

182 FERC ¶ 61,017
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Power Authority

Docket Nos. EL22-15-001

New York Independent System Operator, Inc.
New York Power Authority

ER22-1014-002

ORDER ON COMPLIANCE

(Issued January 19, 2023)

1. On September 8, 2022, as supplemented on November 21, 2022 (Supplement), New York Power Authority (NYPA) submitted a filing (Compliance Filing) to comply with the Commission’s March 11, 2022, order¹ conditionally authorizing recovery of 100% of NYPA’s prudently incurred costs of the Smart Path Connect Project (Project) in the event that the Project is cancelled or abandoned for reasons beyond NYPA’s control (Abandoned Plant Incentive), and the Commission’s July 5, 2022, order² conditionally granting NYPA’s request for a 50-basis point return-on-equity (ROE) adder to reflect the risks and challenges associated with NYPA’s investment in the Project (ROE Risk Adder) and for a cost-containment mechanism with a performance-based rate incentive inclusive of tiered ROE premiums with a cost cap provision (Performance-based ROE Incentive) for the Project. As discussed below, we accept the Compliance Filing.

I. Background

A. NYPA

2. NYPA is a corporate municipal instrumentality and a political subdivision of the State of New York, organized under the laws of the State, operating pursuant to Title 1 of Article 5 of the New York Public Authorities Law. NYPA is a “municipality” within the meaning of section 3(7) of the FPA and is a “state instrumentality” within the meaning of FPA section 201(f).³ NYPA generates, transmits, and sells electric power and energy at

¹ *N. Y. Power Auth.*, 178 FERC ¶ 61,172 (2022) (March 11 Order).

² *N. Y. Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,004 (2022) (July 5 Order).

wholesale and retail throughout New York.⁴ NYPA has no distribution facilities or defined geographical service territory of its own, and since the inception of the New York Independent System Operator, Inc. (NYISO), has recovered its cost of owning and maintaining its backbone transmission facilities primarily through the NYPA Transmission Adjustment Charge, a charge assessed to virtually all loads in NYISO on a load-ratio share basis.⁵

B. The Smart Path Connect Project

3. NYPA states that the Project is the outgrowth of New York State'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 which established certain renewable energy goals (CLCPA Requirements).⁶ NYPA adds that New York State subsequently enacted the Accelerated Renewable Energy Growth and Community Benefit Act (AREGCBA), which called for the New York Public Service Commission (New York Commission) to conduct 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.

4. NYPA 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.⁷ On March 30, 2021, after completing its public solicitation process, NYPA determined that it would develop the Project with Niagara Mohawk Power Corporation (Niagara Mohawk) as a co-participant.⁸ NYPA states that the total capital cost of the Project is estimated at \$1.1 billion; NYPA's share is \$641.3 million. Construction began in October 2022 and the anticipated in-service date for the Project is Fall 2025.⁹

³ 16 U.S.C. §§ 796(7) & 824(f).

⁴ March 11 Order, 178 FERC ¶ 61,172 at P 2.

⁵ July 5 Order, 180 FERC ¶ 61,004 at P 3.

⁶ *Id.* P 4.

⁷ *Id.* P 6.

⁸ *Id.* P 7.

⁹ Supplement at 3, 5.

5. The Project consists of rebuilding approximately 100 linear miles of existing 230 kV transmission lines in northern New York as 345 kV, along with associated substation construction and upgrades, to address existing congestion and curtailment issues by establishing, together with other projects currently under development by NYPA, a continuous 345 kV transmission path from areas of planned renewable generation to New York's load centers.¹⁰

6. NYPA states that the Project consists of two components, an approximately 46-mile northern section known as the "MW-Patnode" component and an approximately 55-mile southern section known as the "Adirondack-Porter" component.¹¹ NYPA will own all of the MW-Patnode facilities and will own part of the Adirondack-Porter facilities, the rest of which will be owned by Niagara Mohawk. The Project includes rebuilding all or parts of the following transmission lines: NYPA's Moses-Willis 1&2, NYPA's Willis-Patnode and NYPA's Willis-Ryan; and Niagara Mohawk's Adirondack to Porter (Chases Lake-Porter Line 11, Adirondack-Porter Line 12, and Adirondack-Chases Lake Line 13), as well as connecting to NYPA's Moses-Adirondack 1&2 transmission facilities. NYPA states that the Project is proposed to be built primarily within existing rights-of-way.

