

185 FERC ¶ 61,164
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York State Electric & Gas Corporation	Docket Nos. ER23-1816-001
New York Independent System Operator, Inc.	ER23-1816-002

Rochester Gas and Electric Corporation	ER23-1817-001
New York Independent System Operator, Inc.	ER23-1817-002

ORDER ON TARIFF FILINGS, AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued December 4, 2023)

1. On May 3, 2023, as amended on July 26, 2023 and October 5, 2023, pursuant to section 205 of the Federal Power Act (FPA)¹ and section 35.13 of the Commission's regulations,² New York Independent System Operator, Inc. (NYISO) submitted, on behalf of New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E) (collectively, Applicants),³ revisions to the NYISO Open Access Transmission Tariff (OATT)⁴ to add Applicants' proposed formula rate templates (Formula Rate Templates), associated formula rate protocols (Formula Rate Protocols), and conforming OATT amendments addressing derivation and recovery of the costs for eligible transmission projects identified and designated under NYSEG's Attachment 1 to Rate Schedule 19⁵ and RGE's Attachment 2 to Rate Schedule 19⁶ (collectively, Tariff

¹ 16 U.S.C. § 824d.

² 18 C.F.R. § 35.13 (2022).

³ NYISO states that it submits the filings on NYSEG's and RG&E's behalf solely in its role as the tariff administrator of the NYISO OATT. Tariff Filings, Transmittal Letters at 1 n.4.

⁴ Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in the NYISO OATT.

Filings). The Tariff Filings further request for each company a ceiling base return on equity (ROE) for transmission facilities under Rate Schedule 19.

2. In this order, we accept NYSEG's proposed Attachment 1 to Rate Schedule 19 and RG&E's proposed Attachment 2 to Rate Schedule 19, which include the Formula Rate Protocols, effective July 3, 2023, as requested. We accept the Formula Rate Templates, subject to further compliance, and suspend them for a nominal period, effective July 3, 2023, as requested, subject to refund and to the outcome of hearing and settlement judge procedures on the proposed ceiling base ROEs.

I. Background

3. The NYISO OATT contains several rate schedules allowing the New York transmission owners and transmission developers to recover project-specific incremental costs of new transmission investments. As explained further below, the rate schedule at issue in this proceeding is Rate Schedule 19, which allows recovery of the costs of new transmission facilities that have historically been bundled as local transmission and distribution under state-jurisdictional rates.

4. Applicants explain that, in a prior order, the Commission accepted Rate Schedule 19 to the NYISO OATT along with the Cost Sharing and Recovery Agreement (CSRA) among the New York transmission owners.⁷ Applicants state that together these tariff records provide a cost recovery and allocation framework for certain local transmission

⁵ New York Independent System Operator, Inc., NYISO Tariffs, NYISO OATT, § 6.19.6.2.2 (Schedule 19 - New York State Electric and Gas) (1.0.0); *id.* § 6.19.6-6.19.6.2.1 (Schedule 19 Attachment 1 - Rate Mechanism for the Recovery of CLCPA Eligible Projects for New York State Electric and Gas Corporation) (2.0.0).

⁶ New York Independent System Operator, Inc., NYISO Tariffs, NYISO OATT, § 6.19.7.2.2 (Schedule 19 -Rochester Gas and Electric Corporation) (1.0.0); *id.* § 6.19.7-6.19.7.2.1 (Schedule 19 Attachment 2 - Rate Mechanism for the Recovery of CLCPA Eligible Projects for New York State Electric and Gas Corporation) (2.0.0).

⁷ *Consolidated Edison Co. of N.Y., Inc.*, 180 FERC ¶ 61,106 (2022) (CSRA Order). Applicants state that the CSRA is a voluntary participant funding agreement among the six New York State-regulated public utility transmission owners (Consolidated Edison Company of New York, Inc. (Consolidated Edison), Niagara Mohawk Power Corp., Orange and Rockland Utilities, Inc., NYSEG, RG&E, and Central Hudson Gas & Electric Corp.), Long Island Power Authority (LIPA), New York Power Authority and, for limited purposes, the New York Public Service Commission (New York Commission) to share the costs of Approved Local Transmission Upgrades. Tariff Filings, Transmittal Letters at 3.

upgrades that are necessary to meet New York State climate and renewable energy goals as required by New York State law⁸ (Approved Local Transmission Upgrades).⁹

5. Applicants state that the costs of these Approved Local Transmission Upgrades have historically been borne primarily through state-administered, bundled, local transmission and distribution rates that reflect both the New York Commission-approved ROE and associated capital structure.¹⁰ Applicants state that the CSRA provides that the costs of the Approved Local Transmission Upgrades shall instead be shared statewide and recovered on a volumetric load-ratio share basis from Load Serving Entities. Applicants state that in order to implement this statewide cost allocation for the upgrades consistent with any New York Commission order approving the upgrades, the six New York State-regulated public utility transmission owners each must amend or establish an applicable formula rate under the NYISO OATT, which is included in the Tariff Filings.

II. Filings

6. Applicants state that, although they each currently have a stated rate for their existing transmission facilities in Attachment H of the NYISO OATT (Transmission Service Charge),¹¹ they do not propose to use this to recover the cost of certain new transmission investments.¹² Instead, Applicants propose to establish incremental formula

⁸ The State laws are the Climate Leadership and Community Protection Act (CLCPA) and the Accelerated Renewable Energy Growth and Community Benefit Act (AREGCBA). *See* 2019 N.Y. Sess. Laws, ch. 106; 2020 N.Y. Sess. Laws, ch. 58, Part JJJ.

