

182 FERC ¶ 61,028  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc.  
New York Power Authority

Docket No. ER23-491-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF FILING, SUBJECT  
TO REFUND AND CONDITION, AND ESTABLISHING HEARING AND  
SETTLEMENT JUDGE PROCEDURES

(Issued January 23, 2023)

1. On November 23, 2022, pursuant to sections 205 and 219 of the Federal Power Act (FPA)<sup>1</sup> and Part 35 of the Commission's regulations,<sup>2</sup> New York Independent System Operator, Inc. (NYISO), on behalf of New York Power Authority (NYPA), filed proposed revisions to NYPA's Formula Rate Template and Formula Rate Protocols, as set forth in sections 14.2.3.1 and 14.2.3.2 of Attachment H to NYISO's Open Access Transmission Tariff (Tariff).<sup>3</sup> NYPA's proposed revisions: (1) update the allocation methodology for administrative and general costs and expenses as well as depreciation and net plant costs for general plant (A&G); (2) incorporate a transmission rate incentive and a cost containment mechanism for the Smart Path Connect Project; and (3) make certain technical and clarifying improvements to the Formula Rate Template. As discussed below, we accept for filing the proposed Tariff revisions to the Formula Rate Template, suspend them for a nominal period, to become effective January 24, 2023, subject to refund, and set them for hearing and settlement judge procedures. We conditionally accept for filing the proposed Tariff revisions to the Formula Rate Protocols, effective January 24, 2023, subject to revision and a compliance filing.

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<sup>1</sup> 16 U.S.C. §§ 824d, 824s.

<sup>2</sup> 18 C.F.R. pt. 35 (2021).

<sup>3</sup> NYISO, NYISO Tariffs, NYISO OATT, §§ 14.2.3-14.2.3.1 OATT attach. H (NYPA Formula Rate) (9.0.0); NYISO OATT, §14.2.3.2 OATT attach. H (NYPA Formula Rate Implementation Protocols) (3.0.0).

## **I. Background**

2. NYPA is a corporate municipal instrumentality and a political subdivision of the State of New York, organized under the laws of the State, and operating pursuant to Title 1 of Article 5 of the New York Public Authorities Law. NYPA is a “municipality” within the meaning of section 3(7) of the FPA and is a “state instrumentality” within the meaning of FPA section 201(f).<sup>4</sup> NYPA generates, transmits, and sells electric power and energy at wholesale and retail throughout New York. NYPA has no distribution facilities or defined geographical service territory of its own, and since the inception of NYISO, has recovered its cost of owning and maintaining its backbone transmission facilities primarily through the NYPA Transmission Adjustment Charge (NTAC), a charge assessed to virtually all loads in NYISO on a load-ratio share basis.<sup>5</sup>

## **II. Filing**

3. NYPA states that New York State has embarked on an aggressive climate change initiative that requires substantial construction of new transmission to accommodate large increases in renewable and other clean generation. Accordingly, NYPA asserts that its business focus and investment profile has shifted such that transmission development and construction are the dominant activities requiring management attention.<sup>6</sup> NYPA states that, after a review of how it allocates A&G costs in its Formula Rate Template, it concluded that the current single factor ratio allocator is no longer the appropriate allocation. NYPA, therefore, proposes to allocate A&G costs using a multi-factor modified Massachusetts method of allocation (Massachusetts Method). NYPA explains that the Massachusetts Method uses an equally weighted average of direct labor, net plant, and net revenue ratios. NYPA proposes to modify the Formula Rate Template to reflect the change (which NYPA characterizes as an accounting change, and which NYPA states it made effective January 1, 2022) and that, as the Formula Rate Protocols provide, NYPA will identify and describe this change and its impacts in its next Annual Update.<sup>7</sup>

4. NYPA states that the Massachusetts Method has broad regulatory acceptance and aligns with utility practice. NYPA also states that modifying the Massachusetts Method by using net rather than gross revenue avoids distortions that are unique to NYPA by

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<sup>4</sup> 16 U.S.C. §§ 796(7), 824(f).

<sup>5</sup> Transmittal Letter at 2.

<sup>6</sup> *Id.* (explaining that NYPA’s transmission investment as of 2020 was approximately \$2.1 billion and, by 2025, it is projected to be \$4.3 billion).

