

180 FERC ¶ 61,026  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;  
James P. Danly, Allison Clements,  
Mark C. Christie, and Willie L. Phillips.

New York Independent System Operator, Inc.  
Niagara Mohawk Power Corporation

Docket No. ER22-1201-001

ORDER ON FORMULA RATE AND TRANSMISSION INCENTIVES

(Issued July 15, 2022)

1. On March 4, 2022, as amended May 16, 2022, pursuant to sections 205 and 219 of the Federal Power Act (FPA),<sup>1</sup> Part 35 of the Commission's regulations,<sup>2</sup> and Order No. 679,<sup>3</sup> New York Independent System Operator, Inc. (NYISO) filed a request, on behalf of Niagara Mohawk Power Corporation (Niagara Mohawk) to: (1) revise tariff records in the NYISO Open Access Transmission Tariff (OATT) to establish a new Rate Schedule 18 to allocate and recover the costs of Niagara Mohawk's investment in the Smart Path Connect Project (Project), including changes to its Formula Rate, and (2) establish certain transmission rate incentives for the Project.

2. In this order we reject Niagara Mohawk's proposed tariff records,<sup>4</sup> including the Rate Schedule 18 and Formula Rate revisions, because, as discussed below, the revised tariff records conflict with the terms of the settlement that established the Transmission Service Charge (TSC) under which Niagara Mohawk recovers the costs of its transmission facilities.<sup>5</sup>

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<sup>1</sup> 16 U.S.C. §§ 824d, 824s.

<sup>2</sup> 18 C.F.R. pt. 35 (2021).

<sup>3</sup> *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).

<sup>4</sup> NYISO, NYISO Tariffs, [NYISO OATT, § 6.18 \(Schedule 18 Rate Mechanism for the Recovery of the Smart Path Connect Facilities Charge\) \(0.0.0\)](#), *see i.d.*, [NYISO OATT, §§ 14.2-14.2.1 \(Attachment 1 to Attachment H\) \(22.0.0\)](#).

<sup>5</sup> *See* Settlement Agreement and Offer of Settlement, Docket Nos. EL14-29-000,

3. We deny Niagara Mohawk's request for the following incentives: (1) a 50-basis point return on equity (ROE) adder to reflect the risks and challenges associated with Niagara Mohawk's investment in the Project (ROE Risk Adder), and (2) a cost-containment mechanism with a performance-based rate incentive inclusive of tiered ROE premiums and a cost cap provision (Performance-based ROE Incentive). The requested incentives conflict with Niagara Mohawk's existing 2015 TSC ROE Settlement governing its Formula Rate and TSC. However, we confirm Niagara Mohawk's previous authorization of a 50-basis point ROE adder for participating in a Regional Transmission Organization (RTO) (RTO Adder). In addition, because we reject the proposed tariff records, we need not address Niagara Mohawk's request for recovery of 100% of prudently incurred costs for construction work in progress (CWIP) in rate base (CWIP Incentive).

## **I. Background**

### **A. Niagara Mohawk**

4. Niagara Mohawk states that it owns and operates transmission facilities in New York and recovers its revenue requirement pursuant to its Formula Rate in Attachment H of the NYISO OATT.<sup>6</sup> Niagara Mohawk's current Formula Rate calculates the TSC, which is recovered through the NYISO OATT.<sup>7</sup> Niagara Mohawk states that it currently has an ROE of 10.3% inclusive of any incentive adders, which is the product of a black box settlement.<sup>8</sup>

### **B. The Smart Path Connect Project**

5. Niagara Mohawk states that the Project is the outgrowth of New York's clean energy legislation known as the Climate Leadership and Community Protection Act (CLCPA) that was enacted by the New York legislature in 2019 and established certain renewable energy goals (CLCPA Requirements).<sup>9</sup> Niagara Mohawk adds that New York

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et al. (Feb. 24, 2015). The Commission accepted this settlement on May 13, 2015. *N.Y. Ass'n of Pub. Power v. Niagara Mohawk Power Corp.*, 151 FERC ¶ 61,121 (2015) (2015 TSC ROE Settlement).

