

184 FERC ¶ 61,059  
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.  
Niagara Mohawk Power Corp.

Docket Nos. ER23-973-001  
ER23-974-001  
(not consolidated)

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

(Issued July 28, 2023)

1. On January 30, 2023, as amended on May 30, 2023, 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) submitted in Docket No. ER23-973, on behalf of Niagara Mohawk Power Corporation (Niagara Mohawk), revisions to the NYISO Open Access Transmission Tariff (OATT) to reflect proposed revisions to Niagara Mohawk's Transmission Service Charge (TSC) under Attachment H<sup>3</sup> and to establish a proposed new Rate Schedule 18,<sup>4</sup> as well as a request for authorization to include 100% of prudently incurred Construction Work in Progress (CWIP) for the Smart Path Connect Project (Project).<sup>5</sup> On January 30, 2023, as amended on May 30, 2023, Niagara Mohawk submitted in Docket No. ER23-974, pursuant to FPA section 205 and Part 35 of the Commission's regulations, a Cost Allocation Agreement for the Project.<sup>6</sup>

---

<sup>1</sup> 16 U.S.C. §§ 824d, 824s.

<sup>2</sup> 18 C.F.R. pt. 35 (2022).

<sup>3</sup> NYISO, NYISO Tariffs, NYISO OATT, §§ 14.2-14.2.1 (Attachment 1 to Attachment H) (26.0.0), Schedules 15a-15e (Schedule 15).

<sup>4</sup> NYISO, NYISO Tariffs, NYISO OATT, § 6.18 (Schedule 18 Rate Mechanism for the Recovery) (4.0.0) (Rate Schedule 18).

<sup>5</sup> NYISO Filing, Docket No. ER23-973-000 (filed Jan. 30, 2023) (Tariff Filing).

2. In this order, we accept in part, and reject in part, the proposed tariff record in Schedule 15 revising Niagara Mohawk's TSC, suspend it for a nominal period, effective April 1, 2023, subject to a compliance filing, and establish hearing and settlement judge procedures. We also accept the proposed tariff record in Rate Schedule 18, effective April 1, 2023. We grant Niagara Mohawk's request for the CWIP incentive (CWIP Incentive) and accept the Cost Allocation Agreement for the Project, effective April 1, 2023.

## **I. Background**

### **A. Description of the Filing Party**

3. Niagara Mohawk is a Commission-regulated public utility company organized and operated under the laws of the State of New York.<sup>7</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 OATT.

### **B. The Project**

4. Niagara Mohawk states that the Project is a product of the Climate Leadership and Community Protection Act (CLCPA), which established certain renewable energy goals (CLCPA Requirements), and the Accelerated Renewable Energy Growth and Community Benefit Act (AREGCBA), which directed the New York Public Service Commission (New York Commission) to identify distribution and transmission infrastructure needs under the CLCPA and to establish a bulk transmission investment program to be submitted to NYISO for incorporation into NYISO's transmission studies and planning processes.<sup>8</sup> The AREGCBA provided for project selection to meet the CLCPA Requirements either (1) through the Public Policy Transmission Planning Process in section 31.1.5 of the NYISO OATT or (2) by the New York Commission as "priority transmission projects" (Priority Projects) needed on an "expeditious" basis to meet the CLCPA Requirements. Niagara Mohawk states that the AREGCBA directs the New York Power Authority (NYPA) to develop Priority Projects through a public solicitation process that assesses whether joint development would provide significant additional benefits in achieving the CLCPA Requirements.

---

<sup>6</sup> Niagara Mohawk Filing, Docket No. ER23-974-000 (filed Jan. 30, 2023) (Cost Allocation Agreement Filing); Niagara Mohawk Power Corporation Tariffs, Rate Schedules, Agreements NYTOs CAA - SPC, Cost Allocation Agreement - Smart Path Connect (0.0.0) (Cost Allocation Agreement).

<sup>7</sup> Tariff Filing, Transmittal at 2.

<sup>8</sup> *Id.* at 7-9.

5. Niagara Mohawk states that on October 15, 2020, pursuant to the AREGCBA, the New York Commission designated the Project as a Priority Project needed expeditiously to meet the CLCPA Requirements.<sup>9</sup>

6. On March 30, 2021, after completing its public solicitation process, NYPA agreed to develop the Project with Niagara Mohawk as a co-participant.<sup>10</sup> Niagara Mohawk states that the total capital cost of the Project is estimated at \$1.2 billion, of which Niagara Mohawk's share is approximately \$535 million.

7. Niagara Mohawk explains that the Project consists of rebuilding approximately 100 linear miles of existing 230 kilovolt (kV) transmission lines to either 230 kV or 345 kV, along with associated substation construction and upgrades that, together with other projects currently under construction in New York, will establish a continuous 345 kV transmission path from northern New York to the downstate region to mitigate current and projected congestion.<sup>11</sup>

8. Niagara Mohawk states that the Project consists of two components, the "MW-Patnode" component and the "Adirondack-Porter" component.<sup>12</sup> Niagara Mohawk further states that NYPA will own all of the MW-Patnode facilities and will own part of the Adirondack-Porter facilities, while Niagara Mohawk will own the rest of the Adirondack-Porter facilities. Niagara Mohawk explains that the Project includes the following work on its facilities: rebuilding the Adirondack to Porter lines, constructing the Austin Road Substation, extending the existing Rector Road to Chases Lake Line 10, expanding the Edic Substation, and removing the existing Edic to Porter Line 17 and equipment at the Porter and Chases Lakes Substations. Niagara Mohawk states that the Project is proposed to be built primarily within existing rights-of-way.

9. On March 11, 2022, the Commission conditionally authorized Niagara Mohawk to recover 100% of prudently incurred Project costs in the event the Project is cancelled or abandoned for reasons beyond Niagara Mohawk's control (Abandoned Plant Incentive), contingent on subsequent New York Commission issuance of a Certificate of Need.<sup>13</sup> On August 11, 2022, the New York Commission approved Niagara Mohawk's and NYPA's Article VII Application for a Certificate of Environmental Compatibility and Public Need

---

<sup>9</sup> *Id.* at 11 (citing *Order on Priority Transmission Projects*, Case 20-E-0197, at 25 (New York Commission Oct. 15, 2020) (New York Commission Priority Project Order)).

<sup>10</sup> *Id.* at 2, 7, 13-14.

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

<sup>12</sup> *Id.*

<sup>13</sup> *Niagara Mohawk Power Corp.*, 178 FERC ¶ 61,173, at P 28 (2022).

to construct, maintain, and operate the Project.<sup>14</sup> On October 24, 2022, the Commission approved Niagara Mohawk's compliance filing demonstrating that the New York Commission approved the Article VII Application in a robust stakeholder process that adequately considered and found that the Project meets the reliability and congestion criteria established in FPA section 219.<sup>15</sup>

10. Niagara Mohawk states that it began construction on the Project in December 2022, with an anticipated in-service date of December 2025.<sup>16</sup>

## **II. Description of Filings**

11. As explained further below, Niagara Mohawk requests to recover CWIP in rate base pursuant to FPA section 219 for its portion of the investment in the Project. Niagara Mohawk also submitted a proposed new Rate Schedule 18, "Rate Mechanism for the Recovery of the Smart Path Connect Facilities Charge," to recover its cost of service for the Project on a statewide volumetric load-ratio share basis rather than only from ratepayers in the Niagara Mohawk zone or service territory.<sup>17</sup> Rate Schedule 18 sets forth the return on equity (ROE) and capital structure that will apply to the Project; Niagara Mohawk proposes to use the existing TSC ROE of 10.3%.<sup>18</sup> Niagara Mohawk will implement Rate Schedule 18 by revising its TSC to add a new Schedule 15 Project-specific incremental formula rate in section 14.2.1 of Attachment 1 to Attachment H of the NYISO OATT and by revising the existing crediting mechanism in Schedule 10 of Attachment 1 to Attachment H.<sup>19</sup> Niagara Mohawk also proposes a cost containment mechanism providing that in the event that "Eligible Project Costs" exceed the "Cost Cap" of \$481.9 million (Cost Cap), Niagara Mohawk will earn no ROE on 20% of the equity portion of the actual costs that exceed the Cost Cap.<sup>20</sup> In addition, Niagara

---

<sup>14</sup> *Order Adopting Joint Proposal*, Case 21-T-0340 (New York Commission Aug. 11, 2022) (Article VII Order).

<sup>15</sup> *Niagara Mohawk Power Corp.*, 181 FERC ¶ 61,065, at P 19 (2022).

<sup>16</sup> Tariff Filing, attach. E, Ex. No. NMPC-100 (Prepared Direct Testimony of Brian Gemmell) at 16-17 (Gemmell Test.).

<sup>17</sup> Tariff Filing, Transmittal at 17, 27-28.

<sup>18</sup> Niagara Mohawk proposes to apply the same 10.3% ROE that is applied to all of its transmission assets. *Id.* at 3 (citing Niagara Mohawk, Settlement Agreement and Offer of Settlement, Docket No. EL14-29-000, et al. (Feb. 24, 2015). The Commission accepted this settlement on May 13, 2015. *N.Y. Ass'n of Pub. Power v. Niagara Mohawk Power Corp.*, 151 FERC ¶ 61,121 (2015)).

