

185 FERC ¶ 61,222
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Transco, LLC
New York Independent System Operator, Inc.

Docket No. ER24-232-000

ORDER ON TRANSMISSION RATE INCENTIVES AND TARIFF FILING, AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 26, 2023)

1. On October 27, 2023, New York Transco, LLC (New York Transco) submitted, pursuant to sections 205 and 219 of the Federal Power Act (FPA),¹ Part 35 of the Commission's regulations,² Order No. 679,³ and the Commission's November 15, 2012 policy statement on transmission incentives,⁴ a tariff filing requesting approval for: (1) a cost allocation method associated with its investment in the Propel New York Energy Alternate Solution 5 Project (Project) via amendments to Rate Schedule 13 of the New York Independent System Operator, Inc. (NYISO) Open Access Transmission Tariff (OATT);⁵ (2) a cost containment mechanism; (3) the establishment of a base return on equity (ROE) of 10.7% for the Project to be applied in the New York Transco formula rate set forth in Attachment DD to section 36 of the NYISO OATT (Formula Rate); and (4) approval of certain electric transmission rate incentive treatments.⁶

¹ 16 U.S.C. §§ 824d, 824s.

² 18 C.F.R. pt. 35 (2022).

³ *Promoting Transmission Inv. through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁴ *Promoting Transmission Inv. through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (2012 Transmission Incentives Policy Statement).

⁵ NYISO, NYISO Tariffs, NYISO OATT, 6.13 OATT (Schedule 13 - Rate Mechanism for the Recovery) (4.0.0) (Rate Schedule 13). Capitalized terms not defined herein shall have the meaning set forth in the NYISO OATT.

2. Specifically, New York Transco requests approval of: (1) the recovery of 100% of prudently incurred costs in the event that the Project is cancelled or abandoned for reasons beyond New York Transco's control (Abandoned Plant Incentive); (2) the inclusion of 100% of construction work in progress (CWIP) in rate base during the development and construction phase of the Project (CWIP Incentive); (3) a 150-basis-point incentive adder to New York Transco's base ROE for its investment in the Project to compensate it for the significant risks and challenges associated with the development of the Project (ROE Risk Incentive); and (4) a 50-basis-point incentive adder to New York Transco's base ROE for Transco's investment in the Project for voluntary participation in NYISO (RTO Participation Adder).⁷

3. As discussed below, we accept New York Transco's proposed cost allocation method in Rate Schedule 13 and proposed cost containment mechanism referenced in the Formula Rate, effective December 27, 2023.⁸ We grant New York Transco's request for the Abandoned Plant Incentive and CWIP Incentive, and we conditionally grant the RTO Participation Adder.⁹ We further conditionally grant a 75-basis-point ROE Risk Incentive, effective December 27, 2023, as ordered below. We accept New York Transco's proposed base ROE for filing, suspend it for a nominal period, to be effective December 27, 2023, subject to refund, and to the outcome of hearing and settlement judge procedures.

⁶ NYISO, NYISO Tariffs, NYISO OATT, § 36 (Attachment DD - Rules to Allocate the Cost of NY Transco) (7.0.0) (Formula Rate).

⁷ Transmittal Letter at 4.

⁸ Although New York Transco requests that the tariff filing be made effective on December 26, 2023, which is the 60th day after filing, December 27, 2023 is the earliest date that the proposed tariff changes can be made effective absent waiver (i.e., on the 61st day after filing, after 60 days notice). 16 U.S.C. § 824d(d); *Cal. Indep. Sys. Operator Corp.*, 136 FERC ¶ 61,120, at P 1 n.4 (2011) *see Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992); *Prior Notice & Filing Requirements Under Pt. II of the Fed. Power Act*, 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993).

⁹ The Commission's "longstanding policy" is that "rate incentives must be prospective and that there must be a connection between the incentive and the conduct meant to be induced." *The Dayton Power & Light Co.*, 172 FERC ¶ 61,140, *order on reh'g*, 178 FERC ¶ 61,102, at P 15 (2020) (quoting *San Diego Gas & Elec. Co. v. FERC*, 913 F.3d 127, 137 (D.C. Cir. 2019)). Accordingly, the requested incentives may only be granted prospectively and may not be made effective on New York Transco's requested effective date of December 26, 2023, which is the date of this order.

I. Background**A. New York Transco**

4. New York Transco is a New York limited liability company that develops high voltage bulk transmission facilities and maintains those projects under the functional control of NYISO.¹⁰ New York Transco is owned by Consolidated Edison Transmission, LLC, Grid NY, LLC, Iberdrola USA Networks New York Transco LLC, and Central Hudson Electric Transmission, LLC. New York Transco is a transmission-owning member of NYISO and recovers its revenue requirements in accordance with its Formula Rate and the New York Transco Facilities Charge under Rate Schedule 13 of the NYISO OATT.

B. The Propel New York Energy Alternate Solution 5 Project

5. New York Transco states that the Project is a \$2.7 billion electric transmission project that will establish a 345 kV electric backbone on Long Island to improve reliability, create system redundancy and resilience, and facilitate New York's decarbonization goals.¹¹ New York Transco states that since enactment of the New York Climate Leadership and Community Protection Act (CLCPA) in 2019, NYISO has stressed that extensive transmission investments will be necessary to deliver renewable energy, including reinforcing the Long Island bulk electric transmission system to deliver renewable resources.¹² New York Transco states that the Project was selected through the NYISO Public Policy Transmission Planning Process¹³ after the New York Public Service Commission (New York Commission) identified the "Long Island Offshore Wind Export Public Policy Transmission Need" and called on NYISO to solicit solutions.¹⁴ New York Transco states that NYISO opened a project solicitation on August 12, 2023 and nineteen projects were submitted by four different developers. New York Transco states that NYISO selected the Project as the more efficient or cost-effective solution in response to this need.¹⁵

¹⁰ Transmittal Letter at 5.

¹¹ *Id.* at 2.

¹² *Id.* at 6.

¹³ NYISO, NYISO Tariffs, NYISO OATT, §31 (Attachment Y), §31.4 (Public Policy Requirements Planning Process) (23.0.0) (Attachment Y).

¹⁴ Transmittal Letter at 7.

¹⁵ *Id.* at 8.

6. New York Transco states that the Project consists of new, high-voltage, completely underground and submarine electric transmission cables and four transmission substations located in densely populated areas – New York City, Long Island, and Westchester County, New York.¹⁶ According to New York Transco, the Project will result in significant production cost savings, reliability, and capacity benefits, avoided capital costs, emissions reductions, and less congestion across the region.¹⁷ For example, New York Transco claims that the Project will result in production cost savings of approximately \$3.6 billion over a twenty-year period and up to 8.06 billion tons of carbon dioxide emissions avoided over a twenty-year period on a statewide basis.

7. New York Transco states that it will co-develop the Project with the New York Power Authority (NYPA).¹⁸ New York Transco states that its filing pertains solely to New York Transco's recovery of costs for the Project based on its final ownership percentage of the Project of no less than 70%, which for current planning purposes is estimated to be up to \$2.2 billion.¹⁹ New York Transco explains that, to ensure no duplicative recovery of Project costs, New York Transco and NYPA intend to engage a third-party accountant responsible for tracking Project costs and the amounts each party is responsible for consistent with its ownership share.²⁰ On a monthly basis, New York Transco and NYPA will review the amounts recorded. Once the Project is completed and the final accounting has been prepared, New York Transco and NYPA will schedule a one-time stakeholder meeting detailing the final ownership percentages and the accounting considerations reflecting such percentages.

C. **Filing**

8. New York Transco proposes to add a new section 6.13.3.4.3 to Rate Schedule 13 of the NYISO OATT to include the Project as eligible for cost recovery under Rate Schedule 10²¹ of the NYISO OATT.²²

¹⁶ *Id.*

¹⁷ *Id.* at 9.

¹⁸ *Id.* at 2.

¹⁹ *Id.* 2 n.6. New York Transco states that NYPA is expected to seek recovery of the costs for its ownership percentage. *Id.*

²⁰ *Id.* at 57.

²¹ NYISO, NYISO Tariffs, NYISO OATT, 6.10 OATT (Schedule 10 - Rate Mechanism For Recovery Of RTFC) (19.0.0) (Rate Schedule 10).

²² Transmittal Letter at 11.

9. New York Transco proposes to include a new section 36.2.1.3 in the Formula Rate of the NYISO OATT to reflect the cost allocation method for the Project using a load-ratio share basis, calculated volumetrically based on actual energy withdrawals by all Load Serving Entities serving load in the New York Control Area.²³ New York Transco also proposes revisions to its Formula Rate to implement its proposed cost containment mechanism.²⁴

10. New York Transco requests approval of a cost containment mechanism that was part of the Project solicitation submission, which will prevent any recovery of the first 20% of potential cost overruns from the Included Capital Costs.²⁵ For the remaining 80% of potential cost overruns, New York Transco proposes to recover its total ROE, including incentives, via a reduced ROE as provided for in section 6.10.6.3 of the NYISO OATT.²⁶ Specifically, New York Transco proposes to determine the appropriate reduction in both the base ROE value and the approved incentive ROE adders so that, when applied to the total amount of Project costs above the Project cost estimate, New York Transco's cost recovery would be equal to its cost recovery if it had simply decided to write-off its share of the 20% of non-recoverable Included Capital Costs.²⁷ New York Transco proposes to include a new Note G in Attachment 4 of its Formula Rate to memorialize its obligation to reduce its allowable revenue requirement by the amount equal to 20% of the cost overrun, as provided for in the pending Development Agreement for the Project and subject to certain excusing conditions. New York Transco includes a "Verification Workpaper" in support of its proposed cost containment mechanism.²⁸

11. New York Transco requests approval of a base ROE of 10.7% for the Project.²⁹ New York Transco states that it will use its Formula Rate to determine the Project's

²³ *Id.* at 10.

