

180 FERC ¶ 61,106
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.

Consolidated Edison Company of New York, Inc.	Docket Nos. ER22-2152-000
New York Independent System Operator, Inc.	ER22-2154-000
Orange and Rockland Utilities, Inc.	ER22-2157-000
Niagara Mohawk Power Corporation	ER22-2164-000
New York State Electric & Gas Corporation	ER22-2180-000
Rochester Gas and Electric Corporation	ER22-2181-000
Central Hudson Gas & Electric Corporation	ER22-2183-000 (not consolidated)

ORDER ACCEPTING PROPOSED COST SHARING AND RECOVERY
AGREEMENT, RATE SCHEDULE, TARIFF REVISIONS,
AND CERTIFICATES OF CONCURRENCE

(Issued August 19, 2022)

1. On June 21, 2022, pursuant to section 205 of the Federal Power Act (FPA),¹ and Part 35 of the Commission's regulations,² Consolidated Edison Company of New York, Inc. (Con Edison) filed a Cost Sharing and Recovery Agreement (CSRA),³ on behalf of

¹ 16 U.S.C. § 824d.

² 18 C.F.R. pt. 35 (2021).

³ The CSRA is filed in Con Edison's eTariff database as follows: Consolidated Edison Company of New York, Inc./Other Service Agreements and Rate Schedules, NYTO, CSRA Agreement (0.0.0).

itself and each of Central Hudson Gas & Electric Corporation (Central Hudson), Niagara Mohawk Power Corporation (Niagara Mohawk), New York State Electric & Gas Corporation (NYSEG), Orange and Rockland Utilities, Inc. (O&R), and Rochester Gas and Electric Corporation (RG&E) (collectively, the New York Transmission Owners, or NYTOs). Also, on June 21, 2022, the New York Independent System Operator, Inc. (NYISO), on behalf of the NYTOs, filed a request to amend NYISO's Open Access Transmission Tariff (OATT) to add a new Rate Schedule 19 and make related, conforming amendments to section 2.7 of NYISO's OATT.⁴ On June 21, 22, and 23, 2022, each of the NYTOs, other than Con Edison, filed certificates of concurrence to incorporate the CSRA by reference into their respective tariff records.⁵ Together, the proposed filings are intended to implement a statewide cost allocation on a volumetric load-ratio basis for local transmission upgrades selected by the New York Public Service Commission (NYPSC) to meet New York State public policy goals.

2. As discussed below, we accept the proposed CSRA, Rate Schedule 19, OATT revisions, and certificates of concurrence, effective August 22, 2022, as requested.

I. Background

3. The NYTOs explain that, consistent with the Commission's State Agreement Policy Statement,⁶ and with the express consent of the NYPSC, the CSRA, proposed Rate Schedule 19, and related tariff revisions were developed to recover the costs of local transmission upgrades determined by the NYPSC to be necessary to meet New York

⁴ NYISO, NYISO Tariffs, NYISO OATT, 6.19 OATT Schedule 19 Rate Mechanism for the Recovery of the CLCPA Facilities Charge (0.0.0); NYISO, NYISO Tariffs, NYISO OATT, 2.7 OATT Billing and Payment (15.0.0).

⁵ The certificates of concurrence for each of the other NYTOs request that the Commission accept a tariff record incorporating by reference the CSRA that was filed by Con Edison in its eTariff database, along with the certificates of concurrence certifying that the respective transmission owner assents to and concurs with the CSRA. Niagara Mohawk Power Corporation/Tariffs, Rate Schedules, Agreements, NMPC Concurrence to CSRA, Cost Sharing and Recovery Agreement (0.0.0); Orange and Rockland Utilities, Inc./Service Agreements and Other Tariffs, O&R Concurrence CSRA, CSRA Concurrence (0.0.0); NYSEG Transmission Related Agreements, Concurrence to CSRA, Cost Sharing and Recovery Agreement (0.0.0); Rochester Gas and Electric Corporation/RG&E Agreements, Concurrence to CSRA, Cost Sharing and Recovery Agreement (0.0.0). As discussed below, there is an error in the eTariff record filed by Central Hudson.

⁶ *State Voluntary Agreements to Plan & Pay for Transmission Facilities*, 175 FERC ¶ 61,225 (2021) (State Agreement Policy Statement).

State climate and renewable energy goals as required by New York State law (Approved Local Transmission Upgrades).⁷ Specifically, the state laws include the CLCPA and the AREGCBA.⁸

4. The NYTOs explain that the Approved Local Transmission Upgrades are expected to create “on-ramps” (for moving existing and future renewable energy connected to the local transmission and distribution system onto the high-voltage⁹ transmission system) and “off-ramps” (for moving energy from that bulk electric system to the local transmission and distribution system where it can be consumed by local loads).¹⁰ The NYTOs also explain that studies have shown that these on-ramps and off-ramps are needed in New York to reach the milestones and mandates under the CLCPA.

5. The NYTOs state that the NYPSC has found that there is a critical need for local transmission investment in certain areas and has directed regulated utilities in the State to submit new or revised local transmission solutions.¹¹ Pursuant to that directive, on March 8, 2022, Central Hudson, NYSEG, Niagara Mohawk, and RG&E filed a petition with the NYPSC seeking approval for local transmission upgrades designed to efficiently and cost effectively address local transmission upgrade needs.¹²

⁷ Section 7(e) of the Accelerated Renewable Energy Growth and Community Benefit Act (AREGCBA) defines “local transmission upgrade” to include: (1) a new transmission facility that is identified within a utility’s local transmission capital plan, (2) an upgrade to a local transmission facility as defined in the tariff of the state grid operator, or (3) an improvement, enhancement, replacement, or other modification to a transmission facility in a utility’s service territory that facilitates achievement of the CLCPA targets. AREGCBA, 2020 N.Y. Sess. Laws, ch. 58, Part JJJ. An “Approved Local Transmission Upgrade” refers to those local transmission upgrades that have been approved by the NYPSC subsequent to the NYPSC’s determination that the upgrade facilitates achievement of the Climate Leadership and Community Protection Act (CLCPA) targets. CLCPA, 2019 N.Y. Sess. Laws, ch. 106.

⁸ The NYTOs state that AREGCBA directs the NYPSC to establish distribution and local transmission capital plans for utilities in whose service territory a power grid study identified distribution upgrades and local transmission upgrades necessary to achieve New York’s climate mandates. NYTOs Filing, Docket No. ER22-2152-000, Transmittal Letter at 3 (filed June 21, 2022) (CSRA Filing).

⁹ 200 kilovolt (kV) and above.

¹⁰ CSRA Filing, Transmittal Letter at 3, 10.

¹¹ *Id.* at 4.

¹² *Id.* at 5.

