

190 FERC ¶ 61,012  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;  
Mark C. Christie, David Rosner,  
Lindsay S. See and Judy W. Chang

Niagara Mohawk Power Corporation  
New York Independent System Operator, Inc.

Docket No. ER25-416-000

ORDER ON ABANDONED PLANT INCENTIVE

(Issued January 10, 2025)

1. On November 13, 2024, pursuant to sections 205 and 219 of the Federal Power Act (FPA),<sup>1</sup> Part 35 of the Commission's regulations,<sup>2</sup> and Order No. 679,<sup>3</sup> New York Independent System Operator, Inc. (NYISO) filed a request, on behalf of Niagara Mohawk Power Corporation (Niagara Mohawk), for authorization to recover 100% of prudently incurred costs associated with transmission projects that Niagara Mohawk is developing in support of New York State public policy goals (Phase 2 Projects<sup>4</sup>) if such projects are abandoned or cancelled for reasons beyond Niagara Mohawk's control (Abandoned Plant Incentive). As discussed below, we conditionally grant Niagara Mohawk's request for the Phase 2 Projects that are subject to subsequent New York State Siting Approval<sup>5</sup> that

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<sup>1</sup> 16 U.S.C. §§ 824d, 824s.

<sup>2</sup> 18 C.F.R. pt. 35 (2024).

<sup>3</sup> *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).

<sup>4</sup> The Phase 2 Projects for which Niagara Mohawk seeks the Abandoned Plant Incentive are listed in Appendix A to this order, with those that Niagara Mohawk currently expects to proceed through the New York State Siting Approval process indicated with an asterisk. *See Niagara Mohawk Power Corp.*, attach. A (List of NMPC Phase 2 Projects), Docket No. ER25-416-000 (filed Nov. 13, 2024). Niagara Mohawk explains that the list of projects that ultimately proceed through the New York State Siting Approval process is subject to change in light of ongoing siting reforms. Filing, Transmittal Letter at 2 n.7.

addresses reliability and/or congestion in a manner contemplated by section 219, as implemented by Order Nos. 679 and 679-A, subject to such approval and subject to the Commission's acceptance of those compliance filing(s) by Niagara Mohawk, effective the date on which such project(s) receive such approval, as reflected in the required compliance filing(s).

**I. Background**

**A. Applicant**

2. Niagara Mohawk is a public utility company organized and operated under the laws of the State of New York.<sup>6</sup> Niagara Mohawk owns and operates transmission facilities in New York, all of which are subject to the operational control of NYISO. Niagara Mohawk recovers its transmission revenue requirements pursuant to formula rates under the NYISO Open Access Transmission Tariff.

**B. The Phase 2 Projects**

3. Niagara Mohawk states that the Phase 2 Projects include 27 local transmission projects, estimated at \$2.1 billion in investment, approved in the New York Commission's "Order Approving Phase 2 Areas of Concern Transmission Upgrades" (Phase 2 Order) to support the achievement of New York State's renewable energy policy goals while increasing reliability and reducing congestion.<sup>7</sup>

4. Niagara Mohawk explains that the Phase 2 Projects are a product of the New York Climate Leadership and Community Protection Act (CLCPA), which established certain renewable energy requirements, and the Accelerated Renewable Energy Growth and Community Benefit Act, which established new regulatory processes to facilitate the achievement of CLCPA requirements.<sup>8</sup> Niagara Mohawk explains that the Accelerated

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<sup>5</sup> For purposes of this order, the term "New York State Siting Approval" includes subsequent permitting approval by the New York Commission under Article VII of New York State's Public Service Law (Article VII Approval), or any revised state process, that addresses reliability and/or congestion in a manner contemplated by section 219, as implemented by Order Nos. 679 and 679-A.

<sup>6</sup> Filing, Transmittal Letter at 2.

<sup>7</sup> *Id.* at 1, 6-7; *see* Filing, attach. B (Order Approving Phase 2 Areas of Concern Transmission Upgrades, Case No. 20-E-0197 (N.Y. Pub. Serv. Comm'n Feb. 16, 2023) (Phase 2 Order)).

<sup>8</sup> Filing, Transmittal Letter at 3-4.

