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**SUBMITTED VIA E-TARIFF FILING**

January 29, 2016

Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

**Re:   *New York Power Authority*  
      Docket No. ER16-\_\_\_\_-000**

Dear Ms. Bose:

The New York Power Authority (“NYPA”) hereby submits this request for acceptance pursuant to section 205 of the Federal Power Act (“FPA”)<sup>1</sup> and Part 35 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) regulations a transmission formula rate template and implementation protocols (together “Formula Rate”) to determine NYPA’s annual transmission revenue requirement (“ATRR”) in order to recover NYPA’s costs for transmission services provided under the New York Independent System Operator, Inc.’s (“NYISO”) Open Access Transmission Tariff (“OATT”). NYPA also requests acceptance of a new Rate Schedule 15 to the NYISO OATT that will enable it to recover its project-specific ATRR associated with the Marcy-South Series Compensation (“MSSC”) Project, determined using the Formula Rate, through a facilities charge that utilizes the participant-funded cost allocation agreement embodied in the settlement agreement recently filed in Docket No. ER15-572-000, hereinafter referred to as the “NY Transco Settlement.”<sup>2</sup>

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> The tariff revisions proposed herein governing the collection of NYPA’s ATRR will become part of the NYISO OATT. Accordingly, the NYISO is submitting this filing in FERC’s e-Tariff system on NYPA’s behalf solely in its role as the Tariff Administrator. However, the burden of demonstrating that the proposed tariff amendments are just and reasonable rests on NYPA, the sponsoring party. The NYISO takes no position on any substantive aspect of the filing at this time.

NYPA respectfully submits that its proposed amendments to the NYISO OATT, as demonstrated by this transmittal letter and the attached testimonies and exhibits, are just and reasonable, and should be accepted without suspension or hearing. NYPA requests an effective date of April 1, 2016 for the Formula Rate and related tariff changes. NYPA proposes to utilize a new formulaic ATRR of \$189,954,660 for its historic system to calculate the NYPA Transmission Adjustment Charge (“NTAC”) effective April 1, 2016, subject to true-up under the Formula Rate implementation protocols. For Rate Schedule 15, NYPA also requests an effective date of April 1, 2016.<sup>3</sup> NYPA does not anticipate collecting revenue related to the MSSC Project until the July 1, 2017 Formula Rate update, following that project’s expected 2016 in-service date.

## **I. INTRODUCTION**

NYPA is an integral transmission-owning contributor to the NYISO-controlled grid in New York State. NYPA owns, operates, and maintains over 1,400 circuit miles of high voltage transmission facilities, many of which comprise backbone paths necessary for critical North-South energy transfers to downstate load. Lacking distribution facilities or a defined geographical service territory of its own, NYPA has, since the inception of the NYISO, recovered its cost of owning and maintaining its transmission facilities from NYISO customers primarily through the NTAC.<sup>4</sup>

Section 14.2.2.4.1 of the NYISO OATT currently allows NYPA to recover a stated ATRR of \$175.5 million through the NTAC, taking into account other revenue streams.<sup>5</sup> This ATRR is the product of a black box settlement in Docket No. ER12-2317-000, wherein NYPA had requested the first increase in its ATRR since 1999. In that proceeding, NYPA indicated that its proposed rate increase was “the first in a probable series of proposed [revenue requirement] increases that will likely culminate in NYPA

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<sup>3</sup> Although NYPA requests an effective date of April 1, 2016 for Rate Schedule 15, NYPA notes that no charge would be collected under Rate Schedule 15 unless and until the Commission issues an order approving the NY Transco Settlement, which contains the participant-funded cost allocation that NYPA proposes to use to allocate the costs of the MSSC Project. *See* Clean Version of NYISO OATT, Rate Schedule 15, § 6.15.4.2 (“In any event, the ISO will not collect the MSSCFC from LSEs under this Schedule 15 unless and until the Commission issues an order approving a settlement in Docket No. ER15-572-000 that includes the cost allocation described in Section 6.15.3.7.”) (attached hereto as Appendix A).

<sup>4</sup> *See Central Hudson Gas & Elec. Corp.*, 86 FERC ¶ 61,062 at p. 61,212, *order on reh’g*, 88 FERC ¶ 61,138 at pp. 61,403-04 (1999). As discussed in Section II.B., *infra*, NYPA recovers some of its transmission costs from customers directly interconnected with its facilities, customers with grandfathered transmission contracts with NYPA, sales of transmission congestion contracts and congestion rents. These revenues are subtracted from NYPA’s ATRR for purposes of determining the NTAC charge, and this will continue to be the case after NYPA switches to a formulaic ATRR for the NTAC. Specifically, the NTAC formula appears at Section 14.2.2.2.1 of the NYISO OATT and subtracts revenue from a variety of sources from NYPA’s current ATRR. These revenues will not appear as credits in the Formula Rate that offset the ATRR produced thereby, but rather will continue to be credited to NYISO customers through the NTAC formula in Section 14.2.2.2.1. *See* NTAC Formula, NYISO Open Access Transmission Tariff, Attachment H, Annual Transmission Revenue Requirement for Point-to-Point Transmission Service and Network Integration Transmission Service § 14.2.2.2, version 7.0.0 (effective July 1, 2015) (hereinafter “NYISO OATT”).