<sup>19</sup> Tariff Filing, Transmittal at 18-20.

Mohawk's Tariff Filing requests Commission authorization to establish a regulatory asset for the cost of removal of existing assets to build the Project (Cost of Removal Regulatory Asset proposal).<sup>21</sup>

12. Niagara Mohawk states that, in order to satisfy the Income Tax Allowance Adjustment Mechanism requirements of Order No. 864,<sup>22</sup> it proposes to include Schedules 15c and 15d, which will be used in the event there is excess or deficient accumulated deferred income taxes (ADIT).<sup>23</sup> Niagara Mohawk explains that these schedules directly correspond to Schedules 14 and 14a of the TSC that the Commission accepted as compliant with Order No. 864.<sup>24</sup> Niagara Mohawk requests an effective date of April 1, 2023, for its CWIP Incentive request and proposed tariff records.<sup>25</sup>

13. Niagara Mohawk also filed a Cost Allocation Agreement in Docket No. ER23-974, which establishes a voluntary agreement by all New York Transmission Owners (NYTOs)<sup>26</sup> that the revenue requirement for Niagara Mohawk's portion of the Project will be allocated statewide on a volumetric load-ratio share basis.<sup>27</sup> Niagara Mohawk explains that the statewide cost allocation mechanism is set forth entirely in the proposed Rate Schedule 18. Niagara Mohawk adds that the Cost Allocation Agreement

---

<sup>20</sup> *Id.* at 22-23. *See also* Tariff Filing, attach. F, Ex. No. NMPC-200 (Prepared Direct Testimony of Andrew Byrne) at 29-32 (Byrne Test.). Schedule 15e provides the definitions of both "Eligible Project Costs" and the "Cost Cap."

<sup>21</sup> Tariff Filing, Transmittal at 4, 39-41.

<sup>22</sup> *See Pub. Util. Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, Order No. 864, 169 FERC ¶ 61,139 (2019), *order on reh'g and clarification*, Order No. 864-A, 171 FERC ¶ 61,033 (2020).

<sup>23</sup> ADIT arise from timing differences between the method of computing taxable income for reporting to the Internal Revenue Service and the method of computing income for regulatory accounting and ratemaking purposes.

<sup>24</sup> Tariff Filing Transmittal at 20 (citing *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER20-2051-003 (Oct. 7, 2022) (delegated order)).

<sup>25</sup> *Id.* at 4.

<sup>26</sup> The NYTOs are: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corporation; Orange and Rockland Utilities, Inc.; Rochester Gas and Electric Corporation; Long Island Power Authority; and NYPA.

<sup>27</sup> Cost Allocation Agreement Filing, Transmittal at 1, 3-4.

includes a provision stating that the proposed cost allocation is limited to the Project and does not apply to other projects.<sup>28</sup> Niagara Mohawk requests an effective date of April 1, 2023, for the Cost Allocation Agreement.<sup>29</sup>

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

14. Notices of NYISO's Tariff Filing in Docket No. ER23-973-000 and Niagara Mohawk's Cost Allocation Agreement Filing in Docket No. ER23-974-000 were published in the *Federal Register*, 88 Fed. Reg. 7425 (Feb. 3, 2023), with interventions and protests due on or before February 21, 2023. Timely motions to intervene were filed in both dockets by Municipal Electric Utilities Association of New York and Indicated New York Transmission Owners.<sup>30</sup> The New York Commission filed a notice of intervention and comments in both proceedings.

15. On March 28, 2023, Commission staff informed NYISO and Niagara Mohawk that their filings were deficient and additional information was necessary to evaluate the submission (Deficiency Letter). On April 13, 2023, Niagara filed a motion for extension of time to respond to the deficiency letter, which was granted on April 19, 2023. On May 30, 2023, NYISO and Niagara Mohawk submitted responses.<sup>31</sup> Notice of NYISO's Amended Tariff Filing in Docket No. ER23-973-001 was published in the *Federal Register*, 88 Fed. Reg. 36,576 (June 5, 2023), with interventions and protests due on or before June 20, 2023. Notice of Niagara Mohawk's Amended Cost Allocation Agreement Filing in Docket No. ER23-974-001 was published in the *Federal Register*, 88 Fed. Reg. 37,060 (June 6, 2023), with interventions and protests due on or before June 20, 2023. The New York Association of Public Power filed timely motions to intervene in both proceedings.

16. The New York Commission states that, while it takes no position on the proposed rate treatments or cost allocation mechanism, it recognizes the need for regulatory certainty to allow Niagara Mohawk to proceed with the Project.<sup>32</sup> The New York

---

<sup>28</sup> *Id.* at 3-4 (citing Rate Schedule 18, § 6.18.1.2).

<sup>29</sup> *Id.* at 4.

<sup>30</sup> The Indicated New York Transmission Owners are: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, NYPA, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

<sup>31</sup> Niagara Mohawk filed amendments in Docket No. ER23-973-001 (filed May 30, 2023) (Amended Tariff Filing) and Docket No. ER23-974-001 (filed May 30, 2023) (Amended Cost Allocation Agreement Filing) (Jointly, Amended Filings).

Commission states that it supports the Cost Allocation Agreement and the statewide load-ratio share cost allocation of Niagara Mohawk's Project costs as a just and reasonable means for allocating those costs. The New York Commission states that doing so spreads costs in a manner roughly commensurate with benefits and is consistent with New York Commission and Commission precedent on allocation of costs incurred to meet New York State policy goals.

#### **IV. Discussion**

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

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

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

###### **1. Request for CWIP Incentive**

###### **a. Section 219 Requirements**

18. 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 electric transmission infrastructure.<sup>33</sup> The Commission subsequently issued Order No. 679, establishing the processes by which a public utility may seek transmission rate incentives pursuant to FPA section 219.<sup>34</sup> Additionally, in November 2012, the Commission issued a Transmission Incentives Policy Statement providing guidance regarding its evaluation of applications for transmission rate incentives under FPA section 219 and Order No. 679.<sup>35</sup>

19. Pursuant to Order No. 679, an applicant may seek to obtain incentive rate treatment for a transmission infrastructure investment that satisfies the requirements of

---

<sup>32</sup> New York Commission Comments at 2, 4.

<sup>33</sup> Pub. L. No. 109-58, § 1241, 119 Stat. 594 (2005).

<sup>34</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>35</sup> *Promoting Transmission Inv. Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (Transmission Incentives Policy Statement).

FPA 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>36</sup> Order No. 679 established a process for an applicant to demonstrate that it meets this standard, including by establishing a rebuttable presumption that the standard is met if: (1) the transmission project results from a fair and open regional planning process that considers and evaluates projects for reliability 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>37</sup>

**b. Rebuttable Presumption**

**i. Niagara Mohawk’s Request**

20. Niagara Mohawk states that the Project qualifies for the rebuttable presumption under FPA section 219 because, in the state siting process, the New York Commission found that “the Project will improve reliability, serve the interests of electric system economy and reliability, and provide increased transmission capability for renewable resources required to meet the State’s obligations under the CLCPA.”<sup>38</sup> Niagara Mohawk states that the state construction approval process considered the reliability and congestion benefits of the Project and found that the Project will provide these benefits, thereby satisfying the criteria set forth in FPA section 219. Niagara Mohawk states that the New York Commission found that the Project had multiple benefits, which include significantly reducing congestion, thereby reducing the cost of delivered power for customers. For example, the New York Commission noted that the project will avoid 7.5 TWh of renewable generation curtailments annually.<sup>39</sup> Niagara Mohawk states that the New York Commission also found that the Project will improve deliverability of renewable generation in New York, and represents an upgrade to the backbone transmission system in New York.<sup>40</sup>

21. Niagara Mohawk states that the Commission has previously found that the New York Commission approved the Project in a stakeholder process that adequately considered and found that the Project meets the reliability and congestion criteria established in FPA section 219, resulting in the issuance of a Certificate of Need.<sup>41</sup>

---

<sup>36</sup> Order No. 679, 116 FERC ¶ 61,057 at P 76.

<sup>37</sup> *Id.* at P 58.

<sup>38</sup> Tariff Filing, Transmittal at 30-32 (citing Article VII Order at 32).

<sup>39</sup> *Id.* at 16 (citing Article VII Order at 32).

<sup>40</sup> Tariff Filing, Transmittal at 30-32 (citing *Niagara Mohawk Power Corp.*, 181 FERC ¶ 61,065 at P 19).



**ii. Commission Determination**

22. The Commission has previously found that projects approved by a state siting board are entitled to the rebuttable presumption established under Order No. 679.<sup>42</sup> Relevant here, the Commission has previously found that the New York Commission approved the Article VII Application for the Project in a robust stakeholder process that adequately considered and found that the Project meets the reliability and congestion criteria established in FPA section 219.<sup>43</sup> Accordingly, we find that the Project is entitled to the rebuttable presumption.