²⁴ *Id.* at 11. See proposed Note G in Attachment 3 to New York Transco's Formula Rate (Formula Rate § 36.3.1.1).

²⁵ *Id.* at 1, 47. "Included Capital Costs" is defined by the NYISO OATT as "all capital costs incurred by a Developer to plan for and construct a Public Policy Transmission Project, and to make it ready for its intended use, with the exception of the capital costs defined as Excluded Capital Costs in Section 31.4.5.1.8.2." Attachment Y § 31.4.5.1.8.1.

²⁶ *Id.* at 47.

²⁷ *Id.* at 11, 47.

²⁸ *Id.* at 48, 50.

²⁹ *Id.* at 12.

revenue requirement, similar to its other electric transmission projects.³⁰ However, New York Transco maintains that it does not have a general base ROE that is applicable to any additional transmission facilities that it might own and construct as the ROEs contained in its Formula Rate are project specific ROEs and thus a specific base ROE will need to be set for the Project.³¹ New York Transco proposes to use its current depreciation rates that are included in Attachment 9 of its Formula Rate.³²

12. New York Transco requests four incentive rate treatments for its portion of investment in the Project: (1) the Abandoned Plant Incentive; (2) the CWIP Incentive; (3) a 150-basis-point ROE Risk Incentive; and (4) a 50-basis-point RTO Participation Adder.

II. Notice of Filing and Responsive Pleadings

13. Notice of New York Transco's filing was published in the *Federal Register*, 88 Fed. Reg. 75, 583 (Nov. 3, 2023), with interventions and comments due on or before November 17, 2023.

14. The New York Commission filed a notice of intervention. The City of New York, Multiple Intervenors,³³ Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc., and the Long Island Power Authority filed timely motions to intervene. On November 17, 2023, the New York Commission, the City of New York, and Multiple Intervenors (collectively, the Ratepayer Advocates) filed a protest and NYPA filed a motion to intervene and comments in support. On December 4, 2023, New York Transco filed an answer.

15. On December 7, 2023, the New York Association of Public Power filed a motion to intervene out-of-time.

³⁰ *Id.* at 52.

³¹ *Id.*

³² *Id.* at 55 (citing Formula Rate § 36.3.1.1).

³³ Multiple Intervenors is an unincorporated association of approximately 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State. Ratepayer Advocates Protest at 2.

III. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³⁴ the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,³⁵ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept New York Transco's answer because it has provided information that assisted us in our decision-making process.

18. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,³⁶ we grant New York Association of Public Power's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Substantive Matters

1. Cost Allocation Method

a. New York Transco's Request

19. New York Transco proposes to allocate the costs of the Project to all load serving entities in New York State on a volumetric load-ratio share basis in accordance with the default cost allocation method for Public Policy Transmission Projects set forth in section 31.5.5.4.3 of Attachment Y to the NYISO OATT.³⁷ New York Transco states that the Commission has previously accepted this cost allocation method for other Public Policy Transmission Planning Process projects needed to meet CLCPA goals.³⁸

³⁴ 18 C.F.R. § 385.214 (2022).

³⁵ 18 C.F.R. § 385.213(a)(2) (2022).

³⁶ 18 C.F.R. § 385.214(d).

³⁷ Transmittal Letter at 44.

³⁸ *Id.* at 44 (citing *N.Y. Indep. Sys. Operator, Inc.*, 184 FERC ¶ 61,059, at P 47 (2023) (accepting proposal to implement a statewide cost allocation on a volumetric load-ratio share basis for a project selected by the New York Commission); *Consol. Edison Co. of N.Y.*, 180 FERC ¶ 61,106, at PP 3, 48-50 (2022) (accepting proposal to implement a statewide cost allocation on a volumetric load ratio share basis for local transmission

b. Commission Determination

20. We accept New York Transco's proposal to allocate the Project costs on a statewide volumetric load-ratio share basis. The Project was selected through the NYISO Public Policy Transmission Planning Process, and we find that the cost allocation proposal is just and reasonable because it is consistent with the default cost allocation method for projects selected through that process.³⁹

2. Cost Containment Mechanism

a. New York Transco's Request

21. New York Transco explains that section 31.4.5.1.8 of Attachment Y to the NYISO OATT permits a developer to submit a voluntary hard or soft cost cap proposal with its project submission that covers its Included Capital Costs.⁴⁰ If selected, the developer may not seek to recover costs other than the Included Capital Costs in the initial project cost estimate, except as permitted by the NYISO OATT.⁴¹ New York Transco proposes a soft cost cap cost containment mechanism of 80/20 whereby New York Transco is solely responsible for 20% of the amount of actual costs that exceed the Project cost estimate.⁴² New York Transco may recover the remaining 80% of costs that exceed the estimate in rates, as described below.⁴³

22. New York Transco states that, per section 6.10.6.3 of Rate Schedule 10 of the NYISO OATT, it seeks to implement an "alternative rate mechanism" that may adjust rate recovery through a reduction in the ROE and any applicable incentives solely on the amount in excess of the Project cost estimate.⁴⁴ New York Transco contends that this leads to an overall recovery of the amount in excess of the Project cost estimate that is equal or better for ratepayers on a present value basis when compared to what would be

upgrades selected by the New York Commission)).

³⁹ See Attachment Y § 31.5.5.4.3.

⁴⁰ Transmittal Letter at 21. See Rate Schedule 10 § 6.10.6.1.

⁴¹ *Id.* at 46 (citing Rate Schedule 10 § 6.10.6.2).

⁴² *Id.* at 46 and 21. In other words, ratepayers do not contribute for 20% of the cost overruns above the estimated costs included in the Project submission. This amount also includes a 2% escalation factor to account for increases in materials and costs.

⁴³ *Id.* at 46-47.

⁴⁴ *Id.* at 47.

achieved if New York Transco were to forgo rate recovery of that percentage of capital costs.⁴⁵ Specifically, New York Transco states that it will determine the appropriate reduction in both the base ROE and the approved ROE incentives that, when applied to costs above the Project cost estimate, will be equal to its cost recovery if it simply decided to write-off its share of 20% of non-recoverable costs.

23. New York Transco states that it proposes to include language in Attachment 4 of its Formula Rate, establishing New York Transco's commitment to forgo cost recovery on the 20% of the cost overrun, plus a 2% escalation factor.⁴⁶ New York Transco also proposes other general revisions to section 6.13.2 of Rate Schedule 13.⁴⁷ New York Transco states that its Verification Workpaper will include necessary information to confirm New York Transco's analysis and verify that the ROE reductions do in fact result in equal to or greater benefits as if New York Transco were to simply write-off its share of 20% of the actual Included Capital Costs above the Project cost estimate.⁴⁸ New York Transco states that it will populate the Verification Workpaper upon Project completion, once all Project costs are known, and present the results to stakeholders as part of a meeting that New York Transco and NYPA will hold to present overall Project accounting.⁴⁹ New York Transco states that it proposes to include a new Note G in Attachment 4 of its Formula Rate to reflect New York Transco's commitment to the cost containment mechanism.⁵⁰ The proposed Note G states that, as permitted by section 6.10.6.2 of Rate Schedule 10 of the NYISO OATT and specified in the Development Agreement with NYISO, certain excusing conditions apply (e.g., transmission project changes, delays, or additional costs that are due to the actions or omissions of NYISO or certain transmission owners; a force majeure event; changes in law, etc.).⁵¹

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ This includes a sentence pertaining to New York Transco's commitment to adhere to the requirements of § 6.10.6 of Rate Schedule 10 for any transmission project for which New York Transco has proposed to limit its allowable cost recovery consistent with a cost cap mechanism, unless otherwise permitted by the Commission. *See* Transmittal Letter at 47.

⁴⁸ Transmittal Letter at 50.

⁴⁹ *Id.* at 48.