⁹ Tariff Filings, Transmittal Letters at 3-4. Section 7(e) of the 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. CSRA Order, 180 FERC ¶ 61,106 at P 3 n.7 (citing § 7(e) of the AREGCBA). An “Approved Local Transmission Upgrade” refers to those local transmission upgrades that have been approved by the New York Commission subsequent to the New York Commission’s determination that the upgrade facilitates achievement of CLCPA renewable energy targets. *Id.*

¹⁰ Tariff Filings, Transmittal Letters at 3.

¹¹ Tariff Filings, attach. B, Ex. No. NYSEG-001 and Ex. No. RG&E-001 (Direct Testimony of Dr. Paul A. Dumais) at 6, n. 2 (Dumais Test.).

¹² Tariff Filings, Dumais Test. at 5-6, 12-13.

rates to calculate the revenue requirements of Approved Local Transmission Upgrades under Rate Schedule 19.¹³ Applicants state that the proposed formula rates are comparable to other Commission-accepted rates under Attachment H of the NYISO OATT and have the same structure as other Commission-approved NYISO OATT Rate Schedules.¹⁴ Applicants request an effective date of July 3, 2023 for the Tariff Filings.

A. Rate Schedule 19

7. Applicants explain that Rate Schedule 19 calculates and allocates to New York Load Serving Entities on a volumetric load-ratio share basis a new CLCPA Facilities Charge that is a cost of service charge to be derived from formula rates filed by Applicants and each of the other New York transmission owners.¹⁵ Applicants emphasize that Rate Schedule 19 does not by itself create or produce transmission use charges; rather, such charges and implementation of Rate Schedule 19 depend on acceptance of each New York transmission owner's formula rate and protocols.¹⁶ Applicants further note that the Commission's acceptance of Rate Schedule 19 did not include any acceptance or pre-approval of costs or revenue requirements for any Approved Local Transmission Upgrade.¹⁷

8. Applicants state that, for Approved Local Transmission Upgrades under Rate Schedule 19, the CSRA Order provides that the Commission will determine the base ROE for each of the New York transmission owners, which will be the ROE "ceiling," with the applicable ROE being the lesser of the Commission-approved ceiling or the ROE determined by the New York Commission.¹⁸ Applicants state that in the CSRA Order, the Commission found that the Approved Local Transmission Upgrades benefit customers throughout New York State because they facilitate compliance with New York State climate and renewable energy goals and, further, that the Commission found that the proposed ceiling ROE structure is just and reasonable.¹⁹

¹³ Tariff Filings, Transmittal Letters at 1-2.

¹⁴ *Id.* at 3-4.

¹⁵ *Id.* at 3. Applicants explain that there is a specific CLCPA Facilities Charge for LIPA.

¹⁶ *Id.*

¹⁷ *Id.* (citing CSRA Order, 180 FERC ¶ 61,106 at P 47).

¹⁸ *Id.* at 4 (citing CSRA Order, 180 FERC ¶ 61,106 at P 51).

¹⁹ *Id.* at 8 (citing CSRA Order, 180 FERC ¶ 61,106 at PP 50-51).

III. Notices and Responsive Pleading

9. Notice of Applicants' filings in Docket Nos. ER23-1816-000 and ER23-1817-000 was published in the *Federal Register*, 88 Fed. Reg. 29,899 (May 9, 2023), with interventions and protests due on or before May 24, 2023. The New York Commission filed a notice of intervention and comments in both dockets.

10. On June 28, 2023, Commission staff issued a letter informing Applicants that their filings were deficient and requested additional information (June Deficiency Letter). On July 26, 2023, Applicants submitted a response to the June Deficiency Letter in Docket Nos. ER23-1816-001 and ER23-1817-001 (July Deficiency Response).

11. Notice of Applicants' July Deficiency Response was published in the *Federal Register*, 88 Fed. Reg. 50,145 (Aug. 1, 2023), with interventions and protests due on or before August 16, 2023. Municipal Electric Utilities Association of New York and New York Association of Public Power (NYAPP) each filed timely motions to intervene in Docket Nos. ER23-1816 and ER23-1817.

12. On September 21, 2023, Commission staff issued a second letter informing Applicants that their filings were deficient and requested additional information (September Deficiency Letter). On October 5, 2023, Applicants submitted a response to the September Deficiency Letter in Docket Nos. ER23-1816-002 and ER23-1817-002 (October Deficiency Response).

13. Notice of Applicants' October Deficiency Response was published in the *Federal Register*, 88 Fed. Reg. 70,966 (Oct. 13, 2023), with interventions and protests due on or before October 26, 2023. NYAPP filed a timely protest in Docket Nos. ER23-1816 and ER23-1817.

14. On November 13, 2023, Applicants filed an answer.

IV. Discussion

A. Procedural Matters

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

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2022), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Applicants' answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

17. As discussed below, we accept NYSEG's proposed Attachment 1 to Rate Schedule 19 and RG&E's proposed Attachment 2 to Rate Schedule 19, which include the Formula Rate Protocols, effective July 3, 2023, as requested. We accept the Formula Rate Templates, subject to further compliance, and suspend them for a nominal period, effective July 3, 2023, as requested, subject to refund and to the outcome of hearing and settlement judge procedures on the proposed ceiling base ROEs.