<sup>7</sup> *Id.* at 2-3.

excluding fuel, purchase power, and other charges that are passed through to its direct service customers.<sup>8</sup>

5. NYPA also proposes to revise its Formula Rate Protocols to implement the Commission-approved incentive rates and cost containment mechanism for the Smart Path Connect Project in its NTAC calculation. NYPA states that the proposed revisions implement the approved 80/20 cost containment provision in the Formula Rate Protocols and calculations.<sup>9</sup>

6. Finally, NYPA proposes to make certain technical and clarifying changes to the Formula Rate Template. NYPA states that these proposed revisions are not substantive and remedy grammatical errors and make clarifications.<sup>10</sup>

7. NYPA requests that the Commission accept the proposed Tariff modifications with an effective date of January 24, 2023.<sup>11</sup>

### **III. Notice and Responsive Pleadings**

8. Notice of NYPA's filing was published in the *Federal Register*, 87 Fed. Reg. 73,549 (Nov. 30, 2022), with interventions and protests due on or before December 14, 2022. The Municipal Electric Utilities Association of New York (MEUA) filed a motion to intervene and comments on December 14, 2022. On December 23, 2022, NYPA filed an answer in response to MEUA's comments.

#### **A. MEUA Comments**

9. MEUA asserts that NYPA failed to demonstrate how the adoption of a multi-factor allocation of A&G costs is just and reasonable. MEUA states that NYPA currently allocates A&G costs among approximately 12 profit centers using a labor allocator based on actual labor costs. MEUA argues that using the Massachusetts Method for A&G costs will likely assign a larger portion of A&G costs to the transmission function recovered in NTAC rates and less to its other profit centers. MEUA states NYPA does not explain its decision to change accounting methods, nor does it cite to any Commission requirement, either statutory or generally accepted accounting change or external factor compelling the change in the allocation of A&G

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<sup>8</sup> *Id.* at 3-4.

<sup>9</sup> *Id.* at 4-5 (citing *N.Y. Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,004, at PP 44-46 (2022) (July Order)).

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Id.* at 2.

costs that NYPA proposes. Finally, MEUA argues that NYPA has not provided an adequate record for the Commission to determine whether the filing is just and reasonable. MEUA asserts that the proposed cost allocation method will have material impacts on the NTAC revenue requirement and that NYPA would systematically over-recover its A&G costs.<sup>12</sup>

10. MEUA requests that the Commission direct NYPA to demonstrate how the proposal is just and reasonable for all NYPA's profit centers and explain how the changes will apply to its non-transmission profit centers.<sup>13</sup>

**B. NYPA's Answer**

11. NYPA states that it is proposing a modified Massachusetts Method to more accurately allocate A&G costs. NYPA states that given the changes to its business focus, it concluded that a single factor labor ratio allocator did not adequately capture the appropriately allocated A&G costs to NYPA's various business functions. NYPA explains that it is only proposing nomenclature changes to the allocator references in the Formula Rate Template to accommodate what it has characterized as a change in accounting, which it asserts does not impose A&G costs on NYPA's transmission customers.<sup>14</sup>

12. NYPA states that the details and effects of this accounting change, which became effective January 1, 2022, will be presented to stakeholders as part of the Annual Update process on July 1, 2023. NYPA explains that it filed the revisions now, in time for the Annual Update, to obviate the need to supply additional workpapers. NYPA explains that, during the Annual Update, it will use 2022 data to show the effect on NYPA's revenue requirement and stakeholders will have the opportunity to examine the impacts of the Massachusetts Method. NYPA asserts that, if a stakeholder takes issue with the proposed Massachusetts Method, the stakeholder retains the right to seek remedy at the Commission. NYPA argues that the A&G allocator change would not have material impacts. NYPA further argues that, even if a changed A&G allocator would have material impacts on NYPA's transmission revenue requirement, there is no basis for the Commission to determine the nomenclature change being made in the instant filing is unjust and unreasonable. NYPA asserts that, although the impacts of the change are not before the Commission in this filing, it has supplied sufficient justification for the Commission to approve the nomenclature changes to the Formula Rate Template so NYPA's 2023 Annual Update can accommodate the change.<sup>15</sup>

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<sup>12</sup> MEAU Comments at 3-4.

<sup>13</sup> *Id.* at 5.

<sup>14</sup> NYPA Answer at 2-3.

13. NYPA asserts that changing the allocation methodology is an accounting approach to allocate A&G costs to NYPA's profit centers, not a ratemaking approach to allocate costs to different functions. NYPA clarifies that it will use the three-factor A&G allocation approach for all profit centers other than those where it is contractually bound to use a labor ratio. NYPA explains that MEUA's concern that NYPA will over-recover its costs is speculative and will not occur because most of NYPA's profit centers do not have cost-based rates. NYPA states that it only has cost-based rates for transmission under the Formula Rate Template and for the sale of preference hydropower under contractual arrangements, and the allocation of A&G costs to all other services, which do not have cost-based rates, does not impact the prices charged for those services.<sup>16</sup>

#### **IV. Discussion**

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

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2021), the timely, unopposed motion to intervene serves to make MEUA a party to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2021), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept NYPA's Answer because it has provided information that assisted us in our decision-making process.