6. The NYTOs state that they filed the CSRA and Rate Schedule 19 with the NYPSC on January 7, 2022, and that, partially in response to stakeholder comments, the NYTOs filed certain revisions to the CSRA with the NYPSC on April 20, 2022.¹³ On May 12, 2022, the NYPSC issued an order accepting both the CSRA (as revised) and Rate Schedule 19.¹⁴

II. Filings

7. The NYTOs request that the Commission accept the CSRA and proposed Rate Schedule 19, as well as related, conforming amendments to section 2.7 of the NYISO OATT. In addition, each of the NYTOs, other than Con Edison, filed a separate certificate of concurrence requesting that the Commission accept a tariff record incorporating by reference the CSRA and certifying that the transmission owner assents to and concurs with the CSRA.

A. CSRA

8. The NYTOs describe the CSRA as a voluntary participant funding agreement among the six public utility NYTOs, Long Island Power Authority (LIPA) and New York Power Authority (NYPA),¹⁵ and, for limited purposes, the NYPSC.¹⁶ The NYTOs explain that the CSRA is a voluntary agreement consistent with the State Agreement Policy Statement and reflects “state efforts to develop transmission facilities through voluntary agreement to plan and pay for those facilities.”¹⁷ The NYTOs state that the

¹³ *Id.*

¹⁴ *Order on Accepting Compliance Filings*, NYPSC Case 20-E-0197 (May 12, 2020).

¹⁵ The NYTOs explain that as signatories to the CSRA, LIPA and NYPA join in and support the acceptance of the CSRA. However, the NYTOs note that both LIPA and NYPA are non-public utilities pursuant to section 201(f) of the FPA. 16 U.S.C. § 824(f); CSRA Filing, Transmittal Letter at 2 n. 2.

¹⁶ The NYPSC is a signatory to the CSRA for the limited purposes set forth in section 9.16 of the CSRA, which states that upon the acceptance, adoption, or approval of the CSRA by the NYPSC, the NYPSC will support and not oppose the CSRA before the Commission, and any rate filings made by the NYTOs consistent with its terms, as authorized by the NYPSC Chair under New York Public Service Law §12; provided however, the NYPSC reserves the right to protest costs recoverable in any formula rate filings made pursuant to the CSRA. *See* CSRA § 9.16; CSRA Filing, Attachment B at 17

(stating that the NYPSC executed the CSRA to show that it agrees with the NYTOs’ plan to pay for the Approved Local Transmission Upgrades).

CSRA reflects their agreement to share the costs of the Approved Local Transmission Upgrades.¹⁸

9. The NYTOs explain that the State Agreement Policy Statement provides that agreements, such as the CSRA, may include, among other things, an agreement between one or more states and one or more public utility transmission providers or two or more public utility transmission providers.¹⁹ The NYTOs state that the Commission has explained that such agreements may allow state-prioritized transmission facilities to be planned and built more quickly than if such projects resulted from the regional transmission planning process.²⁰ The NYTOs further note that the State Agreement Policy Statement provides that neither the FPA nor the Commission's rules preclude voluntary agreements, and that Order No. 1000²¹ allows the negotiation of voluntary alternative cost sharing arrangements distinct from the relevant regional cost allocation methods.²²

10. The NYTOs state that the CSRA provides that the costs of Approved Local Transmission Upgrades shall be shared statewide among the CLCPA's beneficiaries and recovered on a volumetric load-ratio basis.²³ The NYTOs explain that to implement statewide cost allocation for such Approved Local Transmission Upgrades, the CSRA contemplates that the NYTOs will seek approval from the Commission for cost recovery for those future Approved Local Transmission Upgrades consistent with the cost allocation approved in any NYPSC order approving the upgrades. The NYTOs further explain that to develop the NYTOs' actual charges, they each will propose formula rate template filings under section 205 of the FPA.

¹⁷ CSRA Filing, Transmittal Letter at 5 (quoting the State Agreement Policy Statement, 175 FERC ¶ 61,225 at P 1).

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 6 (citing State Agreement Policy Statement, 175 FERC ¶ 61,225 at P 1).

²⁰ *Id.* at 6 (citing State Agreement Policy Statement, 175 FERC ¶ 61,225 at P 2).

²¹ *Transmission Planning & 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).

²² CSRA Filing, Transmittal Letter at 6 (citing State Agreement Policy Statement, 175 FERC ¶ 61,225 at P 3).

²³ *Id.* at 2.

11. The NYTOs explain that each transmission owner's revenue requirements for Approved Local Transmission Upgrades will be calculated using the lower of the NYPSC-approved return on equity (ROE) or the Commission-approved ROE.²⁴ The NYTOs further explain that they have agreed to use the NYPSC-approved ROE and capital structure that applies to their existing capital plans for local transmission and distribution investment because they anticipate that funding will be approved for local transmission upgrades under their NYPSC-authorized capital budgets, for purposes of cost recovery under section 205 of the FPA. The NYTOs add that they have agreed to the CSRA and its cost allocation and recovery framework, subject to the Commission's acceptance, because the CSRA is limited to local transmission upgrades, the costs of which have historically been borne through state-administered bundled local transmission and distribution rates, reflecting both NYPSC-approved ROE and capital structures.

12. The NYTOs state that the Commission has accepted the use of a Commission-approved ROE as a ceiling value in formula rate templates, with the actual ROE used to calculate revenue requirements being the ROE agreed to during the project selection process (subject to the Commission-approved ROE as a cap).²⁵

B. Rate Schedule 19

13. Contemporaneously with the CSRA, NYISO filed, on behalf of the NYTOs, to add a new Rate Schedule 19 and make related, conforming amendments to section 2.7 of NYISO's OATT.²⁶ The NYTOs explain that Rate Schedule 19 provides a tariff-based mechanism for the statewide allocation and recovery of the costs of Approved Local Transmission Upgrades that are selected and authorized by the NYPSC as necessary to meet requirements of New York State law.

14. The NYTOs state that Rate Schedule 19 calculates and allocates to New York ~~load-serving entities (LSE)~~²⁷ on a volumetric load-ratio basis a new CLCPA Facilities

²⁴ *Id.* at 8. The NYTOs' Joint Testimony explains that, after the Commission has approved a ceiling ROE and formula rates for each of the NYTOs in future proceedings, the NYPSC-approved ROE to be used for a particular project will be identified in an informational filing. The Joint Testimony further explains that such an informational filing will be submitted under the soon-to-be-filed formula rates that will, subject to acceptance by the Commission, be incorporated as attachments to Rate Schedule 19. CSRA Filing, Attachment B at 18, n. 14.

²⁵ CSRA Filing, Transmittal Letter at 9 (citing *Republic Transmission, LLC*, 167 FERC ¶61,215, at PP 11-12 (2019), *Kanstar Transmission, LLC*, 152 FERC ¶61,209, at P 58 (2018), *Xcel Energy Transmission Dev. Co., LLC*, 149 FERC ¶61,181 (2014)).

²⁶ NYTOs Filing, Docket No. ER22-2154-000, Transmittal Letter at 2 (filed June 21, 2022) (Schedule 19 Filing).

