

184 FERC ¶ 61,076
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 Independent System Operator, Inc.
Niagara Mohawk Power Corporation

Docket No. ER23-1271-001

ORDER ACCEPTING AND SUSPENDING TARIFF REVISIONS, SUBJECT TO
REFUND, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued August 4, 2023)

1. On March 8, 2023, as amended on June 5, 2023, pursuant to section 205 of the Federal Power Act¹ (FPA) and part 35 of the Commission's regulations,² the New York Independent System Operator, Inc. (NYISO) submitted on behalf of Niagara Mohawk Power Corporation (Niagara Mohawk) revisions to the NYISO Open Access Transmission Tariff (Tariff). These revisions update existing Rate Schedule 17³ and add a new Rate Schedule 20⁴ to provide for Niagara Mohawk's recovery of costs associated with its capital investments in two portions of Segment A of the AC Transmission Public Policy Transmission Project (Segment A Project). In this order, we accept the proposed Tariff revisions to Rate Schedule 17 to become effective August 5, 2023, as requested, and we accept the proposed Tariff revisions that add a new Rate Schedule 20 and suspend them for a nominal period, to become effective August 5, 2023, as requested, subject to refund, and establish hearing and settlement judge procedures.

¹ 16 U.S.C. § 824d.

² 18 C.F.R. pt. 35 (2022).

³ NYISO, NYISO Tariffs, NYISO OATT, § 6.17 (Schedule 17 - Rate Mechanism for Recovery of Western New York Facilities Charge for Non-Bulk Transmission Facilities) (4.0.0).

⁴ NYISO, NYISO Tariffs, NYISO OATT, § 6.20 (Schedule 20 - Rate Mechanism for the Recovery of Niagara Mohawk Segment A Facilities) (1.0.0).

I. Background

A. Description of the Filing Party

2. Niagara Mohawk is a Commission-regulated public utility organized and operating under the laws of the State of New York.⁵ Niagara Mohawk owns and operates transmission facilities in New York, all of which are subject to the operational control of NYISO. Niagara Mohawk recovers its transmission revenue requirements pursuant to formula rates under the Tariff.

B. NYISO Public Policy Transmission Planning and The Segment A Project

3. The Segment A Project is one portion of a group of transmission projects in New York known as the AC Transmission Projects.⁶ The AC Transmission Projects were selected by the NYISO Board of Directors⁷ pursuant to NYISO's Public Policy Transmission Planning Process set forth in section 31.4 of Attachment Y of the Tariff and consistent with the requirements of Order No. 1000.⁸ NYISO has also added a section 31.8 of Attachment Y of NYISO's Tariff to provide a default cost allocation method for the AC Transmission Projects. This method allocates 75% of AC Transmission Project costs to the load zones that will economically benefit from implementation of the AC Transmission Projects, with the remaining 25% of costs allocated regionally on a load-share ratio basis (the 25/75 Cost Allocation Method).⁹ The Commission accepted NYISO's proposed addition of the 25/75 Cost Allocation Method to the Tariff based on a finding that it complies with the applicable Order No. 1000 cost allocation principles.¹⁰

⁵ Transmittal at 2.

⁶ NYISO, *Approval of AC Transmission Public Policy Transmission Planning Report & Selection of Public Policy Transmission Projects* 3 (Apr. 8, 2019), <https://www.nyiso.com/documents/20142/1390750/Board-Decision-AC-Transmission-2019-04-08.pdf/32323d32-f534-a790-1b03-2cb110033320> (NYISO Approval Decision).

⁷ Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in the Tariff.

⁸ See *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 & 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).

⁹ NYISO, NYISO Tariffs, NYISO OATT, § 31 (Attachment Y), § 31.8 (Appendix E - Public Policy Transmission Need Cost Allocation Methodologies) (4.0.0), § 31.8.2.

