

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF ENERGY MARKET REGULATION

New York Independent System Operator, Inc.

Docket Nos. ER23-1816-000

ER23-1817-000

Issued: June 28, 2023

On May 3, 2023, New York Independent System Operator, Inc. (NYISO) filed, on behalf of New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E),¹ proposed revisions to the NYISO Open Access Transmission Tariff (OATT) to establish NYSEG's² and RG&E's³ formula rate templates and associated formula rate implementation protocols to derive and recover the costs of local transmission upgrades determined by the New York State Public Service Commission (NYPSC) to be necessary to meet New York state climate and renewable energy goals as required by New York state law, the Climate Leadership and Community Protection Act (CLCPA Eligible Projects).

Please be advised that the filings are deficient and that additional information is necessary to process the filings. Please provide the information requested below.

Regulatory Asset for Cost of Removal (COR)

1. Commission regulations require utilities to support a change in depreciation (inclusive of changes to cost of removal and salvage) and cost allocation.⁴ The

¹ NYISO submitted the filings on behalf of NYSEG in Docket No. ER23-1816-000 and RG&E in Docket No. ER23-1817-000 in its role as administrator of the NYISO OATT.

² NYISO, NYISO Tariffs, [NYISO OATT, 6.19.6-6.19.6.2.1 OATT Schedule 19 Attachment 1 - Rate Mecha \(0.0.0\)](#) and [NYISO OATT, 6.19.6.2.2 OATT Schedule 19 - New York State Electric and Ga \(0.0.0\) \(NYSEG Formula Rate Template\)](#).

³ NYISO, NYISO Tariffs, [NYISO OATT, 6.19.7-6.19.7.2.1 OATT Schedule 19 Attachment 2 - Rate Mecha \(0.0.0\)](#) and [NYISO OATT, 6.19.7.2.2 OATT Schedule 19 - Rochester Gas and Electric Cor \(0.0.0\) \(RG&E Formula Rate Template\)](#).

⁴ 18 C.F.R. §§ 35.13(h)(5) (Statement AE- Accumulated depreciation and amortization), 35.13(h)(10) (Statement AJ- Depreciation and amortization expenses)

Commission has rejected proposals to retroactively adjust cost of removal in rates.⁵ NYSEG and RG&E request authorization to establish a regulatory asset in FERC Account 182.3 (Other Regulatory Assets) to include the actual cost of removal of existing transmission facilities necessary to build approved CLCPA Eligible Projects (COR regulatory asset).⁶ NYSEG and RG&E explain that although *estimated* cost of removal was included as part of the depreciation rate recovered from one set of customers via bundled local transmission and distribution rates, each company now proposes to collect the *actual* cost of removal for those same assets from statewide wholesale transmission customers via the COR regulatory asset in the proposed formula rate template.⁷ NYSEG and RG&E state that they have “determined in accord with the Commission’s regulations that COR incurred as a result of a CLCPA Eligible Project(s) are not appropriate for recovery in existing rates” and request that the Commission confirm that the COR regulatory asset line (among other rate treatment proposals) in the formula rate template is “probable for recovery in rates in a different period.”⁸ NYSEG and RG&E also request that the Commission accept their proposals to amortize the COR regulatory assets and recover those costs over a 10-year period.⁹ NYSEG’s and RG&E’s proposals do not identify specific, approved CLCPA Eligible Projects, and the specific, existing transmission facilities that would need to be removed to build the approved CLCPA Eligible Projects.

(describing cost of removal as part of this component in cost of service rates), 35.13(h)(36) (Statement BK-Electric utility department cost of service, total and as allocated) (2022).

⁵ *Florida Power Corp. and Carolina Power & Light Co.*, 136 FERC ¶ 61,033, at P 8 (2011) (citing *Florida Power Corp. and Carolina Power & Light Co.*, 134 ¶ 61,145, at P 19 (2011)); *see also*, *PJM Interconnection, LLC*, 93 FERC ¶ 61,056 (2000) (rejecting proposal to calculate depreciation (and related cost of removal) later than the asset’s in-service date, stating “[i]n *Northern Border Pipeline Company*, 77 FERC P 61,006, at 61,021 (1996), the Commission affirmed ... there is no provision in the regulations for not recognizing depreciation on properties previously devoted to public service.”); Order No. 618, FERC Stats. & Regs. ¶ 31,104, at 31,694-95 (2000).