Charge (CFC Charge), or in the case of LIPA, a LIPA CFC Charge.²⁸ The NYTOs explain that the CFC Charge is a cost-of-service charge derived from formula rates that will be filed with the Commission in subsequent, separate submittals that will be attached to Rate Schedule 19. The NYTOs emphasize that proposed Rate Schedule 19 does not by itself create or produce transmission use charges.²⁹ The NYTOs elaborate that such charges and implementation of Rate Schedule 19 will depend on later submission and acceptance of each transmission owner's formula rate template, which will be submitted separately for Commission review under section 205 of the FPA. The NYTOs emphasize that acceptance of Rate Schedule 19 in the instant proceedings does not include or imply any form of acceptance or pre-approval of costs or revenue requirements.

15. The NYTOs state that Rate Schedule 19's treatment of the Approved Local Transmission Upgrades provides comparable treatment to the rates recovered under Attachment H of NYISO's OATT.³⁰ The NYTOs elaborate that Attachment H allocates

²⁷ The NYTOs explain that the NYISO OATT defines an LSE as, "[a]n entity, including a municipal electric system and an electric cooperative, authorized or required by law, regulatory authorization or requirement, agreement, or contractual obligation to supply Energy, Capacity and/or Ancillary Services to retail customers located within the NYCA [New York Control Area], including an entity that takes service directly from the ISO to supply its own load in the NYCA." Schedule 19 Filing, Transmittal Letter at 6, n. 27 (citing NYISO, NYISO Tariffs, NYISO OATT, 1.12 OATT Definitions - L (3.0.0)).

²⁸ Schedule 19 Filing, Transmittal Letter at 6. The NYTOs explain that both the CSRA and Rate Schedule 19 contain LIPA-specific enabling provisions that accommodate LIPA's statutory and jurisdictional framework under FPA section 201(f). The NYTOs elaborate that section 2.3 of the CSRA recognizes that any formula rate to be adopted by LIPA for an Approved Local Transmission Upgrade will be approved by the LIPA Board of Trustees under New York State law and subject to review by the Commission under the same comparability standard that is applied to LIPA's current transmission service charges under Attachment H of NYISO's OATT. The NYTOs explain that NYPA is party to the CSRA only in its capacity as an LSE in New York to demonstrate its support for the CSRA and its consent to be allocated a portion of the costs of the Approved Local Transmission Upgrades. The NYTOs further explain that NYPA will not be allocating costs of transmission upgrades under Rate Schedule 19 because it does not have a local transmission and distribution system. The NYTOs state that NYPA will continue to use its cost recovery mechanism under NYISO's OATT, including the NYPA Transmission Adjustment Charge, through which it allocates and recovers its transmission costs. Schedule 19 Filing, Transmittal Letter at 10-11.

²⁹ *Id.* at 7.

³⁰ *Id.* at 9.

the revenues derived from the sale of Transmission Congestion Contracts (TCCs)³¹ to each of the NYTOs in proportion to the contribution that each transmission owner's transmission facilities make toward supporting the TCCs sold in each auction as well as assessments to them for outages. The NYTOs state that, in essence, the Incremental TCC revenue to the facility owner acts as an offset to the Approved Local Transmission Upgrade's revenue requirement, while outage charges to the facility owner are recoverable as part of the rate mechanism.³² The NYTOs add that the alternative structure for the Approved Local Transmission Upgrades in Rate Schedule 19 is the same structure that the Commission has previously approved for facilities recovered under OATT Rate Schedules 10, 12, 13, 15, 16, and 17.³³

C. Cost Allocation Method

16. The NYTOs state that although local transmission upgrades otherwise are constructed and funded through each individual transmission owner's bundled rate structure that limits recovery to the transmission owner's respective retail customers, applying that cost allocation structure under Rate Schedule 19 would be inefficient and contrary to the Commission's cost-causation principles because costs would be borne only on a local basis for local transmission upgrades that deliver CLCPA benefits statewide.³⁴

17. The NYTOs explain that the NYPSC has expressly held that the benefits of clean energy supply resources in New York (including as mandated by the CLCPA) benefit loads statewide, and thus determined that a statewide cost allocation on a load-ratio share basis is appropriate under the circumstances.³⁵ The NYTOs state that for a local transmission upgrade to be selected by the NYPSC for statewide cost allocation under the CSRA and Rate Schedule 19, the NYPSC must find that the upgrade is needed and appropriate to attain the CLCPA requirements.³⁶ The NYTOs also state that because of

³¹ The NYTOs explain that TCCs represent the right to collect or obligation to pay congestion rents in the day-ahead market for energy associated with a single MW of transmission between a specific point of injection and point of withdrawal. *Id.* at 9.

³² *Id.* at 10.

³³ *Id.* at 9.

³⁴ CSRA Filing, Transmittal Letter at 8.

³⁵ Schedule 19 Filing, Transmittal Letter at 8 (citing *Order on Local Transmission and Distribution Process and Phase 2 Project Proposals*, NYPSC Case 20-E-0197, at 34 (September 9, 2021) (NYPSC Phase 2 Order)).

³⁶ CSRA § 2.1.1.

the statewide environmental, public health, and other benefits of a free-flowing decarbonized electric system, a cost allocation for Approved Local Transmission Upgrades confined to local customers would present a free-ridership problem that is unfair to consumers in local areas where upgrades are needed.

18. The NYTOs' Joint Testimony also explains that the volumetric load-ratio share approach allocates the costs of Approved Local Transmission Upgrades on the basis of an LSE's withdrawal of energy.³⁷ The Joint Testimony states that Approved Local Transmission Upgrades are being developed for purposes of meeting statewide CLCPA climate policy goals intended to benefit all New York customers, and because addressing the bottlenecks in the NYTOs' local transmission grids will allow statewide access to the associated clean energy.³⁸ Therefore, the Joint Testimony explains that it is appropriate to allocate the costs of these projects statewide based on an LSE's energy withdrawals.

19. The NYTOs state that the proposed load-ratio share cost allocation approach is the same basis used to allocate the costs of existing, NYPSC-approved purchase obligations for renewable energy credits, offshore wind renewable energy credits, and the nuclear power zero emission credits in New York.³⁹ The NYTOs elaborate that statewide cost allocation for the costs of Approved Local Transmission Upgrades will foster the proposal, development, and construction of local transmission upgrades that otherwise may not have been undertaken due to concerns of allocating their costs only to customers in the same local utility footprint as such projects.⁴⁰

20. The NYTOs note that, as NYISO is a single-state ISO, this cost allocation is limited to New York ratepayers under Rate Schedule 19, and thus, loads and consumers outside of NYISO's footprint will not be allocated any costs for Approved Local Transmission Upgrades.⁴¹ The NYTOs conclude that approved project revenue requirements will involve costs that are tied directly to accomplishing statewide CLCPA goals by alleviating constraints within local transmission circuits and providing on- and off-ramps to the high-voltage transmission network in New York.⁴²

³⁷ CSRA Filing, Attachment B at 15.