<sup>6</sup> Filing at 4.

<sup>7</sup> *Id.* at 16 (citing NYISO OATT, attach. H, § 14.2.1).

<sup>8</sup> Deficiency Letter Response at 3; *see* 2015 TSC ROE Settlement, 151 FERC ¶ 61,121.

<sup>9</sup> Filing at 7-8. Niagara Mohawk states that the CLCPA Requirements are: a 40% statewide reduction in greenhouse gas emissions from 1990 levels by 2030 and an 85%

subsequently enacted the Accelerated Renewable Energy Growth and Community Benefit Act (AREGCBA), which called for the New York Commission to make a comprehensive study of the State's power grid to identify distribution and transmission infrastructure needs under CLCPA and to establish a bulk transmission investment program to be submitted to NYISO for incorporation into NYISO's transmission studies and planning processes.<sup>10</sup> Niagara Mohawk states that the AREGCBA established two paths for project selection to meet the CLCPA Requirements: (1) the Public Policy Transmission Planning Process found at section 31.1.5 of the NYISO OATT, or (2) a separate path for "priority transmission projects" (Priority Projects) needed on an "expeditious" basis to meet the CLCPA Requirements. Niagara Mohawk states that the AREGCBA directs the New York Power Authority (NYPA) to develop Priority Projects through a public solicitation process that assesses whether joint development would provide significant additional benefits in achieving the CLCPA Requirements.<sup>11</sup>

6. Niagara Mohawk states that the New York Commission established two criteria to determine whether a project qualifies as a Priority Project: (1) whether the project addresses the deliverability of existing generation,<sup>12</sup> and (2) whether an early in-service date for the project would increase the likelihood of meeting the CLCPA Requirements, and/or enhance the value of recent, ongoing or anticipated distribution, local transmission, and/or bulk transmission investments, and/or help the State realize benefits from such investments because it can be placed in-service sooner than the NYISO process would allow.<sup>13</sup>

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reduction by 2050; a minimum of 70% statewide electric generation produced by renewable energy by 2030 (the "70 x 30 Target"); a 100% emissions-free electric demand system by 2040; and the procurement of at least 9 GW of offshore wind by 2035, 6 GW of photovoltaic solar generation by 2025, and 3 GW of energy storage resources by 2030. *Id.*

<sup>10</sup> *Id.* at 8.

<sup>11</sup> *Id.* at 8-9.

<sup>12</sup> *Id.* at 12. Niagara Mohawk states that the New York Commission described "deliverability of existing generation" as, "[t]he transmission investment's potential for unbotling existing renewable generation, as well as projects that are in the NYISO interconnection process, for delivery to load centers in the State, thereby reducing the amount of new generation that must be constructed to meet the CLCPA [Requirements]." *Id.* (citing *Order on Priority Transmission Projects*, CASE 20-E-0197, at 17 (New York Commission Oct. 15, 2020) (Priority Project Order)).

<sup>13</sup> *Id.* at 13 (citing Priority Project Order at 18).

7. Niagara Mohawk states that on October 15, 2020, pursuant to authority under AREGCBA, the New York Commission issued a Priority Project Order that designated the Project as a Priority Project needed expeditiously to meet the CLCPA Requirements.<sup>14</sup> Niagara Mohawk adds that the New York Commission found that the Project met both of the New York Commission Priority Project criteria. The first criterion was met because investments in renewable generation in northern New York were not being fully realized due to transmission limitations, and the Project will avoid 7.5 terawatt-hours (TWh) of renewable generation curtailments annually.<sup>15</sup> The second criterion was met because the NYISO Public Policy Transmission Planning Process could not meet the same goals in the same time frame that the Project may achieve as a Priority Project, and the Project was needed expeditiously to fully access the significant amount of existing renewable generation in the northern New York region.<sup>16</sup>

8. On March 30, 2021, after completing its public solicitation process, NYPA determined that it would develop the Project with Niagara Mohawk as a co-participant.<sup>17</sup> Niagara Mohawk states that the total capital cost of the Project is estimated at \$1.2 billion; Niagara Mohawk's share is approximately \$535 million.<sup>18</sup> Niagara Mohawk states that the Project is planned for an anticipated in-service date of December 2025.<sup>19</sup>

