

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF ENERGY MARKET REGULATION

New York Independent System Operator, Inc.
Docket Nos. ER23-1816-001
ER23-1817-001

Issued: September 21, 2023

On May 3, 2023, New York Independent System Operator, Inc. (NYISO) filed, on behalf of New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E)¹ (collectively, Applicants), proposed revisions to the NYISO Open Access Transmission Tariff (OATT) to establish NYSEG's² and RG&E's³ formula rate templates and associated formula rate implementation protocols (Protocols). These revisions derive and recover the costs of local transmission upgrades determined by the New York State Public Service Commission (NYPSC) to be necessary to meet New York state climate and renewable energy goals as required by New York state law, the Climate Leadership and Community Protection Act (CLCPA Eligible Projects).

On June 28, 2023, Commission staff issued a deficiency letter requesting additional information from NYSEG and RGE regarding their filings. On July 26, 2023, Applicants submitted their response.

Please be advised that the filings remain deficient and that additional information is necessary to process the filings. Please provide the information requested below.

Protocols

The Commission established its policy regarding transmission formula rate protocols in a series of cases involving Midcontinent Independent System Operator, Inc.'s (MISO)

¹ NYISO submitted the filings on behalf of NYSEG in Docket No. ER23-1816-001 and RG&E in Docket No. ER23-1817-001 in its role as administrator of the NYISO OATT.

² NYISO, NYISO Tariffs, [NYISO OATT, 6.19.6-6.19.6.2.1 OATT Schedule 19 Attachment 1 - Rate Mecha \(0.0.0\)](#) and [NYISO OATT, 6.19.6.2.2 OATT Schedule 19 - New York State Electric and Ga \(0.0.0\) \(NYSEG Formula Rate Template\)](#).

³ NYISO, NYISO Tariffs, [NYISO OATT, 6.19.7-6.19.7.2.1 OATT Schedule 19 Attachment 2 - Rate Mecha \(0.0.0\)](#) and [NYISO OATT, 6.19.7.2.2 OATT Schedule 19 - Rochester Gas and Electric Cor \(0.0.0\) \(RG&E Formula Rate Template\)](#).

Open Access Transmission, Energy and Operating Reserve Markets Tariff.⁴ The resulting MISO Protocol Orders have served as the benchmark for proceedings involving the justness and reasonableness of formula rate protocols.⁵

1. This Commission precedent requires that formula rate protocols include certain provisions for the disclosure of information. NYSEG's and RG&E's proposed Protocols require NYSEG and RG&E to disclose this information in its Actual Annual Revenue Requirements (ATTR)⁶ and Annual True Up Adjustments⁷ posting, but the Protocols do not require the disclosure of the information in the Annual Update posting for "Projected ATTRs."⁸ While NYSEG's and RG&E's Annual Update postings for their "Projected ATTRs" provides for information exchange and challenge procedures for "Projected ATTRs," they do not appear to specifically provide the necessary disclosures.⁹ For example, the Commission has

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012), *order on investigation*, 143 FERC ¶ 61,149 (2013) (MISO Investigation Order), *order on reh'g*, 146 FERC ¶ 61,209, *order on compliance*, 146 FERC ¶ 61,212 (2014) (MISO Compliance Order), *order on reh'g*, 150 FERC ¶ 61,024, *order on compliance*, 150 FERC ¶ 61,025 (2015) (MISO Compliance Order II) (collectively, MISO Protocol Orders).

⁵ See, e.g., *Black Hills Power, Inc.*, 150 FERC ¶ 61,198 (2015); *UNS Elec., Inc.*, 153 FERC ¶ 61,132 (2015); *The Empire Dist. Elec. Co.*, 153 FERC ¶ 61,127 (2015); *Kansas City Power & Light Co.*, 153 FERC ¶ 61,150 (2015); *Louisville Gas & Elec. Co.*, 153 FERC ¶ 61,126 (2015); *Westar Energy, Inc.*, 153 FERC ¶ 61,143 (2015); *Alabama Power Co.*, 182 FERC ¶ 61,015 (2023).