Renewable Energy Growth and Community Benefit Act directs the New York Commission to establish a distribution and local transmission capital plan for each utility in whose service territory the power grid study identified distribution upgrades and local transmission upgrades that the New York Department of Public Service determines are necessary or appropriate to achieve the CLCPA targets.<sup>9</sup>

5. Niagara Mohawk states that the New York Commission initiated a process to establish this plan on May 14, 2020, directing the New York utilities to submit a comprehensive report identifying local transmission and distribution upgrades to achieve the CLCPA targets.<sup>10</sup> According to Niagara Mohawk, the New York utilities recommended dividing local transmission projects into “Phase 1” projects already needed under existing planning criteria and “Phase 2” projects proposed primarily to increase transmission system headroom in support of renewable energy development.<sup>11</sup>

6. Niagara Mohawk states that, on September 9, 2021, the New York Commission issued an order: (1) identifying specific “Areas of Concern” in New York “characterized by the presence of existing renewable generation that is already experiencing curtailments and a strong level of developer interest that exceeds the capability of the local transmission system” and (2) ordering Niagara Mohawk, New York State Electric & Gas (NYSEG), Rochester Gas & Electric (RG&E), and Central Hudson Gas & Electric Corporation (Central Hudson) to “consult with Department of Public Service Staff regarding presentation of a minimum of two options for each Area of Concern that identifies the most cost-effective upgrades on a dollar per megawatt basis.”<sup>12</sup> Niagara Mohawk, along with Central Hudson, NYSEG, and RG&E, submitted a joint petition for approval of Phase 2 local transmission projects on March 8, 2022. The New York Commission issued the Phase 2 Order approving Niagara Mohawk’s Phase 2 Projects on February 16, 2023.<sup>13</sup>

7. Niagara Mohawk also explains that, on June 17, 2022, Niagara Mohawk, RG&E, NYSEG, Central Hudson, Consolidated Edison Company of New York, Inc., and

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<sup>9</sup> *Id.* at 4-5.

<sup>10</sup> *Id.* at 5 (citing *Ord. on Transmission Plan. Pursuant to the Accelerated Renewable Energy Growth & Cmty. Benefit Act*, Case 20-E-0197, at 3 (N.Y. Pub. Serv. Comm’n, May 14, 2020)).

<sup>11</sup> *Id.* at 5-6.

<sup>12</sup> *Id.* at 6 (citing *Ord. on Loc. Transmission & Distrib. Plan. Process & Phase 2 Project Proposals*, Case 20-E-0197, at 34 & Ordering P 6 (N.Y. Pub. Serv. Comm’n, Sept. 9, 2021)).

<sup>13</sup> *Id.*; see also Phase 2 Order at 2.

Orange and Rockland Utilities, Inc. entered into the “Cost Sharing and Recovery Agreement” (CSRA) participant funding agreement for local transmission upgrades selected by the New York Commission to meet CLCPA mandates, which the Commission accepted on August 19, 2022.<sup>14</sup>

8. Niagara Mohawk explains that, pursuant to the Regulatory Accountability and Process Improvement Act, New York State is implementing reforms to its siting review and permitting process, including the current transmission permitting process under which the New York Commission conducts its Article VII Approval process.<sup>15</sup> Niagara Mohawk further explains that these reforms will transfer the Office of Renewable Energy Siting (ORES) to the New York Department of Public Service, and ORES will then be responsible for the approval of major electric transmission facilities and will make project need determinations consistent with the rebuttable presumption in Order No. 679. Niagara Mohawk states that the revised process and associated regulations will be substantively similar to the existing Article VII Approval process. Niagara Mohawk states that the revised process is anticipated to be initially implemented in the third quarter of 2025. Niagara Mohawk states that it is likely that some of the Phase 2 Projects will proceed through the existing Article VII Approval process, while others may receive New York State Siting Approval through the revised process.