9. The Project consists of rebuilding approximately 100 linear miles of existing 230 kilovolt (kV) transmission lines to either 230 kV or 345kV, along with associated substation construction and upgrades, that, together with other projects currently under construction in New York will establish a continuous 345 kV transmission path from northern New York to the downstate region to mitigate current and projected congestion.<sup>20</sup>

10. Niagara Mohawk states that the Project consists of two components, the "MW-Patnode" component and the "Adirondack-Porter" component.<sup>21</sup> NYPA will own all of the MW-Patnode facilities and will own part of the Adirondack-Porter facilities, the rest

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<sup>14</sup> *Id.* (citing Priority Project Order at 25).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 14.

<sup>17</sup> *Id.* at 14-15.

<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 6.

<sup>21</sup> *Id.*

of which will be owned by Niagara Mohawk. The Project includes rebuilding all or parts of the following Niagara Mohawk facilities: rebuild of the Adirondack to Porter lines, construction of the Austin Road Substation, extension of the existing Rector Road to Chases Lake Line 10, expansion of the Edic Substation, and removal of the existing Edic to Porter Line 17 and equipment at the Porter and Chases Lakes Substations. Niagara Mohawk states that the Project is proposed to be built primarily within existing rights-of-way.

11. Niagara Mohawk states that there is an application currently pending before the New York Commission for siting approval for the Project, including a *Certificate of Environmental Compatibility and Public Need* (Certificate of Need).<sup>22</sup>

**C. Abandoned Plant Incentive Order**

12. On March, 11, 2022, the Commission conditionally granted Niagara Mohawk's request for authorization to recover 100% of its prudently incurred costs for the Project in the event the Project is cancelled or abandoned for reasons beyond Niagara Mohawk's control (Abandoned Plant Incentive).<sup>23</sup> The Commission found in the Abandoned Plant Incentive Order that the Project's approval through the Priority Project Order process did not satisfy Order No. 679's rebuttable presumption.<sup>24</sup> The Commission authorized the Abandoned Plant Incentive contingent upon the Project being issued a Certificate of Need by the New York Commission.<sup>25</sup>

**II. Niagara Mohawk's Filing**

**A. Proposed Tariff Revisions**

13. Niagara Mohawk proposes tariff records that include a new Rate Schedule 18, "Rate Mechanism for the Recovery of the Smart Path Connect Facilities Charge," to recover its cost of service for the Project on a statewide volumetric load ratio share basis, rather than just from ratepayers in the Niagara Mohawk zone.<sup>26</sup> Rate Schedule 18 sets

<sup>22</sup> See *Id.* at 7, n. 15.

<sup>23</sup> *Niagara Mohawk Power Corp.*, 178 FERC ¶ 61,173 (2022) (Abandoned Plant Incentive Order). The Commission also granted NYPA's request for an abandoned plant incentive in Docket No. EL22-15-000. *New York Power Auth.*, 178 FERC ¶ 61,172 (2022). NYPA also filed, and the Commission granted, a separate request for transmission incentives and associated tariff revisions for the Project in Docket No. ER22-1201-001. *N.Y. Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,004 (2022).

<sup>24</sup> Abandoned Plant Incentive Order, 178 FERC ¶ 61,173 at P 26.

<sup>25</sup> *Id.* P 28.

forth the ROE and capital structure that will apply to the Project. Niagara Mohawk is requesting that the Commission approve a new base ROE of 10.5% for the Project and future projects,<sup>27</sup> while maintaining its existing TSC ROE of 10.3% for its existing transmission facilities. Niagara Mohawk will implement Rate Schedule 18 via its existing Commission-accepted Formula Rate Protocols that apply to the TSC by adding a new Schedule 15 to its Formula Rate templates in section 14.2.1 of Attachment H of the NYISO OATT.<sup>28</sup>

