.¹¹¹ LSPG-NY states that its proposed ROE considers the Commission's most recent guidance and policy objectives, including the guidance provided on remand of *Emera Maine v. FERC* and Opinion No. 569.¹¹²

60. LSPG-NY asserts that its proposed Protocols are transparent, are consistent with the Commission's guidance on protocols for forward-looking formula rates, and will provide LSPG-NY's customers with sufficient information and procedural safeguards to facilitate the annual review of the inputs to the template. LSPG-NY states that its proposed Protocols are consistent with the protocols submitted by Midcontinent Independent System Operator, Inc. (MISO) and MISO Transmission Owners and accepted by the Commission in 2015.¹¹³ LSPG-NY also states that its Formula Rate is consistent with other Commission-approved formula rates and protocols for NY Transco and NEET NY under the NYISO OATT.¹¹⁴ LSPG-NY asserts that the similarities between these formula rate templates and protocols allow these transmission owners' common stakeholders within the area operated by NYISO the ability to review formula rates with similar formats and processes.¹¹⁵

61. LSPG-NY states that its proposed Formula Rate provides a means for reflecting competitive bid concessions offered for its transmission projects, which could reduce or increase its annual transmission revenue requirement.

62. Additionally, LSPG-NY requests Commission acceptance of provisions in its Formula Rate pertaining to the recovery of lump sum capital leases and acquisition premiums. LSPG-NY explains that Segment A will be built within incumbent utilities' existing rights-of-way and replace incumbent utilities' existing 230 kV transmission lines

¹¹⁰ NYISO OATT, 6.10.6.2.2 OATT Schedule 10 - Formula Rate Implementation Pr, 1.0.0, (Protocols), Section 1-Annual Projection.

¹¹¹ LSPG-NY Filing, Attachment H, Ex. LSPG-NY-700-702.

¹¹² LSPG-NY Transmittal at 21 (citing *Emera Me. v. FERC*, 854 F.3d 9 (D.C. Cir. 2017); *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (2018); *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569, 169 FERC ¶ 61,129 (2019) (Opinion No. 569)).

¹¹³ *Id.* at 21.

¹¹⁴ *Id.* at 17; LSPG-NY Filing, Attachment F, Ex. LSPG-NY-500 at 5.

¹¹⁵ LSPG-NY Filing, Attachment F, Ex. LSPG-NY-500 at 5.

with new 345 kV transmission lines.¹¹⁶ According to LSPG-NY, the New York Commission required that incumbent utilities make rights-of-way available to the selected developer, holding that these “ratepayer funded rights-of-way” are held by the incumbent utilities for the benefit of ratepayers and that incumbent “utility company ratepayers” will be compensated for the use of the rights-of-way as well as for the value of existing transmission lines that will be removed.¹¹⁷ LSPG-NY also adds that replacement of aging infrastructure is a key priority of the AC Projects, and that the use of existing rights-of-way was a requirement of NYISO’s Public Policy Transmission Planning Process.¹¹⁸

63. LSPG-NY states that the compensation for, and terms governing the use of the existing rights-of-way remain outstanding, as it is currently in negotiations with incumbent utilities. LSPG-NY notes that it does not know whether there will be a purchase of the existing rights-of-way, a license to use the existing rights-of-way, a long-term lease, or some other agreement, and if the payment would be an upfront purchase or capital lease payment, or a combination thereof. Therefore, to the extent that transmission assets or rights-of-way are acquired under a capital lease, LSPG-NY seeks to include upfront lump sum payments of the lease in its Formula Rate and earn a return on the lease payment. As such, LSPG-NY requests Commission approval to include a provision in the rate base of its Formula Rate for lump sum lease payments if the lease qualifies as a capital lease under the USofA. LSPG-NY states that in *NextEra Energy Transmission New York, Inc.*,¹¹⁹ the Commission approved this treatment of upfront lump sum lease payments under similar circumstances to those faced by LSPG-NY.