**c. Order No. 679 Nexus**

23. In addition to satisfying the FPA 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>44</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>45</sup> The Commission requires a project-specific demonstration of the nexus between the requested incentives and the risks and challenges of the project.<sup>46</sup>

**i. CWIP Incentive**

**(a) Niagara Mohawk’s Request**

24. Niagara Mohawk seeks inclusion of 100% of CWIP in rate base during the development and construction phase of the Project.<sup>47</sup> Niagara Mohawk states that there are a variety of significant risks and challenges associated with the Project, which represents a major financial transmission investment compared to its current average annual transmission investment. Niagara Mohawk explains that 85% of its current

<sup>41</sup> *Id.* at 32 (citing *Niagara Mohawk Power Corp.*, 181 FERC ¶ 61,065 at P 19).

<sup>42</sup> Order No. 679, 116 FERC ¶ 61,057 at P 58; *Dayton Power & Light Co.*, 182 FERC ¶ 61,147, at P 21 (2023).

<sup>43</sup> *Niagara Mohawk Power Corp.*, 181 FERC ¶ 61,065 at P 19.

<sup>44</sup> Order No. 679, 116 FERC ¶ 61,057 at P 48.

<sup>45</sup> Order No. 679-A, 117 FERC ¶ 61,345 at P 40.

<sup>46</sup> *See* 18 C.F.R. § 35.35(d).

<sup>47</sup> Tariff Filing, Transmittal at 30, 32.

annual transmission capital projects are budgeted at less than \$20 million, well below Niagara Mohawk's estimated \$535 million share of the cost of the Project. Niagara Mohawk states that its investment in the Project is by definition an effort that "exceed[s] the normal risks undertaken by a utility."<sup>48</sup> Niagara Mohawk explains that it will expend large amounts of capital – up to \$145 million in a single year – which will negatively affect key financial ratios, i.e., credit metrics, and may negatively affect Niagara Mohawk's ability to attract debt on favorable terms.<sup>49</sup> Niagara Mohawk states that the CWIP Incentive will help it to raise capital and mitigate the decrease in cash flow and the increase in debt that are likely to occur.

25. Niagara Mohawk explains there will be long delays in the recovery of costs associated with constructing a project of this scale, due in part to the nature of system operational constraints (coordinating outages to ensure system reliability), unexpected geotechnical conditions (rocks requiring rerouting or drilling), and extreme weather conditions (such as hurricanes, blizzards, and other wet conditions requiring sediment and pollution control).<sup>50</sup> Niagara Mohawk states that granting the CWIP Incentive will also help it to raise debt from investors who may be discouraged by long delays in the recovery of costs and decide to deploy their capital elsewhere, especially given Niagara Mohawk's proposed cost-containment provision for the Project. Niagara Mohawk adds that the Commission has previously recognized that the CWIP Incentive encourages the construction of large-scale transmission projects and can provide regulatory certainty during the Project's development and construction phases.<sup>51</sup>

26. Niagara Mohawk states that the inclusion of CWIP in rate base will reduce rate shock to ratepayers that would otherwise occur under an approach strictly based on Allowance for Funds Used During Construction (AFUDC), thereby improving rate stability.<sup>52</sup>

27. Niagara Mohawk states that it will implement accounting procedures to prevent double recovery of Project costs regarding AFUDC and CWIP.<sup>53</sup> Niagara Mohawk states

---

<sup>48</sup> *Id.* at 32 (quoting Order No. 679, 116 FERC ¶ 61,057 at P 27).

<sup>49</sup> *Id.* at 32-33, 35, Byrne Test. at 10, 17-18.

<sup>50</sup> Tariff Filing, Transmittal at 34-35.

<sup>51</sup> *Id.* at 35 (citing *The United Illuminating Co.*, 119 FERC ¶ 61,182, at P 66 (2007) ("The Commission also agrees with [United Illuminating Co.] that allowing the 100 percent CWIP incentive will help ensure completion of the [p]roject.")).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 36.

that it will monitor and specifically tag all project work orders associated with the Project to prevent AFUDC from accruing on the work orders. Niagara Mohawk states that it will also provide footnote disclosures in the notes to the financial statements of Niagara Mohawk's annual FERC Form No. 1 and quarterly FERC Form No. 3-Q that will fully explain the impact of CWIP in rate base, including details of non-capitalized AFUDC because of the inclusion of CWIP in rate base for the current year, the previous two years, and the sum of all years. Niagara Mohawk states that its proposed disclosures will also include a partial balance sheet that includes an Assets and Other Debit section with a line item for AFUDC non-capitalized due to the inclusion of CWIP in rate base.

28. To implement this incentive, Niagara Mohawk requests waiver of the Commission's filing requirements related to CWIP, including: (1) 18 C.F.R. § 35.13(h)(38), which requires an applicant to submit a Statement BM, which serves as an applicant's description of its long-range program for providing reliable and economic power, including an assessment of alternatives and an explanation of why the program is consistent with a least-cost energy supply program; (2) 18 C.F.R. § 35.25(c)(4), which requires the development of forward-looking allocation ratios and an evaluation of potential anticompetitive effects of CWIP recovery, including "price squeeze" and "double whammy" concerns; and (3) 18 C.F.R. § 35.25(g), which requires an applicant to provide additional information regarding the potential anti-competitive "price squeeze" and "double whammy" impacts of CWIP recovery.<sup>54</sup> Niagara Mohawk notes that the Commission has recognized that Statement BM was designed primarily for CWIP associated with new generation projects, and that the Commission has waived the requirement to submit Statement BM for utilities that have, or have a pending proposal to have, transmission formula rates.<sup>55</sup> Similarly, Niagara Mohawk states that the Commission's "double whammy" and "price squeeze" requirements relate to concerns that are not present in the case of transmission upgrades in rate base, and the Commission has previously permitted waiver of these requirements for other transmission rate incentive applicants.<sup>56</sup>

#### **(b) Commission Determination**

29. We grant Niagara Mohawk's request for the CWIP Incentive, effective April 1, 2023, as requested, for the Project. We agree that the approval of the CWIP Incentive will bolster Niagara Mohawk's financial metrics, help ensure its current credit rating, and enable its participation in the Project. Additionally, we grant Niagara Mohawk's request for waiver of 18 C.F.R. § 35.13(h)(38) and §§ 35.25(c)(4) and (g). We find that Niagara

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* (citing *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at PP 92, 94 (2007); *N.Y. Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,004, at PP 48, 80-83 (2015)).

<sup>56</sup> *Id.* (citing *N. Ind. Pub. Serv. Co.*, 141 FERC ¶ 61,231, at PP 34 (2012)).

Mohawk has provided sufficient information to satisfy the requirements for waiver of these provisions.

30. 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.<sup>57</sup> 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.

31. We find that Niagara Mohawk has shown a nexus between the proposed CWIP Incentive and its investment in the Project. Niagara Mohawk's share of the Project is expected to cost \$535 million, which is a significant increase from its budgeted transmission capital investment project average of under \$20 million. The record indicates the costs of completing this Project will increase risk in Niagara Mohawk'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 Niagara Mohawk proceeds with the Project. The Commission has, in prior cases, found that such incentives are appropriate in circumstances similar to Niagara Mohawk's.<sup>58</sup>

32. 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 through the use of CWIP.<sup>59</sup> Niagara Mohawk's accounting procedures, if implemented as stated in its filing, are adequate to ensure that there is no duplicate recovery of CWIP.

**ii. Total Package of Incentives**

**(a) Niagara Mohawk's Request**

33. Niagara Mohawk explains that the total package of proposed incentives is tailored to address the Project's risks and challenges because the CWIP Incentive will address cash flow, rate shock, and timing issues, while the Abandoned Plant Incentive addresses risks and challenges associated with abandonment for reasons outside of Niagara Mohawk's control.<sup>60</sup> Niagara Mohawk states that the Commission frequently approves

---

<sup>57</sup> Order No. 679, 116 FERC ¶ 61,057 at PP 29, 117.

<sup>58</sup> See *Duquesne Light Co.*, 179 FERC ¶ 61,218, at P 17 (2022); *Dayton Power & Light Co.*, 172 FERC ¶ 61,140, at P 57 (2020).

<sup>59</sup> See *Boston Edison Co.*, 109 FERC ¶ 61,300, at P 36 (2004).

the CWIP Incentive and the Abandonment Incentive as a package of “risk reducing” incentives and should do so here.<sup>61</sup>

**(b) Commission Determination**

34. We find that the total package of incentives is tailored to address the demonstrable risks and challenges that Niagara Mohawk faces in undertaking the Project. We note that we previously granted Niagara Mohawk the Abandoned Plant Incentive for the Project.<sup>62</sup> 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.<sup>63</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>64</sup> The Commission has, in prior cases, approved multiple rate incentives for particular projects where each incentive is justified by a showing that it satisfies the requirements of FPA section 219 and is otherwise appropriate.<sup>65</sup>

35. For the reasons discussed above, including the significant financial resources necessary to construct the Project, we find that Niagara Mohawk has demonstrated that the incentives package, as a whole, addresses the risks and challenges faced by Niagara Mohawk in undertaking the Project. The CWIP Incentive will provide up-front regulatory certainty, rate stability, and improved cash flow, reducing the pressure on Niagara Mohawk’s finances caused by investing in the Project, while the Abandoned Plant Incentive mitigates the risk to Niagara Mohawk that the Project may need to be canceled or supplanted for reasons beyond its control. We find that each of the requested

---

<sup>60</sup> Tariff Filing, Transmittal at 37.