## **II. Filing**

9. Niagara Mohawk requests that the Commission grant the Abandoned Plant Incentive for its Phase 2 Projects in the event that individual Phase 2 Projects are abandoned for reasons outside Niagara Mohawk’s control, effective January 13, 2025.<sup>16</sup>

## **III. Notice of Filing**

10. Notice of Niagara Mohawk’s filing was published in the *Federal Register*, 89 Fed. Reg. 91381 (Nov. 19, 2024), with interventions and protests due on or before December 4, 2024. The New York Commission filed a notice of intervention. No protests or comments were filed.

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<sup>14</sup> Filing, Transmittal Letter at 6; *see also Consol. Edison Co. of N.Y.*, 180 FERC ¶ 61,106, at P 2 (2022) (accepting filing of the CSRA).

<sup>15</sup> Filing, Transmittal Letter at 5.

<sup>16</sup> *Id.* at 2, 7.

#### **IV. Discussion**

##### **A. Procedural Matters**

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2024), the notice of intervention serves to make the New York Commission a party to this proceeding.

##### **B. Substantive Matters**

###### **1. Section 219 Requirements**

12. 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.<sup>17</sup> 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 a policy statement providing guidance regarding its evaluation of applications for transmission rate incentives under section 219 and Order No. 679.<sup>18</sup>

13. Pursuant to Order No. 679, an applicant may seek to obtain incentive rate treatment for transmission infrastructure investments that satisfy 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."<sup>19</sup> Order No. 679 established a process for an applicant to demonstrate that it meets this standard, including a rebuttable presumption that the standard is met if: (1) the transmission project "result[s] from a fair and open regional planning process that considers and evaluates projects 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."<sup>20</sup> The Commission also stated that "[o]ther applicants not meeting these criteria may nonetheless demonstrate that their

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<sup>17</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, § 1241, 119 Stat. 594 (2005).

<sup>18</sup> *Promoting Transmission Inv. Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (Transmission Incentives Policy Statement).

<sup>19</sup> Order No. 679, 116 FERC ¶ 61,057 at P 76.

<sup>20</sup> *Id.* P 58.

project is needed to maintain reliability or reduce congestion by presenting [to the Commission] a factual record that would support such findings.”<sup>21</sup>

14. 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.<sup>22</sup> 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.”<sup>23</sup> 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.<sup>24</sup> The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.<sup>25</sup> We address the nexus test for the Abandoned Plant Incentive requested for the Phase 2 Projects that are subject to New York State Siting Approval below.

## **2. Niagara Mohawk’s Request**

15. Niagara Mohawk argues that the Commission should find that those Phase 2 Projects that proceed through the New York State Siting Approval process qualify for the rebuttable presumption under the state construction prong articulated in Order No. 679.<sup>26</sup> Niagara Mohawk explains that it will submit Applications for a Certificate of Environmental Compatibility and Public Need for each of the relevant Phase 2 Projects, and New York State’s review of the individual applications will include an analysis of the need for the individual Phase 2 Projects and the environmental impacts of the Projects’ siting, design, construction, and operation.<sup>27</sup> Niagara Mohawk asserts that, where this review includes an analysis of the degree to which the proposed transmission projects

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<sup>21</sup> *Id.* P 57; *see also* Order No. 679-A, 117 FERC ¶ 61,345 at P 41.

<sup>22</sup> Order No. 679, 116 FERC ¶ 61,057 at P 48.

<sup>23</sup> Order No. 679-A, 117 FERC ¶ 61,345 at P 27.

<sup>24</sup> Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at P 10 (quoting Order No. 679-A, 117 FERC ¶ 61,345 at P 27).

<sup>25</sup> Order No. 679, 116 FERC ¶ 61,057 at P 43.

<sup>26</sup> Filing, Transmittal Letter at 9.

<sup>27</sup> *Id.* (citing New York Public Service Law, Chapter 48, Article VII, Siting of Major Utility Transmission Facilities).

will reduce congestion, resulting in substantial cost savings to customers and improved reliability, the resulting New York State Siting Approval constitutes a qualifying construction approval from an appropriate state commission or state siting authority.<sup>28</sup>

16. Niagara Mohawk asserts that, although it has not yet received New York State Siting Approval for any of the Phase 2 Projects, the Commission previously found that it is appropriate to grant incentives to projects that are still undergoing state approval conditioned upon receipt of that construction approval by the state commission or siting authority, including in *RG&E* for other New York utilities' Phase 2 Projects.<sup>29</sup> Niagara Mohawk explains that its Phase 2 Projects were selected through the same state process and individual projects will be subject to the same reviews prior to receiving New York State Siting Approval as those for which incentives were conditionally approved in *RG&E*, thereby justifying a similar grant of the Abandoned Plant Incentive here.