64. LSPG-NY states that, if negotiations with the existing utility result in a purchase of the existing rights-of-way, there will likely be an associated acquisition premium adjustment. LSPG-NY explains that the policy in the State of New York is to transfer real estate, i.e., rights-of-way, at fair market value, which is likely to represent a higher value than when the selling utility originally placed the property into service.¹²⁰ As such, LSPG-NY proposes to include a “Net Acquisition Adjustment” line item in its Template to allow recovery up to the fair market value of the acquisition, if such an acquisition were to occur. LSPG-NY states it “would not be able to recover any amount over fair market value without [the New York Commission’s] authorization.”¹²¹ LSPG-NY states

¹¹⁶ LSPG-NY Transmittal at 18.

¹¹⁷ *Id.* at 18-19; *see also* New York Commission, December 2015 Order, Case 12-T-0502 at 60.

¹¹⁸ LSPG-NY Transmittal at 18.

¹¹⁹ 162 FERC ¶ 61,196, at PP 90-92 (2018).

¹²⁰ LSPG-NY Transmittal at 19.

that the fair market value of the acquisition will be determined by an independent appraiser and the acquisition will be subject to the New York Commission's approval.¹²²

65. LSPG-NY acknowledges that “[u]nder Commission policy, rate recovery of an existing facility is generally limited to the original cost of the facility.”¹²³ However, LSPG-NY asserts that it meets the Commission's requirements to include acquisition premiums in rates. LSPG-NY states that the transaction will be at arms-length, because the existing owner is a non-affiliated incumbent utility competitor of LSPG-NY. LSPG-NY states that the acquired facilities will be put to new use because the rights-of-way will contain higher voltage transmission lines.¹²⁴ To demonstrate that LSPG-NY's portion of Segment A provides “tangible, non-speculative, and quantifiable benefits” to consumers, LSPG-NY cites the AC Projects' benefits that it uses to support its request for the ROE Risk Adder for congestion relief, resiliency, replacement of aging infrastructure, fuel diversity and renewable resources, as well as capacity market benefits.¹²⁵ It states that the AC Projects, of which Segment A is an essential component, will specifically relieve this chronic and severe congestion, increasing the transfer capability over this interface by 875 MW.

66. In its Amendment, LSPG-NY explains that the acquisition premium and capital lease provisions in its Formula Rate are intended to apply to two categories of transactions: (1) transactions related to the construction of Segment A, and (2) transactions related to any future capital investments. As to the Segment A transactions, LSPG-NY states that these would be the facilities that are reflected in NYISO's filing of the Developer Agreement in Docket No. ER20-1156-000.¹²⁶ LSPG-NY reiterates that as to these

¹²¹ *Id.* at 20; *see also* LSPG-NY Filing, Attachment A, LSPG-NY Formula Rate, App. A (“Note B: No Acquisition Adjustment will be recovered until a filing requesting recovery is submitted to and approved by FERC under FPA Section 205.”).

¹²² LSPG-NY Transmittal at 19-20.

¹²³ *Id.* at 19-20 (citing *Ameren Corp.* 140 FERC ¶ 61,034, at PP 10-11 (2012); *Mo. Pub. Serv. Comm'n v. FERC*, 601 F.3d 581, 586 (D.C. Cir. 2010) (*Missouri PSC*)); *Policy Statement on Hold Harmless Commitments*, 155 FERC 61,189 (2016); *Kan. Pipeline Co.*, 81 FERC 61,005, at 61,018 (1997)).

¹²⁴ *Id.* at 20.

¹²⁵ *Id.*

¹²⁶ LSPG-NY Amendment Transmittal at 2. The Development Agreement governs the development and construction of project T027 as the solution to Segment A of the AC Projects. *See* N.Y. Indep. Sys. Operator, Inc., Service Agreement No. 2514, Docket No. ER20-1156-000 (filed Mar. 4, 2020).