⁵⁰ *Id.*

⁵¹ *Id.* at 48-49.

b. Protest

24. Ratepayer Advocates argue that, contrary to New York Transco's claim that its cost containment proposal exposes the Project developers to significant financial risk, New York Transco's approach squarely puts the risk of cost overruns on New York ratepayers (e.g., New York Transco would earn an ROE even if its Project development costs are 100% above the Project cost cap).⁵²

25. Ratepayer Advocates further argue that New York Transco's proposed cost containment mechanism contains unreasonable provisions that could be manipulated to circumvent the cost containment mechanism.⁵³ Specifically, Ratepayer Advocates argue that the cost containment mechanism includes a provision that would excuse New York Transco to the extent costs arise due to the action or omission of entities that may be affiliates of New York Transco and that it is unreasonable to allow the actions of New York Transco's affiliates to dictate which costs fall outside of the cost containment mechanism.⁵⁴ Ratepayer Advocates argue that such a provision would be ripe for manipulation and should be addressed.

c. Answer

26. New York Transco argues that Ratepayer Advocates' claim that it is inappropriate to include the relevant excusing condition is without any supporting evidence or testimony.⁵⁵ New York Transco argues that Ratepayer Advocates fail to recognize that each of the excusing conditions New York Transco proposed to include in Note G are already part of the NYISO OATT and are memorialized in the *pro forma* development agreement that every transmission developer that is awarded a Public Policy Transmission Project is expected to enter into for the development of the project.

27. New York Transco argues that in the event any customer believes that a connecting transmission owner, interconnecting transmission owner, and/or affected transmission owner purposely delayed the Project in order to allow New York Transco (and NYPA) to recover costs above the Project cost estimate that it would not otherwise have been able to recover, the customer can refer the matter to NYISO, the Commission's enforcement hotline, or submit a formal challenge to New York Transco's cost recovery in accordance with the New York Transco formula rate protocols.⁵⁶

⁵² Ratepayer Advocates Protest at 3.

⁵³ *Id.* at 14.

⁵⁴ *Id.* at 14-15.

⁵⁵ New York Transco Answer at 13.

d. Commission Determination

28. We accept New York Transco's proposed 80/20 soft cap cost containment mechanism under which New York Transco will forgo recovery of (and recovery on) 20% of prudently incurred costs above the Project cost estimate. New York Transco's proposed cost containment mechanism would reduce the total ROE (including applicable incentives) on the remaining 80% to achieve a rate recovery reduction that would be equal to its cost recovery if it had decided to write off its share of the 20% of non-recoverable costs on a present value basis. We find that this proposal is consistent with section 6.10.6.3 of Rate Schedule 10 of the NYISO OATT. Further, New York Transco states that it will populate the Verification Workpaper upon Project completion, once all Project costs are known, and present the results to stakeholders as part of a meeting that New York Transco and NYPA will hold to present overall Project accounting. We find that the Verification Workpaper and meeting with stakeholders will provide sufficient transparency to confirm New York Transco's analysis and will allow for verification that the ROE reductions do in fact result in equal or greater benefits as if New York Transco were to write-off its share of 20% of the actual Included Capital Costs above the Project cost estimate.

29. Although Ratepayer Advocates argue that the cost containment mechanism contains unreasonable provisions that could be manipulated, we agree with New York Transco that these provisions are generally applicable terms for all transmission development under the Public Policy Transmission Planning Process⁵⁷ and NYISO's *pro forma* development agreement. We further agree with New York Transco that there are remedies, such as contacting the Commission's enforcement division, to address alleged manipulation if it were to occur. We also find that New York Transco's existing formula rate protocols, which apply to the Project, along with the company's commitment to use a third-party accountant to do monthly cost tracking, provide protections to safeguard against Ratepayers Advocates' concern regarding manipulation.

3. Base ROE

a. New York Transco's Request

30. New York Transco requests a 10.7% base ROE that would apply to the Project. According to New York Transco, the base ROE values currently in use under its Formula Rate are project-specific and the Formula Rate does not include a base ROE value that is generally applicable to any additional transmission facilities that New York Transco might own or develop.⁵⁸ New York Transco states that its Formula Rate is the result of

⁵⁶ *Id.* at 15.

⁵⁷ See Rate Schedule 10 § 6.10.6.2.

two settlement agreements for other transmission facilities developed by New York Transco.⁵⁹ One agreement provided for, among other things, the general formula rate that would apply for New York Transco's investment in specific electric transmission facilities, a project-specific base ROE value of 9.5%, and incentive rate ROE adders. The second agreement resulted in a project-specific ROE value of 9.65% and incentive rate ROE adders for a second set of transmission facilities. Accordingly, New York Transco asserts it must propose a base ROE value that applies to the Project.

31. New York Transco states that it calculates its proposed base ROE using the two-step discounted cash flow (DCF) model, the capital asset pricing (CAPM) model, and the Risk Premium method, supplemented with an expected earnings approach.⁶⁰ New York Transco states that its analysis identified a composite zone reasonableness of 8.43% - 13.23% and that its proposed base ROE of 10.7% is well within that zone.

32. According to testimony provided by New York Transco, financing for the Project will come from equity contributions by New York Transco's members, in proportion to their ownership shares, and external debt borrowings, while maintaining its 53% equity capital structure.⁶¹

b. Protest

33. Ratepayer Advocates argue that New York Transco's base ROE is overstated and should not be accepted merely because it falls within the zone of reasonableness.⁶² Ratepayer Advocates argue that while New York Transco's 10.7% base ROE request is close to that of the Ratepayer Advocates' ROE analysis, which results in a 10.5% base ROE, there are significant differences in their respective calculations.⁶³ Ratepayer Advocates argue that these differences include variations in proxy group composition and nature, as well as in the cost of equity methodologies.⁶⁴ Further, Ratepayer Advocates state that New York Transco's base ROE analysis used four methods, including the expected earnings approach, while the Ratepayer Advocates employed the same three

⁵⁸ Transmittal Letter at 52.

⁵⁹ *Id.* at 52-53.

⁶⁰ *Id.* at 54.

⁶¹ Tariff Filing, attach. H, Ex. No. TRANSCO-300 (Testimony of Robert Caso), at 15.

⁶² Ratepayer Advocates Protest at 3.

⁶³ *Id.* at 6-7.

⁶⁴ *Id.* at 7.

ROE models (DCF, CAPM, and Risk Premium) but without the expected earnings approach. Ratepayer Advocates argue that given the discrepancy in the approach used to reach New York Transco's proposed base ROE, Ratepayer Advocates request that the Commission accord interested parties the opportunity to cross-examine New York Transco's ROE witnesses.

34. Additionally, Ratepayer Advocates state that New York Transco's proposal to use an actual capital structure capped at 53% equity ratio is excessive when compared to the approximately 43% average common equity ratio of Ratepayer Advocates' proxy group.⁶⁵ Ratepayer Advocates state that as of 2022 year-end, the New York Transco affiliates have an average common equity ratio of 51.72%, and similarly, New York Transco's actual equity ratio as of 2022 is 52%.⁶⁶ Ratepayer Advocates argue that an average common equity ratio of 51.72% has proven sufficient to allow transmission owners in New York access to the financial market at reasonable rates. Ratepayer Advocates argue that to the extent current year-end financial data is available at the time of the Commission's decision, the Commission should update these common equity ratios.

c. Answer

35. New York Transco argues that the Commission has what it needs to make affirmative determinations on the base ROE value that should apply to the Project.⁶⁷ New York Transco notes that the Commission did not foreclose the use of the expected earnings approach as long as concerns expressed in Opinion Nos. 569⁶⁸ and 569-A were addressed. New York Transco states that it specifically addressed these concerns. New York Transco further argues that its analysis used extensive criteria to identify a national proxy group composed of 32 risk comparable electric utilities that satisfy the Commission's requirements on proxy group selection. New York Transco argues that its proposal and supporting testimony meet Commission precedent, so that a hearing is

⁶⁵ *Id.*

⁶⁶ *Id.* at 8.

⁶⁷ New York Transco Answer at 5.

⁶⁸ *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569, 169 FERC ¶ 61,129 (2019), *order on reh'g*, Opinion No. 569-A, 171 FERC ¶ 61,154, *order on reh'g*, Opinion No. 569-B, 173 FERC ¶ 61,159 (2020).

⁶⁹ New York Transco Answer at 12.

⁷⁰ *Id.* at 13.

unnecessary to determine the just and reasonable base ROE value and the zone of reasonableness that provides the band within which the effective ROE should fall.

36. New York Transco argues that Ratepayer Advocates' claims regarding New York Transco's proposed capital structure are baseless.⁶⁹ New York Transco argues that the Commission's long-standing policy is to use, where possible, the utility's actual capital structure. New York Transco states that it utilizes a 13-month average to calculate cost figures, including its actual capital structure for the year, which mitigates the ability of a transmission owner to manipulate the capital structure. New York Transco argues that Ratepayer Advocates' position on the proposed capital structure would require a change to the manner in which the New York Transco Formula Rate currently operates. New York Transco states that it seeks to continue to use its existing capital structure of 53% equity as identified in its 2024 Annual Projection filed with NYISO.⁷⁰

d. Commission Determination

37. As an initial matter, we note that New York Transco is not proposing to change its capital structure in the instant filing. New York Transco's Formula Rate, Appendix A, Note J states, in relevant part, "[t]he capital structure will be the actual capital structure up to 53% equity." Indeed, Ratepayer Advocates acknowledge that New York Transco is using its actual capital structure, which is presently 53%, in accordance with Note J.⁷¹ Accordingly, we find Ratepayer Advocates' arguments about this unchanged component of New York Transco's Formula Rate to be outside the scope of this proceeding.