4. The Segment A Project is intended to address public policy transmission needs identified by the New York Public Service Commission (New York Commission) by providing at least 350 MW of transfer capability across Central East New York.¹¹ The NYISO Board of Directors selected the New York Power Authority (NYPA) and LS Power Grid New York Corporation I (LS Power) as joint developers of the Segment A Project on April 8, 2019.¹² Subsequently, on May 26, 2020, the Commission accepted LS Power's proposal to recover its costs associated with the Segment A Project according to the 25/75 Cost Allocation Method,¹³ and on June 17, 2021 approved a settlement resolving all other matters related to LS Power's transmission formula rate template and formula rate implementation protocols for LS Power's investment in the Segment A Project facilities.¹⁴

5. Niagara Mohawk states that construction activities for the AC Transmission Projects began in early 2021, and the anticipated in-service date is December 2023.¹⁵

C. Niagara Mohawk's Transmission Service Charge

6. Niagara Mohawk recovers its wholesale transmission service costs primarily through the Transmission Service Charge (TSC), an embedded cost transmission rate. The TSC establishes a wholesale transmission service revenue requirement for all of Niagara Mohawk's wholesale transmission facilities (including new transmission plant additions), system control and dispatch costs, and congestion related costs.¹⁶ Wholesale transmission customers pay the TSC after it is adjusted to reflect certain penalties and

¹⁰ *N. Y. Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,160, at P 27 (2017) (25/75 Cost Allocation Method Order).

¹¹ *See Order Finding Transmission Needs Driven by Public Policy Requirements*, Case 14-E-0454 (New York Commission Dec. 17, 2015); *Order Addressing Public Policy Transmission Need For AC Transmission Upgrades*, Case 14-E-0454 (New York Commission Jan. 24, 2017).

¹² Transmittal at 3 (citing NYISO Approval Decision at 2).

¹³ *N. Y. Indep. Sys. Operator, Inc.*, 171 FERC ¶ 61,159, at P 78 (May 2020 LS Power Segment A Order), *order on reh'g*, 172 FERC 61,226 (2020).

¹⁴ *N. Y. Indep. Sys. Operator, Inc.*, 175 FERC ¶ 61,210, at P 1 (2021) (June 2021 LS Power Segment A Settlement Order).

¹⁵ Transmittal at 3-4.

¹⁶ *See* NYISO, NYISO Tariffs, NYISO OATT, § 14.2-14.2.1 (Attachment 1 to Attachment H) (26.0.0).

certain revenues, including revenues received from transmission project-specific rate schedules such as the proposed Rate Schedule 20.

II. Description of Filings

A. Initial Filing

7. Niagara Mohawk proposes revisions to the Tariff to include a new incremental transmission rate within the TSC rate design, i.e., Rate Schedule 20. Proposed Rate Schedule 20 contains the Niagara Mohawk Segment A Facilities Charge, which produces Niagara Mohawk's revenue requirement for its investments in the Segment A Project Facilities.¹⁷

8. Niagara Mohawk states that portions of the Segment A Project involve modifications to Niagara Mohawk's existing transmission facilities and rights of way.¹⁸ Niagara Mohawk states that it, LS Power, and NYPA discussed these modifications to its facilities and agreed that Niagara Mohawk would make the capital investments in, and recover the costs of, two such portions of the Segment A Project. Niagara Mohawk describes these facilities as: (1) all work required within the existing and expanded fence-line of Niagara Mohawk's Edic Substation; and (2) all work required to remove the existing conductor and install new 345 kV conductor on existing towers owned by Niagara Mohawk for approximately 12 miles in and between Oneida County, New York and Herkimer County, New York (Niagara Mohawk Segment A Facilities).¹⁹

9. Niagara Mohawk expects the modifications to the Niagara Mohawk Segment A Facilities to cost \$38,881,000—\$22,310,000 for the work within the existing and expanded Edic Substation fence-line and \$16,571,000 to replace the existing conductor with a new 345 kV conductor on existing towers in and between Oneida and Herkimer Counties.²⁰

10. Niagara Mohawk states that section 6.20.3.1 of proposed Rate Schedule 20 provides that NYISO will calculate and bill the Niagara Mohawk Segment A Facilities Charge separately for the Niagara Mohawk Segment A Facilities and will collect Niagara Mohawk's corresponding revenue requirement from specified New York load-serving entities (LSEs) (collectively, Responsible LSEs).²¹ According to Niagara Mohawk, Rate

¹⁷ Transmittal at 4.

¹⁸ *Id.* at 3-4.

¹⁹ *Id.* at 4.

²⁰ *Id.* n.12.

Schedule 20 allocates the costs of the Niagara Mohawk Segment A Facilities to the Responsible LSEs in accordance with the 25/75 Cost Allocation Method.