1. Formula Rate Protocols

18. The Commission established its policy regarding formula rate protocols in a series of cases involving Midcontinent Independent System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff.²⁰ The resulting MISO Protocol Orders have served as the benchmark for proceedings involving the justness and reasonableness of formula rate protocols.²¹

a. Filing

19. Applicants state that Rate Schedule 19 calculates and allocates to New York Load Serving Entities on a volumetric load-ratio share basis a new CLCPA Facilities Charge (CFC Charge).²² Section 6.19.6.1 of Attachment 1 to Rate Schedule 19 establishes the CFC Charge for NYSEG and § 6.19.7.1 of Attachment 2 to Rate Schedule 19 establishes the CFC Charge for RG&E. Attachments 1 and 2 provide that Applicants' revenue requirement shall be determined in accordance with the Formula Rate Protocols set forth in Attachments 1 and 2, and the respective Formula Rate Templates. Applicants state that the proposed Formula Rate Protocols prescribe the proposed annual update process, which establishes the legal framework for development and review of the formula rates.²³

²⁰ *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), *order on reh'g*, 150 FERC ¶ 61,024, *order on compliance*, 150 FERC ¶ 61,025 (2015) (collectively, MISO Protocol Orders).

²¹ *See, e.g., Black Hills Power, Inc.*, 150 FERC ¶ 61,198 (2015); *UNS Elec., Inc.*, 153 FERC ¶ 61,132 (2015); *The Empire Dist. Elec. Co.*, 153 FERC ¶ 61,127 (2015); *Kan. City Power & Light Co.*, 153 FERC ¶ 61,150 (2015); *Louisville Gas & Elec. Co.*, 153 FERC ¶ 61,126 (2015); *Westar Energy, Inc.*, 153 FERC ¶ 61,143 (2015); *Ala. Power Co.*, 182 FERC ¶ 61,015 (2023).

²² Tariff Filings, Transmittal Letters at 3.

²³ *Id.* at 8.

Applicants explain that the proposed Formula Rate Protocols provide that each annual update will be publicly posted on NYISO's website not later than October 15 and that, as part of the annual update process, Applicants will determine a true-up adjustment by comparing the prior calendar year's actual Annual Transmission Revenue Requirement (ATRR)—using data from its FERC Form No. 1—against transmission revenues received under Rate Schedule 19 during the preceding January 1 through December 21 rate year (Rate Year).

20. Applicants state that the proposed Formula Rate Protocols provide for review procedures that are consistent with the Commission's directives and determinations regarding, among other aspects: (i) scope of participation in the information exchange process, including specification that "interested party" is defined broadly to include any transmission customer under the NYISO OATT, the New York Commission, other New York State government entities that may have an interest in transmission rates, and any party that has standing in a NYSEG or RG&E formula rate proceeding under the FPA; (ii) the transparency of the information exchange; and (iii) the ability of interested parties to challenge Applicants' implementation of the formula rates as a result of the information exchange.²⁴ Applicants state that the Formula Rate Protocols are also consistent with the Commission's guidance on timing, sequence, transparency, and other specifications in proceedings concerning the formula rate protocols of transmission-owning members of MISO, and consider recent formula rate protocol show cause orders issued to various transmission owners by the Commission.

b. June Deficiency Letter and July Deficiency Response

21. In the June Deficiency Letter, Commission staff asked Applicants to explain how the proposed Formula Rate Protocols comply with Commission requirements regarding extensions of time in the event of a delay in the publication date of the annual update.²⁵ Applicants respond that they have amended their Formula Rate Protocols to extend the information request deadline for any delays in the publication date, including if the publication date falls on a holiday or weekend.²⁶ In addition, Applicants state that they each have amended their Formula Rate Protocols to move the deadline for information requests and the end of the review period to the next business day, in the event these dates fall on a weekend or holiday. Applicants add that they have amended their Formula Rate Protocols to make a comparable extension for the due date for formal challenges.

²⁴ *Id.* at 9; *see, e.g., Empire Dist. Elec. Co.*, 150 FERC ¶ 61,200 (2015).

²⁵ June Deficiency Letter at 5 (citing MISO Compliance Order, 146 FERC ¶ 61,212 at P 61).

²⁶ July Deficiency Response, attach. 1 at 6.

22. Also, Commission staff asked Applicants to explain how the proposed Formula Rate Protocols comply with Commission requirements that formal challenges are filed pursuant to the Formula Rate Protocols, rather than Rule 206, and to detail specifically the filing requirements that an interested party must satisfy in submitting a formal challenge to the Commission.²⁷ Applicants responded that they have amended their Formula Rate Protocols to state that formal challenges shall be filed pursuant to the Formula Rate Protocols, not under section 206 of the FPA.²⁸ Applicants state that section 8c of the Formula Rate Protocols provides the filing requirements and information that an interested party must satisfy in submitting a formal challenge to the Commission.

23. In addition, Commission staff asked Applicants to explain whether the proposed Formula Rate Protocols comply with Commission requirements that the annual informational filing must be made following the information exchange period, must include any corrections or adjustments made during that period, and must note any aspects of the formula rate or its inputs that are the subject of an ongoing dispute under the challenge procedures.²⁹ Commission staff also asked Applicants to explain whether the Formula Rate Protocols comply with Commission requirements that the annual informational filing must include 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).³⁰ Applicants responded that section 7 of the proposed Formula Rate Protocols state that Applicants must submit the required annual informational filing to the Commission by February 1st, at the conclusion of the Review Period, and that such filing must describe any changes made as a result of the annual review procedures, and all aspects of the formula rate or its inputs that are the subject of an ongoing dispute under informal or formal challenge procedures.³¹ Applicants add that section 7 further states that the annual informational filing must

²⁷ June Deficiency Letter at 5 (citing MISO Compliance Order, 146 FERC ¶ 61,212 at P 112).