38. Our preliminary analysis indicates that New York Transco's proposed base ROE for the Project has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that New York Transco's proposed base ROE raises issues of material fact, including the proxy group composition and discrepancies in the approach used to reach New York Transco's proposed base ROE, 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 the proposed ROE for filing, suspend it for a nominal period, to be effective December 27, 2023, subject to refund, and to the outcome of hearing and settlement judge procedures.

39. While we are setting the proposed base ROE for a trial-type evidentiary hearing, we encourage efforts to reach settlement before hearing procedures commence.⁷² To aid

⁷¹ We also note that the Commission's preference is to base rates on a company's actual capital structure. *See Midcontinent Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,242, at P 12 (2020).

⁷² Trial Staff is a participant in the hearing and settlement judge procedures. *See* 18 C.F.R. § 385.102(b), (c) (2022).

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.⁷³ If parties 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.⁷⁴ 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.

4. Transmission Incentives

a. Section 219 Requirement

40. In the Energy Policy Act of 2005, Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in certain transmission infrastructure.⁷⁵ The Commission subsequently issued Order No. 679, establishing the processes by which a public utility may seek transmission rate incentives pursuant to section 219. Additionally, in November 2012, the Commission issued the 2012 Transmission Incentives Policy Statement providing additional guidance regarding its evaluation of applications for transmission rate incentives under section 219 and Order No. 679.⁷⁶

41. Pursuant to Order No. 679, an applicant may seek to obtain incentive rate treatment for a transmission infrastructure investment that satisfies the requirements of section 219, i.e., the applicant must show that "the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion."⁷⁷ In Order No. 679, the Commission established a process for an applicant to demonstrate that it meets this standard, including a rebuttable presumption that the

⁷³ 18 C.F.R. § 385.603 (2022).

⁷⁴ 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>).

⁷⁵ Energy Policy Act of 2005, Pub. L. No. 109-58, § 1241, 119 Stat. 594 (2005).

⁷⁶ 2012 Transmission Incentives Policy Statement, 141 FERC ¶ 61,129.

⁷⁷ Order No. 679, 116 FERC ¶ 61,057 at P 76.

standard is met if: (1) “the transmission project results from a fair and open regional planning process that considers and evaluates the project for reliability and/or congestion and is found to be acceptable to the Commission;” or (2) “a project has received construction approval from an appropriate state commission or state siting authority.”⁷⁸ The Commission also stated that “other applicants not meeting these criteria may nonetheless demonstrate that their project is needed to maintain reliability or reduce congestion by presenting [to the Commission] a factual record that would support such a finding.”⁷⁹

i. New York Transco’s Request

42. New York Transco argues that the Project qualifies for the rebuttable presumption outlined in Order No. 679 because the Project was selected through NYISO’s Public Policy Transmission Planning Process, which is a Commission-approved fair and open planning process that evaluates potential projects for their ability to reduce congestion and increase reliability and determines whether a project is the more efficient or cost-effective solution.⁸⁰ Moreover, New York Transco maintains that, notwithstanding the rebuttable presumption, the Project satisfies the requirements of FPA section 219. New York Transco asserts that the Project is needed to maintain reliability and reduce congestion as it will increase export capability and access to clean energy and offshore wind generation from Long Island to southeast New York, reduce the number of curtailments from offshore wind resources, and improve the reliability of the transmission system in Long Island by upgrading several existing facilities to be able to connect more than 3,000 MW of offshore wind generation to southeast New York.⁸¹

ii. Commission Determination

43. The Commission has previously found that projects approved through a regional transmission planning process that evaluated whether the identified transmission projects will enhance reliability and/or reduce congestion are entitled to the rebuttable presumption established under Order No. 679.⁸² In this case, NYISO’s Public Policy Transmission Planning Process evaluated whether the Project will enhance reliability and/or reduce congestion and ultimately selected the Project as the more efficient or

⁷⁸ *Id.* P 58.

⁷⁹ *Id.* P 57; *see also* Order No. 679-A, 117 FERC ¶ 61,345 at P 41.

⁸⁰ Transmittal Letter at 15-16.

⁸¹ *Id.* at 17-18.

⁸² *See, e.g., N.Y. Power Authority*, 185 FERC ¶ 61,102, at P 16 (2023); *NextEra Energy Transmission N.Y., Inc.*, 162 FERC ¶ 61,196, at P 17 (2018).

cost-effective transmission solution. Therefore, we find that the Project is entitled to the rebuttable presumption that it meets this requirement of FPA section 219.

b. Order No. 679 Nexus Requirement

44. In addition to satisfying the section 219 requirement of ensuring reliability and/or reducing the cost of delivered power by reducing congestion, Order No. 679 requires an applicant to demonstrate that there is a nexus between the incentive sought and the investment being made.⁸³ In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is “tailored to address the demonstrable risks or challenges faced by the applicant.”⁸⁴ Applicants must provide sufficient support to allow the Commission to evaluate each element of the package and the interrelationship of all elements of the package.⁸⁵ The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.⁸⁶ We address the nexus test below for each incentive and for the total package of incentives requested.

i. Abandoned Plant Incentive

(a) New York Transco’s Request

45. New York Transco requests the ability to recover 100% of prudently incurred costs if the Project is abandoned, in whole or in part, due to reasons outside of New York Transco’s control, i.e., the Abandoned Plant Incentive. According to New York Transco, the Project faces significant financial, regulatory, permitting, and execution risks, as well as other requirements, that may result in the Project being cancelled for reasons beyond New York Transco’s control.⁸⁷ These include, among other things, opposition to its permit application, including for the siting approvals required under Article VII of the New York Public Service Law.⁸⁸ New York Transco states that under Article VII, the Project qualifies as a major utility transmission facility and requires a “Certificate of Environmental Compatibility and Public Need” and an approved “Environmental

⁸³ Order No. 679, 116 FERC ¶ 61,057 at P 48.

⁸⁴ Order No. 679-A, 117 FERC ¶ 61,345 at P 40.

⁸⁵ 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at P 10 (quoting Order No. 679-A, 117 FERC ¶ 61,345 at P 27).

⁸⁶ Order No. 679, 116 FERC ¶ 61,057 at P 43.

⁸⁷ Transmittal Letter at 30.

⁸⁸ *Id.* at 23.

Management and Construction Plan” before construction may begin. New York Transco states that it may be subject to an administrative evidentiary hearing upon filing an Article VII application, providing an additional forum for public scrutiny. Additionally, New York Transco states that Project development will last seven years and within that time, the Project could be deemed unnecessary or no longer viable due to changes in policy, legislation, the economy, and federal and/or state regulatory processes.⁸⁹

(b) Commission Determination

46. We grant New York Transco’s request for the Abandoned Plant Incentive for the Project. In Order No. 679, the Commission found that the Abandoned Plant Incentive is an effective means of encouraging transmission development by reducing the risk of non-recovery of costs when a project is abandoned for reasons outside the applicant’s control.⁹⁰ We find that New York Transco has demonstrated that the Project faces certain regulatory, environmental, financial, and siting risks that are beyond New York Transco’s control and could lead to the Project’s abandonment, and that approval of the Abandoned Plant Incentive will address those risks by protecting New York Transco if the Project is cancelled for reasons outside its control. Thus, we find that New York Transco has demonstrated a nexus between the recovery of its prudently incurred costs associated with the abandonment of the Project and its planned investment in the Project.

47. The Abandoned Plant Incentive for the Project will be available to New York Transco for 100% of prudently incurred costs expended on the Project on and after the effective date granted in this order if the Project is abandoned for reasons beyond New York Transco’s control. We will not determine the prudence of any costs incurred prior to the abandonment, if any, until New York Transco seeks such recovery in a future FPA section 205 filing that a public utility is required to make if it seeks abandoned plant recovery.⁹¹ As a result of the Commission approving the rate incentive, New York Transco must submit FERC-730 reports annually.⁹²

⁸⁹ *Id.* at 31.

⁹⁰ Order No. 679, 116 FERC ¶ 61,057 at PP 163-166.

⁹¹ *Id.* PP 165-166. In the event that New York Transco seeks abandoned plant recovery for the time period prior to the effective date of this order, New York Transco would be eligible to seek recovery of 50% of its prudently incurred costs, consistent with prior precedent. *See, e.g., San Diego Gas & Elec. Co.*, 154 FERC ¶ 61,158, *order on reh’g*, 157 FERC ¶ 61,056 (2016), *aff’d sub nom. San Diego Gas & Elec. Co. v. FERC*, 913 F.3d 127 (D.C. Cir. 2019).