11. Niagara Mohawk calculates the ratio of its transmission system expenses (such as operations and maintenance, administrative and general (A&G), Taxes, Return, Depreciation, general and intangible plant (General Plant), Cash Working Capital and Accumulated Deferred Income Taxes, among other components) in its TSC to its gross (i.e., undepreciated) TSC investment cost. This ratio (the Segment A Carrying Charge) is then applied to Segment A's original investment cost to determine the company's average cost of providing service for those facilities (the Niagara Mohawk Segment A Revenue Requirement). This Segment A Carrying Charge establishes the historical relationship between Niagara Mohawk's embedded transmission systemwide costs in the TSC and Niagara Mohawk's investment in the Segment A Facilities.

12. Niagara Mohawk states that it will determine the Niagara Mohawk Segment A Revenue Requirement each year as part of the Annual Update process set forth in its existing wholesale TSC.²²

13. Niagara Mohawk asserts that, by using this method, Niagara Mohawk will earn the same return on equity for the Niagara Mohawk Segment A Facilities as applies to Niagara Mohawk's wholesale TSC based on a settlement accepted by the Commission in 2015.²³

14. Niagara Mohawk further states that revenues from Rate Schedule 20 will be credited to Niagara Mohawk's TSC revenue requirement in order to avoid double-charging Niagara Mohawk's TSC customers,²⁴ and that the Commission-accepted formula rate protocols that apply to Niagara Mohawk's TSC will also apply to the determination of the Niagara Mohawk Segment A Revenue Requirement.²⁵

15. Niagara Mohawk states that Rate Schedule 20 is closely modeled upon other NYISO rate schedules previously accepted by the Commission, including Rate Schedule 17, which contains the Western New York Facilities Charge for certain upgrades made by

²¹ *Id.* at 4.

²² NYISO, NYISO Tariffs, NYISO OATT, § 14.1 (Attachment H – TSC) (29.0.0), § 14.1.9.4; *see also* Transmittal at 4-5.

²³ Transmittal at n.13 (citing *N. Y. Ass'n of Pub. Power v. Niagara Mohawk Power Corp.*, 151 FERC ¶ 61,121 (2015)).

²⁴ *Id.* at 5.

²⁵ *Id.*

Niagara Mohawk to non-bulk transmission facilities related to public policy transmission projects.²⁶

16. Niagara Mohawk also proposes minor tariff revisions to Rate Schedule 17 to reflect changes made in compliance with the Commission's Order No. 864,²⁷ as well as to clarify certain other provisions.²⁸ Specifically, Niagara Mohawk proposes to update references to Attachment 1 to Attachment H, Schedule 1 of the Tariff to reflect changes already made to that part of the Tariff, to explicitly reference a Tariff section (i.e., section 31.8.4 of Appendix E to Attachment Y) that contains a cost allocation method used in Rate Schedule 17, and to clarify procedures related to true-ups of revenues from "Incremental TCCs" awarded to applicable Niagara Mohawk transmission facilities.²⁹

B. Deficiency Letter and Deficiency Response

17. On May 4, 2023, Commission staff informed NYISO and Niagara Mohawk that their filing was deficient and additional information was necessary to evaluate the submission (Deficiency Letter). The Deficiency Letter asked Niagara Mohawk a number of questions, including about its proposed Segment A Carrying Charge and the source of its authority to allocate costs associated with Niagara Mohawk Segment A Facilities. On June 5, 2023, Niagara Mohawk submitted a response to the Deficiency Letter (Deficiency Response). The Deficiency Response requests an amended effective date of August 5, 2023.³⁰

1. Segment A Carrying Charge

18. First, the Deficiency Letter asked Niagara Mohawk to explain how the Segment A Carrying Charge will not result in ratepayers paying a return on and of (through depreciation) investment in the Niagara Mohawk Segment A Facilities after those facilities are fully depreciated for book purposes.³¹

²⁶ *Id.*; see *N. Y. Indep. Sys. Operator, Inc.*, Docket No. ER17-1629-001 (July 20, 2017) (delegated order) (accepting Rate Schedule 17).

²⁷ *Pub. Util. Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, Order No. 864, 169 FERC ¶ 61,139 (2019), *order on reh'g*, Order No. 864-A, 171 FERC ¶ 61,033 (2020).

²⁸ Transmittal at 5.

²⁹ *Id.* at 5-6.

³⁰ Deficiency Response at 13.

³¹ Deficiency Letter at 2.