<sup>61</sup> *Id.* (citing *Niagara Mohawk Power Corp.*, 181 FERC ¶ 61,065 (finding that the Abandonment Incentive addresses risks and challenges associated with abandonment for reasons outside of Niagara Mohawk’s control)).

<sup>62</sup> *See Niagara Mohawk Power Corp.*, 178 FERC ¶ 61,173 at P 28; *Niagara Mohawk Power Corp.*, 181 FERC ¶ 61,065 at P 19.

<sup>63</sup> Order No. 679-A, 117 FERC ¶ 61,345 at P 27; Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at P 10.

<sup>64</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>65</sup> 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).

incentives address different risks and challenges faced by Niagara Mohawk in constructing the Project.

36. Finally, as a result of the Commission approving rate incentives, we remind Niagara Mohawk that it must submit FERC-730 reports annually.<sup>66</sup>

## **2. Cost Allocation Agreement**

### **a. Niagara Mohawk Proposal**

37. Niagara Mohawk's Cost Allocation Agreement is a voluntary participant funding agreement among all NYTOs. It memorializes their agreement that the revenue requirement for Niagara Mohawk's portion of the Project should be allocated statewide on a volumetric load-ratio share basis.<sup>67</sup> Niagara Mohawk explains that the applicable statewide allocation mechanism is set forth entirely in the proposed Rate Schedule 18 to the NYISO OATT. Niagara Mohawk adds that the Cost Allocation Agreement includes a provision stating that the proposed cost allocation is limited to the Project and does not apply to other projects. The Cost Allocation Agreement is subject to the condition precedent that the New York Commission file with the Commission comments supporting the allocation of the costs of the Project on a statewide volumetric load-ratio share basis.<sup>68</sup>

38. Niagara Mohawk's proposed Rate Schedule 18 allocates Project costs on a statewide volumetric load-ratio share basis across NYISO's eleven load zones, rather than solely to Niagara Mohawk's ratepayers.<sup>69</sup> According to Niagara Mohawk, the proposed cost allocation mechanism currently results in approximately 43% of the costs being allocated to LSEs in upstate New York (Zones A through F) and 57% of the costs being allocated to LSEs in downstate New York (Zones G through K), although these proportions could change with load-ratio shifts over time.<sup>70</sup> Niagara Mohawk states that

---

<sup>66</sup> FERC-730 annual reports 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. *Id.*

<sup>67</sup> Cost Allocation Agreement Filing, Transmittal at 3-4.

<sup>68</sup> Cost Allocation Agreement at P 5.

<sup>69</sup> Tariff Filing, Transmittal at 16-17, 25-27. Niagara Mohawk includes testimony to show that it is appropriate to allocate the costs of these projects on a statewide basis in a manner that roughly corresponds to the location of customers throughout New York. *See* Tariff Filing, attach. G, Ex. No. NMPC-300 (Direct Testimony of Bart D. Franey) at 10 (Franey Test.).

it modeled proposed Rate Schedule 18 on NYISO OATT rate schedules previously accepted by the Commission for public policy projects in New York, which also allocate costs on a statewide basis.<sup>71</sup>

39. The proposed Rate Schedule 18 provides that each LSE will pay a portion of the Project revenue requirement calculated by applying a cost allocation ratio to the Project revenue requirement after it is adjusted for incremental transmission rights revenues and outage cost adjustments.<sup>72</sup> This cost allocation ratio is each individual LSE's actual energy withdrawals for all load zones in NYISO aggregated across all hours in the billing period, divided by all LSEs' actual energy withdrawals for all load zones aggregated across all hours in the billing period. As a result, each LSE's share can fluctuate depending on their withdrawals from the entire NYISO system in relationship to total withdrawals from the NYISO system.

40. Niagara Mohawk states that statewide allocation of the costs is fully consistent with New York State law and the Commission's precedent and recent policy pronouncements.<sup>73</sup> Specifically, Niagara Mohawk argues that statewide cost allocation is justified: (1) under the Commission's 2021 State Agreement Policy Statement;<sup>74</sup> (2) as roughly commensurate with the public policy and economic benefits of the Project;<sup>75</sup> and (3) given Commission approval of similar allocations in similar circumstances.<sup>76</sup>

41. First, Niagara Mohawk states that statewide allocation of the costs of its portion of the Project is consistent with the Commission's 2021 State Agreement Policy Statement. Niagara Mohawk notes that the Commission's 2021 State Agreement Policy Statement recognized that voluntary agreements may allow state-prioritized transmission facilities

---

<sup>70</sup> Tariff Filing, Franey Test. at 5.

<sup>71</sup> Tariff Filing, Transmittal at 17 (citing NYISO, NYISO Tariffs, NYISO OATT, § 6.13 OATT (Schedule 13 – Rate Mechanism for the Recovery) (2.0.0) (establishing the Transco Facilities Charge); NYISO, NYISO Tariffs, NYISO OATT, § 6.17 (Schedule 17 - Rate Mechanism for Recovery of) (1.0.0) (establishing the Western New York Facilities Charge)).

<sup>72</sup> Rate Schedule 18, § 6.18.3.5.

<sup>73</sup> Tariff Filing, Transmittal at 24-28.

<sup>74</sup> *Id.* at 24-25 (citing *State Voluntary Agreements to Plan & Pay for Transmission Facilities*, 175 FERC ¶ 61,225, at P 2 (2021) (2021 State Agreement Policy Statement)).

<sup>75</sup> *Id.* at 27.

<sup>76</sup> *Id.* at 25.

to be planned and built more quickly than comparable facilities planned through the regional transmission planning process.<sup>77</sup> Niagara Mohawk states that statewide allocation of the costs of its portion of the Project is consistent with the Commission's Policy Statement because the NYTOs agreed to load-ratio share cost allocation in the Cost Allocation Agreement,<sup>78</sup> which is a "voluntary agreement" by public utilities and two non-jurisdictional utilities that reflects "state efforts to develop transmission facilities through voluntary agreement to plan and pay for those facilities."<sup>79</sup> Niagara Mohawk states that the Cost Allocation Agreement is consistent with other types of voluntary agreements accepted by the Commission, most notably the Cost Sharing and Recovery Agreement (CSRA) that the Commission relied upon, in part, to accept a statewide volumetric load-ratio share basis cost allocation for local transmission upgrades selected by the New York Commission to meet CLCPA mandates.<sup>80</sup>

42. In support of its voluntary agreement argument, Niagara Mohawk asserts that, even without the Cost Allocation Agreement, the State of New York has, through the AREGCBA, essentially volunteered New York customers to pay for projects selected as Priority Projects under the Act. In support, Niagara Mohawk cites Commission precedent approving the PJM State Agreement Approach, which provides that, "if a State decides, through the State Agreement Approach, to support a transmission project that serves only the state public policy requirements, then a state may do so."<sup>81</sup>

43. Second, Niagara Mohawk asserts that statewide allocation of Project costs is roughly commensurate with benefits.<sup>82</sup> Niagara Mohawk states that because the Project

---

<sup>77</sup> *Id.* at 24-25 (citing 2021 State Agreement Policy Statement, 175 FERC ¶ 61,225 at P 2).

<sup>78</sup> The Cost Allocation Agreement conditions support for the volumetric load-ratio share allocation of Project costs upon Niagara Mohawk's filing, and the Commission accepting, Rate Schedule 18 without "alter[ation] in a manner not reasonably acceptable to the New York Transmission Owners." Cost Allocation Agreement at P 4.

<sup>79</sup> Cost Allocation Agreement Filing, Transmittal at 3, 5 (quoting 2021 State Agreement Policy Statement, 175 FERC ¶ 61,225 at P 1); *see also* Tariff Filing, Transmittal at 25-26.

<sup>80</sup> Tariff Filing, Transmittal at 25 (citing *Consol. Edison Co. of N.Y.*, 180 FERC ¶ 61,106, at P 2 (2022) (CSRA Order)).

<sup>81</sup> *Id.* at 27 (citing *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at PP 142-44 (2013), *order on reh'g & compliance*, 147 FERC ¶ 61,128, at P 92 (2014)).

<sup>82</sup> *Id.* (citing *Ill. Com. Comm'n v. FERC*, 576 F.3d 470 (7th Cir. 2009); *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*,



is designed to achieve statewide policy goals, the costs of the Project should be allocated on a statewide basis. In addition, Niagara Mohawk states that, on top of these public policy benefits, the Project will benefit customers across New York by delivering control area-wide load savings, capacity market savings, and reduction of transmission congestion that will permit the delivery of transmission-constrained northern New York generation across the State. Niagara Mohawk states that these benefits are not limited to any one zone or transmission owner service territory and that, accordingly, statewide cost allocation would still be roughly commensurate with benefits even if public policy benefits were not considered.<sup>83</sup>

44. Last, Niagara Mohawk notes that the proposed cost allocation method is similar to those approved by the Commission in other comparable contexts, such as the CSRA Order.<sup>84</sup> Niagara Mohawk states that the cost allocation is also consistent with the default cost allocation method for public policy transmission projects that the Commission approved in NYISO's Order No. 1000 compliance proceedings.<sup>85</sup> Niagara Mohawk further notes that NYPA includes its portion of the Project cost in NYPA's Transmission Adjustment Charge, and that Niagara Mohawk's proposed cost allocation method is substantially similar.<sup>86</sup>

#### **b. Deficiency Letter and Amended Filings**

45. In the Deficiency Letter, Commission staff requested further explanation about how Niagara Mohawk proposes to calculate the volumetric load-ratio share allocation.<sup>87</sup> Specifically, noting that Rate Schedule 18 proposes to calculate the load-ratio share volumetrically "based on Actual Energy Withdrawals by LSEs," the Deficiency Letter asked Niagara Mohawk to describe the withdrawal points for the purpose of that calculation and to provide estimated allocations and rate design information.<sup>88</sup> In

---

Order No. 1000, 136 FERC ¶ 61,051, at P 622 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g & clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014)); *see also* Cost Allocation Agreement Filing, Transmittal at 4.