²⁸ July Deficiency Response, attach. 1 at 6-7.

²⁹ June Deficiency Letter at 6 (citing MISO Investigation Order, 143 FERC ¶ 61,149 at P 92).

³⁰ *Id.*

³¹ July Deficiency Response, attach. 1 at 7.

include the information required under section 3 of the Formula Rate Protocols, which contains an exhaustive list of requirements that covers the five categories of information identified in the question.

c. September Deficiency Letter and October Deficiency Response

24. In the September Deficiency Letter, Commission staff asked Applicants to explain how the proposed Formula Rate Protocols comply with Commission requirements to include certain provisions for the disclosure of information,³² and noted that the Formula Rate Protocols require Applicants to disclose this information in their Actual Annual Revenue Requirements (ATTR)³³ and Annual True Up Adjustments³⁴ posting, but do not require the disclosure of the information in the Annual Update posting for “Projected ATTRs.”³⁵ Applicants responded that they have amended the Formula Rate Protocols to

³² For example, the Commission has found that formula rate protocols must require transmission owners to disclose any change in accounting during the rate period that affects inputs to the formula rate or the resulting charges billed under the formula rate. Specifically, a change in accounting may involve: (1) the initial implementation of an accounting standard or policy; (2) the initial implementation of accounting practices for unusual or unconventional items where the Commission has not provided specific accounting direction; (3) corrections of errors and prior period adjustments; (4) the implementation of new estimation methods or policies that change prior estimates; and (5) changes to income tax elections. The formula rate protocols must also provide for identification of items included in the formula rate at an amount other than on a historical cost basis (e.g., fair value adjustments). September Deficiency Letter at 3 (citing MISO Investigation Order, 143 FERC ¶ 61,149 at P 87).

³³ The Formula Rate Protocols, section 1.d., define Actual ATTRs as “the actual annual revenue requirement of [the utility’s] CLCPA Eligible Projects for a Rate Year calculated in accordance with the Formula Rate and posted on the ISO website no later than June 15 following the end of such Rate Year.”

³⁴ The Formula Rate Protocols, section 1.e., define Annual True-Up Adjustments as “the difference between the revenues collected for that Rate Year under the Formula Rate based upon the Projected ATRR (not including the True-up Adjustment or Corrections) and the Actual ATRR for the same Rate Year. The Annual True-up Adjustment is included in the Annual Update for the next Rate Year.”

³⁵ The Formula Rate Protocols, section 1.p. defines Projected ATTRs as “the projected annual revenue requirement of [the utility’s] CLCPA Eligible Projects for the upcoming Rate Year calculated in accordance with the Formula Rate and posted on the ISO website no later than the Posting Date.”

require that the above-required information also will be provided with the posting of their Projected ATRRs.³⁶ Applicants state that with the posting of their Projected ATRRs, they will provide information required for accounting changes, specifically, for any item for which the amount recorded differs from original cost and for any reorganization or merger transactions. Applicants state that they also will provide a narrative explanation of the individual impact of any such changes on the Projected ATRRs.

25. Also, Commission staff asked Applicants to explain how the proposed Formula Rate Protocols comply with Commission requirements to disclose all accounting changes that affect inputs to the formula rate or the resulting charges billed under the formula rate in Annual Update postings.³⁷ Applicants responded that they have amended their Formula Rate Protocols to eliminate the materiality threshold from accounting change disclosures provided in both the Actual ATRR and Projected ATRR sections of the Formula Rate Protocols, and to include this information with the posting of Projected ATRR.³⁸

26. In addition, Commission staff asked Applicants to explain how the proposed Formula Rate Protocols comply with Commission requirements to provide certain cost allocation methodologies and details for the “prior Rate Year,” and not the “applicable rate year.”³⁹ Applicants responded that they have amended their Formula Rate Protocols to change the language in section 3.g.x of the Formula Rate Protocols from “prior Rate Year” to “applicable rate year.”⁴⁰

27. Commission staff asked Applicants to explain how the proposed Formula Rate Protocols comply with Commission requirements to provide interested parties the opportunity to obtain information on procurement methods and cost control methodologies used by the transmission owner.⁴¹ Applicants responded that they have

³⁶ October Deficiency Response, attach. 1 at 2.

³⁷ September Deficiency Letter at 3-4 (citing MISO Compliance Order, 146 FERC ¶ 61,212 at P 66). The Commission found that provisions that limit utility disclosure of accounting changes to only those that are “material” are insufficient to ensure just and reasonable rates and that the word “material” must be removed from the description of the accounting changes that will be disclosed. *Id.* P 65.

³⁸ October Deficiency Response, attach. 1 at 3.

³⁹ September Deficiency Letter at 4 (citing *Commonwealth Edison Co.*, 182 FERC ¶ 61,156, at P 28 (2023)).

⁴⁰ October Deficiency Response, attach. 1 at 4.