⁹² FERC-730 annual reports, which contain actual, projected, and incremental transmission investment information, must be filed by public utilities that have been granted incentive rate treatment for specific transmission projects. 18 C.F.R. § 35.35(h)

ii. **CWIP Incentive**

(a) **New York Transco's Request**

48. New York Transco requests 100% CWIP recovery for the Project.⁹³ New York Transco states that the CWIP Incentive improves cash flows during the construction period. New York Transco states that its investment in the Project requires capital expenditures of approximately \$1.89 billion to \$2.2 billion over at least seven years while its current total investment in its transmission assets is roughly \$830 million between two projects.⁹⁴ New York Transco contends that the Project's capital expenditures will create significant pressure on its cash flows. New York Transco maintains that having more cash flow from operations during years of very high capital expenditures will reduce its exposure to the risks of capital market financing. Additionally, New York Transco argues that the inclusion of CWIP in rate base is desirable for customers because it avoids rate shock and results in lower rates once the Project is in service. New York Transco also avers that the present value of receiving cash flow sooner under CWIP is lower than the present value of delayed cash flows under the traditional Allowance for Funds Used During Construction (AFUDC) treatment, which means that fewer dollars need to be collected from customers over the life of the project to provide the same return on investment to equity investors in the project.⁹⁵

49. If the CWIP Incentive is approved, New York Transco states that it will include its capital expenditures in a CWIP account and remove any amount from an AFUDC account.⁹⁶ New York Transco also states that it will engage a third-party accountant that will be responsible for ensuring all Project costs are appropriate and the amount that each party is responsible for is consistent with its ownership share. New York Transco adds that it and NYPA will review the amounts recorded by each entity on a monthly basis, so that there is no duplicative accounting of Project costs. New York Transco also states that it will submit a CWIP report as required under its formula rate protocols, and adhere to additional accounting procedures described therein.⁹⁷

(2022).

⁹³ Transmittal Letter at 31.

⁹⁴ *Id.* at 32.

⁹⁵ *Id.* at 32-33.

⁹⁶ *Id.* at 33. We understand that if the CWIP Incentive is approved, New York Transco intends to include CWIP in rate base, but not include AFUDC on the Project in CWIP.

⁹⁷ *Id.* at 56

50. New York Transco requests waiver of the Commission's other filing requirements related to CWIP: 18 C.F.R. §§ 35.13(h)(38), 35.25(c)(4) and (g) (2022).⁹⁸ New York Transco states that these were designed primarily for CWIP associated with new generation projects, are not applicable in the case of transmission construction, that requirements related to anti-competitive effects relate to concerns that are not applicable to transmission construction, and that the Commission has waived these requirements for applicants seeking transmission incentives under Order No. 679.

(b) Commission Determination

51. We grant New York Transco's request for the CWIP Incentive for the Project, effective December 27, 2023. In Order No. 679, the Commission established a policy that allows utilities to include, where appropriate, 100% of prudently-incurred transmission-related CWIP in rate base.⁹⁹ The Commission stated that this rate incentive treatment will advance the goals of FPA section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow, reducing the pressure on an applicant's finances caused by investing in transmission projects.

52. We find that New York Transco has shown a nexus between the proposed CWIP Incentive and its investment in the Project. New York Transco states that its investment requires capital expenditures of approximately \$1.89 billion to \$2.2 billion over at least seven years, which is more than 100% of its current total investment in its transmission assets of approximately \$830 million.¹⁰⁰ The record indicates the costs of completing the Project will increase risk in New York Transco's finances. We find that granting the CWIP Incentive will help ease this risk by providing upfront certainty, improved cash flow, and reduced interest expense as New York Transco proceeds with the Project.

53. A utility with an approved CWIP Incentive must propose accounting procedures that ensure there is no duplicate recovery of CWIP and corresponding AFUDC capitalized as a result of different accounting or ratemaking treatments by state or local authorities.¹⁰¹ We find that New York Transco's proposed accounting procedures (i.e., its use of a third-party accountant to track Project costs) coupled with its existing formula rate protocols are adequate to ensure that there is no duplicate recovery of CWIP. Additionally, we grant New York Transco's request for waiver of 18 C.F.R. §§ 35.13(h)(38), 35.25(c)(4) & (g). We find that New York Transco has provided sufficient information to satisfy the requirements for waiver of these provisions.

⁹⁸ *Id.* at 55-56.

⁹⁹ Order No. 679, 116 FERC ¶ 61,057 at PP 29, 117.

¹⁰⁰ Transmittal Letter at 32.

¹⁰¹ *See Boston Edison Co.*, 109 FERC ¶ 61,300, at P 36 (2004).

iii. RTO Participation Adder**(a) New York Transco's Request**

54. New York Transco requests a 50-basis-point RTO Participation Adder for its continued participation in NYISO.¹⁰² According to New York Transco, it is eligible because, since 2016, it has been a member of NYISO, and New York law does not mandate transmission organization participation, making New York Transco's membership in NYISO voluntary.¹⁰³ New York Transco also notes that the RTO Participation Adder will not be applied to any transmission project other than the Project.¹⁰⁴

(b) Protest

55. Ratepayer Advocates argue that the RTO Participation Adder should not be applied where New York Transco is selected to construct transmission facilities as a result of the NYISO planning process and receives rate-based treatment.¹⁰⁵ Ratepayer Advocates argue that under such circumstances, New York Transco will be required to turn over operational control of its transmission facilities to the NYISO. Ratepayer Advocates argue that New York Transco is already a member of NYISO and has been for nearly a decade. Ratepayer Advocates contend that New York Transco's request for incentive relief for an action it has already undertaken should be viewed as an end run around the Commission-approved settlement agreements in Docket No. ER15-572-000.¹⁰⁶ Ratepayer Advocates argue the RTO Participation Adder is unwarranted, lacks a rational basis, and should be denied by the Commission.

(c) Answer

56. New York Transco argues that it has adequately supported its requested RTO Participation Adder.¹⁰⁷ New York Transco states that a utility is eligible for the RTO

¹⁰² Transmittal Letter at 40.

¹⁰³ *Id.* at 41. See *NextEra Energy Transmission N.Y., Inc.*, 162 FERC ¶ 61,186, at P 6 (2018) (finding that a transmission provider “voluntarily” chooses to pursue transmission projects in NYISO and that turning over control of transmission facilities to NYISO is “simply the final step in the process” that a transmission provider “voluntarily began when it chose to pursue projects through the competitive process.”)

¹⁰⁴ Transmittal Letter at 41.

¹⁰⁵ Ratepayer Advocates Protest at 13.

¹⁰⁶ *Id.* at 13-14.

Participation Adder if it can demonstrate that it has voluntarily joined an RTO and that its membership is ongoing, which New York Transco argues it has done in its filing. New York Transco also argues that the settlements do not preclude New York Transco from requesting the RTO Participation Adder for a future project because New York Transco would honor its commitment not to apply any RTO Participation Adder to existing projects that form the basis of the settlements.¹⁰⁸

(d) Commission Determination

57. We conditionally grant the request for a 50-basis-point RTO Participation Adder for New York Transco's participation in NYISO. We find that, as conditioned herein, the requested RTO Participation Adder is consistent with FPA section 219 and Commission precedent. The Commission's decision to grant an RTO Participation Adder is intended to encourage public utilities' continued involvement in an RTO. A utility is presumed eligible for an RTO Participation Adder "if it can demonstrate that it is a member of an RTO . . . and its membership is ongoing."¹⁰⁹ As the Commission has previously stated, the basis for the RTO Participation Adder is a recognition of the benefits that flow from membership in an RTO and that continuing membership is generally voluntary.¹¹⁰ New York Transco demonstrates its eligibility for the RTO Participation Adder through its ongoing voluntary membership in NYISO.

58. We disagree with Ratepayer Advocates that the RTO Participation Adder is an end-run around the Commission-approved settlement agreements. We agree with New York Transco that the RTO Participation Adder will only apply to the Project, because New York Transco's Formula Rate, Attachment 4, Notes D and F limit the application of any incentives, including the RTO Participation Adder, on a project-specific basis.

59. We condition our approval on the RTO Participation Adder being applied to a base ROE that has been shown to be just and reasonable, and subject to the resulting ROE inclusive of all granted incentives being within the applicable zone of reasonableness, as may be determined in the hearing and settlement judge procedures ordered herein. Further, our approval of the RTO Participation Adder is conditioned on New York Transco's continuing membership in NYISO and transfer of operational control of the Project to NYISO once it has been placed in service.

¹⁰⁷ New York Transco Answer at 10.

¹⁰⁸ *Id.* at 10-11.

¹⁰⁹ Order No. 679, 116 FERC ¶ 61,057 at P 327.

¹¹⁰ *Id.* P 331.

iv. **ROE Risk Incentive**

(a) **New York Transco's Request**

60. New York Transco requests a 150-basis-point ROE Risk Incentive to address the risks and challenges in developing its portion of the Project. New York Transco asserts that it satisfies the four showings expected under the Commission's 2012 Transmission Incentives Policy Statement to obtain the ROE Risk Incentive: (1) a demonstration that the proposed project faces risks and challenges that are not either accounted for in the applicant's base ROE or addressed through risk reducing incentives; (2) a demonstration that the applicant is taking appropriate steps and using appropriate mechanisms to mitigate risks during project development; (3) a demonstration that alternatives to the Project have been, or will be, considered in the relevant transmission planning process; and (4) an explanation of whether the applicant is committed to limiting the application of the ROE Risk Incentive to a cost estimate.¹¹¹ According to New York Transco, the Commission also explained that projects may merit an ROE Risk Incentive if they relieve chronic or severe grid congestion, unlock location constrained resources that had no access to the wholesale markets, or apply new technologies that allow for more reliable and efficient usage of the facilities to relieve chronic or severe grid congestion.