<sup>5</sup> *See* discussion *supra* note 4 (describing crediting of certain revenue streams through NTAC formula).

requesting, in some future filing, authorization to implement a formula rate in order to make annual updates to its transmission [revenue requirement].”<sup>6</sup> Increasing operation and maintenance expenses and life extension expenditures for NYPA’s existing facilities, as well as investments in new projects, such as the MSSC Project, threaten to strain NYPA’s finances if cost recovery lag is not adequately managed. For this reason, NYPA seeks to convert its stated ATRR to a formulaic ATRR that updates on an annual basis.

On July 2, 2015, NYPA filed for acceptance under section 205 of the FPA proposed changes to the NYISO OATT to implement a formula transmission rate, and also requested pursuant to section 219 of the FPA<sup>7</sup> and Order No. 679<sup>8</sup> recovery of 100% of prudently incurred costs associated with the MSSC Project if it is abandoned for reasons outside NYPA’s control (“July 2 Filing”).<sup>9</sup> The July 2 Filing also proposed to eliminate an existing provision in Attachment H of the NYISO OATT that limited NYPA’s ability to recover costs associated with “[a]dditions to its system” in excess of \$5 million annually through the NTAC absent unanimous approval of the other New York transmission owners (“NTAC Veto”).<sup>10</sup>

The Commission rejected NYPA’s July 2 Filing on August 31, 2015, determining that NYPA failed to demonstrate that its proposal to eliminate the NTAC Veto from the NYISO OATT is just and reasonable.<sup>11</sup> The Commission noted, however, that its rejection was “without prejudice to NYPA filing to request transmission rate incentives for the MSSC Project or to replace its existing stated rate for the [NTAC] with a formula rate.”<sup>12</sup>

Accordingly, NYPA is re-filing its request to transition to a formula rate here. Unlike NYPA’s July 2 Filing, this Application does not request—and should not be viewed as dependent upon—any change to the NTAC Veto provision in the NYISO OATT. Section 14.2.2.2.3 of Attachment H of the NYISO OATT will remain unchanged, and parties’ rights thereunder will be unaffected. NYPA has also omitted from this filing its prior request for abandoned plant recovery as an incentive rate treatment for the MSSC Project, due to its advanced state of development.

Instead, this Application is limited to NYPA’s request for acceptance under section 205 of (1) a Formula Rate to be included in Attachment H of the NYISO OATT,

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<sup>6</sup> See Exh. No. PA-1, Prepared Direct Testimony of Thomas A. Davis at 4, Docket No. ER12-2317-000 (filed July 27, 2012) (NYPA testimony in support of transmission revenue requirement application filed in 2012).

<sup>7</sup> 16 U.S.C. § 824s.

<sup>8</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 Fed. Reg. 43,294 (July 3, 2006), FERC Stats. & Regs. ¶ 31,222 at P 58 (2006), *order on reh’g*, Order No. 679-A, 72 Fed. Reg. 1152 (Jan. 10, 2007), FERC Stats. & Regs. ¶ 31,236 at P 49 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007).

<sup>9</sup> The MSSC Project is described in more detail *infra* Section II.E.

<sup>10</sup> See NYISO OATT, Attachment H, Section 14.2.2.2.3.

<sup>11</sup> *New York Indep. Sys. Operator, Inc.*, 152 FERC ¶ 61,166 at P 59 (2015) (hereinafter “August 31 Order”).

<sup>12</sup> *Id.* at P 64.

and (2) a new Rate Schedule 15 to Section 6 of the NYISO OATT that will enable NYPA to recover its project-specific revenue requirement associated with the MSSC Project, determined using the Formula Rate in Attachment H, through a new MSSC Facilities Charge (“MSSCFC”). NYPA’s proposed Formula Rate, which is similar or identical in many respects to that which was rejected in Docket No. ER15-2102-000, reflects established cost-of-service principles for electric utilities and is similar to other formula rates accepted by the Commission as just and reasonable. It will allow NYPA to recover its ATRR across a July to June period (“Rate Year”) that uses the prior calendar year’s historical cost of service as a proxy projection for the Rate Year revenue requirement. Calendar year actual costs are determined the following year and any difference between transmission revenues received and actual costs during a calendar year are reflected as a True-Up Adjustment during the subsequent Rate Year. In this way, NYPA will never collect any more or less than its actual cost of service. The Formula Rate incorporates a base return on equity (“ROE”) of 8.65%, which is fully supported by a two-step discounted cash flow (“DCF”) analysis, plus a 50 basis point adder for NYPA’s continued participation as a NYISO transmission owner (“RTO Participation Adder”). Stated values for depreciation and amortization rates are supported by depreciation studies and supporting testimony, and stated values for post-retirement benefits other than pensions (“PBOP”) are supported by an actuarial report. While NYPA, as a state instrumentality, is not required to file a FERC Form No. 1, the inputs to the Formula Rate will be sourced from or reconciled to independently-audited financial statements included in NYPA’s publicly available Annual Report published each April.<sup>13</sup>