<sup>83</sup> Tariff Filing, Transmittal at 27 (citing Tariff Filing, Gemmell Test. at 24-26; Tariff Filing, Franey Test. at 14).

<sup>84</sup> *Id.* at 25.

<sup>85</sup> *Id.* at 29 (citing NYISO, NYISO Tariffs, NYISO OATT, § 31.5 (Attachment Y Cost Allocation and Cost Recovery) (30.0.0), § 31.5.5.4.3).

<sup>86</sup> Tariff Filing, Franey Test. at 4.

<sup>87</sup> Deficiency Letter at 9.

response, Niagara Mohawk explains that, under the NYISO OATT, NYISO measures energy withdrawals at “Points of Withdrawal” defined as the “point(s) on the NYS Transmission System or Proxy Generator Buses where Energy will be made available to the Transmission Customer or Customers under the ISO Tariffs.”<sup>89</sup> Niagara Mohawk also provides an estimated allocation based on the 2022 New York Control Area load consumption data, as allocated on a NYISO zonal and subzonal level.<sup>90</sup>

46. The Deficiency Letter also asked about the Cost Allocation Agreement and its relationship with Niagara Mohawk’s Cost of Removal Regulatory Asset proposal, questioning whether Niagara Mohawk’s Cost of Removal Regulatory Asset proposal was part of the Cost Allocation Agreement and whether other contractual agreements with Project ratepayers address the Cost of Removal Regulatory Asset proposal.<sup>91</sup> In response, Niagara Mohawk states that the Cost Allocation Agreement does not directly address the Cost of Removal Regulatory Asset proposal, nor is it directly addressed under any other contractual agreements with Project ratepayers.<sup>92</sup>

---

<sup>88</sup> *Id.* (citing Rate Schedule 18, § 6.18.3.1).

<sup>89</sup> Amended Tariff Filing, Transmittal at 14-15. *See also* NYISO, NYISO Tariffs, NYISO OATT, § 1.16 (Definitions – P) (7.0.0).

<sup>90</sup> *Id.*, Transmittal at 15; Amended Tariff Filing, attach. K(b). Niagara Mohawk states that this allocation is based on the cost containment mechanism and does not include any estimates for settlements related to incremental transmission congestion charges.

<sup>91</sup> Deficiency Letter at 9.

<sup>92</sup> Amended Tariff Filing, Transmittal at 15-16.

<sup>93</sup> *See* Order No. 1000, 136 FERC ¶ 61,051 at PP 724, 726; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 728-729; 2021 State Agreement Policy Statement, 175 FERC ¶ 61,225 at PP 1, 3. Under Order No. 1000, participant funding arrangements are those where “the costs of a transmission facility are allocated only to those entities that volunteer to bear those costs.” Order No. 1000, 136 FERC ¶ 61,051 at P 486, n.375.

<sup>94</sup> New York Commission Comments at 1, 2, 4.

<sup>95</sup> CSRA Order, 180 FERC ¶ 61,106 at PP 3, 48-50 (accepting proposal to implement a statewide cost allocation on a volumetric load-ratio share basis for local transmission upgrades selected by the New York Commission to meet New York State public policy goals).

**c. Commission Determination**

47. We accept Niagara Mohawk’s proposal in Rate Schedule 18 to allocate the Project costs on a statewide volumetric load-ratio share basis, as well as the proposed voluntary Cost Allocation Agreement filed in ER23-974, both to be effective April 1, 2023, as requested. Order No. 1000 and the 2021 State Agreement Policy Statement both emphasize that the Commission’s rules do not preclude voluntary participant funding agreements among public utility transmission providers to plan and pay for transmission facilities outside the relevant Order No. 1000 regional cost allocation processes.<sup>93</sup> As the New York Commission states in its comments in support of the Agreement, “[t]he Agreement represents a voluntary participant funding approach amongst the New York Transmission Owners for allocating Niagara Mohawk’s costs across New York State, based on a volumetric load-ratio share basis.”<sup>94</sup> The Commission accepted a similar participant funding agreement allocating costs for local transmission projects needed to meet the CLCPA Requirements on a statewide volumetric load-ratio share basis in the CSRA Order.<sup>95</sup> Thus, Niagara Mohawk’s proposed cost allocation for the Project is consistent with the cost allocation method already approved for other transmission projects needed to meet the CLCPA Requirements. Additionally, Niagara Mohawk has demonstrated that the proposed cost allocation is roughly commensurate with the benefits of the Project.<sup>96</sup> Just as in the CSRA Order, the Project has been determined by the New York Commission to be necessary to meet New York State law requirements.<sup>97</sup> As the New York Commission stated, “the Project is needed to advance important State policy objectives to provide for the delivery of 70% renewable generation to load by 2030.”<sup>98</sup> The New York Commission explains that the allocation of costs across the state based on a volumetric load-ratio share basis “correctly reflects the Statewide benefits of the Project.”<sup>99</sup> For these reasons, we find that, based on this record, it is just and

---

<sup>96</sup> See *BNP Paribas Energy Trading GP v. FERC*, 743 F.3d 264, 267 (D.C. Cir. 2014) (citing *KN Energy, Inc., v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992), for the cost causation principle that all approved rates “reflect to some degree the costs actually caused by the customer who must pay them”); *id.* at 268 (“This typically translates into a process of ‘comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.’”) (quoting *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004)).

<sup>97</sup> CSRA Order, 180 FERC ¶ 61,106 at P 50.

<sup>98</sup> New York Commission Comments at 2.

<sup>99</sup> *Id.* The New York Commission further notes that the Commission has already accepted a load-ratio share cost allocation method as the default method utilized by NYISO for transmission projects selected to meet public policy requirements established by the New York Commission. *Id.* at 4.

reasonable and not unduly discriminatory or preferential to allocate the costs of the Project on a volumetric load-ratio share basis.

### **3. Project Rate Proposal**

#### **a. Niagara Mohawk Proposal**

48. The TSC calculates a wholesale transmission service revenue requirement for all of Niagara Mohawk's wholesale transmission facilities, system control and dispatch costs, and congestion related costs.<sup>100</sup> Wholesale transmission customers pay the TSC after it is adjusted to reflect revenues received from transmission project-specific rate schedules and penalties from congestion rent settlements in "Transmission Congestion Contracts."<sup>101</sup> Revenues collected under project-specific rate schedules (incremental cost rates) are credited to the embedded cost TSC to offset the TSC revenue requirement.

49. Niagara Mohawk proposes to recover costs associated with the Project through a new incremental cost transmission formula rate for the Project (Project Rate) within the TSC rate design. Schedule 15 calculates the Project revenue requirement. Rate Schedule 18 allocates the Project revenue requirement. Schedule 10 credits most of the Project revenues collected against the TSC revenue requirement.

50. Niagara Mohawk states that the revisions to Schedule 10 of the TSC allow most of the revenues from the Project Rate to be credited to the TSC in order to ensure that Niagara Mohawk does not recover twice for the Project (once in the TSC and again in the Project Rate).

51. Niagara Mohawk proposes a cost containment mechanism that would deny ROE collection for 20% of the equity portion of "Eligible Project Costs" over \$481.8 million.<sup>102</sup> Niagara Mohawk explains that the New York Commission expected a cost containment mechanism to be included as part of the Project when designating the Project as a Priority Project,<sup>103</sup> and that its cost containment mechanism is substantially identical to the mechanism proposed in NYPA's Commission-approved filing relating to the Project.<sup>104</sup>

---

<sup>100</sup> See, e.g., NYISO, NYISO Tariffs, NYISO OATT, §§ 14.2-14.2.1 (Attachment 1 to Attachment H) (26.0.0).

<sup>101</sup> NYISO, NYISO Tariffs, NYISO OATT, § 1.20 OATT (Definitions – T) (9.0.0).

<sup>102</sup> Tariff Filing, Transmittal at 22-23. See also Tariff Filing, Byrne Test. at 29-32.

<sup>103</sup> Tariff Filing, Transmittal at 22 (citing New York Commission Priority Project Order at 27).