⁴¹ September Deficiency Letter at 4 (citing MISO Investigation Order, 143 FERC

amended sections 6.a.vii. and ix. of the Formula Rate Protocols to identify procurement approaches and cost control methodologies as information that interested parties can request.⁴²

28. Commission staff asked Applicants to explain how section 3.k of the proposed Formula Rate Protocols complies with Commission requirements that formula rate protocols cannot define the scope of various types of future section 205 filings.⁴³ Applicants responded that they have amended their Formula Rate Protocols to remove the relevant language from section 3.k of the Formula Rate Protocols.⁴⁴

29. In addition, Applicants state that to add clarity to the Formula Rate Protocols the annual information filing will include details of projected capital costs, they will add a statement to section 7 of the Formula Rate Protocols, which states that the annual informational filing “will include supporting documentation and workpapers for all Rate Schedule 19 projects added to operating property in the Rate Year of the respective Projected ATRRs, including projected costs of each project, expected construction schedule and in-service dates.”⁴⁵

d. Commission Determination

30. We find that NYSEG’s amended Attachment 1 to Rate Schedule 19 and RG&E’s amended Attachment 2 to Rate Schedule 19, including the amended Formula Rate Protocols, are just and reasonable and comply with Commission precedent in the MISO Protocol Orders and related orders.⁴⁶ We therefore accept NYSEG’s Attachment 1 to Rate Schedule 19 and RG&E’s Attachment 2 to Rate Schedule 19, including the Formula Rate Protocols, effective July 3, 2023, as requested.

¶ 61,149 at P 90).

⁴² October Deficiency Response, attach. 1 at 4.

⁴³ September Deficiency Letter at 4-5 (citing e.g., *ATX Sw., LLC*, 152 FERC ¶ 61,193, at P 85 (2015)).

⁴⁴ October Deficiency Response, attach. 1 at 5.

⁴⁵ *Id.*

⁴⁶ See, e.g., *Black Hills Power, Inc.*, 150 FERC ¶ 61,198; *UNS Elec., Inc.*, 153 FERC ¶ 61,132; *The Empire Dist. Elec. Co.*, 153 FERC ¶ 61,127 (2015); *Kan. City Power & Light Co.*, 153 FERC ¶ 61,150; *Louisville Gas & Elec. Co.*, 153 FERC ¶ 61,126; *Westar Energy, Inc.*, 153 FERC ¶ 61,143; *Ala. Power Co.*, 182 FERC ¶ 61,015.

2. Formula Rate Templates

a. Overall Structure

i. Filing

31. Applicants state that they each anticipate being designated to build and own projects eligible for cost recovery under Rate Schedule 19, which will require a formula rate to be on file under the respective Rate Schedules to effectuate the annual revenue requirement and applicable cost allocation and to implement associated cost recovery for any such projects.⁴⁷ Applicants state that the proposed Formula Rate Templates would be placed in Rate Schedule 19 of the NYISO OATT under Attachment 1 for NYSEG and Attachment 2 for RG&E. Applicants add that, prior to recovering any costs related to an eligible project, they will be required to satisfy all applicable requirements of the NYISO OATT and the formula rate.

32. Applicants state that the proposed Formula Rate Templates adhere to established cost-of-service principles for electric utilities, enabling recovery of ATRR on a forward-looking basis using projected data for a Rate Year, with annual true-up adjustments.⁴⁸ Applicants maintain that the difference between an actual ATRR for a Rate Year and the projected ATRR for the same Rate Year, along with interest calculated in accordance with section 35.19a of the Commission's regulations,⁴⁹ will be reflected as a true-up adjustment to the applicable forecasted ATRR for the next applicable Rate Year.

33. Applicants state that projected input data will be obtained from internal budgeting processes, while actual input data will be derived from FERC Form No. 1, consistent with Commission precedent.⁵⁰ Applicants note that the Formula Rate Templates contain several worksheets needed to determine ATRR and can calculate project-specific costs with unique columns covering each Rate Schedule 19 project. Applicants state that the formula rate allows for the recovery of a return on rate base (including an ROE, as discussed in detail below), taxes other than income taxes, depreciation and amortization expense, operation and maintenance expense, and administrative and general (A&G) expense, less any revenue credits. Applicants explain that, for transmission and general/common plant balances, land held for future use, materials and supplies, unfunded liabilities, and prepayments, the formula rate uses the average of a five quarter-ending balance average. In the case of accumulated deferred income taxes

⁴⁷ Tariff Filings, Transmittal Letters at 5-6.

⁴⁸ *Id.* at 5.

⁴⁹ 18 C.F.R. § 35.19a (2022).

⁵⁰ Tariff Filings, Transmittal Letters at 6.

(ADIT), the Formula Rate Templates use the average of beginning and end of year balances or a prorated balance, in accordance with Internal Revenue Service regulations, and also include an income tax allowance.

34. Additionally, Applicants state that Appendix A of the Formula Rate Templates will produce the aggregate ATRR for Rate Schedule 19 projects and confirm that the Applicants will exclude such charges from retail rates or otherwise provide an appropriate credit to retail customers for the recovery of any Rate Schedule 19 costs under the NYISO OATT.⁵¹

35. Finally, the proposed Formula Rate Template includes a regulatory asset for the cost of removal less salvage (COR) incurred to remove certain transmission assets necessary for construction of a given project under the CFC Charge, with amortization of such costs to be accomplished on a project-specific basis as may be authorized by the Commission separately under section 205 of the FPA.⁵²

ii. New York Commission's Comments in Support

36. The New York Commission states that because the cost to remove assets necessary for construction of projects under Rate Schedule 19 would not have been incurred by Applicants but for the CLCPA and AREGCBA mandates, such costs are appropriately recoverable from the beneficiaries of the respective Rate Schedule 19 projects.⁵³ The New York Commission explains that because the average service life of assets in transmission accounts for Applicants ranges between 60 and 80 years, the typical approach could require Applicants to maintain the regulatory asset, subject to carrying costs, for a prolonged period of time in order to amortize the COR regulatory asset over such average service life. The New York Commission states that Applicants' proposals to amortize the COR regulatory asset over 10 years creates a reasonable balance that would avoid recovering COR regulatory assets over a prolonged period in which benefits are anticipated to be realized while limiting the Rate Schedule 19 revenue requirements in any given year.⁵⁴

⁵¹ *Id.* at 7-8.