facilities, it provided all of the support required to meet the consumer benefits test for Segment A pursuant to section 205.¹²⁷ As to any future acquisitions, LSPG-NY explains that Appendix A, Note B, of the Formula Rate makes clear that no premium would be recovered for such future transactions without first filing a request for approval from the Commission under section 205.¹²⁸

b) Protests

67. Protesters, in general, argue that LSPG-NY failed to demonstrate that its filing would produce a rate that is just and reasonable, and request that the Commission set LSPG-NY's Formula Rate in its entirety for hearing and settlement judge procedures. Protesters argue that the base ROE is not sufficiently supported and may be unjust and unreasonable and argue that an evidentiary hearing is necessary to examine LSPG-NY's request. The New York Commission contends that its preliminary analysis, using a proxy group of 31 companies, indicates that the base ROE for LSPG-NY, with a presumed "above average risk" profile, is 9.41% versus the 10% base ROE recommended by LSPG-NY witness Robert B. Hevert.¹²⁹ New York City argues that LSPG-NY's pre-filed testimony on the cost of equity supports New York City's position that an ROE of 10% is too high, revealing that both the Discounted Cash Flow Model and Capital Asset Pricing Model produce ROE results less than 10%.¹³⁰ New York City argues that proceeding pursuant to the New York Commission and NYISO decisions and actions does not provide a rational basis for a base ROE close to the high end of the zone of reasonableness.¹³¹

68. New York City states that LSPG-NY's proposed depreciation rates are unjust and unreasonable because they do not take into account the conditions in New York which have different wear and tear on facilities than facilities in other parts of the country. New York City offers that, although LSPG-NY may not have depreciation rates of its own, it should look to the actual depreciation of transmission in New York, and actual experience in New York rather than the rest of the country.

69. Municipal Utilities Association asserts that further clarification is required regarding LSPG-NY and NYPA's joint ownership of Segment A and raises concern that costs related to NYPA's ownership share will not be properly removed from LSPG-NY's

¹²⁷ LSPG-NY Amendment Transmittal at 2-3.

¹²⁸ *Id.* at 3.

¹²⁹ New York Commission at 4.

¹³⁰ New York City at 3.

¹³¹ *Id.* at 7.

Formula Rate.¹³² Municipal Utilities Association argues that LSPG-NY does not explain how its Formula Rate will distinguish operation and maintenance (O&M), labor and capital costs that are properly allocable to NYPA. Also, Municipal Utilities Association contends that LSPG-NY must demonstrate how its acquisition costs of acquiring rights-of-way and acquiring and demolishing existing transmission facilities of the incumbent utility is just and reasonable.¹³³

70. Finally, Municipal Utilities Association argues that LSPG-NY should be required to allocate the costs for Segment A using the same zonal allocation factors that were established in NY Transco's settlement in Docket No. ER15-572-000.¹³⁴ While Municipal Utilities Association acknowledges that the NYISO OATT reflects a different cost allocation of 75% allocated to beneficiaries and 25% on a statewide load ratio share basis for each of New York's eleven zones, they argue that the cost allocation for Segment A should be the more detailed zonal allocation the Commission accepted in the NY Transco settlement concerning NY Transco's portion of the AC Projects.¹³⁵

c) Answer

71. LSPG-NY argues that neither New York City nor the New York Commission provide any evidence to counter the substantial evidence on the appropriate ROE submitted by LSPG-NY with its application.¹³⁶ LSPG-NY notes that the New York Commission did not actually submit its "preliminary analysis" and instead just asserts that an examination is needed to ensure New York ratepayers are not charged unjust and unreasonable rates. In response to New York City's arguments on depreciation rates, LSPG-NY states that its proposal to rely on affiliate depreciation rates for similar types of projects is consistent with Commission precedent.¹³⁷

72. In response to Municipal Utilities Association's concerns related to NYPA's ownership share and costs that are attributable to NYPA, LSPG-NY states that NYPA's costs will not be included in its Formula Rate. LSPG-NY argues that, because it is not collecting rates for construction work in progress, it will not be collecting a rate until the transmission facilities are in-service. At that point, LSPG-NY's Formula Rate "will only

¹³² Municipal Utilities Association Protest at 4.

¹³³ *Id.* at 4-5.

¹³⁴ *Id.* at 5-6 (citing *N.Y. Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,161 (2017)).