³⁸ *Id.* at 20.

³⁹ Schedule 19 Filing, Transmittal Letter at 8.

⁴⁰ *Id.* at 8-9.

⁴¹ *Id.* at 9.

⁴² *Id.*

III. Notice of Filing and Responsive Pleadings

21. Notice of the NYTOs' filing in Docket No. ER22-2152-000 was published in the *Federal Register*, 87 Fed. Reg. 38,147 (June 27, 2022), with interventions and protests due on or before July 12, 2022. Notice of NYISO's filing on behalf of the NYTOs in Docket No. ER22-2154-000 was published in the *Federal Register*, 87 Fed. Reg. 38,147 (June 27, 2022), with interventions and protests due on or before July 12, 2022. The NYTOs filed timely motions to intervene in Docket Nos. ER22-2152-000 and ER22-2154-000. The Solar Energy Industries Association and Equinor Wind US, LLC, filed timely motions to intervene in Docket No. ER22-2154-000. The NYPSC filed a notice of intervention and comments in Docket Nos. ER22-2152-000 and ER22-2154-000. The New York Association of Public Power (NYAPP) and LSP Transmission Holding II, LLC, with LS Power Grid (collectively, LS Power) filed timely motions to intervene and protests in Docket Nos. ER22-2152-000 and ER22-2154-000. The Natural Resources Defense Council with Sustainable FERC Project (collectively, Clean Energy Advocates) filed a timely motion to intervene and comments in Docket No. ER22-2154-000. LS Power filed an out-of-time supplement to its protest on July 27, 2022 in Docket Nos. ER22-2152-000 and ER22-2154-000. On July 27, 2022, the NYTOs filed an answer in Docket Nos. ER22-2152-000 and ER22-2154-000 (Answer).

22. Notice of O&R's certificate of concurrence filing in Docket No. ER22-2157-000 was published in the *Federal Register*, 87 Fed. Reg. 38,147 (June 27, 2022), with interventions and protests due on or before July 12, 2022.

23. Notice of Niagara Mohawk's certificate of concurrence filing in Docket No. ER22-2264-000 was published in the *Federal Register*, 87 Fed. Reg. 38,743 (June 29, 2022), with interventions and protests due on or before July 13, 2022.

24. Notice of NYSEG's certificate of concurrence filing in Docket No. ER22-2180-000 and RG&E's certificate of concurrence filing in Docket No. ER22-2181-000 was published in the *Federal Register*, 87 Fed. Reg. 39,083 (June 30, 2022), with interventions and protests due on or before July 14, 2022.

25. Notice of Central Hudson's certificate of concurrence filing in Docket No. ER22-2283-000 was published in the *Federal Register*, 87 Fed. Reg. 39,083 (June 30, 2022), with interventions and protests due on or before July 13, 2022.

A. Comments

26. The NYPSC states that the CSRA is consistent with the State Agreement Policy Statement, which promotes voluntary agreements that can further the Commission's goals of developing cost-effective and reliable transmission facilities by providing states with a way to prioritize, plan, and pay for transmission facilities that are not being developed pursuant to the regional transmission planning processes.⁴³ The NYPSC states

that it supports the CSRA as an effective means of planning and paying for Approved Local Transmission Upgrades to comply with the requirements of New York State's CLCPA and AREGCBA.⁴⁴

27. Clean Energy Advocates support adding Rate Schedule 19 to provide a tariff-based mechanism for the regional allocation of the costs of local transmission upgrades to meet the requirements of the CLCPA.⁴⁵ Clean Energy Advocates further state that there is no existing instrument through which the costs of local transmission upgrades selected and built to deliver statewide benefits may be allocated to the intended beneficiaries.⁴⁶

28. Clean Energy Advocates state that the proposed tariff amendments are in the public interest for four reasons: (1) they are consistent with the Commission's policy statement on state voluntary agreements as well as with the Commission's "beneficiaries pay" approach to allocation and recovery of transmission upgrade costs that provide widespread benefits; (2) they establish a flexible rate mechanism that will help contain costs; (3) they enable and encourage the NYTOs to consider, propose, and construct transmission upgrades that they may otherwise not pursue because benefits accrue across multiple service territories; and (4) because Commission deference to the State's decision for statewide cost allocation of Approved Local Transmission Upgrades is consistent with state authority over local transmission development while providing a simple, readily available solution to the practical challenge of administering statewide cost allocation.⁴⁷

29. Clean Energy Advocates explain that the Approved Local Transmission Upgrades are the type of local transmission upgrades that the NYPSC historically has approved without Commission involvement or review.⁴⁸ Clean Energy Advocates state that the NYPSC determination that the costs of local transmission upgrades to meet the needs of CLCPA should be allocated to all beneficiaries across the state on a volumetric load-ratio share basis is appropriate because achieving the CLCPA targets produces statewide benefits. Clean Energy Advocates explain that the NYPSC's preference for statewide cost allocation is consistent with the Commission's "beneficiaries pay" approach to cost allocation and recovery of transmission upgrade costs that provide widespread benefits.⁴⁹

⁴³ NYPSC Comments at 3-4.

⁴⁴ *Id.* at 4.

⁴⁵ Clean Energy Advocates Comments at 2.

⁴⁶ *Id.* at 7.

⁴⁷ *Id.* at 2, 7-8.

⁴⁸ *Id.* at 2, 10.

Clean Energy Advocates state that Commission precedent requires that the costs of transmission facilities are allocated in a manner that is “roughly commensurate” with the benefits of those facilities, and under the CSRA, the Approved Local Transmission Upgrades are designed and selected to deliver benefits that are recognized under state law to accrue across the entire state.⁵⁰

30. Additionally, Clean Energy Advocates state that the Commission can fulfill its obligation to ensure that rates are just, reasonable, and not unduly discriminatory by reviewing the NYTOs’ soon-to-be-filed formula rates and ROE proposal, which will serve as a cost cap, while allowing for cost savings because the NYTOs, by entering into the CSRA, have voluntarily agreed to set revenue requirements using an ROE that is less than or equal to the ROE set by the Commission.

B. Protests

31. LS Power argues that the filings at issue in these proceedings are beyond the scope of the NYTOs’ unilateral filing rights under section 205 of the FPA because section 19.01 of the NYISO Agreement provides that NYISO’s OATT and NYISO’s Services Tariff may be modified only after approval by the NYISO Management Committee and the NYISO Board. LS Power states that the reservation of filing rights in section 17.A.1 of the NYISO Agreement and section 3.10 of the NYISO-Transmission Owner Agreement are not relevant because they are limited and include only filings “necessary” to recover costs related to services under NYISO’s OATT, and that the limitation on filing rights applies to any service agreement under NYISO’s OATT, including the CSRA.⁵¹ LS Power argues that the filings seek to establish a new planning process for certain public policy transmission facilities in which only the NYTOs themselves may participate⁵² and that the NYTOs made no effort to demonstrate that the provisions of their proposals that address cost recovery are “necessary” to recover costs that they would be unable to recover under the existing provisions of the NYISO OATT.⁵³

32. LS Power states that, pursuant to Order No. 1000, NYISO’s OATT ensures that planning for public policy requirements is incorporated in both local and regional planning, providing exclusively local cost allocation for locally planned projects and

⁴⁹ *Id.* at 9.