### **B. Requests for Transmission Incentives**

14. Niagara Mohawk requests four incentives pursuant to section 219 of the FPA for its investment in the Project: (1) a 50-basis point ROE Risk Adder; (2) a 50-basis point RTO Adder; (3) recovery of 100% CWIP; and (4) a Performance-based ROE Incentive. Niagara Mohawk proposes to incorporate these incentive rates into its Formula Rate through new Schedule 15, which will be used to populate new Rate Schedule 18.<sup>29</sup>

### **III. Notice of Filing and Responsive Pleadings**

15. Notice of Niagara Mohawk's filing was published in the *Federal Register*, 87 Fed. Reg. 13,724 (March 10, 2022) with interventions and protests due on or before March 25, 2022. New York Association of Public Power (NYAPP), Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc., New York State Electric & Gas Corp. and Rochester Gas and Electric Corp., and Avangrid Networks, Inc. filed timely motions to intervene. The New York Commission filed a notice of intervention and a protest. Municipal Electric Utilities Association of New York (MEUA) filed a timely motion to intervene and protest. NYPA filed a timely motion to intervene and comment. On April 11, 2022, Niagara Mohawk filed an answer (First Answer).

16. On April 28, 2022, Commission staff issued a deficiency letter informing Niagara Mohawk that its filing was deficient and additional information was necessary to evaluate its submission.

17. On May 16, 2022, Niagara Mohawk submitted a response to the deficiency letter (Deficiency Letter Response). Notice of NYPA's Deficiency Letter Response was published in the *Federal Register*, 87 Fed. Reg. 30,933 (May 20, 2022), with

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<sup>26</sup> Filing at 17.

<sup>27</sup> *Id.*, attach. C at § 6.18.3.2 (Section 6.18 of NYISO OATT - Rate Schedule 18).

<sup>28</sup> *Id.* at 18-20.

<sup>29</sup> *Id.*

interventions and protests due on or before June 6, 2022. NYAPP filed a timely protest. On June 17, 2022, Niagara Mohawk filed an answer to NYAPP (Second Answer).

#### **IV. Discussion**

##### **A. Procedural Matters**

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2021), the timely, unopposed notice of intervention and motions to intervene serve to make the entities that filed them parties to this proceeding.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2021), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Niagara Mohawk's answers because they have provided information that assisted us in our decision-making process.

##### **B. Substantive Matters**

##### **1. Proposed Tariff Revisions and Requested ROE Risk Adder and Performance-based ROE Incentive**

20. Niagara Mohawk proposes a new Rate Schedule 18 that will allocate Project costs on a statewide volumetric load ratio share basis.<sup>30</sup> Niagara Mohawk further proposes amendments to Attachment 1 to Attachment H of the NYISO OATT to add a new Schedule 15 to its Formula Rate templates that apply to its TSC. Proposed Schedule 15 consists of Schedules 15, 15a, 15b, 15c and 15d, and is used to calculate the Rate Schedule 18 revenue requirement, as well as revenue requirements for potential future Niagara Mohawk projects whose revenue requirements will not be collected under the TSC.<sup>31</sup>

21. Niagara Mohawk states that it must file a new rate with the Commission because it does not currently have a transmission rate through which it could allocate and recover the costs of the Project on a statewide basis.<sup>32</sup> Niagara Mohawk states that the TSC is limited to only those customers in Niagara Mohawk's footprint and because the Project will benefit all New York customers, it would be inappropriate for its TSC customers to bear the full costs of Niagara Mohawk's portion of the Project.

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<sup>30</sup> *Id.* at 17.

<sup>31</sup> *Id.* at 18-19.

<sup>32</sup> Deficiency Letter Response at 2.

22. Niagara Mohawk also explains that, as the result of a black box settlement, its current TSC establishes an ROE of 10.3% “inclusive of *any* incentive adders.”<sup>33</sup> Niagara Mohawk is requesting in proposed Rate Schedule 18 that the Commission approve a base ROE of 10.5% for the Project and future projects,<sup>34</sup> while maintaining its existing TSC ROE for its other existing transmission facilities. In support of its proposed base ROE, Niagara Mohawk’s witness submitted testimony using the two-step discounted cash flow model, the Capital Asset Pricing Model, and the Risk Premium method, producing a composite ROE zone of reasonableness of 7.89 – 12.72%, resulting in a median value of 10.50%<sup>35</sup> Since Niagara Mohawk is requesting an RTO Adder of 50-basis points and an ROE Risk Adder of 50-basis points for the Project, the total ROE with incentives for the Project would be 11.5%.