⁵² *Id.* at 2.

⁵³ New York Commission Comments at 3.

⁵⁴ *Id.* at 4.

iii. June Deficiency Letter and July Deficiency Response

37. In the June Deficiency Letter, Commission staff asked Applicants to explain whether the Applicants propose to use a regulatory asset to recover the actual cost of removal associated with an existing transmission facility where the respective company already recovered the estimated cost of removal of the existing transmission facility, the implications of that proposal on depreciation, whether the regulatory asset was probable for recovery, and other questions about the details of the proposal.⁵⁵ In response, Applicants withdrew their request to create a regulatory asset for the cost of removal for facilities removed to make room for projects under Rate Schedule 19 and amended the Formula Rate Templates to remove the regulatory asset and related amortization.⁵⁶ Applicants state that they reserve their right to request regulatory asset treatment for the cost of removal in the future, pursuant to section 205 of the FPA.

iv. NYAPP Protest

38. NYAPP claims that Applicants cannot directly assign A&G expenses, and then allocate the same expenses on a plant allocator basis.⁵⁷ NYAPP states that the formula rate also does not appear to subtract the directly assigned costs from the more general transmission-related regulatory expenses on line 46 of Appendix A before allocating the larger bucket of costs.

39. NYAPP raises additional concerns, including that Workpaper 4-IT Permanent Differences needs to multiply line 2 columns c and d by the Income Tax Factor found in Appendix A in order to display the proper value, that the Formula Rate Templates are inaccurate as the FERC Form 1 inputs are currently static, rather than averaged, and that the ADIT workpapers included in the NYSEG filing contain improper links to other workpapers.⁵⁸

v. Applicants Answer

40. Applicants respond to NYAPP's claims regarding A&G expenses by explaining that the Formula Rates allocate transmission regulatory expenses to the ATRR of Schedule 19 projects only after first deducting any directly assigned transmission regulatory expenses.⁵⁹ Applicants add that the Commission rejected a protest from

⁵⁵ June Deficiency Letter at 1-4.

⁵⁶ July Deficiency Response, attach. 1 at 2-4.

⁵⁷ NYAPP Protest at 3.

⁵⁸ *Id.* at 3-5.

NYAPP concerning a similar issue concerning Consolidated Edison's Rate Schedule 19 formula rate template.⁶⁰ Applicants note that, if directed on compliance and consistent with the Commission's approach in the Consolidated Edison proceeding, Applicants could add a clarifying footnote to line 47 of Appendix A of the Formula Rate Templates to expressly state that any regulatory transmission expenses allocated to Rate Schedule 19 Projects occurs only after deducting any directly assigned regulatory expenses.

41. Applicants respond to NYAPP's concerns regarding improper linkages on the ADIT workpapers by noting that the linkages are an artifact of how Dr. Dumais populated the Formula Rate Templates and that when the Formula Rate Templates are live, the ADIT workpapers will be populated with either projected data (to determine the Projected ATRR) or actual data (to determine the actual ATRR used for the annual true-up adjustments), as applicable.⁶¹

42. Applicants answer NYAPP's concerns with Workpaper 4-IT Permanent Differences by explaining that the composite income tax rate is properly applied to the permanent differences on Workpaper 4-IT Permanent Differences.⁶² Applicants state that the sum of these products is then sent to Appendix A, line 70, where the amount is further adjusted by the gross-up factor on line 66 of Appendix A to arrive at the permanent differences tax adjustment on line 74, which is included in the revenue requirement. Applicants state that they will correct the reference for columns b, c, and d of Workpaper 4-IT to change "income tax factor" to "composite tax rate."

43. Finally, Applicants provide clarification in response to NYAPP's list of administrative observations about the proposed Formula Rate Templates and agrees to make any corrections necessary in a compliance filing.⁶³

vi. Commission Determination

44. We disagree with NYAPP that the formula rate misallocates A&G expenses. As explained in the Dumais Testimony, there is a multi-step process used to calculate A&G expenses.⁶⁴ Beginning with total A&G expenses on line 40, the formula rate deducts

⁵⁹ Answer at 5-6 (citing Tariff Filings, Dumais Test. at 23-24).

⁶⁰ *Id.* (citing *Consolidated Edison Co. of N.Y., Inc.*, 185 FERC ¶ 61,091, at PP 41-42 (2023)).

⁶¹ *Id.* at 6.

⁶² *Id.* at 6-7.

⁶³ *Id.* at 7.

certain unallowable costs (e.g., regulatory commission expenses on line 42) to arrive at adjusted A&G expenses, which are then allocated to Rate Schedule 19 projects on line 45 using those respective projects' wage and salary allocator, consistent with how A&G is treated in most transmission formula rates.