C. NYPA's Petition for Abandoned Plant Incentive and the March 11 Order

7. On November 16, 2021, as supplemented on November 23, 2021, NYPA filed with the Commission a petition for declaratory order (Petition) pursuant to section 219 of the Federal Power Act (FPA)¹² and Order No. 679,¹³ seeking authorization for the Abandoned Plant Incentive. NYPA states that, as of the time the Petition was filed, it still required approvals from the New York Commission under Article VII of the New York Public Service Law.¹⁴

8. On March 11, 2022, the Commission issued an order granting the Petition conditioned upon the New York Commission issuing a Certificate of Environmental Compatibility and Public Need and an Environmental Management and Construction

¹⁰ *Id.* P 8.

¹¹ *Id.* P 9.

¹² 16 U.S.C. § 824s.

¹³ *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).

¹⁴ March 11 Order, 178 FERC ¶ 61,172 at P 22.

Plan (EMCP) for the Project that address reliability and congestion in the manner contemplated by FPA section 219.¹⁵ The Commission directed NYPA to make a compliance filing showing that “the Certificate of Need process adequately considered and found that the Project will ensure reliability or reduce the cost of delivered power by mitigating congestion consistent with Order No. 679-A.”¹⁶

D. NYPA’s Request for a 50-basis point ROE Risk Adder and Performance-based ROE Incentive and the July 5 Order

9. On February 10, 2022, as amended May 6, 2022, New York Independent System Operator, Inc. (NYISO) filed, on behalf of NYPA, a request for: (1) the 50-basis point ROE Risk Adder; (2) the Performance-based ROE Incentive; and (3) in connection with the requested incentive-based rate treatments, proposed tariff revisions to NYPA’s Formula Rate, which is set forth in section 14.2.3.1 of Attachment H of the NYISO Open Access Transmission Tariff (OATT).¹⁷

10. On July 5, 2022, the Commission issued an order granting the requests conditioned upon the New York Commission issuing a Certificate of Environmental Compatibility and Public Need and an EMCP for the Project that address reliability and congestion in the manner contemplated by FPA section 219, as it had in the March 11 Order.¹⁸

II. Compliance Filing

11. In the Compliance Filing, NYPA states that the New York Commission issued the Article VII Order approving the Article VII Application by NYPA and Niagara Mohawk (Applicants) for a Certificate of Environmental Compatibility and Need and adopting the Applicants’ Joint Proposal with Stakeholders on August 11, 2022.¹⁹ NYPA asserts that

¹⁵ *Id.* PP 28, 30. NYPA explained in its Petition that it needed the Certificate of Environmental Compatibility and Public Need and the EMCP to begin construction. Petition at 25.

¹⁶ March 11 Order, 178 FERC ¶ 61,172 at P 28.

¹⁷ NYISO, NYISO Tariffs, [NYISO OATT, § 14.2.3-14.2.3.1 \(Attach. H - NYPA Formula Rate\) \(7.0.0\)](#).

¹⁸ July 5 Order, 180 FERC ¶ 61,004 at P 27.

¹⁹ Compliance Filing at 2 (citing *Order Adopting Joint Proposal*, CASE 21-T-0340 (New York Commission Aug. 11, 2022) (Article VII Order). The Article VII Order, which grants NYPA’s request for a Certificate of Environmental Compatibility and Public Need, is attached to the Compliance Filing as Attachment A.

the EMCP has no bearing on whether the Project reduces congestion and saves consumers money, which is addressed exclusively by the Certificate of Environmental Compatibility and Public Need.²⁰ NYPA proffers that it has therefore met the conditions set forth in the March 11 and July 5 Orders to demonstrate that the New York Commission properly considered whether and determined that the Project will ensure reliability and reduce the costs of delivered power by mitigating congestion.²¹

12. NYPA states that the New York Commission determined that the Project will produce congestion cost savings of approximately \$450 million and that the Project represents an upgrade to the transmission backbone system of New York that will improve reliability throughout the State.²² NYPA states that the Article VII Order recognized that the Project would greatly expand the deliverability of renewable generation from northern New York to load centers and significantly reduce congestion and curtailments affecting that renewable generation, thereby reducing the costs of delivered power for customers, and also provide significant reliability benefits throughout the State.

13. On November 21, 2022, NYPA supplemented its Compliance Filing to provide additional information regarding the New York Commission's issuance of an EMCP. NYPA explains that, because of the expedited nature of the Project, and in consultation with staff from the New York Department of Public Service, the EMCP approval process for NYPA's part of the Project was broken into two segments to enable a timely start to construction of the Project.²³ NYPA states that, on September 16, 2022, the New York Commission approved the EMCP for the first segment, encompassing approximately 27 miles as well as all of the NYPA substation components.²⁴ NYPA states that it anticipates receiving EMCP approval for the second segment of the Project in February 2023.