23. In response to a deficiency letter issued by Commission staff seeking support for the requested project-specific base ROE, Niagara Mohawk relies on *S. Cal. Edison Co.*, 131 FERC ¶ 61,020 (2010) (*SoCal Edison*), as a case where the Commission allowed the use of a new base ROE for purposes of justifying incentives where there was a settled rate with no defined base ROE.<sup>36</sup>

24. Niagara Mohawk states that, because the Project is being developed to ensure the achievement of New York State CLCPA Requirements and because the Project benefits consumers across New York State in numerous ways, Rate Schedule 18 will appropriately allocate and collect Niagara Mohawk’s revenue requirement for the Project from all New York load-serving entities.<sup>37</sup> Niagara Mohawk submitted to support its argument that it is appropriate to allocate the costs of these projects on a statewide basis in a manner that roughly corresponds to the location of customers throughout the State.<sup>38</sup>

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<sup>33</sup> *Id.* at 3 (emphasis in the original).

<sup>34</sup> Filing, attach. C at § 6.18.3.2 (Section 6.18 of NYISO OATT - Rate Schedule 18).

<sup>35</sup> *Id.* at 21-22 (citing *Ass’n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569-A, 171 FERC ¶ 61,154, *order addressing arguments raised on reh’g, & setting aside prior order, in part*, Opinion No. 569-B, 173 FERC ¶ 61,159 (2020)).

<sup>36</sup> Deficiency Letter Response at 4-5; *see also S. Cal. Edison Co.*, 122 FERC ¶ 61,187 (2008).

<sup>37</sup> Filing at 16.

<sup>38</sup> *See, e.g., Id.*, attach. H at 7.



25. Niagara Mohawk states the proposed cost allocation mechanism will result in approximately 43% of the costs being allocated to load serving entities (LSE) in upstate New York and 57% of the costs being allocated to LSEs in downstate New York.<sup>39</sup> Niagara Mohawk states that Rate Schedule 18 is modeled on NYISO OATT rate schedules previously accepted by the Commission, which established charges for public policy projects in New York where the costs are allocated on a statewide basis.<sup>40</sup>

26. Niagara Mohawk proffers that statewide allocation of the costs is fully consistent with New York State law and the Commission's precedent and recent policy pronouncements. Further, Niagara Mohawk states that, while Order No. 1000<sup>41</sup> required utilities to have in place methods for allocating costs on a region-wide basis, the Commission did not prohibit alternative cost allocation arrangements, and the Commission specifically noted that it did not foreclose the use of participant funding approaches.<sup>42</sup> Additionally, Niagara Mohawk relies on the Commission's 2021 State Agreement Policy Statement,<sup>43</sup> stating that the Commission recognized that voluntary agreements between states and transmission providers may allow state-prioritized transmission facilities to be planned and built more quickly than comparable facilities planned through the regional planning process.<sup>44</sup> Niagara Mohawk adds that NYPA will recover its costs for the Project through the NYPA Transmission Adjustment Charge, which is recovered from all load in New York using a load ratio share approach and that through the AREGCBA, the State of New York has "essentially volunteered" New York customers to pay for the Project.<sup>45</sup>

<sup>39</sup> *Id.*, attach. H at 5.

<sup>40</sup> *Id.* at 16 (citing NYISO OATT Rate Schedule 13 (establishing the Transco Facilities Charge) and Rate Schedule 17 (establishing the Western New York Facilities Charge)).

<sup>41</sup> *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

<sup>42</sup> Filing at 28 (citing Order No. 679, 116 FERC ¶ 61,057 at PP 622, 724).

<sup>43</sup> *State Voluntary Agreements to Plan & Pay for Transmission Facilities*, 175 FERC ¶ 61,225 (2021) (State Agreement Policy Statement).