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

##### **1. Formula Rate Template Revisions**

16. Our preliminary analysis indicates that NYPA's proposed revisions to the Formula Rate Template have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that NYPA's proposed changes raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Accordingly, we accept for filing NYPA's proposed Tariff revisions to its Formula Rate Template, suspend them for a nominal period, to be effective January 24, 2023, as requested, subject to refund, and establish hearing and settlement judge procedures.

17. Although we are setting the entirety of the Formula Rate Template revisions for hearing, we note below several specific issues to be addressed at hearing. We note that

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<sup>15</sup> *Id.* at 3-5.

<sup>16</sup> *Id.* at 5-6.

the proposed Formula Rate Template revisions to implement the proposed change in the A&G allocator go beyond NYPA's assertion that the revisions are only changes in nomenclature or a non-ratemaking change. Further, the incorporation of an allocation methodology is not an "accounting change," as NYPA asserts. Specifically, the proposed changes to the Formula Rate Template provide for a changed allocation of A&G costs to ratepayers and provide for changes to the Formula Rate Template that allow for the use of new inputs for those costs.<sup>17</sup> Accordingly, whether such changes are just and reasonable must be supported in the instant proceeding and not in the Annual Update process, as asserted by NYPA.

18. The first issue is whether the Massachusetts Method is a just and reasonable method for NYPA to use in allocating its A&G costs between business functions. The Massachusetts Method is typically used by holding companies to allocate A&G costs between a non-revenue generating holding company and its operating/subsidiary companies.<sup>18</sup> NYPA, however, is a corporate municipal instrumentality and a political subdivision of the State of New York. NYPA's proposal includes no support for its claim that the Massachusetts Method is appropriate for its specific circumstances and structure.<sup>19</sup>

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<sup>17</sup> For example, the proposed changes to Work Paper EA add "Net Plant" and "Net Revenue" to the existing worksheet. These new fields are changes to the *formula* and are not "Accounting Changes" within the scope of NYISO OATT, § 14.2.3.2.2(d)(i) as argued by NYPA. "Accounting Changes" are defined as "any change in accounting that affects *inputs* to the Formula Rate or the resulting charges billed under the Formula Rate." NYISO OATT, § 14.2.3.2.1(b) (emphasis added).

<sup>18</sup> *Questar Pipeline Co.*, 74 FERC ¶ 61,126, at 61,454-55 (1996) (rejecting use of the Massachusetts Method for functionalizing A&G expenses and explaining that this method is used for allocating non-revenue-generating parent holding company A&G expenses to subsidiaries); *Tenn. Gas Pipeline Co.*, Opinion No. 240, 32 FERC ¶ 61,086, at 61,232-33 (1985) (affirming an initial decision ruling that A&G expenses should be allocated on the basis of the Massachusetts Method).

<sup>19</sup> Commission precedent generally views use of labor ratios as the appropriate methodology for allocating intra-corporate A&G expenses. *E.g.*, *Entergy Servs. Inc.*, 130 FERC ¶ 61,026, at P 88 (2010) ("[T]he use of labor ratios for functionalizing [general and intangible p]lant costs and A&G expenses is well-settled Commission policy."), *reh'g denied*, 143 FERC ¶ 61,120, at P 33 (2013); *Utah Power & Light Co.*, Opinion No. 308, 44 FERC ¶ 61,166, at 61,549 n.11 (1988); *Idaho Power Co.* Opinion No. 13, 3 FERC ¶ 61,108, at 61,295 (1977) (finding A&G expenses are "clearly labor-related rather than plant-related. Functionalization of these expenses on the basis of labor ratios is reasonable, and is consistent with reasoned FPC precedent.").

19. The second issue is how the proposed change in the allocation methodology and the proposed revisions to the Formula Rate Template will affect rates. It is NYPA's burden to demonstrate that the proposed changes are just and reasonable.<sup>20</sup> NYPA has not demonstrated that its proposed change in the allocation methodology and Formula Rate Template revisions will not instead result in unjust and unreasonable rates. Moreover, as explained above, NYPA's assertions that the Formula Rate Template revisions can be analyzed during the Annual Update misconstrues the Annual Update process, which provides for evaluation of the Formula Rate inputs, not the Formula Rate Template or revisions thereto.