61. New York Transco argues that it merits the ROE Risk Incentive because NYISO's evaluation determined that the Project will relieve congestion on the transmission grid by unlocking constrained wind generated energy on Long Island to areas of southeast New York in a cost effective manner.¹¹²

62. New York Transco also argues that the Project's risks and challenges are not already accounted for in the base ROE due to the risks associated with the Project's specific capital investments.¹¹³ This includes the fact that larger infrastructure projects, in this case approximately \$2.7 billion, generally demand higher returns from investors.¹¹⁴ New York Transco also provides testimony noting the engineering and permitting risks in construction, including nearly 90 miles of excavation for underground cable in urban areas, underwater crossings, and the need to directionally drill for 6,000 feet.¹¹⁵

¹¹¹ See Transmittal Letter at 33-39 (citing 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at PP 20-28).

¹¹² *Id.* at 34.

¹¹³ *Id.* at 36; Tariff Filing, attach. J, Ex. No. TRANSCO-500 (Testimony of John Tsoukalis) at 28 (Tsoukalis Test).

¹¹⁴ Tsoukalis Test 32-46.

¹¹⁵ *Id.* at 32, 44.

63. New York Transco further contends that given the benefits of the significant new investment in transmission infrastructure, which is deemed necessary to meet established policy goals, establishing a total ROE that incorporates additional incentives beyond the base ROE is reasonable.¹¹⁶ New York Transco argues that the risks and challenges of the Project are not mitigated by the other risk-reducing incentives. New York Transco states that the CWIP Incentive is not expected to fully compensate for expenditures during the development and construction periods.¹¹⁷

64. New York Transco contends that it has taken the appropriate steps to minimize risks during project development.¹¹⁸ According to New York Transco, it has collaborated with NYPA to propose, develop, and construct the Project, which combines two utilities' experience with in-state competitive transmission development. Additionally, New York Transco states that it will implement best practices and mitigation measures to reduce the risks including, but not limited to, coordinating with existing utilities, NYISO, New York City, and each local government to plan outages and map out existing infrastructure and utilize NYPA's Environmental Justice team to address any issues that arise in development.¹¹⁹

65. New York Transco states that alternatives to the Project have been considered, noting that the Project was selected after being evaluated alongside 18 other projects per the NYISO's Public Policy Transmission Planning Process, which is an Order No. 1000-compliant transmission process that compares projects against one another, or other non-transmission alternatives.¹²⁰

66. New York Transco maintains that it is committed to limiting the application of the ROE Risk Incentive to a cost estimate, because New York Transco and NYPA have committed to a soft cost cap mechanism whereby New York Transco and NYPA will forgo recovery of and on the 20% of the Included Capital Costs that exceed the cost estimate, plus a 2% escalation factor.¹²¹

¹¹⁶ Transmittal Letter at 36; Tariff Filing, attach. K, Exhibit No. TRANSCO-600 (Testimony of Adrien McKenzie), at 18.

¹¹⁷ Transmittal Letter at 37.

¹¹⁸ *Id.* at 37.

¹¹⁹ *Id.* at 37-38.

¹²⁰ *Id.* at 38-39.

¹²¹ *Id.* at 39.

(b) Protest

67. According to Ratepayer Advocates, New York Transco's Request for a 150-basis-point ROE Risk Incentive is unreasonable and should be rejected.¹²² Ratepayer Advocates argue that New York Transco is simultaneously seeking a "panoply" of risk-reducing incentives in the form of the CWIP Incentive and the Abandoned Plant Incentive in addition to the 150-basis-point ROE Risk Incentive. Ratepayer Advocates argue that New York Transco has not demonstrated that these risk-reducing incentives will be insufficient, generally, nor has New York Transco demonstrated that there are special Project risks and challenges that it otherwise cannot mitigate that support the requested ROE Risk Incentive. Ratepayer Advocates argue that there are redundancies and overlaps in risk mitigation efforts, either already in place or being proposed, that undermine New York Transco's request.

68. Ratepayer Advocates also argue that NYPA's and New York Transco's engagement of resources that leverage experience and improve efficiency and construction process further mitigates the need for additional ROE incentives.¹²³ Ratepayer Advocates state that because the Project is fully regulated, New York Transco will not need to rely on market-based revenues and that NYISO found the Project to have low procurement, permitting, and construction risks compared to other proposals.¹²⁴ Ratepayer Advocates argue that New York Transco does not need an additional ROE Risk Incentive here to mitigate the construction risks of the Project.¹²⁵ Such risks, Ratepayer Advocates argue, have already been taken into account through New York Transco's development of the Project with NYPA and participation in NYISO's competitive solicitation process.

(c) Answer

69. New York Transco argues that Ratepayer Advocates ignore the fact that the Project is an extremely complex undertaking involving significant development risks and challenges that are not mitigated by non-ROE incentives.¹²⁶ New York Transco argues

¹²² Ratepayer Advocates Protest at 8-9.

¹²³ *Id.* at 11.

¹²⁴ *Id.* at 10 (citing Report of the New York Independent System Operator, Inc., Long Island Offshore Wind Export Public Policy Transmission Plan (June 13, 2023), <https://www.nyiso.com/documents/20142/38388768/Long-Island-Offshore-Wind-Export-Public-Policy-Transmission-Planning-Plan-2023-6-13.pdf/03712cc1-6da6-ee89-2f63-176d2d7a9296?t=1687290255402>).

¹²⁵ Ratepayer Advocates Protest at 12.

that it has described the significant additional risks and challenges it expects to encounter, given the size and unique complexities associated with developing the Project, including the financial, permitting, scheduling, procurement, geotechnical, geographical, and other technical and logistical challenges. New York Transco argues that it has also meticulously explained how each of the requested incentive rate treatments independently address the demonstrable risks and challenges that it will face in developing the Project.

(d) Commission Determination

70. We conditionally grant in part New York Transco's request for a ROE Risk Incentive for the Project. We find, as discussed below, that a 75-basis-point ROE Risk Incentive, rather than the requested 150-basis-point ROE Risk Incentive, is appropriate under these circumstances.

71. The Commission stated in Order No. 679-A that it would authorize incentive ROEs to new transmission projects that demonstrate particular risks and challenges. In the 2012 Transmission Incentives Policy Statement, the Commission offered additional guidance for applicants seeking an incentive ROE adder based on a project's risks and challenges and identified four showings that the Commission expected an applicant to make to justify the need for such an incentive ROE adder. First, an applicant is expected to demonstrate that the proposed project faces risks and challenges that are not either already accounted for in the applicant's base ROE or addressed through the risk-reducing incentives. The Commission also identified several types of projects that it anticipated may face the types of risks and challenges that would not be addressed by either the base ROE or risk-reducing incentives:

- 1) projects to relieve chronic or severe grid congestion that has had demonstrated cost impacts to consumers;
- 2) projects that unlock location constrained generation resources that previously had limited or no access to the wholesale electricity markets;
- 3) projects that apply new technologies to facilitate more efficient and reliable usage and operation of existing or new facilities.¹²⁷

72. Second, an applicant is expected to demonstrate that it has taken appropriate steps and implemented appropriate mechanisms to minimize its risks during project development. Third, an applicant is expected to demonstrate that alternatives to the project have been or will be considered in either a relevant transmission planning process

¹²⁶ New York Transco Answer at 8.

¹²⁷ 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at P 21 & n.28.

or another appropriate forum. Fourth, an applicant is expected to commit to limit the application of such incentive ROE adder to a cost estimate.

73. We find that New York Transco satisfies each of these expectations. As to the first showing, we find that the Project is an example of the second type of project that the Commission identified in the 2012 Transmission Incentives Policy Statement. The Project will unlock location constrained generation resources with limited or no access to the wholesale electricity markets. Specifically, the Project will connect more than 3,000 MW of offshore wind generation to southeast New York.¹²⁸

74. We also find that New York Transco has satisfied the other three showings expected under the 2012 Transmission Incentives Policy Statement. As to the second showing, we find that, by committing to use best practices in project management and procurement, New York Transco has demonstrated that it is taking appropriate steps and using appropriate mechanisms to minimize risk during project development.¹²⁹ As discussed above, New York Transco also has sought, and we are granting, risk-reducing incentives for the Project in the form of the CWIP Incentive and the Abandoned Plant Incentive.¹³⁰ As to the third showing, the Project was evaluated against alternatives in both a competitive New York Commission proceeding and NYISO's regional Public Policy Transmission Planning Process.¹³¹ Finally, as to the fourth showing, the Commission stated in the 2012 Transmission Incentives Policy Statement that it would be "open to approaches that control transmission development costs and provide more transparency regarding how incentives will be applied to costs beyond initial estimates."¹³² New York Transco's Project has a unique set of risks and challenges, and the proposed 80/20 soft cap cost containment mechanism forgoes any cost recovery on 20% of cost overruns and proportionally reduces the total ROE collected on cost overruns, thereby limiting application of the ROE Risk Incentive and reducing total recovery of Project costs.¹³³ Accordingly, we find that New York Transco's proposal is sufficient to meet this showing in the case of this Project because it will adequately control transmission development costs through its proposed 80/20 soft cap cost containment mechanism, and does so in a transparent manner.