⁶ NYSEG's and RGE's Protocols Section 1.d. define Actual ATTRs as "the actual annual revenue requirement of [the utility's] CLCPA Eligible Projects for a Rate Year calculated in accordance with the Formula Rate and posted on the ISO website no later than June 15 following the end of such Rate Year."

⁷ NYSEG's and RGE's Protocols Section 1.e. define Annual True-Up Adjustments as "the difference between the revenues collected for that Rate Year under the Formula Rate based upon the Projected ATRR (not including the True-up Adjustment or Corrections) and the Actual ATRR for the same Rate Year. The Annual True-up Adjustment is included in the Annual Update for the next Rate Year."

⁸ For example, see NYSEG's and RGE's Protocols, Section 3.c, 3.g (Actual ATRR Requirements), 3.h (Projected ATRR Requirements).

⁹ NYSEG's and RGE's Protocols, Sections 3.h, 6.a, 8.a. NYSEG's and RGE's Protocols, Section 1.p. defines Projected ATTRs as "the projected annual revenue requirement of [the utility's] CLCPA Eligible Projects for the upcoming Rate Year

found that formula rate protocols must require transmission owners to disclose any change in accounting during the rate period that affects inputs to the formula rate or the resulting charges billed under the formula rate. Specifically, a change in accounting may involve: (1) the initial implementation of an accounting standard or policy; (2) the initial implementation of accounting practices for unusual or unconventional items where the Commission has not provided specific accounting direction; (3) corrections of errors and prior period adjustments; (4) the implementation of new estimation methods or policies that change prior estimates; and (5) changes to income tax elections. The formula rate protocols must also provide for identification of items included in the formula rate at an amount other than on a historical cost basis (e.g., fair value adjustments).¹⁰ Please explain how NYSEG's and RG&E's proposed Protocols comply with these requirements.

2. The Commission has further found that all interested parties should be able to identify and understand all accounting changes that affect inputs to the formula rate or the resulting charges billed under the formula rate.¹¹ The Commission found that provisions that limit utility disclosure of accounting changes to only those that are "material" are insufficient to ensure just and reasonable rates and that the word "material" must be removed from the description of the accounting changes that will be disclosed.¹² The Commission noted that "by adding the concept of materiality to the accounting changes that must be disclosed, the MISO Transmission Owners reduced the transparency of financial information used in formula rate billings without sufficient support."¹³ NYSEG's and RG&E's proposed Protocols state that, with respect to Accounting Changes that NYSEG and RG&E will disclose, such disclosures are limited to "correction of *material* errors and *material* prior period adjustments that impact an Annual True-up Adjustment calculation or prior Annual True-up Adjustments."¹⁴ It appears that NYSEG's and RG&E's proposed Protocols also do not require NYSEG and RG&E to disclose this information in their Annual Update postings.¹⁵ Please

calculated in accordance with the Formula Rate and posted on the ISO website no later than the Posting Date."

¹⁰ MISO Investigation Order, 143 FERC ¶ 61,149 at P 87.

¹¹ MISO Compliance Order, 146 FERC ¶ 61,212 at P 66.

¹² *Id.* P 65.

¹³ *Id.*

¹⁴ NYSEG's and RGE's Protocols, Section 3.g.vi.C.

¹⁵ NYSEG's and RGE's Protocols, Section 3.c., 3.g.

demonstrate how NYSEG's and RG&E's proposed Protocols comply with these requirements.