<sup>44</sup> Filing at 28 (citing State Agreement Policy Statement, 175 FERC ¶ 61,225 at P 2).

<sup>45</sup> *Id.* at 29-30.

27. Niagara Mohawk offers that this approach is analogous to the cost allocation method under the PJM State Agreement Approach<sup>46</sup> where states may agree voluntarily to be responsible for the allocation of all costs of a proposed transmission facility that addresses state public policy requirements identified or accepted by the relevant state. Notwithstanding this, Niagara Mohawk asserts that the statewide cost allocation will be roughly commensurate with benefits even if public policy benefits are not considered.

28. Finally, Niagara Mohawk states that even if the Commission believes that statewide allocation of the costs of its portion of the Project would require a revision or extension of the Commission's current cost allocation policies, Niagara Mohawk urges the Commission to do so.<sup>47</sup>

**a. Protests and Comment**

29. New York Commission states that the requested total ROE of 11.5% would result in unjust and unreasonable rates and asserts the matter should be set for hearing.<sup>48</sup> New York Commission further states that the requested base ROE of 10.5% is "overstated."<sup>49</sup> MEUA also protests the requested base ROE of 10.5% as excessive and inconsistent with the ROEs that Commission has approved for comparable projects in recent years.<sup>50</sup>

30. MEUA protests Niagara Mohawk's proposed statewide load ratio share cost allocation methodology because the proposed methodology is different from the "preferred" New York Commission formula, which allocates 75% of costs to economic beneficiaries and 25% on a statewide load ratio share basis.<sup>51</sup> MEUA further asserts that the proposed cost allocation disproportionally allocates costs to upstate zones in violation of the "beneficiaries pay" principle because Niagara Mohawk's proposal would allocate 57% of costs to downstate zones and 43% to upstate zones, although its analysis

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<sup>46</sup> *Id.* at 30 (citing *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at PP 142-144 (2013), *order on reh'g and compliance*, 147 FERC ¶ 61,128, at P 92 (2014)).

<sup>47</sup> *Id.* (citing State Agreement Policy Statement, 175 FERC ¶ 61,225 at P 6, as inviting filings to address barriers to voluntary agreements).

<sup>48</sup> New York Commission Protest at 5-6.

<sup>49</sup> *Id.* at 2.

<sup>50</sup> MEUA Protest at 9 (citing *N. Y. Indep. Sys. Operator, Inc.*, 175 FERC ¶ 61,210 (2021); *N. Y. Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,043 (2017); *N. Y. Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,196 (2016)).

<sup>51</sup> *Id.* at 4.

estimates that 62% of production cost savings accrue to downstate zones and 38% to upstate zones.<sup>52</sup>

31. NYAPP contends that the proposed load ratio share cost allocation has not been shown to be just and reasonable and that the proposed cost allocation will produce unjust and unreasonable results for an LSE in at least one of the 11 load zones in the NYISO.<sup>53</sup> NYAPP asserts that Niagara Mohawk does not identify the “specific cost allocation” that would result from the proposed cost allocation methodology and further asserts that the benefits are not equal across the state.<sup>54</sup> NYAPP also complains that a cost allocation methodology that does not include economic beneficiaries cannot be just and reasonable.

32. NYPA states in its supporting comments that the proposed tariff amendments to allocate and recover the costs of Niagara Mohawk’s investment in the Project are consistent with Commission precedent.<sup>55</sup>

**b. Answers**

33. In its First Answer, Niagara Mohawk defends its proposed base ROE of 10.5%, for the Project and future projects by arguing that neither the New York Commission nor MEUA provide any evidence that the ROE analysis was flawed or incomplete, and Niagara Mohawk notes that no party challenged the principle of statewide allocation.<sup>56</sup>

34. In its Second Answer, addressing NYAPP’s protest, Niagara Mohawk asserts that it identified the “specific cost allocation” and asserts that the CLCPA and AREGCBA justify a statewide cost allocation by pointing to a recent New York Commission determination that load ratio share methodology is the preferred method for transmission projects needed to facilitate the interconnection of large amounts of offshore wind development.<sup>57</sup> Niagara Mohawk also rejects NYAPP’s position, that economic benefits must be considered, by stating that policy benefits are a more appropriate determinant for cost allocation.<sup>58</sup>

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<sup>52</sup> *Id.* at 8-9.