17. Niagara Mohawk contends that because the Phase 2 Projects are subject to further review and approval by New York State in a proceeding that will evaluate individual Phase 2 Projects' anticipated contributions to system reliability and reductions in the costs of delivered power—including ultimate determinations regarding the need for the respective Phase 2 Projects—there is no need for the Commission to duplicate the work of the state in evaluating whether specific Phase 2 Projects meet the section 219 criteria.<sup>30</sup> Niagara Mohawk asserts that the Commission should find that those Phase 2 Projects that obtain New York State Siting Approval are entitled to the rebuttable presumption under Order No. 679.

18. Niagara Mohawk states that the Phase 2 Projects face considerable risks and challenges associated with Niagara Mohawk's investment in those projects and that the requested Abandoned Plant Incentive is designed to mitigate those risks if the Phase 2 Projects are abandoned for reasons beyond Niagara Mohawk's control.<sup>31</sup> Niagara Mohawk asserts that the requested Abandoned Plant Incentive directly addresses, and is tailored to, the specific risks posed by Niagara Mohawk's investment of capital in the Phase 2 Projects.<sup>32</sup>

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<sup>28</sup> *Id.* (citing *Rochester Gas & Elec. Corp.*, 188 FERC ¶ 61,001, at P 20 (2024) (*RG&E*)).

<sup>29</sup> *Id.* (citing *RG&E*, 188 FERC ¶ 61,001 at PP 20, 37, *order on reh'g*, 189 FERC ¶ 61,001, at P 23 (2024); *Niagara Mohawk Power Corp.*, 178 FERC ¶ 61,173, at P 28 (2022)).

<sup>30</sup> *Id.* at 10.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 13.

19. Niagara Mohawk asserts that there are significant financial risks and challenges in connection with the development of the Phase 2 Projects, which represent a series of major transmission investments that, given the size of the proposed investment compared to Niagara Mohawk's current average annual transmission investment, have the potential to adversely impact Niagara Mohawk's finances.<sup>33</sup> Niagara Mohawk explains that there are risks inherent in the development of major transmission projects, and that the investment in the Phase 2 Projects is by definition an effort that "exceeds the normal risks undertaken by a utility."<sup>34</sup>

20. Niagara Mohawk also asserts that there are substantial project construction risks associated with the Phase 2 Projects, beyond the necessary regulatory approvals, that have the potential to substantially increase the expected costs of and/or delay the Phase 2 Projects' construction.<sup>35</sup> Niagara Mohawk argues that these risks are amplified due to the need for expeditious development of the Phase 2 Projects. Niagara Mohawk explains that sequential, utility-scale construction projects, like the Phase 2 Projects, require careful planning to ensure system reliability in consideration of how outages and construction processes affect resources.<sup>36</sup> Niagara Mohawk further explains that most of the Phase 2 Projects are in close proximity to each other and are expected to be built on an accelerated timeline to meet New York State policy goals. Niagara Mohawk asserts that energization of the Phase 2 Projects is dependent on other Niagara Mohawk projects funded in its pending rate case before the New York Commission and any funding delay could put the Phase 2 Projects at risk. Additionally, Niagara Mohawk asserts that the development of the Phase 2 Projects will require coordination between Niagara Mohawk and neighboring utilities, over whom Niagara Mohawk has no operational control, and reliance on the deployment of a high volume of new renewable generation resources. Niagara Mohawk states that the Phase 2 Projects will also be constructed in areas with high interest in renewable generation development, and the interconnection work done in parallel with construction is anticipated to cause unique planning challenges. Niagara Mohawk argues

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<sup>33</sup> *Id.* at 10-11 (citing Filing, attach. C (Direct Testimony of Marc Quesnel), at 6-7 (Quesnel Test.)). Niagara Mohawk states that the Phase 2 Projects add to Niagara Mohawk's already substantial planned investment in New York State's transmission infrastructure, with a projected annual investment of approximately \$211.2 million in fiscal year 2025, \$390.7 million in fiscal year 2026, and \$579.3 million in fiscal year 2027. *Id.* Niagara Mohawk states that the Phase 2 Project investment represents a 39% increase in capital expenditure on transmission for 2025.