3. The Commission has found that "formula rate protocols must require a transmission owner to provide: (1) a detailed description of the methodologies used to allocate and directly assign costs between the transmission owner and its affiliates by service category or function *for the applicable rate year*, including any changes to such cost allocation methodologies from the prior year, and the reasons and justification for those changes; and (2) the magnitude of such costs that have been allocated or directly assigned between the transmission owner and each affiliate by service category or function for the applicable period."¹⁶ Please explain how NYSEG's and RG&E's proposed Protocols providing this information for the "prior Rate Year," and not the "applicable rate year," complies with this requirement.
4. The Commission also provided that, following the annual update, interested parties must be afforded the opportunity to obtain upon request, information on procurement methods and cost control methodologies used by the transmission owner.¹⁷ Please explain how NYSEG's and RG&E's proposed Protocols comply with this requirement.
5. The Commission has found that formula rate protocols cannot define the scope of various types of future section 205 filings, and the Commission will determine the scope of any future section 205 filings when such filings are made.¹⁸ NYSEG's and RG&E's proposed Protocols provide that "[the utility] may also make a limited section 205 filing to request recovery of extraordinary property losses or to

¹⁶ *Commonwealth Edison Co.*, 182 FERC ¶ 61,156, at P 28 (2023) (emphasis added).

¹⁷ MISO Investigation Order, 143 FERC ¶ 61,149 at P 90.

¹⁸ *ATX Sw., LLC*, 152 FERC ¶ 61,193, at P 85 (2015) ("We reject ATX Southwest's proposed Section IV.J, which attempts to define the scope of various types of future section 205 filings and is inappropriate to include in the formula rate protocols. The scope of any future section 205 filings will be addressed when such filings are made."); *Transource Kansas, LLC*, 163 FERC ¶ 61,176, at PP 13-17 (2018); *Indicated RTO Transmission Owners*, 161 FERC ¶ 61,018, at P 13 (2017) (declining to make an advance determination on single issue ratemaking for transmission owners of PJM Interconnection, LLC and Southwest Power Pool, Inc. on the basis that it was "unclear whether the specific revisions [] will affect other unchanged components of their formula rates"); *Commonwealth Edison Co.*, 182 FERC ¶ 61,156 at P 27.

change or to add new depreciation and amortization rates. In each case, the sole purpose of any such limited section 205 filing shall be to address whether such proposed changes are just and reasonable and shall not include other aspects of the Formula Rate.”¹⁹ Please explain how NYSEG’s and RG&E’s proposed Protocols comply with this Commission precedent.

This letter is issued pursuant to 18 C.F.R. § 375.307 and is interlocutory. This letter is not subject to rehearing under 18 C.F.R. § 385.713. A response to this letter must be filed with the Secretary of the Commission within 30 days of the date of this letter by making a deficiency filing in accordance with the Commission’s electronic tariff requirements. For your response, use Type of Filing Code 170 if your company is registered under program code “M” (Electric Market Based Rate Public Utilities) or Type of Filing Code 180 if your company is registered under program code “E” (Electric Traditional Cost of Service and Market Based Rates Public Utilities).²⁰

In addition, submit an electronic version of your response to Paul Robinson at paul.robinson@ferc.gov. The information requested in this letter order will constitute amendments to your filings and a new filing date will be established.²¹ Notices will be issued upon receipt of your filing.

Pending receipt of the above information, a filing date will not be assigned to your filings. Failure to respond to this letter order within the time period specified may result in a further order rejecting your filings.

Issued by: Kurt M. Longo, Director, Division of Electric Power Regulation – East

¹⁹ NYSEG’s and RGE’s Protocols, Section 3.k.

²⁰ The filing must include at least one tariff record in each docket to restart the statutory timeframe for Commission action even though a tariff revision might not otherwise be needed. *See generally Elec. Tariff Filings*, 130 FERC ¶ 61,047, at PP 3-8 (2010) (explaining that the Commission uses the data elements resulting from the tariff filing process to establish statutory filing and other procedural dates).

²¹ *See Duke Power Co.*, 57 FERC ¶ 61,215, at 61,713 (1991) (“the Commission will consider any amendment or supplemental filing filed after a utility’s initial filing . . . to establish a new filing date for the filing in question”).