⁵⁰ *Id.* (citing Order No. 1000, 136 FERC ¶ 61,051 at P 622).

⁵¹ LS Power Protest at 15-16 (citing *N.Y. Indep. Sys. Operator, Inc.*, 176 FERC ¶ 61,143, at P 22 (2021)).

⁵² *Id.* at 17.

⁵³ *Id.* at 18.

regional allocation for regionally planned projects, with mandatory competition for those projects utilizing regional cost allocation.⁵⁴ LS Power states that Order No. 1000 requires that to be eligible for regional cost allocation a proposed new transmission facility must be selected in a regional transmission plan for purposes of cost allocation.⁵⁵ LS Power argues that because the NYTOs' projects were not selected in the regional planning process for purposes of cost allocation, NYISO's OATT prohibits the projects from using regional cost allocation.⁵⁶ LS Power states that NYISO's OATT provides that locally planned transmission additions, even those addressing public policy requirements, must be locally cost allocated.⁵⁷

33. NYAPP protests the proposed statewide cost allocation by asserting that the benefits are not equal across the state, and thus, the costs cannot be properly shared on a statewide load-share basis.⁵⁸ NYAPP argues that, under the statewide cost allocation, NYAPP members will be forced to pay for upgrades that do not benefit them.⁵⁹ Further, NYAPP asserts that its members have already contributed more than their load ratio share to meet New York's clean energy goals, and therefore they do not benefit from the proposal, in violation of the cost causation principle.⁶⁰ NYAPP also states that what is at issue is local transmission and distribution facilities owned by the NYTOs that serve as on-ramps and off-ramps to the bulk transmission system.⁶¹ NYAPP contends that in the case of on-ramps, the beneficiaries are the developers or generators who now do not have to pay all of the costs of interconnecting to the transmission system, shifting the risk of building unneeded facilities from developers to consumers. NYAPP argues that in the case of off-ramps, the beneficiaries are the load at the point of the off-ramp, not customers in distant localities.⁶² NYAPP claims that under the NYTOs' proposal,

⁵⁴ *Id.* at 6.

⁵⁵ *Id.* at 4 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 539).

⁵⁶ *Id.* at 11.

⁵⁷ *Id.* at 14 (citing NYISO, NYISO Tariffs, NYISO OATT, 31.5 OATT Att. Y Cost Allocation and Cost Recovery (29.0.0), § 31.5.1.5).

⁵⁸ NYAPP Protest at 6.

⁵⁹ *Id.* at 5.

⁶⁰ *Id.* at 2-3.

⁶¹ *Id.* at 5.

⁶² *Id.* at 5-6.

NYAPP members who are already meeting clean energy goals far away from the load at an off-ramp would be forced to help cover the costs of that off-ramp.⁶³

34. LS Power argues that the NYTOs' filings evade Order No. 1000 by allowing the NYTOs to exclusively plan and build purportedly regionally beneficial projects without meeting the requirement for a competitive process.⁶⁴ LS Power states that Order No. 1000 requires that where regional cost allocation is allowed, incumbents and nonincumbent developers alike must have a non-discriminatory right to access that regional cost allocation method.⁶⁵ LS Power protests that, pursuant to Order No. 1000, NYISO's OATT prohibits declaring a project "local" for planning purposes but "regional" for cost allocation purposes.⁶⁶ LS Power states that the Approved Local Transmission Upgrades are not "local" transmission projects under Order No. 1000 or under NYISO's OATT if they facilitate deliverability to all consumers across New York.⁶⁷ LS Power explains that the NYPSC's definition of "Local Transmission" in the orders relevant to the NYTOs' filings confuses the fundamental distinction between local and regional projects by defining "transmission lines which transfer power to other service territories and operate at less than 200 kV" as definitively local transmission.⁶⁸ LS Power argues that the impact of this definition is that the NYTOs' proposed "local" projects—which include "New York State Bulk Power Transmission Facilities" under 200 kV that are necessary for regional transfers—are subject to exclusively local planning, skirting NYISO's competitive process required for regional cost allocation under NYISO's OATT.⁶⁹

35. LS Power's supplemental protest further states that the NYTOs' filings "evade" the NYISO tariff, relying on a July 15, 2022, NYPSC order that denied LS Power's request for rehearing of the NYPSC Phase 2 Order approving statewide cost allocation for the Approved Local Transmission Upgrades. LS Power argues that the NYPSC rehearing order denying rehearing shows that the Approved Local Transmission

⁶³ *Id.* at 6.

⁶⁴ LS Power Protest at 6-7.

⁶⁵ *Id.* at 20 (citing Order No. 1000, 136 FERC ¶ 61,051 at PP 316, 539).

⁶⁶ *Id.* at 3.

⁶⁷ *Id.* at 4-5.

⁶⁸ *Id.* at 20 (citing *Order on Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*, NYPSC Case 20-E-0197, at 3, n. 4 (May 14, 2020)).

⁶⁹ *Id.* at 20-21.

Upgrades are being developed outside of the Order No. 1000 process and therefore violate NYISO's OATT.⁷⁰ LS Power asserts that the NYPSC rehearing order shows there is no gap between the NYISO planning process as referenced in the State Agreement Policy Statement. LS Power further states that the NYPSC rehearing order acknowledges that "local" projects have been submitted for NYPSC approval that are above the 200kV threshold.⁷¹

36. Additionally, NYAPP states that its members are municipal electric utilities and rural electric cooperatives, which are LSEs and are defined as such in NYISO's OATT.⁷² NYAPP explains that the proposed Rate Schedule 19 inappropriately allocates the costs of the local transmission and distribution facilities not to the NYTOs, but to all LSEs. NYAPP asserts that its members have not been asked and have not voluntarily agreed to the load-ratio share cost allocation proposed here, nor have they been ordered to adopt the cost allocation by the NYPSC.

C. Answer

37. In response to LS Power's claims that the CSRA and Rate Schedule 19 violate Order No. 1000, the NYTOs state that voluntary participant funding is a permitted means by which to fund and pay for transmission outside of the Order No. 1000 process.⁷³ The NYTOs explain that their filings involve a voluntary agreement to fund transmission projects to achieve state policy goals that are not otherwise being developed under Order No. 1000's regional transmission planning process, which is the type of agreement to which the Commission referred in the State Agreement Policy Statement.⁷⁴

38. The NYTOs state that the Approved Local Transmission Upgrades are not proposed in response to a public policy requirement under the Order No. 1000 process in NYISO's OATT.⁷⁵ Rather, the NYTOs explain the Approved Local Transmission Upgrades are upgrades that have been identified as part of local transmission planning required by New York State law. The NYTOs argue that under NYISO's foundational agreements and Commission precedent, the upgrades are appropriately considered within the NYTOs' local planning process, not NYISO's planning process for non-local bulk

⁷⁰ LS Power Protest Supplement at 2.