52. To comply with Order No. 864, Niagara Mohawk proposes to use Schedules 15c and 15d for excess or deficient ADIT due to changes in federal, state, or local income taxes that can be directly attributed to the Project, ensuring that balances relating to excess or deficient ADIT are appropriately refunded or charged to the correct customer groups.<sup>105</sup> Niagara Mohawk explains that these schedules directly correspond to Commission-approved Schedules 14 and 14a of Attachment 1 to Attachment H of the NYISO OATT.<sup>106</sup>

53. Niagara Mohawk states that several existing transmission facilities will be removed to accommodate the Project, including the existing 230 kV Edic to Porter Line 17 and equipment at the Porter and Chase Lakes Substations.<sup>107</sup> Niagara Mohawk explains that the cost of removal of these facilities is, and has been, in the depreciation components of the existing rates over the life of these existing facilities to be removed.<sup>108</sup> Niagara Mohawk initially proposed a ratemaking surcharge and crediting mechanism using Account 182.3- Other Regulatory Assets in the Project Rate, and Account 254- Other Regulatory Liabilities, whereby Niagara Mohawk would charge Project ratepayers the actual cost of removal of these existing facilities after the Project goes into service (expected December 2025), and credit the revenues back to retail and wholesale ratepayers who paid the cost of removal of the existing facilities over the existing facilities' service lives through depreciation. Niagara Mohawk proposed that this

<sup>104</sup> *Id.* at 21. See NYPA, Filing, Docket No. ER22-1014, at 31-36 (filed Feb. 10, 2022); Tariff Filing, Transmittal at 22 (citing *N.Y. Power Auth.*, 182 FERC ¶ 61,017, at P 20 (2023)). Niagara Mohawk explains that its cost containment proposal differs from NYPA's primarily in that: (1) it does not include a provision to forego incentive adders, because Niagara Mohawk is not proposing incentive adders and (2) it does not include a performance-based ROE allowing basis point premiums on savings or ROE basis point reductions on overages. See Tariff Filing, Transmittal at 23-24.

<sup>105</sup> Tariff Filing, Transmittal at 20.

<sup>106</sup> *Id.* (citing *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER20-2051-003 (Oct. 7, 2022) (delegated order)).

<sup>107</sup> *Id.* at 6.

<sup>108</sup> Tariff Filing, attach. H, Ex. No. NMPC-400 (Prepared Direct Testimony of Tiffany M. Escalona) at 18 (Escalona Test.). Niagara Mohawk explains that its depreciation rates incorporate an estimated net salvage rate that considers the expected cost of dismantling a given asset at the end of its useful life (also called cost of removal), netted against the value of materials that can be salvaged or resold. Niagara Mohawk states that its proposal included recording these costs in the accumulated provision for depreciation account (FERC Account 108), consistent with the Commission's regulatory accounting requirements. *Id.* at 18-19.

surcharge and crediting mechanism would amortize the \$36 million cost of removal over 10 years, with the unamortized surcharge balance earning a return and taxes in the Project rate base.<sup>109</sup> Although, as discussed below, Niagara Mohawk withdrew this request, it continues to propose to include this Cost of Removal Regulatory Asset mechanism in the Project Rate, Schedule 15a, line 5 and line 13.<sup>110</sup>

54. Within Schedule 15a, Niagara Mohawk proposes to allocate the cost of general and intangible plant (General Plant) and administrative and general (A&G) expenses to the transmission function in the Project Rate using a functional plant allocator.<sup>111</sup> (Generally, functional allocation refers to the process by which utilities divide costs between their regulated and unregulated businesses, then among generation, transmission, distribution, retail, and customer service business segments, according to the functional purpose that those costs are incurred to serve.)

**b. Deficiency Letter and Niagara Mohawk's Amended Filings**

55. In the Deficiency Letter, Commission staff asked Niagara Mohawk to address several issues with its Tariff Filing, including the following: an explanation of how Schedules 15c and 15d show the accounts in which excess and deficient ADIT are recorded and the accounting for any excess or deficient amounts in Accounts 182.3 and 254; the necessary tariff records to implement the proposed cost containment mechanism or an explanation of why the cost containment mechanism tariff provisions are not included in the Project Rate; an explanation of the Cost of Removal Regulatory Asset Proposal;<sup>112</sup> an explanation of whether it is just and reasonable to use a labor allocator for the TSC rate, but a plant allocator for the Project Rate, which will be credited to offset the TSC rate; and all studies and analyses performed to support the proposed allocations for A&G expenses and General Plant in the Project Rate.<sup>113</sup>

---

<sup>109</sup> *Id.* at 18-20.

<sup>110</sup> Tariff Filing, Transmittal at 40, n. 224 (explaining how the Project Rate implements the Cost of Removal Regulatory Asset accounting request), Schedule 15a, lines 5 and 13.

<sup>111</sup> *Id.*, Escalona Test. at 20.

<sup>112</sup> Specifically, the Deficiency Letter asked questions pertaining to retroactive ratemaking, double-recovery, intergenerational equity, and cost allocation. Deficiency Letter at 2-6.

<sup>113</sup> *Id.* at 2-8.

56. As to ADIT, Niagara Mohawk explains in its Amended Tariff Filing that excess or deficient ADIT specific to the Project will be recorded to Account 182.3 or Account 254; however, the recorded amount will not be directly reconcilable to a FERC Form No. 1 line item, as it will be a subset of the total transmission-related excess or deficient ADIT reflected in TSC Schedules 14 and 14a.<sup>114</sup> Project-related excess or deficient ADIT will be a component of the revenue credit to the TSC revenue requirement to ensure TSC customers are not affected. Niagara Mohawk explains that it omitted the reconciliation to Account 182.3 and 254 in proposed Schedule 15c (similar to lines 6, 7, and 8 of Schedule 14) for this reason. Niagara Mohawk proposes to revise footnote (a) in Schedule 15c to clarify how the amounts will be reconciled to Account 182.3 and 254,<sup>115</sup> and states that it will make the proposed footnote revisions in a compliance filing.<sup>116</sup>

57. In its Amended Tariff Filing, Niagara Mohawk submits the cost containment mechanism tariff provisions as new Schedule 15e.<sup>117</sup> Niagara Mohawk explains that Third Party Costs<sup>118</sup> and Unforeseeable Costs<sup>119</sup> are subtracted from total capital costs of

---

<sup>114</sup> Amended Tariff Filing, Transmittal at 3-4.

<sup>115</sup> *Id.* at 4.

<sup>116</sup> *Id.* at n.9.

<sup>117</sup> *Id.* at 11-12.

<sup>118</sup> Schedule 15e defines Third Party Costs to include: (1) interconnection and network upgrade costs resulting from the ISO evaluation process; (2) property taxes; and (3) 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 Niagara Mohawk to control or mitigate.

<sup>119</sup> Schedule 15e defines Unforeseeable Costs in terms of costs that Niagara Mohawk could not have reasonably anticipated at the time the estimate was submitted to the New York Commission as part of the Article VII application process. Schedule 15e Unforeseeable Costs include those are imposed or required by governmental Agency, costs associated with changes in applicable laws and regulations, or interpretations thereof by governmental agencies, costs incurred as a result of orders of courts or action, or inaction, by governmental agencies; costs related to destruction, damage, interruption, suspension, or interference of or with the Project caused by landslides, lightning, earthquakes, hurricanes, tornadoes, severe weather, fires, explosions, floods, epidemics, pandemics, acts of public enemy, acts of terrorism, wars, blockades, riots, rebellions, sabotage, insurrections, environmental contamination or damage, or strike or otherwise unavailability of skilled labor, provided that the cause was not reasonably within the control of Niagara Mohawk, Niagara Mohawk made reasonable efforts to avoid or minimize the adverse impacts of any of the above-listed events, and took reasonable steps

the Project to arrive at “Total Eligible Project Costs”<sup>120</sup> that are subject to the Cost Cap. Niagara Mohawk states that the Cost Cap amount is then subtracted from this value to arrive at the amount above or below the Cost Cap.

58. Niagara Mohawk’s Amended Tariff Filing withdraws its Cost of Removal Regulatory Asset Proposal.<sup>121</sup> However, Niagara Mohawk retained line item placeholders for a potential regulatory asset to recover cost of removal under the Project Rate but requested that, if needed to approve the filing as just and reasonable, the Commission should “approve the remaining aspects of the [filing] and direct appropriate modifications related to [cost of removal] on compliance[,]” and that Niagara Mohawk “consents to such modifications in accordance with the D.C. Circuit’s decision in *NRG Power Mktg., LLC v. FERC* . . . .”<sup>122</sup>

59. Niagara Mohawk’s Amended Tariff Filing also responds to the Deficiency Letter’s questions regarding the justness and reasonableness of, and support for, its proposed allocations for A&G expenses and General Plant in the Project Rate.<sup>123</sup> Niagara Mohawk states that use of a labor ratio allocator in the Project Rate is unreasonable because of the administrative burdens.<sup>124</sup> Niagara Mohawk explains that it does not track salaries on a project basis and doing so would require modification to its systems and processes that would likely increase the administrative burden of shared services employees and result in additional costs that would ultimately be borne by customers.