45. Next, after the formula rate allocates adjusted A&G expenses, it allocates any general transmission regulatory expenses using a Rate Schedule 19 plant allocator on line 46.⁶⁵ The formula rate directly assigns any regulatory expenses incurred directly for Rate Schedule 19 projects on line 47. Column (2) of lines 46 and 47 states that the inputs are sourced from FERC Form No. 1, pages from 350-351, with additional detail provided in footnotes. Because regulatory commission expenses have been removed from the initial calculation of adjusted A&G expenses on line 42 and may be added back on either a direct or plant allocator basis, as appropriate, on lines 46 and/or 47, we find that the formula rate allocates A&G expenses appropriately. Notwithstanding the foregoing, we accept, subject to further compliance as directed below, Applicants' proposal to add a clarifying footnote to line 47 to expressly state that any regulatory transmission expenses allocated to Rate Schedule 19 projects occur only after deducting any directly assigned regulatory expenses.

46. Because Applicants have withdrawn their proposals for a regulatory asset for COR, we will not address the merits of the proposals at this time. Nonetheless, we find that the placeholder line items for the proposed regulatory asset for COR in the Formula Rate Templates for NYSEG's proposed Attachment 1 to Rate Schedule 19 and RG&E's proposed Attachment 2 to Rate Schedule 19 must be removed to completely effectuate Applicants' withdrawal of the regulatory asset for COR.⁶⁶ Absent further support, we cannot find that inclusion of these placeholder line items in the Formula Rate Templates are just and reasonable. Accordingly, and given Applicants' proffered consent to modifications related to the cost of removal provisions,⁶⁷ we reject the placeholder line items for the proposed regulatory asset for COR in the Formula Rate Templates, and direct Applicants to submit a compliance filing, within 60 days of the date of issuance of

⁶⁴ Tariff Filing, Dumais Test. at 22-23.

⁶⁵ *Id.*

⁶⁶ *N.Y. Indep. Sys. Operator, Inc.*, 184 FERC ¶ 61,059, at P 64 (2023) (requiring Niagara Mohawk Power Corporation (Niagara Mohawk) to remove the placeholder line items for its proposed regulatory asset for COR in proposed Rate Schedule 15 to completely effectuate Niagara Mohawk's withdrawal of its proposal for a regulatory asset for COR).

⁶⁷ July Deficiency Response, attach. 1 at 3-4.

this order, to remove the placeholder line items for the proposed regulatory asset for COR from the Formula Rate Templates.

47. With respect to the Formula Rate Template's ADIT workpapers, we agree with Applicants that, given the way the formula rate is structured, Workpapers 2c and 2d will be populated with either projected data or actual data for the appropriate year.

48. With respect to the calculations on Workpaper 4-IT Permanent Differences and the ministerial corrections or explanations requested by NYAPP and reiterated in Appendix A of Applicants' answer, we agree with Applicants' proposed corrections. Accordingly, we direct Applicants to make all the corrections and clarifications proffered in its Answer in a compliance filing, within 60 days of the date of issuance of this order. We otherwise find that the proposed Formula Rate Template is just, reasonable, and not unduly discriminatory or preferential, with the exception of the proposed base ROEs as discussed below.

b. Depreciation

i. Filing

49. Applicants state that the Formula Rate Templates directly assign depreciation expenses related to Rate Schedule 19 projects, as tracked by Applicants in their fixed asset systems.⁶⁸ Applicants states that Workpaper 8-Depreciation Rates contains the depreciation rates to be used to determine transmission, general, intangible, and common depreciation and amortization expenses included in ATRRs.⁶⁹ Applicants explain that the depreciation rates are approved by the New York Commission and that Applicants will continue to use those depreciation rates until the New York Commission orders any changes and Applicants receive Commission approval to use the changed depreciation rates.

ii. June Deficiency Letter and July Deficiency Response

50. In the June Deficiency Letter, Commission staff asked Applicants to provide depreciation studies and supporting documentation to support the proposed depreciation rates for the Formula Rate Templates.⁷⁰ Applicants state that the depreciation rates approved by the New York Commission for use in determining depreciation expense for New York Commission jurisdictional rates were the result of settlement.⁷¹ Applicants

⁶⁸ Tariff Filings, Dumais Test. at 23-24.

⁶⁹ *Id.* at 30.

⁷⁰ June Deficiency Letter at 4-5.

further state that they are including their respective 2018 Depreciation Studies, both dated May 15, 2019, which were approved by the New York Commission on November 19, 2020.⁷²

iii. Commission Determination

51. We accept Applicants' proposed depreciation rates for the Formula Rate Templates as just and reasonable.

c. Ceiling Base ROEs

i. Filing

52. Applicants state that, for projects under Rate Schedule 19, each Applicant is proposing a ceiling base ROE of 10.87% as a fixed value in the formula rate, subject to a lower ROE authorized by the New York Commission.⁷³ Applicants explain that the proposed ceiling base ROEs have been developed using the methods accepted by the Commission for transmission cost-of-service revenue requirement purposes.⁷⁴ Applicants states that the formula rate will use the capital structure applicable to Applicants for retail ratemaking purposes, as established and revised from time to time by the New York Commission.

ii. NYAPP Protest

53. NYAPP notes that Rate Schedule 19 contemplates the Commission determining the base ROE for each of the jurisdictional New York Transmission Owners, which would become the ROE ceiling and the applicable ROE for a Rate Schedule 19 project

⁷¹ July Deficiency Response, attach. 1 at 5.

⁷² *Id.* (citing *Order Approving Electric & Gas Rate Plans in Accord with Joint Proposal, with Modifications*, Case 19-E-0378 (New York Commission, Nov. 19, 2020)).

⁷³ Tariff Filings, Transmittal Letters at 5, 8.