⁶ Transmittals at 6.

⁷ Transmittals at 3-4.

⁸ Transmittals at 6-7.

⁹ Dumais Testimony, Exh. No. NYSEG-001, at 20-21; Dumais Testimony, Exh. No. RG&E-001, at 20.

- a. The Commission has typically allowed utilities to use regulatory assets to recover costs in two types of cases: (1) to defer recovery of future project costs until future project rates go into effect when the applicant neither provides service at the time of cost-incurrence nor has an effective rate for that service;¹⁰ and (2) to defer recovery of non-routine costs to a different period than the existing rates provide when the applicant already has existing formula rate authority to make cost adjustments.¹¹ Please explain whether NYSEG and RG&E propose to use a regulatory asset to recover the actual cost of removal associated with an existing transmission facility where the company already recovered the estimated cost of removal of the existing transmission facility and, if so, how that is consistent with the Commission's precedent on regulatory asset treatment and the rule against retroactive ratemaking,¹² citing to such precedent.
- b. Please explain, and provide the rationale for your proposal, which historically included via depreciation the estimated cost of removal of the existing retail facilities in retail rates and now proposes to include the actual cost of removal of these same facilities in wholesale rates.
- c. Please explain in detail how the wholesale CLCPA Eligible Projects are the "but for"¹³ cause of the retail facilities' removal and cite to

¹⁰ *Va. Elec. & Power Co.* 125 FERC ¶ 61,391 (2008) (request to establish a regulatory asset for Regional Transmission Organization (RTO) start-up costs); *Idaho Power Co.*, 123 FERC ¶ 61,104 (2008) (proposal to recover RTO formation costs booked to a regulatory asset); *Pioneer Transmission, LLC*, 168 FERC ¶ 61,055 (2019). *Cf. Cross Sound Cable Co., LLC*, 176 FERC ¶ 61,073 (2021), *order on reh'g*, 178 FERC ¶ 61,134 (2022), *order rejecting reh'g*, 179 FERC ¶ 61,064 (2022).

¹¹ *AMP Transmission LLC*, 181 FERC ¶ 61,279 (2022).

¹² *Id.* See also, *PJM Interconnection, LLC*, 93 FERC ¶ 61,056 (2000).

¹³ *Standardization of Generator Interconnection Agreements & Procs.*, Order No. 2003, 104 FERC ¶ 61,103, at PP 683-703 (2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regul. Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008). The Commission's existing "but for" transmission pricing policy is generally that interconnection customers pay the costs of new network upgrades that were not needed "but for" a particular interconnection customer's generating facility *and*

supporting Commission precedent.

- d. Please explain the basis upon which the Commission could accept that the COR regulatory asset is “probable for recovery in rates in a different period” without a demonstration of the specific, approved CLCPA Eligible Project and the specific, existing transmission facilities that would need to be removed to build the approved CLCPA Eligible Project.
 - e. Please explain the basis upon which the Commission could accept the proposal to amortize the COR regulatory asset and recover these costs over 10 years without a demonstration of the specific, approved CLCPA Eligible Project and the specific, existing transmission facilities that would need to be removed to build the approved CLCPA Eligible Project.
2. Please explain how NYSEG’s and RG&E’s proposals will avoid “and”¹⁴ pricing; in particular, provide (1) the actuarial method that NYSEG and RG&E will use to measure the cost of removal already recovered in retail rates (e.g., theoretical reserve or another actuarial method); (2) precedent where the Commission has accepted such method; (3) the method to reconcile the amounts already recovered in retail rates with the amounts to be charged in wholesale rates; (4) Commission precedent for shifting cost of removal from retail rates to wholesale rates; and (5) how the Commission and interested parties will be able to review that reconciliation between retail and wholesale rates.

Formula Rate Template

3. NYSEG and RG&E propose to include depreciation rates in Worksheet 8 - Depreciation Rates of the formula rate templates.¹⁵ NYSEG and RG&E note

that provide no benefits to the other transmission customers on the transmission system.

¹⁴ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at P 21, 602 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Pol’y Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002).

that the depreciation rates were approved by the NYPSC,¹⁶ but neither NYSEG nor RG&E submitted a depreciation study with their filings in support of the proposed depreciation rates for the CLCPA Eligible Projects. Please provide the depreciation studies, including all supporting documentation and workpapers, to support the proposed depreciation rates for the CLCPA Eligible Projects as just and reasonable.