60. Niagara Mohawk provides an illustrative example of its proposed functionalization of estimated A&G expense using a plant ratio in Attachment E of its Amended Tariff Filing to support the proposed allocations for A&G expenses and General Plant in the Project Rate.<sup>125</sup> Niagara Mohawk states that General Plant in the

---

to expeditiously resolve the event after it occurred; steel cost escalation that is greater than the “Handy Whitman Construction Cost Index” applied to steel costs in determining the Cost Cap; and total actual Project cost escalation, excluding steel costs, that are greater than 150% of the Handy Whitman Construction Cost Index applied to non-steel costs in determining the Cost Cap.

<sup>120</sup> See Schedule 15e at line 16.

<sup>121</sup> Amended Tariff Filing, Transmittal at 2.

<sup>122</sup> *Id.* at n.11 (citing *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017)).

<sup>123</sup> See *supra* P 54.

<sup>124</sup> Amended Tariff Filing, Transmittal at 11.



TSC is already functionalized based on a labor ratio, while functionalization of A&G expense in the TSC uses a combination of plant and labor ratios “[a]s the Project-related A&G expense and General Plant allocation will be a derivative of A&G expense and General Plant under the TSC formula rate, [Niagara Mohawk] proposes to allocate those components of the [Project] revenue requirement based on the ratio of [Project] to total [Niagara Mohawk] transmission plant.”<sup>126</sup> Niagara Mohawk states that it has not yet incurred Project-specific A&G related labor, so it does not have the historic labor data needed to create a Project-specific labor allocator. Further, Niagara Mohawk states that after the Project goes into service, A&G will not be tracked at the project level.<sup>127</sup> Niagara Mohawk states that its transmission labor ratio was fixed at 13% as part of a negotiated settlement providing for the transition of components of the TSC from stated values to formula rates.<sup>128</sup> Niagara Mohawk states that for these reasons, use of the plant ratio to allocate General Plant and A&G in the Project Rate is also just and reasonable.

**c. Commission Determination**

61. As discussed further below, we find that, except for Niagara Mohawk’s Order No. 864 compliance and Cost of Removal Regulatory Asset Proposal, the Project Rate, and more specifically the proposed allocation of General Plant and A&G expenses in Schedule 15, raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below. As to the reserved issues, we accept Niagara Mohawk’s Order No. 864 compliance, to be effective April 1, 2023, as requested, subject to condition and we reject the Cost of Removal Regulatory Asset Proposal line items in Schedule 15, subject to compliance.<sup>129</sup>

---

<sup>125</sup> *Id.* at 10, n.13. The estimate is prepared using the proposed Cost Cap for the Project and actual 2021 TSC formula rate data.

<sup>126</sup> *Id.* at 10.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 10-11, n.13 (citing Settlement Agreement and Offer of Settlement, Docket No. ER08-552-000, attach. A (revised tariff sheets), § 9.1, P 3 (Apr. 6, 2009) (2009 TSC Settlement)). The Commission accepted the 2009 TSC Settlement in *Niagara Mohawk Power Corp.*, 127 FERC ¶ 61,289 (2009).

<sup>129</sup> See *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017) (discussing the Commission’s authority to propose modifications to a utility’s FPA section 205 rate proposal).

**i. Order No. 864**

62. We find that Niagara Mohawk's Amended Tariff Filing proposal complies with the requirements of Order No. 864, subject to the compliance filing discussed below. In Order No. 864, the Commission required that transmission formula rates properly address excess and deficient ADIT resulting from the Tax Cuts and Jobs Act of 2017 and any future tax rate changes consistent with the Commission's regulations regarding tax normalization<sup>130</sup> and in a transparent manner.<sup>131</sup> The Commission required public utility transmission providers with transmission formula rates under an Open Access Transmission Tariff, a transmission owner tariff, or a rate schedule to revise their transmission formula rates to address excess and deficient ADIT by incorporating the following three major revisions: (1) a mechanism to deduct any excess ADIT from or add any deficient ADIT to their rate bases (Rate Base Adjustment Mechanism); (2) a mechanism to decrease or increase their income tax allowances by any amortized excess or deficient ADIT, respectively (Income Tax Allowance Adjustment Mechanism); and (3) a new permanent ADIT worksheet that will annually track information related to excess or deficient ADIT (ADIT Worksheet).<sup>132</sup>

63. We accept Niagara Mohawk's proposed revisions to footnote (a), as provided in the Amended Tariff Filing. We find that the revised footnote provides the transparency required by Order No. 864 and addresses excess and deficient ADIT in a manner sufficient to remedy the deficiencies identified in the Deficiency Letter. We also accept Niagara Mohawk's proposal to implement these tariff revisions in a compliance filing.<sup>133</sup> Accordingly, we direct Niagara Mohawk to submit a compliance filing within 30 days of the date of this order adding the revised footnote (a) to Schedule 15c.

**ii. Cost of Removal Regulatory Asset**

64. Based on Niagara Mohawk's withdrawal of its Cost of Removal Regulatory Asset Proposal, we will not address the merits of its withdrawn request at this time. However, we find that the placeholder line items for the proposed regulatory asset in proposed Schedule 15 must be removed to completely effectuate Niagara Mohawk's withdrawal of its Cost of Removal Regulatory Asset Proposal.<sup>134</sup> Absent further support, we cannot

---

<sup>130</sup> 18 C.F.R. § 35.24.

<sup>131</sup> Order No. 864, 169 FERC ¶ 61,139 at P 113.

<sup>132</sup> *Id.* PP 3-5.

<sup>133</sup> Amended Tariff Filing, Transmittal at n.9 ("The proposed revisions to footnote (a) of Schedule 15c will be made in the conforming compliance filing to be submitted following Commission action on the January 30 Filings.").

find that inclusion of the line items is just and reasonable. Accordingly, and given Niagara Mohawk's proffered consent to modifications related to the cost of removal provisions,<sup>135</sup> we reject the proposed regulatory asset line items in Schedule 15 and direct Niagara Mohawk to submit a compliance filing within 30 days of the date of this order removing the regulatory asset line items from Schedule 15.

### iii. General Plant and A&G Costs

65. Our preliminary analysis indicates that Niagara Mohawk's proposed Project Rate has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful given Niagara Mohawk's proposed allocation of General Plant and A&G expenses in Schedule 15. We find that Niagara Mohawk's proposed allocation of General Plant and A&G expenses in Schedule 15 raises 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 Niagara Mohawk's proposed Project Rate in Schedule 15 for filing, suspend it for a nominal period, to become effective April 1, 2023, as requested, subject to refund, and establish hearing and settlement judge procedures.

66. The use of labor ratios for functionalizing General Plant costs and A&G expenses is well-settled Commission policy.<sup>136</sup> In order to "use some basis for functionalization other than labor ratios," a utility must "show that labor ratios are unreasonable in its situation (not merely that its proposed alternative method is reasonable)."<sup>137</sup> Niagara Mohawk's proposal does not include sufficient support for its claim that labor ratios are unreasonable for its specific circumstances and structure.<sup>138</sup>

---

<sup>134</sup> NYISO, NYISO Tariffs, NYISO OATT, §§ 14.2-14.2.1 (Attachment 1 to Attachment H) (26.0.0).

<sup>135</sup> Amended Tariff Filing, Transmittal at n.11.

<sup>136</sup> *Entergy Servs. Inc.*, Opinion No. 506, 130 FERC ¶ 61,026, at P 88 (2010), *reh'g denied*, 143 FERC 61,120, at P 33 (2013); *see Minn. Power & Light Co.*, Opinion No. 20, 4 FERC ¶ 61,116, at 61,268 (1978), *aff'd*, Opinion No. 20-A, 5 FERC ¶ 61,091, at 61,150 (1978). The general rule announced in Opinion No. 20 applied to allocation of General Plant costs but applies equally to A&G costs. *See also Idaho Power Co.*, Opinion No. 13, 3 FERC ¶ 61,108, at 61,295 (1978) (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 [Federal Power Commission] precedent."); *Midwest Indep. Trans. Sys. Operator, Inc.*, 101 FERC ¶ 61,221, at P 64 (2002).

<sup>137</sup> Opinion No. 20-A, 5 FERC at 61,150-51.

67. While we are setting the Project Rate, and more specifically the proposed allocation of General Plant and A&G expenses in Schedule 15, for a trial-type evidentiary hearing,<sup>139</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>140</sup> If participants 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>141</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.

The Commission orders:

(A) The Cost Allocation Agreement filed in Docket No. ER23-974-001 is hereby accepted, to be effective April 1, 2023, as discussed in the body of this order.

(B) Niagara Mohawk's request for the CWIP Incentive is hereby granted, as discussed in the body of this order. We grant waiver of 18 C.F.R. § 35.13(h)(38) and the other provisions of section 35.25, as requested, consistent with precedent.

---

<sup>138</sup> Commission precedent generally views use of labor ratios as the appropriate methodology for allocating intra-corporate A&G expenses. *See, e.g.*, Opinion No. 506, 130 FERC ¶ 61,026 at P 88 (noting that the use of labor ratios for functionalizing general and intangible plant costs and A&G expenses is well-settled Commission policy), *reh'g denied*, 143 FERC ¶ 61,120 at P 33; *Utah Power & Light Co.*, Opinion No. 308, 44 FERC ¶ 61,166, at 61,549 n.11 (1988); Opinion No. 13, 3 FERC at 61,295.