<sup>34</sup> *Id.* (quoting Order No. 679, 116 FERC ¶ 61,057 at P 25).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 11-12 (citing Quesnel Test. at 10, 12).



that the Abandoned Plant Incentive will help mitigate the impact of prospective changes in actual resource development, such as a determination by the New York Commission that the Phase 2 Projects are no longer necessary due to unanticipated trends in generation development in New York State.

21. Niagara Mohawk also argues that the Phase 2 Projects face material procurement risks because the concentration of projects to be built under the expedited timelines of the Accelerated Renewable Energy Growth and Community Benefit Act Phase 2 process is likely to exacerbate existing supply chain and procurement challenges.<sup>37</sup> Niagara Mohawk asserts that inflationary pressures and supply chain constraints have strained new project development in the energy sector and competition for labor, materials, and construction resources will be heightened during construction of the Phase 2 Projects. Niagara Mohawk contends that uncertainty around material procurement and costs presents a risk to project development that is appropriately mitigated by the Abandoned Plant Incentive.

22. Finally, Niagara Mohawk avers that the Phase 2 Projects are subject to significant siting and permitting requirements from both federal and state regulatory bodies, requiring complex and time-consuming engagement and coordination.<sup>38</sup> Niagara Mohawk also asserts that, to the extent new or expanded rights of way or parkland alienation is required, Niagara Mohawk will have to negotiate with municipalities and landowners and conduct additional stakeholder engagements. Niagara Mohawk argues that these siting and permitting activities present a particular risk in the context of the accelerated timelines and development-intensive areas associated with the Phase 2 Projects. Niagara Mohawk contends that the Abandoned Plant Incentive provides appropriate protection in light of these challenges.

23. Niagara Mohawk states that, to the extent it incurs abandoned plant costs, it will submit a separate section 205 filing demonstrating that any costs it seeks to recover were prudently incurred and that the abandonment was due to events outside Niagara Mohawk's control.<sup>39</sup>

### **3. Commission Determination**

24. We grant the requested Abandoned Plant Incentive for the Phase 2 Projects that are subject to subsequent New York State Siting Approval, conditioned upon (i) receipt of New York State Siting Approval<sup>40</sup> that addresses reliability and/or congestion in the

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<sup>37</sup> *Id.* at 12 (citing Quesnel Test. at 10, 13).

<sup>38</sup> *Id.* at 12-13 (citing Quesnel Test. at 10-11).

<sup>39</sup> *Id.* at 13 n.65 (citing Order No. 679, 116 FERC ¶ 61,057 at P 166).

manner contemplated by section 219, as implemented by Order Nos. 679 and 679-A—i.e., that determines that each proposed project ensures reliability and/or reduces the cost of delivered power by reducing transmission congestion—and (ii) Commission acceptance of Niagara Mohawk’s compliance filing(s) demonstrating to the Commission’s satisfaction that such approval contemplated by section 219, as implemented by Order Nos. 679 and 679-A, has been obtained. The Commission has previously found that it is appropriate to grant incentives to certain transmission projects that are still undergoing state approval conditioned upon receipt of such construction approval by the state commission or siting authority that meets the requirements of section 219, as implemented by Order Nos. 679 and 679-A.<sup>41</sup> In this case, Niagara Mohawk anticipates that some of the Phase 2 Projects will be subject to New York State Siting Approval, either under the existing Article VII approval process or the revised Regulatory Accountability and Process Improvement Act process, which may form an appropriate basis for finding that the section 219 criteria, as implemented by Order Nos. 679 and 679-A, are met but which will be considered should those facts and circumstances be presented to the Commission in a future filing.<sup>42</sup>

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<sup>40</sup> We reiterate that such approval includes Article VII Approval or approval under any revised state process, so long as that state approval process expressly addresses reliability and/or congestion in a manner contemplated by section 219, as implemented by Order Nos. 679 and 679-A.