19. In response, Niagara Mohawk states the proposed carrying charge method uses average systemwide cost ratemaking. Niagara Mohawk states that because the cost inputs that go into the Segment A Carrying Charge are a ratio of *all of Niagara Mohawk's assets*, the Segment A Carrying Charge represents all vintages of all transmission plant across old and new facilities. Niagara Mohawk states that as retirements, replacements, and upgrades occur on its transmission system, “those activities will extend the life of assets used to provide ongoing service.”³² Niagara Mohawk states that, as a result, its carrying charge method “results in [Segment A] ratepayers paying a return on and of the Segment A Project[,], as calculated over the averaged useful life of the same [types of facilities].”³³

20. Niagara Mohawk states that this method is widely used in formula rates, including in Schedule 17, and is just and reasonable.³⁴ Niagara Mohawk explains that this method is often used because tracking and calculating actual costs of specific low capital assets (like its \$38,881,000 share of the Segment A Project) may be administratively burdensome, thereby increasing costs to ratepayers.³⁵

21. Next, the Deficiency Letter asked Niagara Mohawk to explain why certain costs unrelated to the Segment A facilities are incorporated into the Segment A Carrying Charge (such as asset retirement obligations and underground conduit), how the Segment A Carrying Charge calculation removes these costs not related to the cost of providing service over the Niagara Mohawk Segment A Facilities, and how the inclusion of asset retirement costs in the Segment A Carrying Charge is consistent with the requirements of Order No. 631.³⁶ Niagara Mohawk responds that this carrying charge method is not intended to be plant utility account specific, but rather a ratio of the average of the

³² Deficiency Response at 3.

³³ *Id.* at 2-3.

³⁴ *Id.* at 2, n.6 (citing Transmittal at 4-5). Niagara Mohawk also states that “[a]lthough there are variations in approach, some form of carrying charge appears in numerous Commission-approved formula rates. *See, e.g.*, Attachments N-1, GG, MM, and XX to the OATT of the Midcontinent Independent System Operator, Inc.; Attachments H-1, H-3, H-8, H-9, H-10, H-13, H-14, H-16, and H-17 to the OATT of PJM Interconnection L.L.C.; and Attachment H to the OATT of the Southwest Power Pool.” Deficiency Response at n.6.

³⁵ Deficiency Response at 2-3.

³⁶ Deficiency Letter at 2 (citing *Acct., Fin. Reporting, & Rate Filing Requirements for Asset Ret. Obligations*, Order No. 631, 103 FERC ¶ 61,021, at PP 60-62, 65 (2003), *order on reh'g*, Order No. 631-A, 104 FERC ¶ 61,183 (2003)).

transmission system. Niagara Mohawk states that a more detailed project-specific or asset-specific tracking of costs is generally used for significantly larger projects, where the tracking will not impose inordinate administrative burden.³⁷ However, Niagara Mohawk states that it has reviewed the TSC, and has identified changes that would allow the Segment A Carrying Charge to exclude asset retirement obligations from the TSC calculation, and by extension, from the Segment A Carrying Charge. Niagara Mohawk commits to making a separate FPA section 205 filing prior to its 2024 TSC Annual Update filing to effectuate the changes and facilitate compliant implementation of the Segment A Carrying Charge.

22. The Deficiency Letter also asked Niagara Mohawk how it complies with the Commission's cost of service regulations requiring it to show and explain the derivation of allocation factors and special assignments.³⁸ Niagara Mohawk states that the Segment A Carrying Charge is fully sourced from the TSC, which is sourced fully from Niagara Mohawk's FERC Form No. 1, and that Niagara Mohawk will provide support for costs that are not sourced from its FERC Form No. 1.³⁹

23. In addition, the Deficiency Letter asked Niagara Mohawk to provide a cost of service related to Niagara Mohawk's portion of the Segment A project.⁴⁰ Niagara Mohawk provides such an estimated cost of service in Worksheet 18 of the TSC using 2022 data,⁴¹ which calculates the Niagara Mohawk Segment A Revenue Requirement as \$5,349,753 using the carrying charge method. Niagara Mohawk also shows this Segment A revenue requirement as a credit in Schedule 10 of the TSC. Niagara Mohawk reiterates that this revenue credit is necessary to assure there is no double recovery and is set forth in section 6.20.3.7 of proposed Rate Schedule 20.