<sup>139</sup> Trial Staff is a participant in the hearing and settlement judge procedures. *See* 18 C.F.R. §§ 385.102(b), (c).

<sup>140</sup> 18 C.F.R. § 385.603.

<sup>141</sup> If participants 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. (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(C) Niagara Mohawk's proposed Rate Schedule 18 and related amendments to the OATT filed in Docket No. ER23-973-001, including Niagara Mohawk's proposed cost containment mechanism, are hereby accepted in part and rejected in part, to be effective April 1, 2023, subject to condition and further compliance, as discussed in the body of this order.

(D) Niagara Mohawk is hereby directed to submit a compliance filing within 30 days of the date of this order removing the regulatory asset line items from Schedule 15 and adding revisions to footnote (a) in Schedule 15c, as discussed in the body of this order.

(E) Niagara Mohawk's proposed allocation of General Plant and A&G expenses in Schedule 15 is hereby accepted for filing and subject to the hearing proceedings ordered below. Niagara Mohawk's Project Rate is accepted and suspended for a nominal period, to become effective April 1, 2023, as requested, subject to refund, as discussed in the body of this order.

(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 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 Niagara Mohawk's proposed allocation of General Plant and A&G expenses, 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 participants 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 Christie is concurring with a separate statement attached.

( S E A L )

Kimberly D. Bose,  
Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Docket Nos. ER23-973-001  
ER23-974-001  
(not  
consolidated)

(Issued July 28, 2023)

CHRISTIE, Commissioner, *concurring*:

1. I concur in today's order related to filings involving Niagara Mohawk's portion of the development of the Smart Path Connect Project (Project), including issues related to Project cost allocation (including a cost allocation agreement and proposed rate schedule), a CWIP incentive, a cost containment provision, and revisions to the Transmission Services Charge related to implementing the Project Rate.<sup>1</sup> I write separately to highlight my reasons for concurring in this order, which echo what I have noted in previous statements.

2. As I noted in another order related to the Project:

The costs related to a public policy project – which the Smart Path Connect Project is – should be borne by the sponsoring state and not shifted to consumers in other states without the consent of responsible officials in those states, who can then be held accountable by the voters of that state for their decisions (as can officials in the sponsoring state). That is how democracy is supposed to work.<sup>2</sup>

---

<sup>1</sup> As noted in today's order, the New York State Public Service Commission (NYSPSC) filed comments in both dockets. The NYSPSC supports the "Cost Allocation Agreement and the statewide load-ratio share cost allocation of Niagara Mohawk's Project costs as a just and reasonable means for allocating those costs." *N.Y. Indep. Sys. Operator, Inc.*, 184 FERC ¶ 61,059, at P 16 (2023); *see* NYSPSC Feb. 21, 2023 Comments at 2, 4. Moreover, while the NYSPSC takes no position on the rate treatments and the proposed cost allocation mechanism, "it recognizes the need for regulatory certainty to allow Niagara Mohawk to proceed with the Project." *N.Y. Indep. Sys. Operator, Inc.*, 184 FERC ¶ 61,059 at P 16 (citing NYSPSC Feb. 21, 2023 Comments at 2, 4). The support of the NYSPSC of the cost allocation agreement is noteworthy to my analysis of the findings made in this order as is the NYSPSC's failure to protest the rate treatments and the cost allocation mechanism.

3. I am aware of no evidence in the record before us that indicates that the matters addressed in this order will cause citizens of other states to be forced to pay for a New York state public policy project: this is vital to my decision to vote for this order. As I noted in my concurrence to the Cost Sharing and Recovery Agreement (CSRA) order,<sup>3</sup> which order is mentioned in today's order:

[T]here is nothing in the record in this matter to indicate that any of the costs of the transmission projects that will be built to implement New York's public policies under the terms described in this proposal will be forced on consumers in other states. As I have also said before, if the record showed costs for New York's policies were being imposed on consumers in states that had not consented to such cost allocation, that would be a much different story and would quite likely result in unjust and unreasonable rates. And claiming that such consumers were somehow "beneficiaries" of New York's public policies, when out-of-state consumers had no say in electing the New York politicians adopting such policies, would not cure the fundamental unjustness and unreasonableness of such cost allocation.<sup>4</sup>

---

<sup>2</sup> *N.Y. Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,004 (2022) (addressing New York Power Authority's (NYPA) requests for certain incentives related to the Project) (Christie, Comm'r, concurring at P 2) (footnote omitted) (citing in support of my conclusion that the Project is a public policy project, NYPA Filing, Docket No. ER22-1014-001, at 2 (Feb. 10, 2022) ("The [Smart Path Connect (SPC)] Project was identified and selected by the New York State Public Service Commission . . . as a 'priority transmission project' . . . , the construction of which is needed 'expeditiously' to meet the State's clean energy goals.")). In today's proceeding I note that the transmittal letter accompanying the filing made by NYISO on behalf of Niagara Mohawk similarly states: "The SPC Project was identified and selected by the New York Public Service Commission . . . , pursuant to New York State legislation, as a 'priority transmission project' that is needed on an expedited basis in order to meet the State's legislatively enacted clean energy policies and provide benefits to consumers throughout New York State." NYISO Jan. 30, 2023 Tariff Filing Transmittal Letter, Docket No. ER23-973-000, at 2; *see also* Niagara Mohawk Jan. 30, 2023 Transmittal Letter, Docket No. ER23-974-000, at 2-3.

<sup>3</sup> *Consol. Edison Co. of N.Y.*, 180 FERC ¶ 61,106 (2022) (CSRA Order) (Christie, Comm'r, concurring).

<sup>4</sup> *Id.* (Christie, Comm'r, concurring at P 4) (footnote omitted) (citing *N.Y. Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,004 (Christie, Comm'r, concurring at P 2) ("Thus, there being no evidence in this record that citizens of other states will be made to pay for New York's policy decisions through the potential impacts of NYISO's proposed tariff



4. Sticking with the topic of benefits for a moment, I note that today's order makes certain statements about benefits including that "Niagara Mohawk has demonstrated that the proposed cost allocation is roughly commensurate with the benefits of the Project."<sup>5</sup> In the CSRA Order a similar analysis was made with regard to cost allocation across the state based on a load-share basis. I emphasize again today, what I said then:

While the order states that the allocation of costs of these upgrades on a load-share basis across the state is roughly commensurate with the benefits, this finding is only appropriate under these facts and circumstances. Any suggestion that this order can be read to permit shifting a state's public policy costs to consumers in other states or to suggest that the consumers in other states benefit from those projects without the express agreement of

---

revisions, I conclude that any costs will be confined to New York. Based on the particular set of facts in this record, I do not find that the NYISO proposal 'as-applied' results in rates that are 'unjust, unreasonable and unduly discriminatory or preferential' under the FPA.") (quoting *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,102 (Christie, Comm'r, concurring at P 3) (quoting *N.Y. Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,101 (Christie, Comm'r, concurring at PP 4-6)) (further citations omitted)); *NSTAR Elec. Co.*, 179 FERC ¶ 61,200 (2022) (Christie, Comm'r, concurring at P 10) ("To reiterate, imposing the costs of a project driven by one state's public policies onto another state that has not consented to such cost allocation would, in my view, presumably result in unjust and unreasonable rates.") (available at <https://www.ferc.gov/media/e-13-er22-1247-000>); *N.Y. Pub. Serv. Comm'n v. N.Y. Indep. Sys. Operator, Inc.*, 174 FERC ¶ 61,110 (2021) (Christie, Comm'r, concurring at P 3) ("I also note that the NYISO is a single-state ISO and I have been able to locate no evidence in the record that the New York policies at issue in today's order are causing cost-shifting onto consumers in other states. *If consumers in other states were disadvantaged, I may well view this matter differently.*") (emphasis added) (available at <https://www.ferc.gov/news-events/news/item-e-2-commissioner-mark-c-christie-concurrence-regarding-new-york-state-public>); Commissioner Mark C. Christie, Fair RATES Act Statement on PJM Minimum Offer Price Rule (MOPR) Revisions, Docket No. ER21-2582-000 at P 6 (Oct. 19, 2021) ("... I would have proposed that PJM formulate a replacement for the current MOPR based on three broad principles: (1) a state may designate specific or categorical resources as 'public policy resources' and such designated resources will be funded through a mechanism *chosen by the state* outside of the capacity market ... and (3) *non-sponsoring state consumers would not be forced to pay for another state's designated public-policy resources.*") (footnotes omitted) (emphasis in the original and added) (available at <https://www.ferc.gov/news-events/news/commissioner-christies-fair-rates-act-statement-pjm-mopr>)).

<sup>5</sup> *N.Y. Indep. Sys. Operator, Inc.*, 184 FERC ¶ 61,059 at P 47 (footnote omitted).

those other states is incorrect and it is not the order I support here or would have supported here.<sup>6</sup>

5. My concurrence in this matter is similarly limited to the very specific facts in this matter and shall not be read otherwise.

For these reasons, I respectfully concur.

---

Mark C. Christie  
Commissioner

---

<sup>6</sup> CSRA Order, 180 FERC ¶ 61,106 (Christie, Comm'r, concurring at P 5).