<sup>41</sup> See *RG&E*, 188 FERC ¶ 61,001 at PP 20, 37, *order on reh’g*, 189 FERC ¶ 61,001 at P 23; *Niagara Mohawk Power Corp.*, 178 FERC ¶ 61,173 at P 28 (granting Abandoned Plant Incentive request for investment in the Smart Path Connect Project conditioned upon the New York Commission issuing an Article VII Approval for the Smart Path Connect Project that addresses reliability and/or congestion in the manner contemplated by section 219); *N.Y. Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,004, at P 27 (2022) (granting 50-basis point return on equity adder request to reflect the risks and challenges associated with investment in the Smart Path Connect Project conditioned upon the New York Commission issuing an Article VII Approval for the Smart Path Connect Project that addresses reliability and/or congestion in the manner contemplated by section 219); *N.Y. Power Auth.*, 178 FERC ¶ 61,172, at P 28 (2022) (granting Abandoned Plant Incentive request for investment in the Smart Path Connect Project conditioned upon the New York Commission issuing an Article VII Approval for the Smart Path Connect Project that addresses reliability and/or congestion in the manner contemplated by section 219); *Xcel Energy Servs., Inc.*, 121 FERC ¶ 61,284, at P 53 (2007) (finding that a set of projects qualified for the rebuttable presumption that they met the requirements of section 219 if they received a “Certificate of Need” from the Minnesota Public Utility Commission).

<sup>42</sup> The Phase 2 Projects are listed in Appendix A, and those that Niagara Mohawk anticipates will be subject to subsequent New York State Siting Approval are indicated with an asterisk.

Because the New York State Siting Approval process may adequately consider and evaluate the reliability and/or congestion-relieving impacts of these Phase 2 Projects, they may satisfy the rebuttable presumption. To the extent a Phase 2 Project meets the rebuttable presumption, we grant the Abandoned Plant Incentive, as discussed herein, conditioned upon receipt of New York State Siting Approval that addresses reliability and/or congestion in the manner contemplated by section 219, as implemented by Order Nos. 679 and 679-A, for the relevant Phase 2 Project. We direct Niagara Mohawk to submit a compliance filing(s) within 30 days of issuance of New York State Siting Approval for the relevant Phase 2 Project(s). Niagara Mohawk's compliance filing(s) must include the date of New York State Siting Approval and demonstrate that the given New York State Siting Approval process adequately considered and found that the relevant Phase 2 Project(s) will ensure reliability and/or reduce the cost of delivered power by mitigating congestion consistent with section 219, as implemented by Order Nos. 679 and 679-A.<sup>43</sup>

25. We note that the Commission's grant of conditional approval of the Abandoned Plant Incentive applies to all Phase 2 Projects listed in Appendix A in light of the uncertainty regarding which Phase 2 Projects will ultimately receive subsequent New York State Siting Approval that addresses reliability and/or congestion in a manner contemplated by section 219, as implemented by Order Nos. 679 and 679-A, and which are subsequently accepted by this Commission through compliance filings.<sup>44</sup> The Commission's grant of conditional approval of the Abandoned Plant Incentive, however, does not apply to those Phase 2 Projects that do not ultimately receive New York State Siting Approval that addresses reliability and/or congestion in a manner contemplated by section 219, as implemented by Order Nos. 679 and 679-A.

26. In Order No. 679, the Commission found that the Abandoned Plant Incentive is an effective means to encourage transmission development.<sup>45</sup> We find that the Phase 2 Projects that are subject to subsequent New York State Siting Approval face certain regulatory, financial, siting, execution, and procurement risks and challenges beyond Niagara Mohawk's control that could lead to their abandonment, and that approval of the Abandoned Plant Incentive will address those risks and challenges. Thus, we find that Niagara Mohawk has demonstrated a nexus between its requested incentive and its

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<sup>43</sup> See Order No. 679-A, 117 FERC ¶ 61,345 at P 49; *see also* *Niagara Mohawk Power Corp.*, 178 FERC ¶ 61,173 at P 28 (directing further filing).