24. The Deficiency Letter next asked Niagara Mohawk to explain how it is just and reasonable to use a labor allocator for the TSC rate but a plant allocator for the Segment A Carrying Charge, which will be credited to offset the TSC rate, and to provide all studies and analyses performed to support the proposed allocations for A&G expenses and General Plant in the Segment A Carrying Charge.⁴² Niagara Mohawk answers that a use of a labor ratio allocator in the Segment A Carrying Charge is unreasonable because

³⁷ Deficiency Response at 3-4.

³⁸ Deficiency Letter at 2-3.

³⁹ Deficiency Response at 4-5.

⁴⁰ Deficiency Letter at 2-3.

⁴¹ Deficiency Response at 5-6.

⁴² Deficiency Letter at 3-4.

of the administrative burden.⁴³ Niagara Mohawk explains that it does not track salaries on a project basis and doing so would require modification to its systems and processes that would likely increase the administrative burden of shared services employees and result in additional costs that would ultimately be borne by customers. Further, Niagara Mohawk states that General Plant in the TSC is already functionalized based on a labor ratio, while functionalization of A&G expense in the TSC uses a combination of plant and labor ratios. Niagara Mohawk states that since the A&G and General Plant allocations in Rate Schedule 20 are derivatives of the A&G and General Plant under the TSC, Niagara Mohawk proposes to allocate these components of the Segment A Carrying Charge based on the ratio of Segment A facilities to Niagara Mohawk's total gross transmission plant in service.

2. Niagara Mohawk's Use of the 25/75 Cost Allocation Method

25. In addition, the Deficiency Letter asked Niagara Mohawk to explain how the use of the 25/75 Cost Allocation Method in Rate Schedule 20 is consistent with the Tariff.⁴⁴ Niagara Mohawk responds by asserting that Commission precedent and certain foundational agreements underlying the formation of NYISO and section 31.6.4 of Attachment Y to the NYISO Tariff confirm that Niagara Mohawk and other New York transmission owners (NYTOs) retain all rights to upgrade their existing transmission facilities and to own and earn a return on those facilities and upgrades.⁴⁵ Niagara Mohawk continues that when the NYISO Board of Directors selected NYPA and LS Power as joint developers of the Segment A Project in April 2019, the NYISO Tariff lacked procedures for how those rights might be asserted. Niagara Mohawk explains that against this backdrop, LS Power, NYPA, and Niagara Mohawk signed an agreement that provided Niagara Mohawk the right to make the capital investment in, and recover the

⁴³ Deficiency Response at 6-7.

⁴⁴ Deficiency Letter at 4-5.

⁴⁵ Deficiency Response at 9 (citing *N. Y. Indep. Sys. Operator, Inc.*, 175 FERC ¶ 61,038, at PP 33-34 (2021) (April 2021 Declaratory Order); NYISO, NYISO Tariffs, NYISO OATT, § 31.6 (Attachment Y - Other Provisions) (17.0.0), § 31.6.4 ("Nothing in this Attachment Y affects the right of a Transmission Owner to: (1) build, own, and recover the costs for upgrades to the facilities it owns, provided that nothing in Attachment Y affects a Transmission Owner's right to recover the costs of upgrades to its facilities except if the upgrade has been selected in the regional transmission plan for purposes of cost allocation, in which case the regional cost allocation method set forth in Attachment Y of the ISO OATT applies For purposes of Section 31.6.4, the term 'upgrade' shall refer to an improvement to, addition to, or replacement of a part of, an existing transmission facility and shall not refer to an entirely new transmission facility.")).

costs of, the Niagara Mohawk Segment A Facilities in order to resolve disputes and avoid potential litigation (Segment A Agreement).⁴⁶ Niagara Mohawk submitted the Segment A Agreement as an attachment to its Deficiency Response, explaining that while it did not believe it needed to file the Segment A Agreement with the Commission, “to the extent that the Commission believes that the Segment A Agreement should be filed for Commission review as an [Niagara Mohawk] agreement subject to [FPA s]ection 205 filing requirements, [Niagara Mohawk] commits to do so in a future filing.”⁴⁷

III. Notice of Filing and Responsive Pleadings

26. Notice of the initial filing was published in the *Federal Register*, 88 Fed. Reg. 15,707 (Mar. 14, 2023), with interventions and protests due on or before March 29, 2023. Timely motions to intervene were filed by Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.