Finally, like other modern rate formulas recently accepted by the Commission, the NYPA Formula Rate is capable of calculating one or more project-specific revenue requirements subject to an alternative cost allocation in the event it is determined that the costs of any project developed by NYPA should be allocated to NYISO customers on some basis other than the load-ratio share allocation embodied in the NTAC mechanism. Under such circumstances, the Formula Rate would generate (1) an ATRR for the NTAC (“NTAC ATRR”), and (2) one or more separate, project-specific ATRRs that would be entirely distinct from the NTAC ATRR. For example, the NY Transco Settlement recently filed in Docket No. ER15-572-000 reflects a participant-funded cost allocation

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<sup>13</sup> The Commission has accepted formula rates filed by other non-jurisdictional entities that have used similar inputs to populate their formula rates. *See, e.g., Southwest Power Pool, Inc., Omaha Public Power District (“OPPD”) Transmittal Letter and Formula Rate Filing*, Exh. No. OPP-1 at 8, Docket No. ER09-256-000 (filed Nov. 7, 2008) (“The Template is to be completed with actual test year data as reported in OPPD’s audited financial statements. The financial information is as reported in OPPD’s audited financial statements and summarized in OPPD’s annual report.”); *Southwest Power Pool, Inc., Letter Order*, Docket No. ER09-256-000 (issued Jan. 27, 2009) (letter order accepting tariff revisions implementing OPPD formula rate); *Southwest Power Pool, Inc., Mid-Kansas Electric Company Transmittal Letter and Formula Rate Filing*, Docket No. ER13-301-000 (Nov. 2, 2012) (using Annual Report data as inputs to formula rate); *Southwest Power Pool, Inc., 143 FERC ¶ 61,025 at P 11* (2013) (“Our review indicates that the proposed OATT revisions [for Mid-Kansas] appear to be just and reasonable and not unduly discriminatory or preferential. Accordingly, we conditionally accept them . . . .”); *Southwest Power Pool OATT, Attachment H, Addendum 19, Part 3, version 0.1.0* (“The FBR specifies in detail the manner in which . . . [t]he most recent Annual Report data shall be used as inputs . . . ;” “The True-Up Adjustment for the prior Rate Year shall . . . [b]e based upon Mid-Kansas’ Annual Report for that Rate Year and upon the books and records of Mid-Kansas . . . to be maintained consistently with the FERC Uniform System of Accounts (USoA) and FERC accounting policies and practices[.]”).

agreement that NYPA proposes to use to allocate NYPA's revenue requirement associated with the MSSC Project ("MSSC Project ATRR") after that project is placed in service. Specifically, NYPA proposes a new Rate Schedule 15 that will incorporate as an input and recover NYPA's MSSC Project ATRR using a new charge—the MSSCFC—that reflects the participant-funded cost allocation agreed to in the NY Transco Settlement. The MSSC Project ATRR produced by the Formula Rate will be distinct from the NTAC ATRR produced by the Formula Rate, and will be recovered using a separate charge, *i.e.*, the new MSSCFC. The MSSCFC will be administered by the NYISO and will be developed in the same manner as the Transco Facilities Charge proposed by the New York Transco, LLC ("NY Transco") to recover its costs for its portion of the MSSC Project.

NYPA's request for acceptance of the Formula Rate is fully supported by the ensuing discussion and accompanying testimony and exhibits. With life extension expenditures for its existing system needed to ensure the reliability of New York's electric grid and the MSSC Project expected to achieve commercial operation in 2016, now is the appropriate time for NYPA to modernize its transmission cost recovery mechanism by converting from a stated ATRR to a formulaic ATRR. Accordingly, NYPA asks that the Commission accept for filing the Formula Rate and related tariff changes effective April 1, 2016 so that the NYISO may begin collecting the NTAC using the NTAC ATRR produced by the Formula Rate and using 2014 calendar year inputs. NYPA also asks that the Commission accept for filing Rate Schedule 15 effective April 1, 2016.<sup>14</sup>