¹³⁵ *Id.* at 6.

¹³⁶ LSPG-NY Answer at 4.

¹³⁷ *Id.* at 9-10.

reflect the transmission facilities that it owns” and any costs attributable to NYPA will be reflected in NYPA’s transmission formula rate. Further, LSPG-NY adds that “[t]o the extent that NYPA provides O&M on facilities owned by LSPG-NY, it will do so pursuant to contract, at cost, and for which payment will be reflected in LSPG-NY’s annual update.”¹³⁸ Regarding Municipal Utilities Association’s argument that LSPG-NY must demonstrate that costs related to upfront lease payments and acquisition premium are reasonable, LSPG-NY states that any concerns with costs for inclusion in the Formula Rate can be addressed through LSPG-NY’s annual updates. Additionally, LSPG-NY adds that Municipal Utilities Association will be able to participate in the New York Commission proceeding that will evaluate whether any real estate transfers are in the public interest.¹³⁹

73. Finally, in response to Municipal Utilities Association’s protest on cost allocation, LSPG-NY argues that it is simply using the Commission-approved cost allocation from Docket No. ER17-1310, to which the Municipal Utilities Association was a party.¹⁴⁰ LSPG-NY states that it is not proposing any new cost allocation in its filing, and has no ability to change the cost allocation set forth in the NYISO OATT.¹⁴¹

d) Commission Determination

74. Except as summarily addressed below, our preliminary analysis indicates that LSPG-NY’s proposed Formula Rate has not been shown to be just and reasonable and may be unjust, unreasonable, or unduly discriminatory or preferential, or otherwise unlawful. LSPG-NY’s proposed Formula Rate raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Such issues include, but are not limited to, the allocation factors under the Protocols,¹⁴² the depreciation of land rights and underground facilities, ROE issues, recovery and accounting for contributions in aid of construction (CIAC),¹⁴³ and land held for future use. Accordingly, we accept for filing LSPG-NY’s proposed Formula Rate and Protocols and suspend them for a nominal

¹³⁸ LSPG-NY Answer at 11-12.

¹³⁹ *Id.*

¹⁴⁰ *N.Y. Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,160 (2017).

¹⁴¹ LSPG-NY Answer at 12.

¹⁴² *Transource Wis., LLC*, 155 FERC ¶ 61,302 (2016); *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,097, at P 127 (2016); *Xcel Energy Sw. Transmission Co., LLC*, 149 FERC ¶ 61,182, at 38 (2014).

period, to become effective May 27, 2020, subject to refund, and establish hearing and settlement judge procedures.

75. We grant LSPG-NY's request to include capital lease payments as a line item in its Formula Rate. LSPG-NY proposes to record the amount of any upfront payment on a capital lease in Account 101.1, Property under Capital Leases. Under the Commission's Uniform System of Accounts, capital leases are recorded in Account 101.1 and include amounts equal to the present value of lease payments.¹⁴⁴ As such, amounts recorded in Account 101.1 may not always represent a lump sum upfront lease payment made by LSPG-NY. Accordingly, our acceptance of LSPG-NY's capital lease payment proposal only includes rate recovery of its cash outlay for an upfront capital lease payment. LSPG-NY must establish controls to ensure that any upfront capital lease payments included in the newly added provision within rate base are not also included in other components of rate base, e.g., Prepayments.¹⁴⁵

76. We similarly grant LSPG-NY's request to include an acquisition premium as a line item in its Formula Rate. However, before LSPG-NY may recover such costs through this line item in its Formula Rate, LSPG-NY must submit a filing under section 205 of the FPA demonstrating that such costs are just and reasonable. The Commission's policies with regard to acquisition premiums require a balancing of the costs of the acquisition with the benefits of the project.¹⁴⁶ At present, LSPG-NY is unable to provide the necessary information to complete this analysis because it has not completed negotiations with the incumbent utilities and the costs are unknown. We recognize, however, that the use of existing rights-of-way was a requirement of NYISO's Public Policy Transmission Planning Process.¹⁴⁷ Consistent with that requirement, Segment A will be built within incumbent utilities' existing rights-of-way and will replace incumbent utilities' existing transmission lines, which may compel LSPG-NY to acquire the existing rights-of-way.¹⁴⁸ Under these circumstances, we recognize that the recovery of an acquisition premium may be appropriate.