27. Notice of the Deficiency Response was published in the *Federal Register*, 88 Fed. Reg. 37,873 (June 9, 2023), with interventions and protests due on or before June 26, 2023. None was filed.

IV. Discussion

A. Procedural Matters

28. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2022), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

29. We accept Niagara Mohawk’s proposed revisions to Rate Schedule 17 as just and reasonable and not unduly discriminatory or preferential, to be effective August 5, 2023, as requested. In addition, we accept Rate Schedule 20’s proposed allocation of the costs of the Niagara Mohawk Segment A Facilities because the proposed tariff sheets reflect the *ex ante* cost allocation method that the Commission approved for the AC Transmission Projects (inclusive of Segment A).⁴⁸ We also accept Niagara Mohawk’s commitment to file the Segment A Agreement.⁴⁹

⁴⁶ *Id.* See also Deficiency Response, attach. B.

⁴⁷ Deficiency Response at n.19.

⁴⁸ 25/75 Cost Allocation Method Order, 161 FERC ¶ 61,160 at P 27 (accepting the 25/75 Cost Allocation Method for the AC Transmission Projects as consistent with the applicable Order No. 1000 cost allocation principles).

30. We accept Niagara Mohawk's proposal to allocate the Niagara Mohawk Segment A Facilities costs "in accordance with" the 25/75 Cost Allocation Method.⁵⁰ We find this allocation to be just and reasonable because it allocates costs associated with Niagara Mohawk's components of the Segment A Project consistent with the cost allocation of the AC Transmission Projects, which were selected under NYISO's Order No. 1000 Public Policy Transmission Planning Process.⁵¹ In accepting this cost allocation, we note that the Segment A Project is a portion of a larger transmission project that was selected by NYISO through an Order No. 1000 regional transmission planning process⁵² for which the Commission has approved the recovery of all project costs using the 25/75 Cost Allocation Method. Certain portions of that project involve modifications to transmission facilities and rights of way owned and operated by Niagara Mohawk,⁵³ and the Commission has affirmed that NYISO foundational agreements and Tariff provisions provide for NYTOs, such as Niagara Mohawk, to retain all rights to make investments in, and recover the costs of, upgrades to their existing transmission facilities.⁵⁴ Despite the existence of those rights, the Tariff lacked procedures to exercise them in April 2019 when the NYISO Board of Directors selected NYPA and LS Power as joint developers of the Segment A Project. Nevertheless, against this backdrop, LS Power, NYPA, and Niagara Mohawk, by executing the Segment A Agreement, recognized that Niagara Mohawk would make the investments in and recover the costs of the Niagara Mohawk

⁴⁹ Deficiency Response at n.19.

⁵⁰ Rate Schedule 20, § 6.20.3.1.

⁵¹ 25/75 Cost Allocation Method Order, 161 FERC ¶ 61,160 at P 27 ("We find that the 25/75 Cost Allocation Method complies with the applicable Order No. 1000 cost allocation principles."). *See also* May 2020 LS Power Segment A Order, 171 FERC ¶ 61,159 at P 78 (rejecting protester's opposition to LS Power's proposed use of the Segment A cost allocation because "[LS Power's] proposed tariff sheets are based on the *ex ante* cost allocation methodology that the Commission approved

in NYISO's Order No. 1000 compliance filings" and are therefore "consistent with the NYISO [Tariff]").

⁵² NYISO Approval Decision at 2.

⁵³ Transmittal at 3-4.

⁵⁴ April 2021 Declaratory Order, 175 FERC ¶ 61,038 at P 34 ("[W]e find that NYTOs possess a federal ROFR for upgrades to their own existing transmission facilities and local transmission facilities, including upgrades that are part of another [d]eveloper's proposed transmission project that NYISO selects in its regional transmission plan for purposes of cost allocation.").

Segment A Facilities.⁵⁵ Through the Rate Schedule 20 proposed in the instant filing, Niagara Mohawk proposes to recover costs for these components of the Segment A Project in accordance with the cost allocation method designated for the Segment A Project under the Tariff.