<sup>44</sup> See *RG&E*, 189 FERC ¶ 61,001 at P 23.

<sup>45</sup> Order No. 679, 116 FERC ¶ 61,057 at PP 163-66; *see also, e.g.,* *Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,296, at P 28 (2015); *TransCanyon DCR, LLC*, 152 FERC ¶ 61,017, at P 41 (2015).

planned investment, and Niagara Mohawk has tailored its incentive request to its identification of risks and challenges associated with the Phase 2 Projects that are subject to subsequent New York State Siting Approval.

27. Consistent with Commission policy, the Abandoned Plant Incentive for the Phase 2 Projects that are subject to subsequent New York State Siting Approval will be available to Niagara Mohawk, as conditioned above, for 100% of prudently incurred costs expended on and after the effective date granted in this order if those Phase 2 Projects are abandoned for reasons beyond Niagara Mohawk's control. We will not determine the prudence of any costs incurred prior to the abandonment, if any, until Niagara Mohawk seeks such recovery in a future section 205 filing that a public utility is required to make if it seeks abandoned plant recovery.<sup>46</sup>

28. As a result of the Commission conditionally approving the rate incentive, Niagara Mohawk must submit FERC-730 reports annually.<sup>47</sup>

The Commission orders:

(A) Niagara Mohawk's request for the Abandoned Plant Incentive for the Phase 2 Projects, identified in Appendix A, that are subject to subsequent New York State Siting Approval is hereby granted, effective the date on which such project(s) receive such New York State Siting Approval, as reflected in the required compliance filing(s), conditioned upon receipt of New York State Siting Approval for the relevant Phase 2

Projects, as described in the body of this order and on the Commission's acceptance of Niagara Mohawk's compliance filing(s), as discussed in the body of this order.

(B) Niagara Mohawk is hereby directed to submit a compliance filing(s) within

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<sup>46</sup> Order No. 679, 116 FERC ¶ 61,057 at PP 165-66. In the event that Niagara Mohawk seeks abandoned plant recovery for the time period prior to the effective date established in any compliance order (i.e., the date on which the Phase 2 Project(s) receive New York State Siting Approval, as reflected in the required compliance filing), Niagara Mohawk 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 denying reh'g*, 157 FERC ¶ 61,056 (2016), *aff'd*, *San Diego Gas & Elec. Co. v. FERC*, 913 F.3d 127 (D.C. Cir. 2019).

<sup>47</sup> 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). These reports contain actual, projected, and incremental transmission investment information.

30 days of receipt of New York State Siting Approval for the relevant Phase 2 Project(s), as discussed in the body of this order.

By the Commission.

( S E A L )

Carlos D. Clay,  
Acting Deputy Secretary.

**Appendix A – Phase 2 Project List**

1. Aloc Thermal Upgrades
2. Black River – Lighthouse Hill Rebuild\*
3. Black River – North Carthage – Taylorville Rebuild\*
4. Black River Substation Upgrades
5. Boonville – Porter Rebuild\*
6. Boonville Substation – PAR\*
7. Bremen Thermal Upgrades
8. Clay Thermal Upgrades
9. Coffeen – Black River Rebuild
10. Coffeen – East Watertown Rebuild
11. Coffeen – Lyme Junction Rebuild
12. Coffeen Synchronous Condensers
13. Colton – Nicholville Rebuild\*
14. Colton Thermal Upgrades
15. Dennison Thermal Upgrades
16. East Ave Substation\*
17. East Watertown Thermal Upgrades
18. Lighthouse Hill – Clay Rebuild\*
19. Lighthouse Hill – South Oswego Rebuild\*
20. Maiden Lane Substation\*
21. Ames Road Substation\*
22. McIntyre – Colton DLR Installation
23. Staplin Creek Substation\*
24. North Carthage Thermal Upgrades
25. South Oswego Thermal Upgrades
26. Taylorville – Boonville Rebuild\*
27. Beaver River Substation & Synchronous Condensers\*

\* Indicates projects that Niagara Mohawk currently expects to proceed through the New York State Siting Approval process.