¹⁴³ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,899-94 (1993) (explaining what types of CIAC agreements must be filed, and the criteria for a *de minimis* exception).

¹⁴⁴ 18 C.F.R. pt. 101, General Instruction No. 20 (Accounting for Leases).

¹⁴⁵ LSPG-NY Filing, Attachment A, Formula Rate, app. A, Lines 100-106, Attachment 7, Note C.

¹⁴⁶ *See, e.g., Duke Energy Progress, Inc.*, 149 FERC ¶ 61,220, at P 67 (2014) (granting an acquisition premium based on the benefits exception test); *see also Missouri PSC*, 601 F.3d at 586 (discussing the Commission's benefits exception test).

¹⁴⁷ *See* LSPG-NY Transmittal at 18.

77. Regarding Municipal Utilities Association's arguments that LSPG-NY needs to establish that costs related to the transactions are reasonable and properly incorporated in its Formula Rate, we note that Municipal Utilities Association will be able to raise any concerns regarding such costs in future annual updates to LSPG-NY's Formula Rate, in LSPG-NY's FPA section 205 filing(s) to include acquisition premium costs in its Formula Rate, and in the New York Commission proceedings that LSPG-NY describes.

78. Regarding Municipal Utilities Association's arguments on cost allocation, we find that LSPG-NY's proposed tariff sheets are based on the *ex ante* cost allocation methodology that the Commission approved in NYISO's Order No. 1000 compliance filings. Thus, we reject the protest as the proposed cost recovery is consistent with the NYISO OATT.¹⁴⁹

79. As discussed above, we are also setting the Performance-based Rate Incentive and Cost Cap for hearing and settlement judge procedures, with these issues to be included in the hearing and settlement judge procedures held for the Formula Rate issues.

80. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁵⁰ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based

on workload requirements, which determine the judges' availability.¹⁵¹ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of

¹⁴⁸ According to LSPG-NY, policy in the State of New York is to transfer real estate, including rights-of-way, at fair market value. LSPG-NY states that the fair market value of the acquisition will be determined by an independent appraiser, and that the acquisition will be subject to the New York Commission's approval. *Id.* at 19-20.

¹⁴⁹ The Commission found "that the 25/75 Cost Allocation Method [for the AC Projects] complies with the applicable Order No. 1000 cost allocation principles." *N.Y. Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,160 at PP 26-27.

¹⁵⁰ 18 C.F.R. § 385.603.

¹⁵¹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience

appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) LSPG-NY's proposed Formula Rate is hereby accepted for filing and suspended for a nominal period, to become effective May 27, 2020, subject to refund, as discussed in the body of this order.

(B) LSPG-NY's proposed Performance-based Rate Incentive and Cost Cap are hereby accepted and suspended for a nominal period, to become effective May 27, 2020, subject to refund, as discussed in the body of this order.

(C) LSPG-NY's requests for a Regulatory Asset Incentive, Hypothetical Capital Structure Incentive, RTO-Participation Incentive, and ROE Risk Adder are hereby granted, as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of LSPG-NY's proposed Formula Rate and its request for a Performance-based Rate Incentive and Cost Cap, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2019), the Chief Judge is hereby directed to appoint a settlement judge in this proceeding within 45 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge.

If the participants decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.

(F) Within 60 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this

(<https://www.ferc.gov/legal/adr/avail-judge.asp>).

case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 45 days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426, or remotely (by telephone or electronically), as appropriate. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) Given that the circumstances caused by the COVID-19 pandemic may disrupt, complicate, or otherwise change the ability of participants to engage in normal hearing procedures, the Chief Judge is hereby authorized to set or change the dates for the commencement of the hearing and the issuance of the initial decision as may be appropriate.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.