¹²⁸ Transmittal Letter at 18.

¹²⁹ *Id.* at 37.

¹³⁰ *See supra* PP 46, 51.

¹³¹ *Id.* at 38-39.

¹³² 2012 Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at P 28.

¹³³ Transmittal Letter at 39.

75. As to the size of the ROE Risk Incentive, we observe that since the issuance of the 2012 Transmission Incentives Policy Statement, the Commission has not granted an ROE Risk Incentive of greater than 50-basis-points. During that period, the Commission has granted a 50-basis-point ROE Risk Incentive, including for projects in NYISO, where applicants satisfied the four expectations set forth in that policy statement.¹³⁴ Those projects in NYISO primarily involved the rebuilding of existing transmission lines in existing rights of way.¹³⁵ By contrast, the Project involves new, high-voltage, completely underground and submarine electric transmission cables that will involve nearly 90 miles of excavation for underground cable in urban areas, underwater crossings, and the need to directionally drill for 6,000 feet, as well as the construction of four transmission substations located in densely populated areas. We find that the greater risks and challenges associated with those characteristics of the Project of warrant an increase in the level of ROE Risk Incentive compared to those earlier cases. However, New York Transco has not justified an ROE Risk Incentive of 150-basis-points, which we find would be excessive in these circumstances. Recognizing our above-noted precedent and based on the record here, we find that a 75-basis-point ROE Risk Incentive is warranted for the Project.¹³⁶

76. We condition our approval on the ROE Risk Incentive being applied to a base ROE that has been shown to be just and reasonable, and subject to the resulting ROE inclusive of all granted incentives being within the applicable zone of reasonableness, as may be determined in the hearing and settlement judge procedures ordered herein.

¹³⁴ See, e.g., *N.Y. Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,004, at PP 45-46 (2022) (*NYPA Smart Path*); *N.Y. Indep. Sys. Operator, Inc.*, 171 FERC ¶ 61,159, at PP 42-45 (2020); *N.Y. Power Auth.*, 169 FERC ¶ 61,125, at PP 37-42 (2019) (*NYPA AC Transmission*).

¹³⁵ See, e.g., *NYPA Smart Path*, 180 FERC ¶ 61,004 at P 9 (explaining that the proposed transmission facilities involved rebuilding transmission lines primarily within existing rights-of-way); *NYPA AC Transmission*, 169 FERC ¶ 61,125 at P 6 (noting that the proposed transmission facilities involved replacements of transmission lines in an existing right-of way); *N.Y. Transco, LLC*, 151 FERC ¶ 61,004, at P 11 (2015) (observing that the transmission facilities for which the ROE Risk Incentive was granted involved replacement of existing transmission lines within existing rights-of-way).

¹³⁶ See also *Midcontinent Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,083, at P 21 (2018) (granting a 50-basis-point ROE Risk Incentive, rather than the requested 100-basis-point incentive, after comparing project to others granted an ROE Risk Incentive following the 2012 Transmission Incentives Policy Statement).

v. Total Package of Incentives

(a) New York Transco's Request

77. New York Transco argues that the total package of incentives is tailored to the risks and challenges of the Project. According to New York Transco, the Abandoned Plant Incentive mitigates the risks of non-recovery of costs in the event the Project is cancelled for reasons beyond its control, and in the absence of this incentive the risk can impede efforts to secure financing.¹³⁷ Additionally, New York Transco avers that the CWIP Incentive addresses cash flow deficiencies and is necessary for the Project's scope given the significant funding and capital outlays that will be required.¹³⁸ Further, New York Transco argues that the RTO Participation Adder is designed to promote the participation in and transfer of functional control of the Project to a Commission-approved RTO. New York Transco also argues that the ROE Risk Incentive addresses risks not adequately covered by the Abandoned Plant Incentive, CWIP Incentive, or base ROE. Further, New York Transco contends the ROE Risk Incentive is merited for significantly large projects that unlock location constrained generation resources and relieve anticipated severe and chronic congestion.

78. New York Transco argues that the resulting rates are just and reasonable because the Abandoned Plant Incentive will not influence New York Transco's rates, unless and until New York Transco submits a FPA section 205 filing to recover Abandoned Plant costs, the CWIP Incentive does not affect New York Transco's level of recovery, only its timing of recovery, and the requested total ROE of 12.70% (inclusive of incentives) falls below the 13.23% upper end of the composite zone of reasonableness.¹³⁹

vi. Commission Determination

79. As noted above, in Order No. 679-A, the Commission clarified that its nexus test is met when an applicant demonstrates that the total package of incentives requested is tailored to address the demonstrable risks or challenges faced by the applicant.¹⁴⁰ Applicants must provide sufficient support to allow the Commission to evaluate each element of the package and the interrelationship of all elements of the package.¹⁴¹ The

¹³⁷ Transmittal Letter at 41-42.

¹³⁸ *Id.* at 42.

¹³⁹ *Id.* at 43-44.

¹⁴⁰ Order No. 679-A, 117 FERC ¶ 61,345 at P 40; 2012 Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at P 10.

¹⁴¹ 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at P 10 (quoting Order

Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis. The Commission has, in prior cases, approved multiple rate incentives for particular projects where appropriate.¹⁴² For the reasons discussed above, we find that New York Transco has demonstrated that each of the requested incentives that we authorize here, and the incentives package as a whole, addresses the risks and challenges faced by New York Transco in undertaking the Project.

The Commission orders:

(A) New York Transco's request to utilize the default cost allocation method provided for in the NYISO OATT for Public Policy Transmission Projects through the proposed revisions to Rate Schedule 13 and New York Transco's cost containment mechanism and the other revisions to the Formula Rate are hereby accepted, effective December 27, 2023, as discussed in the body of this order.

(B) New York Transco's requests for the Abandoned Plant Incentive and CWIP Incentive are hereby granted, effective December 27, 2023, as discussed in the body of this order.

(C) New York Transco's request for a 50-basis-point RTO Participation Adder is hereby conditionally granted, effective December 27, 2023, conditioned on it being applied to a base ROE that has been shown to be just and reasonable, and subject to the resulting ROE being within the applicable zone of reasonableness, as may be determined in the hearing and settlement judge procedures ordered herein.

(D) New York Transco's request for a ROE Risk Incentive is hereby conditionally granted in part. As discussed herein, the Commission conditionally grants a 75-basis-point ROE Risk Incentive, effective December 27, 2023, conditioned on it being applied to a base ROE that has been shown to be just and reasonable, and subject to the resulting ROE being within the applicable zone of reasonableness, as may be determined in the hearing and settlement judge procedures ordered herein.

(E) New York Transco's proposed base ROE is hereby accepted for filing, suspended for a nominal period, to be effective December 27, 2023, subject to refund, and to the outcome of hearing and settlement judge procedures ordered herein.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Commission by section 402(a) of the Department of Energy

No. 679-A, 117 FERC ¶ 61,345 at P 40).

¹⁴² Order No. 679, 116 FERC ¶ 61,057 at P 55; *see also Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,246, at P 35 (2015).

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 New York Transco's proposed ROE, 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 (G) and (H) below.

(G) 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 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.

(H) 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.

(I) 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.

Commissioner Christie is dissenting with a separate statement attached.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New York Transco, LLC
New York Independent System Operator, Inc.

Docket No. ER24-232-000

(Issued December 26, 2023)

CHRISTIE, Commissioner, *dissenting*:

1. While I have approved granting incentives to transmission developers in prior cases that generally fit within FERC's existing practices and precedent,¹ I dissent in this

¹ See, e.g., *PJM Interconnection, L.L.C.*, 185 FERC ¶ 61,200 (2023) (Christie, Comm'r, concurring at P 2), <https://www.ferc.gov/news-events/news/e-7-commissioner-christies-concurrence-exelons-application-abandoned-plant>; *The Potomac Edison Co.*, 185 FERC ¶ 61,083 (2023) (Christie, Comm'r, concurring at P 2), <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-concerning-potomac-edisons-abandoned-plant>; *Montana-Dakota Utils. Co.*, 185 FERC ¶ 61,015 (2023) (Christie, Comm'r, concurring at P 2), <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-montana-dakota-utilities-co-regarding>; *Midcontinent Indep. Sys. Operator, Inc.*, 184 FERC ¶ 61,136 (2023) (Christie, Comm'r, concurring at P 2), <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-midcontinent-independent-system-operator-inc-0>; *GridLiance W. LLC*, 184 FERC ¶ 61,129 (2023) (Christie, Comm'r, concurring at P 2), <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-gridliance-west-regarding-transmission>; *Midcontinent Indep. Sys. Operator, Inc.*, 184 FERC ¶ 61,034 (2023) (Christie, Comm'r, dissenting at P 2), <https://www.ferc.gov/news-events/news/commissioner-christies-dissent-award-transmission-incentives-nipsco-er23-1904>; *Otter Tail Power Co.*, 183 FERC ¶ 61,121 (2023) (Christie, Comm'r, concurring at P 2), <https://www.ferc.gov/news-events/news/e-18-commissioner-christies-concurrence-otter-tail-power-company-regarding>; *LS Power Grid Cal., LLC*, 182 FERC ¶ 61,201 (2023) (Christie, Comm'r, concurring at P 2), <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-ls-power-grid-regarding-transmission-incentives>; *Nev. Power Co.*, 182 FERC ¶ 61,186 (2023) (Christie, Comm'r, concurring at P 2), <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-nv-energy-regarding-transmission-incentives>; *The Dayton Power and Light Co.*, 182 FERC ¶ 61,147 (2023) (Christie, Comm'r, concurring at P 2), <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-dayton-power-and-light-company-regarding>; *Midcontinent Indep. Sys. Operator, Inc.*, 182 FERC ¶ 61,039 (2023) (Christie, Comm'r, concurring at P 2), <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-midcontinent-independent-system-operator-inc>; *NextEra Energy*