⁷¹ *Id.* at 6.

⁷² NYAPP Protest at 2.

⁷³ Answer at 5.

⁷⁴ *Id.* at 7.

⁷⁵ *Id.* at 9.

system needs.⁷⁶ The NYTOs assert that their proposal does not replace, supplant, or otherwise alter the selection criteria and cost allocation under the New York regional planning process. The NYTOs further proffer that the CSRA does not conflict with NYISO's regional planning process because the NYPSC has directed the NYTOs to demonstrate consideration of bulk transmission solution alternatives.⁷⁷

39. The NYTOs argue that because Order No. 1000 permits voluntary participant funding agreements for allocating the cost of local or non-local transmission investments, LS Power's arguments concerning definitions of what are, or are not, "local" are not relevant. As to LS Power's argument that the filings are beyond the NYTOs' reserved filing rights, the NYTOs assert that the filings were submitted pursuant to their reserved unilateral FPA section 205 filing rights under section 17A.1 of the NYISO Agreement and section 3.10 of the NYISO-Transmission Owners Agreement.⁷⁸ The NYTOs state that the only purpose of the filings is to establish a framework for recovery of their reasonably incurred costs, which fits squarely within their reserved filing rights. Furthermore, the NYTOs state that NYISO routinely makes filings pursuant to section 205 of the FPA to amend its tariff records on behalf of the NYTOs so that they may recover their costs.⁷⁹

40. In response to NYAPP and in support of the proposed statewide load ratio share cost allocation, the NYTOs argue that the statewide nature of the goals established through New York State law are the foundation for the load-ratio share cost allocation proposed in the CSRA. The NYTOs also state that the CSRA and Rate Schedule 19 only allow for the statewide allocation of costs after the underlying project has been determined by the NYPSC to provide statewide benefits based on the record developed in a public proceeding.⁸⁰ The NYTOs point out that NYAPP consists of members who are customers of the NYTOs that have freely entered into a voluntary participant funding agreement, approved by the NYPSC and providing for statewide cost allocation.⁸¹ The NYTOs further state that both the NYPSC and the Commission have previously determined that it is just and reasonable to allocate the costs of projects driven by the CLCPA and AREGCBA on a load-ratio share basis across the State.⁸²

⁷⁶ *Id.* at 10.

⁷⁷ *Id.* at 11 (citing NYPSC Phase 2 Order, at 11-12).

⁷⁸ *Id.* at 13-14.

⁷⁹ *Id.* at 15.

⁸⁰ *Id.* at 16.

⁸¹ *Id.* at 17-18.

IV. Discussion

A. Procedural Matters

41. 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.

42. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we accept LS Power's late-filed supplement given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

43. 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 the NYTOs' answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

44. We accept the NYTOs' proposed filings as just and reasonable and not unduly discriminatory or preferential.

45. As a preliminary matter, we disagree with LS Power that the NYTOs lack the filing rights to submit the instant filings. The reservation of rights in section 17.A.1 of the NYISO Agreement and section 3.10 of the NYISO-Transmission Owner Agreement authorize the NYTOs to make filings "necessary" to recover costs associated with services under NYISO's OATT.⁸³ The argument that both the CSRA and Rate Schedule

⁸² *Id.* at 18.

⁸³ In relevant part, section 3.10(a) of the NYISO-Transmission Owner Agreement states:

Each Transmission Owner shall have the right at any time unilaterally to file pursuant to [s]ection 205 of the [FPA] to change the [NY]ISO OATT, a Service Agreement under the [NY]ISO OATT, or the [NY]ISO Agreement to the extent necessary: (i) to recover all of its reasonably incurred costs, plus a reasonable return on investment related to services under the [NY]ISO OATT and (ii) to accommodate implementation of, and changes to, a Transmission Owner's retail access program.

19 are necessary to recover costs of services under the OATT is supported by the function of Rate Schedule 19, which is solely to recover the costs of Approved Local Transmission Upgrades that provide transmission service under the OATT. The CSRA is necessary to establish the voluntary commitment of the NYTOs and the voluntary concurrence of the NYPSC to allocate the costs of the Approved Local Transmission Upgrades on a volumetric load-ratio share basis across the state. The CSRA also establishes eligibility for cost allocation under Rate Schedule 19, pursuant to the NYPSC approval of the applicable local transmission upgrade.⁸⁴

46. LS Power argues that the NYTOs have failed to show that the filings are “necessary” because other existing rate mechanisms can be used to recover the costs of these Approved Local Transmission Upgrades. We do not find this argument persuasive. Here, the term “necessary” is identifying a situation where the NYTOs’ proposal serves a means to recover costs through rates rather than needing to be the only option for cost recovery. Because public utilities must have a rate schedule to recover costs, we find Rate Schedule 19 is necessary to recover costs, and we further find that the CSRA is necessary to implement Rate Schedule 19. Thus, we find that the NYTOs are within their rights to file the instant filings with the Commission under FPA section 205 pursuant to their reserved unilateral filing rights under the NYISO Agreement and the NYISO-Transmission Owner Agreement.

47. We are also unconvinced by LS Power’s argument that the filings establish an alternative transmission planning process⁸⁵ that is more than establishing a rate structure and is therefore beyond the reservation of rights in sections 17.A.1 of the NYISO Agreement and 3.10 of the NYISO-Transmission Owner Agreement. Nothing in the CSRA or Rate Schedule 19 provides for a transmission planning process. Instead, the NYTOs’ filings provide for the recovery of costs for Approved Local Transmission Upgrades identified by the NYTOs and chosen by the NYPSC pursuant to New York State law.

48. We also disagree with LS Power’s argument that the Commission should reject the NYTOs’ filings because they are not compliant with NYISO’s Order No. 1000 regional transmission planning and cost allocation process. Order No. 1000 expressly does not preclude participant funding arrangements such as the one proposed here, where market

Section 17.A.1 of the NYISO Agreement contains language nearly identical to section 3.10(a) of the NYISO-Transmission Owner Agreement.

⁸⁴ Proposed Rate Schedule 19 at section 16.19.1.1.