31. Our preliminary analysis of the Segment A Carrying Charge indicates that the remainder of Niagara Mohawk's proposed Rate Schedule 20 has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that Niagara Mohawk's filing raises issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing procedures ordered below. First, Niagara Mohawk's Segment A Carrying Charge includes asset retirement obligations. Niagara Mohawk is correct that the Commission has permitted utilities to use a carrying

charge method in the past for certain types of costs.⁵⁶ However, such a charge should reflect the cost of providing service over the facility in service, and should not include costs that are not traditionally permissible in rates.⁵⁷ Although Niagara Mohawk commits to making a future filing removing asset retirement obligations,⁵⁸ it is not clear that this approach is appropriate. Second, Niagara Mohawk explains that its Segment A Carrying Charge includes depreciation on the gross plant in service based on the systemwide embedded cost, a method Niagara Mohawk asserts that other transmission owners use. As Niagara Mohawk acknowledges, Segment A will never fully depreciate for rate purposes because Niagara Mohawk's carrying charge is a ratio of its average total transmission system assets, which are continually upgraded and augmented.⁵⁹ Niagara Mohawk has not shown how depreciating its portion of Segment A using this method, when other portions of Segment A will be depreciated differently, will ensure that depreciation will be allocated over the service life of Segment A in a systematic and rational manner.⁶⁰ Third, Niagara Mohawk proposes to populate the numerator of its

⁵⁵ See Deficiency Response at 9.

⁵⁶ See generally *Promoting Wholesale Competition Through Open-Access Non-discriminatory Transmission Servs. by Pub. Util. Recovery of Stranded Costs by Pub. Util. & Transmitting Util., Notice of Fixed Charge Rate Methodology*, 72 FERC ¶ 61,047 (1995). See also *Midwest ISO Transmission Owners*, 133 FERC ¶ 61,196 (2010).

⁵⁷ Order No. 631, 103 FERC ¶ 61,021 at PP 60-62.

⁵⁸ Deficiency Response at 4.

⁵⁹ Commission jurisdictional facilities can be fully depreciated for rate purposes while they remain in service.

carrying charge with the TSC revenue requirement before the TSC revenue requirement is adjusted to reflect revenues Niagara Mohawk receives from other sources such as penalties from congestion rent settlements. Without subtracting these revenues, it is not clear whether revenues that are not part of the embedded fixed cost will inflate the Segment A revenue requirement. Accordingly, we accept Niagara Mohawk's proposed Rate Schedule 20 for filing, suspend it for a nominal period, to become effective August 5, 2023, subject to refund, and establish hearing and settlement judge procedures to address these issues.

32. While we are setting these matters for a trial-type evidentiary hearing,⁶¹ we encourage efforts to reach settlement before hearing procedures commence. To aid settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁶² If participants desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.⁶³ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide additional time to continue settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

⁶⁰ LS Power and NYPA calculate depreciation on their portions of Segment A facilities, and use labor ratios to calculate their revenue requirements for their portions of Segment A. See NYISO, NYISO Tariffs, NYISO OATT, § 6.10.7-6.10.7.2 (Schedule 10 – Attachment 1 – Rate Mechanism for LS Power Grid New York Corporation I)(5.0.0) § 6.10.7.2 (LSPG-NY Revenue Requirement); NYISO, NYISO Tariffs, NYISO OATT, § 6.10.8 (Schedule 10 – Attachment 2 NYPA RTFC AC Projects) (0.0.0). See *Fla. Power Corp.*, 136 FERC ¶ 61,033, at P 8 (explaining that “the cost of property used in utility operations should be allocated in a ‘systematic and rational manner’ to periods during which the property is used in utility operations, i.e., over the property’s remaining estimated useful service life.”), *order on reh’g*, 137 FERC ¶ 61,150 (2011).

⁶¹ Trial Staff is a participant in the hearing and settlement judge procedures. See 18 C.F.R. § 385.102(b), (c) (2022).

⁶² 18 C.F.R. § 385.603 (2022).

⁶³ If participants decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience. (<https://www.ferc.gov/available-settlement-judges>).

The Commission orders:

(A) Niagara Mohawk's proposed revisions to Rate Schedule 17 are hereby accepted, effective August 5, 2023, as discussed in the body of this order.

(B) Niagara Mohawk's proposed Rate Schedule 20 is hereby accepted, suspended for a nominal period, to become effective August 5, 2023, subject to refund, and subject to the outcome of hearing and settlement judge procedures, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Niagara Mohawk's proposed Rate Schedule 20, as discussed in the body of this order. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

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

(E) Within 60 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide participants with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of participants' progress toward settlement.

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

is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.