case because I agree with the joint protestors New York State Public Service Commission (NYSPSC), the City of New York, and Multiple Intervenors² (collectively, Ratepayer Advocates) that the incentives granted in this order go beyond the Commission's practices and what should be accepted by this Commission.³ While the order sends the final computation of NY Transco's ROE to an Administrative Law Judge for further hearing and settlement proceedings, the points made by the NYSPSC remain persuasive. It also appears that regardless of an ALJ determination on the ROE, the extent of the incentives will be egregiously unfair to New York consumers.⁴

2. By way of example with respect to the ROE Risk Adder, the NYSPSC and its joint protestors note that "such a broad and sweeping range of incentives is not appropriate here."⁵ They support this conclusion by noting, *inter alia*:

Transmission Sw., LLC, 180 FERC ¶ 61,032 (2022) (Christie, Comm'r, concurring at P 2) (July 2022 Concurrence), <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-nextera-energy-transmission-southwest-llc>; *NextEra Energy Transmission Sw., LLC*, 178 FERC ¶ 61,082 (2022) (Christie, Comm'r, concurring at P 2) (February 2022 Concurrence), <https://www.ferc.gov/news-events/news/commissioner-mark-c-christie-concurrence-nextera-energy-transmission-southwest-llc>. See also *DCR Transmission, L.L.C.*, 184 FERC ¶ 61,199 (2023) (Christie, Comm'r, concurring at P 6), <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-dcr-transmission-regarding-transmission-cost>.

² As today's order recognizes, Multiple Intervenors is "an unincorporated association of approximately 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State." Order at P 14 n.33 (citation omitted).

³ As set forth more fully below, the NYSPSC and its joint protestors aver that the requests for the Abandoned Plant and CWIP adders along with the ROE Risk Adder are inconsistent with the requirements of the Commission's November 15, 2012 policy statement on transmission incentives, *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (Policy Statement). See *infra* at P 2 (citing Ratepayer Advocates Protest at 12-13). See also *infra id.* (citing Ratepayer Advocates Protest at 10, distinguishing 13 prior Commission incentive orders relied on by a NY Transco witness).

⁴ For example, Ratepayer Advocates state that "the requested base ROE and incentive ratemaking treatment, resulting in a total ROE of 12.7%, as well as the proposed capital structure, are excessive, and therefore will result in unjust and unreasonable rates" and "NY Transco's approach squarely puts the risk of cost overruns on New York ratepayers" Ratepayer Advocates Protest at 2, 3.

⁵ *Id.* at 9.

- “NY Transco is simultaneously seeking a panoply of risk-reducing incentives – CWIP and Project Abandonment Incentives – plus a 150 basis point adder to the base ROE. However, [NY Transco has] not demonstrated that the risk-reducing incentives will be insufficient, generally, nor [has NY Transco] demonstrated that there are special risks and challenges that are not otherwise mitigatable for the Project. In short, there are redundancies and overlaps in risk mitigation efforts, either already in place or being proposed, that undermine NY Transco’s request.”⁶
- “Of the 13 cases presented by [a NY Transco witness], not one application approved by the Commission included the same base ROE and level of incentives being requested by NY Transco here. In fact, in all but one of the 13 cases listed, the Commission declined to approve a portfolio of incentives that included CWIP, Project Abandonment, Risks and Challenges ROE Adder, and RTO Participation Adder. This lack of evidence further underscores the unreasonableness of NY Transco’s proposal.”⁷
- “*NY Transco also neglects to acknowledge that this is a fully regulated project, the revenue recovery for which is essentially assured (i.e., NY Transco will not need to rely on market-based revenues). Because NY Transco was selected by the NYISO as the most ‘efficient and cost-effective solution,’ it is assured of a cost allocation mechanism to recover its costs under the NYISO’s Open Access Transmission Tariff (‘OATT’). The OATT provisions related to the [Public Policy Transmission Need (PPTN)] process significantly increase regulatory certainty and reduce Project risks. It should also be recognized that NY Transco’s Project was selected through the PPTN competitive solicitation process, in part, based on the NYISO Board’s finding that it had ‘relatively low procurement, permitting, and construction risks compared to other proposals’ Because these low risks were used as a basis in selecting the Project, NY Transco’s claims that such risk must now be mitigated through extensive incentives should be rejected.*”⁸

⁶ *Id.* (referencing, in part, the protest’s citation to Policy Statement, 141 FERC ¶ 61,129 at P 16) (“[T]he Commission expects incentives applicants to seek to reduce the risk of transmission investment not otherwise accounted for in its base ROE by using risk-reducing incentives before seeking an incentive ROE based a project’s risks and challenges.”)). I recognize that today’s order does not grant Transco’s request for the additional 150 basis point ROE Risk Adder but instead reduces that adder to 75 basis points. However, I do not read the Ratepayer Advocates Protest to be accepting of Transco’s application before the Commission based on a reduction in the level of the ROE Risk Adder: “[T]he Commission should reject NY Transco’s request for incentive adders in its entirety.” *Id.* at 13.

⁷ *Id.* at 10 (footnote omitted).

- “In discussing its need for a Risks and Challenges ROE Adder, NY Transco relies heavily upon the size of the Project and the densely populated urban area and waterways/coastlines that will need to be constructed upon for justification of extraordinary risk. However, throughout its Application, NY Transco asserts that [it is] engaging resources from both NY Transco’s affiliates and the New York Power Authority (‘NYPA’) (NY Transco’s Project partner) to improve efficiency, leverage experience and capability, and improve the development and construction process. All of these actions mitigate risk and the need for additional ROE incentives. Indeed, NY Transco has access to centuries of institutional knowledge and experience in constructing electric infrastructure in densely populated urban areas and waterways/coastlines. NY Transco’s affiliate, Con Edison, celebrated two centuries of operating in New York City earlier this year and NYPA, which has been in existence since 1931, has unique knowledge navigating state project development, will be a co-developer of the Project.”⁹
- “*NY Transco’s request to utilize the 100% CWIP Incentive and Project Abandonment Incentive will only further reduce lending/investor and cash flow risk, making the inclusion of a 150 basis point Risks and Challenges ROE Adder excessive and unreasonable.* The Ratepayer Advocates submit that there are factual questions surrounding NY Transco’s perceived siting and permitting risks, especially given its request for a Project Abandonment Incentive. Specifically, NY Transco notes the need for all siting and permitting to be completed simultaneously to enable the effective construction of the project. *This approach, coupled with NY Transco’s extensive community outreach that commenced well before the Project was selected in June 2023, appears to address siting and permitting risks. The inclusion of the Abandoned Plant Incentive will resolve any remaining risk associated with a failure to receive siting and permitting approvals in a timely manner. Accordingly, there is no rational basis for the Risks and Challenges ROE Adder together with the other requested incentives. NY Transco’s*

⁸ *Id.* at 10 (footnotes and citation omitted) (emphasis added) (quoting NYISO, *Long Island Offshore Wind Export Public Policy Transmission Plan 5* (June 13, 2023), <https://www.nyiso.com/documents/20142/38388768/Long-Island-Offshore-Wind-Export-Public-Policy-Transmission-Planning-Plan-2023-6-13.pdf/03712cc1-6da6-ee89-2f63-176d2d7a9296?t=1687290255402>). What is important also to recognize is that these statements about the PPTN are made in this protest by the NYSPSC which itself has had a significant role in the existence of this project: “[T]he Project was selected by the . . . NYISO . . . to address a . . . PPTN . . . that was identified by the . . . NYSPSC . . . in order to further state policy goals and increase transmission capacity and reduce congestion in New York State.” Ratepayer Protest at 1 (emphasis added). Today’s order does not appear to give weight to the NYSPSC’s unique knowledge in this matter.

⁹ *Id.* at 11 (footnotes omitted).

*requests are not consistent with the requirements of the Policy Statement, and their inclusion would make NY Transco's resulting rates even more unjust and unreasonable. For all of these reasons, the Commission should reject NY Transco's request for incentive adders in its entirety.*¹⁰

3. I dissent as I find the arguments of and questions raised by the NYSPSC, City of New York, and Multiple Intervenors compelling.

For these reasons, I respectfully dissent.

Mark C. Christie
Commissioner

¹⁰ *Id.* at 12-13 (emphasis added) (footnotes omitted).