20. While we are setting these matters for a trial-type evidentiary hearing,<sup>21</sup> we encourage efforts to reach settlement before hearing procedures commence. To aid settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>22</sup> 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.<sup>23</sup> The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide additional time to continue settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

## **2. Formula Rate Protocols Revisions**

21. NYPA states that it has revised its Formula Rate Protocols to implement the Commission-approved incentive rates and cost containment mechanism for the Smart Path Connect Project; however, we find that NYPA's proposed revisions are inconsistent with NYPA's representations in its transmittal letter in Docket No. ER22-1014-000 (February Transmittal Letter),<sup>24</sup> which the Commission relied upon in

<sup>20</sup> 16 U.S.C. § 824d(e); *Ala. Power Co. v. FERC*, 993 F.2d 1557, 1571 (D.C. Cir. 1993).

<sup>21</sup> Trial Staff is a participant in the hearing and settlement judge procedures. *See* 18 C.F.R. § 385.102(b), (c) (2021).

<sup>22</sup> 18 C.F.R. § 385.603 (2021).

<sup>23</sup> If 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>).

granting the relevant incentives. Accordingly, we accept NYPA's proposed Tariff revisions to the Formula Rate Protocols to incorporate the transmission rate incentives and cost containment mechanism approved in the July Order granting the incentives for the Smart Path Connect Project subject to a compliance filing that corrects inconsistencies with the language relied upon in the July Order.

22. The proposed definition of "Third Party Costs" diverges from NYPA's representations in the February Transmittal Letter.<sup>25</sup> NYPA stated that Third Party Costs include: "(i) interconnection and network upgrade costs resulting from the NYISO interconnection process; and (ii) any increased costs (i.e., costs incurred related to the rescheduling of outages or to the relocation of utility assets, which are beyond the ability of NYPA to control or mitigate)."<sup>26</sup> NYPA's proposed Tariff revisions in the instant filing alter this definition to state: Third Party Costs are costs that result from: "(i) ISO requirements, including interconnection costs and upgrades resulting from the ISO interconnection processes and related interregional studies; or (ii) increased costs, such as costs incurred related to the rescheduling of outages or the relocation of utility assets that are beyond the ability of NYPA to control or mitigate."<sup>27</sup> The proposed definition of Third Party Costs may be interpreted to allow NYPA to exclude more costs from total Project Costs than contemplated by the Commission when it granted the incentive rates. Accordingly, NYPA must submit a compliance filing correcting the definition of Third Party Costs to reflect the definition in the February Transmittal Letter.

23. Further, the proposed Tariff revisions do not include any reference to the Commission's determination that implementation of the granted incentives are "bounded by the upper end of the zone of reasonableness."<sup>28</sup> NYPA's compliance filing must include tariff revisions reflecting that the incentives are bounded by the upper end of the zone of reasonableness as discussed in the July Order.

24. We also note that the proposed Tariff revisions include the definition of "Performance-Based ROE Incentive" in proposed section 14.2.3.2.10(A)(5)(g), as an "Unforeseeable Cost."<sup>29</sup> Including this defined term as a subsection of the definition of

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<sup>24</sup> Transmittal Letter, Docket No. ER22-1014-000 (Feb. 10, 2022) (February Transmittal Letter).

<sup>25</sup> Filing, Attach. B §14.2.3.2.10(A)(3).

<sup>26</sup> See February Transmittal Letter at 33 (defining "Third Party Costs").

<sup>27</sup> Filing, Attach. B § 14.2.3.2.10(A)(3).

<sup>28</sup> See July Order, 180 FERC ¶ 61,004 at PP 41, 46.

<sup>29</sup> Filing, Attach. B § 14.2.3.2.10(A)(5)(g).



Unforeseeable Cost is inconsistent with the structure of proposed section 14.2.3.2.10(A) and the language should be revised to make Performance-Based ROE Incentive its own definition.

25. We therefore accept the proposed Tariff revisions subject to NYPA submitting a compliance filing within 30 days of the date of this order, as discussed above.

The Commission orders:

(A) NYPA's proposed Tariff revisions to its Formula Rate Template are hereby accepted for filing, suspended for a nominal period, to become effective January 24, 2023, subject to refund, and set for hearing and settlement judge procedures, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of NYPA's proposed Formula Rate Template revisions, 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 (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2021), 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.

(D) 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.

(E) 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.

(F) NYPA's proposed Tariff revisions to its Formula Rate Protocols are hereby conditionally accepted for filing effective January 24, 2023, subject to NYPA submitting a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.