⁸⁵ LS Power Protest at 17. As discussed below, LS Power argues that an alternative transmission planning process violates Order No. 1000, which is a separate question from filing rights.

participants negotiate voluntary alternative cost sharing arrangements that are separate from the relevant Order No. 1000 regional cost allocation method(s).⁸⁶ In addition, the Commission clarified in the State Agreement Policy Statement that neither the FPA nor the Commission's rules and regulations categorically preclude voluntary agreements among one or more states and one or more public utility transmission providers to plan and pay for transmission facilities.⁸⁷ The Commission stated that "[d]eveloping cost-effective and reliable transmission facilities remains a priority" and that "[v]oluntary agreements can further those goals by, for example, providing states with a way to prioritize, plan and pay for transmission facilities that, for whatever reason, are not being developed under the regional transmission planning processes required by Order No. 1000."⁸⁸ Consistent with that precedent, we find that the cost allocation processes contemplated by the NYTOs' filings do not have to comply with all the regional transmission planning and cost allocation requirements in Order No. 1000, on which LS Power relies, because they are the type of voluntary participant funding arrangement that the Commission in Order No. 1000 recognized need not comply with that rule.⁸⁹ In addition, we note that the proposal "supplements, but does not conflict [with] or otherwise replace" NYISO's Order No. 1000 process.⁹⁰

49. Similarly, we find that NYAPP's argument—that the proposed statewide cost allocation is unjust and unreasonable because NYAPP has not voluntarily agreed to the cost allocation in the CSRA—misconstrues the characteristics of a voluntary agreement.

⁸⁶ For example, the Commission stated in Order No. 1000 that the requirement to have an *ex ante* regional cost allocation method or methods "does not undermine the ability of market participants to negotiate alternative cost sharing arrangements voluntarily and separately from the regional cost allocation method or methods." *Id.* P 561. *See also id.* PP 724, 726; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 728-729. Under Order No. 1000, participant funding arrangements are those where "the cost of a transmission facility are allocated only to those entities that volunteer to bear those costs." Order No. 1000, 136 FERC ¶ 61,051 at P 486, n.375.

⁸⁷ State Agreement Policy Statement, 175 FERC ¶ 61,225 at PP 1, 3.

⁸⁸ *Id.* P 2.

⁸⁹ Because Order No. 1000 does not apply to the CSRA and Rate Schedule 19, LS Power's arguments about competing definitions of "local transmission projects" are unavailing. *See* LS Power Protest at 4-5, 20, 24-26.

⁹⁰ *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 142 (2013) ("PJM's State Agreement Approach supplements, but does not conflict or otherwise replace, PJM's process to consider transmission needs driven by public policy requirements as required by Order No. 1000....").

Order No. 1000 described participant funding as entailing an arrangement among transmission developers (which in this case are the NYTOs that will develop Approved Local Transmission Upgrades).⁹¹ Here, the NYTOs are the only entities that can avail themselves of Rate Schedule 19 and also the only entities responsible for the development and funding of the Approved Local Transmission Upgrades. Although NYAPP entities may ultimately pay for a portion of the costs of the Approved Local Transmission Upgrades through the rates they pay for transmission service, Commission precedent does not require that they, as transmission *customers*, sign off on a voluntary arrangement among the *transmission developers* of those transmission facilities.

50. We also find that, based on this record, it is just and reasonable and not unduly discriminatory or preferential to allocate the costs of the Approved Local Transmission Upgrades that the NYPSC determines are necessary to meet New York State law requirements on a volumetric load-ratio basis.⁹² The CLCPA instituted statewide mandates to achieve reductions in greenhouse gas emissions,⁹³ which are implemented in part through NYPSC directives to jurisdictional LSEs, which include the NYTOs that are parties to the CSRA. The Approved Local Transmission Upgrades that are subject to the CSRA are those that the NYPSC has found to facilitate achievement of the statewide mandates applicable to all NYTOs. In other words, these Approved Local Transmission Upgrades benefit customers throughout the state insofar as they facilitate compliance with the New York State climate and renewable energy goals as required by New York State law and have been determined by the NYPSC to be necessary to meet such obligations. That is true regardless of whether the individual transmission owner or LSE has otherwise taken actions that also contribute to New York's policy goals; the NYPSC has acted, pursuant to state law, to direct LSEs to comply with those mandates via Approved Local Transmission Upgrades. Accordingly, based on the record before us, we

⁹¹ Order No. 1000, 136 FERC ¶ 61,051 at PP 724-726; *see also* State Agreement Policy Statement, 175 FERC ¶ 61,225 at P 1.

⁹² CSRA Filing, Attachment B at 19-20 (citing NYPSC Phase 2 Order, at 22-23 (stating that the NYPSC supports allocating the costs of the Approved Local Transmission Upgrades on a volumetric load-ratio basis, concluding that the statewide allocation to all customers is appropriate for projects that capture CLCPA benefits)).

⁹³ *See* CLCPA § 6 (“New York should therefore minimize the risks associated with climate change through a combination of measures to reduce statewide greenhouse gas emissions and improve the resiliency of the state with respect to the impacts and risks of climate change that cannot be avoided”). *See also* AREGCBA § 3 (noting that a “public policy purpose” is served and the interests of the people of the State advanced by directing the NYPSC to study transmission infrastructure necessary to meet CLCPA targets and develop plans that provide for the timely development of, *inter alia*, local transmission upgrades).

find that the NYTOs' proposal to allocate costs of the Approved Local Transmission Upgrades—which the NYPSC has determined are needed to meet New York State law—on a load-ratio share basis across the state is roughly commensurate with the benefits.⁹⁴

51. Additionally, in accepting the NYTOs' filings, we find that the proposed ceiling ROE structure is just and reasonable. Rate Schedule 19 does not by itself create or produce transmission use charges, and implementation of Rate Schedule 19 depends on later submission and acceptance of each transmission owner's formula rate template, which will be submitted separately for Commission review under FPA section 205. Therefore, we clarify that the Commission is not ruling on the specific formula rates in this proceeding and will only do so in response to the applicable future filings.

52. Finally, two eTariff records filed by NYISO, on behalf of the NYTOs, in Docket No. ER21-2154-000 contain errors that require correction. Specifically, the eTariff record for section 2.7 includes redline edits rather than a clean version, and the eTariff record for section 6.19 does not reflect proposed Rate Schedule 19 but instead mistakenly includes redline edits of section 2.7. NYISO is directed to submit, on behalf of the NYTOs, a compliance filing that corrects these errors, within 30 days of the date of this order. Additionally, an error in the eTariff record filed by Central Hudson in Docket No. ER22-2183-000 must also be corrected. Specifically, the certificate of concurrence does not include an eTariff record. Central Hudson is directed to submit a compliance filing that corrects this error, within 30 days of the date of this order.

The Commission orders:

(A) The NYTOs' proposed CSRA filed in Docket No. ER22-2152-000 is hereby accepted, to be effective August 22, 2022, as discussed in the body of this order.

(B) The NYTOs' proposed Rate Schedule 19 and related amendments to the OATT filed in Docket No. ER22-2154-000, are hereby accepted, subject to a compliance filing, to be effective August 22, 2022, as discussed in the body of this order.

(C) O&R's certificate of concurrence filed in Docket No. ER22-2157-000, is hereby accepted, to be effective August 22, 2022, as discussed in the body of this order.