<sup>53</sup> NYAPP Protest at 1, 4-5 (referring specifically to Zone D in upstate New York).

<sup>54</sup> *Id.* at 4.

<sup>55</sup> NYPA Comments at 4.

<sup>56</sup> First Answer at 13.

<sup>57</sup> Second Answer at 3-4, 10.

<sup>58</sup> *Id.* at 12.

**c. Commission Determination**

35. For the reasons discussed below, we reject Niagara Mohawk's proposed tariff records because Niagara Mohawk's proposed ROE is inconsistent with the 2015 TSC ROE Settlement, and Niagara Mohawk has failed to provide sufficient justification for why departure from that settlement is warranted. We find, therefore, that Niagara Mohawk has not met its burden of showing that its proposed new Rate Schedule 18 is just and reasonable and not unduly discriminatory or preferential.

36. Niagara Mohawk voluntarily entered into the 2015 TSC ROE Settlement, in which it agreed to a 10.3% ROE for all of its transmission facilities, inclusive of any incentive adders. Niagara Mohawk points to nothing in the 2015 TSC ROE Settlement to suggest that the ROE established there applies only to either then-existing transmission facilities or transmission facilities that primarily have certain types of benefits. We find that, in the absence of any such language, the ROE established in the 2015 TSC ROE Settlement should apply to all of Niagara Mohawk's transmission facilities, including its going forward investments. Accordingly, we reject Niagara Mohawk's proposed new Rate Schedule 18 and related tariff revisions, including its proposed 10.5% base ROE for the Project.

37. Niagara Mohawk argues that the Project is different from the rest of its transmission facilities and, therefore, should be treated differently for ROE purposes because it is developed for public policy benefits with beneficiaries statewide, beyond the customers subject to its current TSC.<sup>59</sup> Specifically, Niagara Mohawk explains it proposes a new rate schedule with a new ROE because it cannot use the TSC to charge the expanded set of beneficiaries of the Project. Further, Niagara Mohawk explains that because the TSC ROE is a black-box value, there is no definitive means by which to separate the 10.3% value into a specific base ROE or RTO Adder components and there is no zone of reasonableness, which is required to cap the ROE incentives at the upper zone of reasonableness for the Project.<sup>60</sup> We are not persuaded that these arguments justify a deviation from the ROE in Niagara Mohawk's prior settlement, which applies to all of Niagara Mohawk's transmission facilities and which expressly includes any ROE incentives. Niagara Mohawk's arguments may be relevant as to cost allocation where consideration of the beneficiaries of transmission facilities is an element of satisfying the cost causation principle, or they may also be relevant to whether the project qualifies for ROE incentives pursuant to Order No. 679 and the Commission's 2012 Incentives Policy Statement.<sup>61</sup> However, they do not explain why the ROE for the rebuild of existing

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<sup>59</sup> Deficiency Letter Response at 2.

<sup>60</sup> *Id.* at 3.

<sup>61</sup> *Promoting Transmission Investment through Pricing Reform*, 141 FERC ¶

Niagara Mohawk transmission facilities is not covered by the terms of the 2015 TSC ROE Settlement.

38. Furthermore, we disagree with Niagara Mohawk's argument that the Commission's decision in *SoCal Edison* supports its request for a separate ROE for the Project.<sup>62</sup> *SoCal Edison* is factually distinguishable because the Commission accepted a distinct ROE there for a limited CWIP-related purpose, with the existing settled ROE applying after the facility at issue went into service. In *SoCal Edison*, the Commission found that it was appropriate to address that requested CWIP incentive as a single issue filing because requiring a comprehensive rate case to establish a base ROE for the CWIP incentive would negate the incentives approved by the Commission.<sup>63</sup> In the instant case, Niagara Mohawk proposes to differentiate the Project, and future transmission investment, from its existing transmission facilities and the 2015 TSC ROE Settlement that covers them, rather than simply facilitating a single incentive.