14. NYPA asserts that it has met the condition that the Article VII process adequately considered and found that the Project will ensure reliability or reduce the cost of delivered power by mitigating congestion, and that the remaining EMCP approval is only relevant to how the Project will be physically constructed, as opposed to whether the Project is needed.²⁵ NYPA adds that the reliability and congestion findings in the Article VII process are final and will not be revisited in the EMCP process.

²⁰ *Id.* at 5.

²¹ *Id.* at 4.

²² *Id.* at 3-4.

²³ Supplement at 3-4.

²⁴ *Id.*

15. NYPA states that the fact that certain portions of the EMCP approvals for the Project remain outstanding should not prevent FERC from ruling that the condition for the incentives in the March 11 Order and July 5 Order have been satisfied.²⁶ NYPA explains that the Project has been designated by the New York Commission as a priority project and the planned in-service date is Fall 2025.²⁷ NYPA states that, although construction has commenced, further delay in confirmation of NYPA's requested incentives would result in financial uncertainty that should be avoided to ensure the Project is constructed without delay so that substantial cost increases are avoided.

III. Notice of Filing and Responsive Pleadings

16. Notice of NYPA's Compliance Filing was published in the *Federal Register*, 87 Fed. Reg. 56,643 (2022) with interventions and protests due on or before September 29, 2022. None was filed.

17. Notice of NYPA's Supplemental Filing was published in the *Federal Register*, 87 Fed. Reg. 73,294 (2022) with interventions and protests due on or before December 1, 2022. None was filed.

IV. Discussion

18. We find that NYPA's Compliance Filing complies with the conditions of the March 11 Order and July 5 Order given the New York Commission's issuance of a Certificate of Environmental Compatibility and Public Need in the Article VII Order that addresses reliability and congestion in the manner contemplated by FPA section 219.²⁸ NYPA has demonstrated that the New York Commission approved the Article VII Application in a robust stakeholder process that adequately considered and found that the Project meets the reliability and congestion criteria established in FPA section 219. Upon review of the EMCP approval included with the Supplemental Filing, we agree with NYPA that the EMCP approvals are related to physical construction and do not address reliability or congestion criteria. Accordingly, we find that the Article VII Order issuing the Certificate of Environmental Compatibility and Public Need provides the necessary findings by the New York Commission to satisfy the conditions of the March 11 Order and the July 5 Order and thus we accept NYPA's Compliance Filing.

²⁵ *Id.* at 4.

²⁶ *Id.*

²⁷ *Id.* at 5.

²⁸ March 11 Order, 178 FERC ¶ 61,172 at P 28; July 5 Order, 180 FERC ¶ 61,004 at P 27.

19. As the Commission stated in the March 11 Order, consistent with Commission policy, the Abandoned Plant Incentive for the Project will be available to NYPA for 100% of prudently-incurred costs expended on or after the date of that order if the Project is abandoned for reasons beyond NYPA's control.²⁹ We will not determine the justness and reasonableness of NYPA's recovery of costs for abandoned electric transmission facilities, if any, until NYPA seeks such recovery in a future FPA section 205³⁰ filing seeking abandoned plant recovery.³¹

20. Based on our acceptance of the Compliance Filing, the ROE Risk Adder and Performance-based ROE Incentive are granted effective July 6, 2022, and the revised tariff records filed in Docket No. ER22-1014-001 are accepted effective July 6, 2022.

²⁹ Order No. 679, 116 FERC ¶ 61,057 at P 163; *see San Diego Gas & Elec. Co. v. FERC*, 913 F.3d 127, 137-38 (D.C. Cir. 2019); *see also*, e.g., *NextEra Energy Transmission Midwest, LLC*, 166 FERC ¶ 61,169, at P 21 (2019); *GridLiance West Transco LLC*, 164 FERC ¶ 61,049, at P 20 (2018); *Pac. Gas & Elec. Co.*, 163 FERC ¶ 61,187, at P 14 (2018).

³⁰ 16 U.S.C. § 824d.

³¹ Order No. 679, 116 FERC ¶ 61,057 at PP 165-166. In the event that NYPA seeks abandoned plant recovery for the time period prior to the effective date of the March 11 Order, NYPA would be eligible to seek recovery of 50% of its prudently-incurred costs, consistent with prior precedent. *See*, e.g., *San Diego Gas & Elec. Co.*, 154 FERC ¶ 61,158, *order on reh'g*, 157 FERC ¶ 61,056 (2016), *aff'd*, *SDG&E*, 913 F.3d 127.

The Commission orders:

NYPA's Compliance Filing is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.