⁷⁴ Tariff Filings, attach. C (Testimony of Adrien M. McKenzie, CFA) at 3, 21. Applicants state that to develop the ceiling base ROEs, they relied on the Commission's guidance in *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,129 (2019), *order on reh'g*, Opinion No. 569-A, 171 FERC ¶ 61,154, *order addressing reh'g arguments and setting aside prior order in part*, 173 FERC ¶ 61,159 (2020), *vacated and remanded sub nom. MISO Transmission Owners v. FERC*, 45 F.4th 248 (D.C. Cir. 2022). Applicants state that the ceiling base ROEs were determined using the two-step "Discounted Case Flow" methodology and the "Capital Asset Pricing Model."

would be the lesser of the Commission-approved ceiling base ROE or the ROE determined by the New York Commission.⁷⁵ NYAPP argues that the Commission must adopt the ROE and capital structure approved by the New York Commission in the most recent retail case for NYSEG. NYAPP states that, for 2024, the ROE for NYSEG is 9.20 % and the capital structure is 52% equity and 48% debt and customer deposits. NYAPP does not identify any ROE or capital structure for RG&E.

iii. Applicants Answer

54. Applicants respond that their proposed approach with regard to ROE and capital structure is consistent with the agreement between all New York public utilities and the New York Commission, as memorialized in the CSRA and accepted by the Commission by earlier order, and that the parties to the CSRA recognize the Commission's jurisdiction over transmission and agreed to rely on the New York Commission-determined ROE and capital structure for rates consistent with the Commission establishing a ROE ceiling.⁷⁶

iv. Commission Determination

55. Our preliminary analysis indicates that Applicants' proposed ceiling base ROEs of 10.87% for Rate Schedule 19 have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that Applicants' proposed ceiling base ROEs raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Therefore, we accept Applicants' proposed Formula Rate Templates, subject to further compliance discussed herein and ordered below, and suspend them for a nominal period, effective July 3, 2023, as requested, subject to refund and to the outcome of hearing and settlement judge procedures on the proposed ceiling base ROEs.

56. While we are setting the proposed ceiling base ROEs for a trial-type evidentiary hearing,⁷⁷ 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.⁷⁸ If parties desire, they may, by mutual agreement, request a

⁷⁵ NYAPP Protest at 2.

⁷⁶ Answer at 4-5 (citing CSRA Order, 180 FERC ¶ 61,106).

⁷⁷ Trial Staff is a participant in the hearing and settlement judge procedures. See 18 C.F.R. § 385.102(b), (c) (2022).

⁷⁸ 18 C.F.R. § 385.603 (2022).

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.⁷⁹ 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 the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assignment of the case to a presiding judge.

d. CWIP/Abandonment Placeholders

i. Filing

57. Applicants state that the rate base in Appendix A of the Formula Rate Templates consists of several items, including Construction Work in Progress (CWIP) and Abandoned Plant Incentives.⁸⁰ Section 5 of each Applicant's Formula Rate Protocols also addresses the rate treatment of CWIP in rate base. Applicants are not requesting these incentives at this time. Instead, Applicants propose calculations in the Formula Rate Template that may be populated in the future, should Applicants request and the Commission authorize these incentives in the future.⁸¹

ii. Commission Determination

58. We reject Applicants' proposal to include calculations for CWIP and Abandoned Plant Incentives as placeholders in the Formula Rate Templates because they are premature.⁸² Order No. 679 requires a project-specific demonstration when an applicant requests CWIP or Abandoned Plant Incentives, which Applicants cannot make at this time.⁸³ It also is not clear in the record before us how the currently-proposed abandoned

⁷⁹ If the parties 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>).

⁸⁰ Tariff Filings, Dumais Test. at 15.

⁸¹ *Id.*, Dumais Test. at 15, 33-36.

⁸² See *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017) (discussing the Commission's authority to propose modifications to a utility's FPA section 205 rate proposal).

⁸³ *Promoting Transmission Inv. through Pricing Reform*, Order No. 679, 116

plant calculations credit revenues from the closing out of transactions as a result of abandoning the plant.⁸⁴ Accordingly, we direct Applicants to submit a compliance filing, within 60 days of the date of issuance of this order, to remove the placeholders in the Formula Rate Templates that include calculations for CWIP and Abandoned Plant Incentives (e.g., lines 23 and 24).

The Commission orders:

(A) NYSEG's proposed Attachment 1 to Rate Schedule 19 and RG&E's proposed Attachment 2 to Rate Schedule 19, which include the Formula Rate Protocols, are hereby accepted, effective July 3, 2023, as requested, as discussed in the body of this order.

(B) Applicants' proposed Formula Rate Templates are hereby accepted, subject to further compliance, and suspended for a nominal period, to be effective July 3, 2023, as requested, subject to refund and to the outcome of hearing and settlement judge procedures on the proposed ceiling base ROEs, as discussed in the body of this order.

(C) Applicants are hereby directed to submit a further compliance filing to address the ministerial corrections and clarifications and to remove the regulatory asset for COR, CWIP Incentive, and Abandoned Plant Incentive placeholders in the Formula Rate Templates, within 60 days of the date of issuance of this order, as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred on the 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 Applicants' proposed ceiling base ROEs in Rate Schedule 19, 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 (E) and (F) below.

(E) 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

FERC ¶ 61,057, at P 20, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁸⁴ See, e.g., *Potomac-Appalachian Transmission Highline, LLC*, 158 FERC ¶ 61,050 (2017), *order on compliance*, 166 FERC ¶ 61,035 (2019), *order on reh'g*, Opinion No. 554-A, 170 FERC ¶ 61,050 (2020).

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 parties decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.

(F) 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.

(G) 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. Commissioner Danly is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.