39. Likewise, we deny Niagara Mohawk's request for an ROE Risk Adder and Performance-based ROE Incentive. As with the proposed 10.5% base ROE, we find that Niagara Mohawk is precluded from requesting these incentives by the terms of the 2015 TSC ROE Settlement, in which Niagara Mohawk agreed to a 10.3% ROE, inclusive of any adders. We address Niagara Mohawk's request for the RTO Adder below.

40. Finally, because we reject the proposed tariff records, including the proposed Rate Schedule 18, we need not address whether the proposal to allocate the costs of the Project on a statewide load ratio share basis is just and reasonable. Similarly, we need not address the merits of the requested CWIP Incentive, given its close relationship to the proposed tariff records that we reject.

## **2. Requested RTO Adder**

41. Niagara Mohawk states that it is entitled to the RTO Adder for its portion of the Project, noting that the Commission has previously determined that Niagara Mohawk is eligible for the RTO Adder with respect to its facilities placed under NYISO's operational control.<sup>64</sup> Niagara Mohawk explains that it and NYPA will turn over operational control of the Project to NYISO once the Project enters service and that its membership in NYISO is voluntary as determined by relevant Commission precedent.<sup>65</sup>

61,129 (2012) (2012 Incentives Policy Statement).

<sup>62</sup> Deficiency Letter Response at 4-5.

<sup>63</sup> See *S. Cal. Edison Co.*, 122 FERC ¶ 61,187 at P 45.

<sup>64</sup> *Id.* at 52 (citing *Niagara Mohawk Power Corp.*, 126 FERC ¶61,173, at P 24 (2009)).

42. Niagara Mohawk requests that, even if the Commission were to determine that it is not eligible for the RTO Adder, the Commission should alternatively approve a 50-basis point adder due to the customer benefits that will be provided by the Project.<sup>66</sup>

**a. Protests and Comment**

43. New York Commission argues that the RTO Adder is unwarranted because where an action has already occurred there is no basis to provide an incentive and “Niagara Mohawk cannot unilaterally decide to leave NYISO.”<sup>67</sup> MEUA protests that the RTO Adder is not warranted because Niagara Mohawk’s facilities are already under NYISO operational control. In the alternative, if the Commission determines that the Project is nonetheless eligible for the RTO Adder, MEUA requests that the RTO Adder be limited to the first three years of operation.<sup>68</sup>

44. NYPA states in its comments that it supports Niagara Mohawk’s RTO Adder request.

**b. Answer**

45. Niagara Mohawk states that New York State law only requires New York Commission consent for the contract for the operation of its system and does not require Niagara Mohawk to join NYISO, or maintain its membership in NYISO, or prohibit it from leaving NYISO and resuming operational control of its transmission system.<sup>69</sup>

**c. Commission Determination**

46. Niagara Mohawk has already requested, and the Commission has already authorized, the RTO Adder to encourage its ongoing involvement in NYISO.<sup>70</sup>

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<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 53. Niagara Mohawk references recent settlements approved by the Commission relating to public policy projects in New York that have permitted the project developer to earn an ROE Adder to account for benefits to customers, including congestion relief.

<sup>67</sup> *Id.* at 4 (citing N.Y. Pub. Serv. Law § 70 (requiring approval to transfer operation control of electric facilities)).

<sup>68</sup> MEUA Protest at 11.

<sup>69</sup> First Answer at 8-9.

<sup>70</sup> *See Niagara Mohawk Power Corp.*, 124 FERC ¶ 61,106, at P 35 (2008).

Accordingly, there is no basis or need for Niagara Mohawk to request a second authorization here for the Project as Niagara Mohawk has committed to turning operational control of the Project over to NYISO upon completion of the Project. Additionally, we note that the Commission's previous authorization remains subject to the terms of the 2015 TSC ROE Settlement.

The Commission orders:

(A) Niagara Mohawk's proposed revised tariff records to the NYISO OATT are hereby rejected, as discussed in the body of this order.

(B) Niagara Mohawk's requests for an ROE Risk Adder and Performance-based ROE Incentive are hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Debbie-Anne A. Reese,  
Deputy Secretary.