⁹⁴ See *BNP Paribas Energy Trading GP v. FERC*, 743 F.3d 264, 267 (D.C. Cir. 2014) (citing *KN Energy, Inc., v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992), for the cost causation principle that all approved rates “reflect to some degree the costs actually caused by the customer who must pay them”); *id.* at 268 (“This typically translates into a process of ‘comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.’”) (quoting *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004)).

(D) Niagara Mohawk's certificate of concurrence filed in Docket No. ER22-2164-000, is hereby accepted, to be effective August 22, 2022, as discussed in the body of this order.

(E) NYSEG's certificate of concurrence filed in Docket No. ER22-2180-000, is hereby accepted, to be effective August 22, 2022, as discussed in the body of this order.

(F) RG&E's certificate of concurrence filed in Docket No. ER22-2181-000, is hereby accepted, to be effective August 22, 2022, as discussed in the body of this order.

(G) Central Hudson's certificate of concurrence filed in Docket No. ER22-2183-000, is hereby accepted, subject to a compliance filing, to be effective August 22, 2022, as discussed in the body of this order.

By the Commission. Commissioner Christie is concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Consolidated Edison Company of New York, Inc.	Docket Nos.	ER22-2152-000
New York Independent System Operator, Inc.		ER22-2154-000
Orange and Rockland Utilities, Inc.		ER22-2157-000
Niagara Mohawk Power Corporation		ER22-2164-000
New York State Electric & Gas Corporation		ER22-2180-000
Rochester Gas and Electric Corporation		ER22-2181-000
Central Hudson Gas & Electric Corporation		ER22-2183-000 (not consolidated)

(Issued August 19, 2022)

CHRISTIE, Commissioner, *concurring*:

1. I concur with approving the cost allocation proposal submitted by the New York Transmission Owners (NYTOs) and supported by the New York Public Service Commission (NYPSC).
2. Two key points underlie my support.
3. First, as I have stated on more than one occasion before, NYISO is a single-state ISO and, as such, it is expected that transmission planning in NYISO would be consistent with the public policies of the State of New York, as well as meeting the requirements of the Federal Power Act.¹

¹ See, e.g., *N.Y. Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,179 (2022) (Christie, Comm’r, concurring at P 2) (“The specific projects at issue in this proceeding are designed to implement the public policies of the State of New York, which are ultimately the responsibility of New York’s elected legislators. . . . NYISO is a single-state ISO that is attempting to act in accordance with the public policies of the state.” (footnote omitted)) (available at <https://www.ferc.gov/news-events/news/commissioner-christies-individual-concurrence-el22-2-regarding-nyto-rofr>); *N.Y. Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,101 (2022) (Christie, Comm’r, concurring at PP 3, 5) (available at

4. Second, there is nothing in the record in this matter to indicate that any of the costs of the transmission projects that will be built to implement New York’s public policies under the terms described in this proposal will be forced on consumers in other states. As I have also said before, if the record showed costs for New York’s policies were being imposed on consumers in states that had not consented to such cost allocation, that would be a much different story and would quite likely result in unjust and unreasonable rates.²

<https://www.ferc.gov/news-events/news/item-e-2-commissioner-mark-c-christie-concurrence-regarding-new-york-independent>); *see also* *N.Y. Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,004 (2022) (Christie, Comm’r, concurring at P 2) (quoting *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,102 (2022) (Christie, Comm’r, concurring at P 3) (available at <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-nyiso-tariff-revisions-re-marginal-capacity>) (further citations omitted)).

² *See, e.g., N.Y. Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,004 (Christie, Comm’r, concurring at P 2) (“Thus, there being no evidence in this record that citizens of other states will be made to pay for New York’s policy decisions through the potential impacts of NYISO’s proposed tariff revisions, I conclude that any costs will be confined to New York. Based on the particular set of facts in this record, I do not find that the NYISO proposal ‘as-applied’ results in rates that are ‘unjust, unreasonable and unduly discriminatory or preferential’ under the FPA.”) (quoting *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,102 (Christie, Comm’r, concurring at P 3) (quoting *N.Y. Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,101 (Christie, Comm’r, concurring at PP 4-6)) (further citations omitted)); *see also* *NSTAR Elec. Co.*, 179 FERC ¶ 61,200 (2022) (Christie, Comm’r, concurring at P 10) (“To reiterate, imposing the costs of a project driven by one state’s public policies onto another state that has not consented to such cost allocation would, in my view, presumably result in unjust and unreasonable rates.”) (available at <https://www.ferc.gov/media/e-13-cr22-1247-000>); *N.Y. Pub. Serv. Comm’n v. N.Y. Indep. Sys. Operator, Inc.*, 174 FERC ¶ 61,110 (2021) (Christie, Comm’r, concurring at P 3) (“I also note that the NYISO is a single-state ISO and I have been able to locate no evidence in the record that the New York policies at issue in today’s order are causing cost-shifting onto consumers in other states. *If consumers in other states were disadvantaged, I may well view this matter differently.*”) (emphasis added) (available at <https://www.ferc.gov/news-events/news/item-e-2-commissioner-mark-c-christie-concurrence-regarding-new-york-state-public>); *cf.* Commissioner Mark C. Christie, Fair RATES Act Statement on PJM Minimum Offer Price Rule (MOPR) Revisions, Docket No. ER21-2582-000 at P 6 (Oct. 19, 2021) (“... I would have proposed that PJM formulate a replacement for the current MOPR based on three broad principles: (1) a state may designate specific or categorical resources as ‘public policy resources’ and such designated resources will be funded through a mechanism *chosen by the state* outside of the capacity market ... and (3) *non-sponsoring state consumers would not be forced to pay for another state’s designated public-policy resources.*”) (footnotes omitted) (emphasis in the original and added) (available at <https://www.ferc.gov/news->

And claiming that such consumers were somehow “beneficiaries” of New York’s public policies, when out-of-state consumers had no say in electing the New York politicians adopting such policies, would not cure the fundamental unjustness and unreasonableness of such cost allocation.

5. To that last point, I want to emphasize that my support of this order is based on the facts and circumstances of this record, specifically, that this involves a single-state ISO, acting with the endorsement of the state PSC which itself describes the proposal as an “effective means of planning and paying for local transmission projects approved by the [NYPSC] to comply with the requirements of New York State’s”³ legislation enacted by that state’s legislature to meet that state’s own public policy goals. While the order states that the allocation of costs of these upgrades on a load-share basis across the state is roughly commensurate with the benefits, this finding is only appropriate under these facts and circumstances. Any suggestion that this order can be read to permit shifting a state’s public policy costs to consumers in other states or to suggest that the consumers in other states benefit from those projects without the express agreement of those other states is incorrect and it is not the order I support here or would have supported here.

For these reasons, I respectfully concur.

Mark C. Christie
Commissioner

[events/news/commissioner-christies-fair-rates-act-statement-pjm-mopr](#)).

³ NYPSC Comments at 3.