Formula Rate Protocols

4. The Commission has previously¹⁷ required that if there is a delay in the publication date, formula rate protocols should provide an equivalent extension of time for the submission of information requests.¹⁸ The Commission also requires that formula rate protocols provide that if a deadline for interested parties falls on a weekend or holiday recognized by the Commission, that deadline will be moved to the next business day.¹⁹ Please explain whether NYSEG's and RG&E's proposed formula rate protocols comply with this requirement.
5. The Commission has previously required that formula rate protocols should be clear that formal challenges are filed pursuant to the formula rate proposed protocols, rather than Rule 206, and detail specifically the filing requirements that an interested party must satisfy in submitting a formal challenge to the Commission.²⁰ Please explain whether NYSEG's and RG&E's proposed formula rate protocols comply with this requirement.
6. The Commission has previously required that transmission owners make annual informational filings of their formula rate updates with the Commission. The Commission stated that the informational filing must be

¹⁵ Dumais Testimony, Exh. NYSEG-001, at 30; Dumais Testimony, Exh. RGE-001, at 29-30.

¹⁶ *Id.*

¹⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012), *order on investigation*, 143 FERC ¶ 61,149 (2013) (MISO Investigation Order), *order on reh'g*, 146 FERC ¶ 61,209, *order on compliance*, 146 FERC ¶ 61,212 (2014) (MISO Compliance Order).

¹⁸ MISO Compliance Order, 146 FERC ¶ 61,212, at PP 61 (2014).

¹⁹ *Id.*

²⁰ *Id.* at P 112.

made following the information exchange period and must include any corrections or adjustments made during that period.²¹ The Commission also required that the informational filing note any aspects of the formula rate or its inputs that are the subject of an ongoing dispute under the challenge procedures. The Commission found that the formula rate protocols must specifically provide that the informational filing include the information that is reasonably necessary to determine: (1) that input data under the formula rate is properly recorded in any underlying workpapers; (2) that the transmission owner has properly applied the formula rate and the procedures in the formula rate protocols; (3) the accuracy of data and the consistency with the formula rate of the actual revenue requirement and rates (including any true-up adjustment) under review; (4) the extent of accounting changes that affect formula rate inputs; and (5) the reasonableness of projected costs included in the projected capital addition expenditures (for forward-looking formula rates).²² Please explain whether NYSEG's and RG&E's proposed formula rate protocols comply with this requirement.

This letter is issued pursuant to 18 C.F.R. § 375.307 and is interlocutory. This letter is not subject to rehearing under 18 C.F.R. § 385.713. A response to this letter must be filed with the Secretary of the Commission within 30 days of the date of this letter by making a deficiency filing in accordance with the Commission's electronic tariff requirements. For your response, use Type of Filing Code 170 if your company is registered under program code "M" (Electric Market Based Rate Public Utilities) or Type of Filing Code 180 if your company is registered under program code "E" (Electric Traditional Cost of Service and Market Based Rates Public Utilities).²³

In addition, submit an electronic version of your response to Paul Robinson at paul.robinson@ferc.gov. The information requested in this letter order will constitute amendments to your filings and a new filing date will be established.²⁴ Notices will be issued upon receipt of your filing.

²¹ MISO Investigation Order, 143 FERC ¶ 61,149 at P 92.

²² *Id.*

²³ The filing must include at least one tariff record in each docket to restart the statutory timeframe for Commission action even though a tariff revision might not otherwise be needed. *See generally Elec. Tariff Filings*, 130 FERC ¶ 61,047, at PP 3-8 (2010) (explaining that the Commission uses the data elements resulting from the tariff filing process to establish statutory filing and other procedural dates).

²⁴ *See Duke Power Co.*, 57 FERC ¶ 61,215, at 61,713 (1991) ("the Commission will consider any amendment or supplemental filing filed after a utility's initial filing . . . to establish a new filing date for the filing in question").

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Pending receipt of the above information, a filing date will not be assigned to your filings. Failure to respond to this letter order within the time period specified may result in a further order rejecting your filings.

Issued by: Kurt M. Longo, Director, Division of Electric Power Regulation – East