## **II. BACKGROUND**

### **A. Description of NYPA**

NYPA is a corporate municipal instrumentality and a political subdivision of the State of New York, organized under the laws of New York, and operates pursuant to Title 1 of Article 5 of the New York Public Authorities Law. NYPA is a "state instrumentality" within the definition of section 201(f) of the FPA and therefore is exempt from the requirements of Part II of the FPA.<sup>15</sup> It is engaged in the generation, transmission, and sale of electric power and energy at wholesale and retail throughout New York, and is a founding member of the NYISO.<sup>16</sup> NYPA's bulk power transmission system encompasses approximately 1,400 circuit miles and consists of facilities ranging from 115 kilovolts ("kV") to 765 kV.<sup>17</sup> NYPA's facilities directly interconnect with the

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<sup>14</sup> As discussed *supra* note 3, in accordance with Section 6.15.4.2 of proposed Rate Schedule 15, no charge would be collected under Rate Schedule 15 unless and until the Commission issues an order approving the NY Transco Settlement.

<sup>15</sup> 16 U.S.C. § 824(f) ("No provision in this subchapter shall apply to, or be deemed to include . . . a State or any political subdivision of a State . . . or any agency, authority, or instrumentality of any one or more of the foregoing . . ."); *see also Village of Bergen v. FERC*, 33 F.3d 1385, 1389 (D.C. Cir. 1994).

<sup>16</sup> Prepared Direct Testimony of Scott Tetenman, Exh. No. PA-101 at 4-5 (hereinafter "Tetenman Testimony").

<sup>17</sup> *Id.* at 5.

transmission systems of all of New York's investor-owned utilities.<sup>18</sup> NYPA's facilities also directly interconnect with adjoining control areas through interconnections to utility systems in Vermont, Ontario, and Québec.<sup>19</sup> As the largest state-owned power organization in New York, NYPA has taken responsibility for constructing, owning, and operating critical segments of transmission infrastructure throughout the State.<sup>20</sup> NYPA's generation customers are a geographically diverse group that includes large governmental entities (*e.g.*, City of New York, Metropolitan Transportation Authority), municipal utilities (47 located throughout the state), rural electric cooperatives (4), and numerous end-use business customers.<sup>21</sup>

## **B. The NTAC Cost Recovery Mechanism**

NYPA's agreement to join the NYISO was premised on NYPA's ability to recover its ATRR through the NYISO OATT structure.<sup>22</sup> NYPA has no distribution facilities and virtually all of NYPA's customers are connected to the transmission and distribution systems of other public utilities.<sup>23</sup> FERC has previously recognized that, unlike other transmission owners in New York, NYPA does not have a defined, integrated service area; instead, its "customers are located in the service areas of other transmission providers, and . . . pay for service based on the costs of the transmission providers where the loads are located."<sup>24</sup> These unique circumstances necessitate a usage-based charge to assess NYISO customers for the use of NYPA's transmission facilities to ensure that NYPA is able to recover its costs plus a fair return. Accordingly, NYPA, the NYISO, and the other transmission owners agreed to establish the NTAC to recover any shortfalls in NYPA's ATRR that are not recovered through other agreements under which NYPA directly bills its customers for transmission services.<sup>25</sup> The NTAC is a \$/MWh charge that is applied at a uniform rate to virtually all NYISO energy transactions.<sup>26</sup> The NTAC thus recognizes that NYPA's transmission system, which forms the backbone of the high voltage grid in the NYISO control area, benefits customers throughout the state.

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

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

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 6; *see also* Agreement Between NYISO and Transmission Owners § 3.06, Version 0.0.0 ("This Agreement is premised on NYPA recovering its full annual transmission revenue requirement.").

<sup>23</sup> Tetenman Testimony, Exh. No. PA-101 at 6.

<sup>24</sup> *Central Hudson Gas & Elec. Corp.*, 103 FERC ¶ 61,143 at P 30 (2003).

<sup>25</sup> *See Central Hudson Gas & Elec.*, 86 FERC ¶ 61,062 at pp. 61,212-13, *order on reh'g*, 88 FERC ¶ 61,138 at pp. 61,403-04. On January 27, 1999, FERC conditionally accepted the proposal made by NYPA and the other Transmission Owners to establish the NYISO in Docket No. ER97-1523-000. *See id.* In conjunction with that filing, the NYISO Transmission Owners filed a joint settlement agreement resolving all issues set for hearing in that docket. This settlement established the NTAC mechanism as a part of the NYISO OATT to ensure NYPA's recovery of its ATRR. *See New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,240 at P 4 (2012). Any transmission revenues received from non-NTAC sources are credited against the NTAC ATRR in the NTAC equation set forth in Attachment H, Section 14.2.2 of the NYISO OATT.

<sup>26</sup> *See* NYISO OATT, Attachment H, §§ 14.2.2.1, 14.2.2.2.1.

The NTAC is set forth in Section 14.2.2 of Attachment H of the NYISO OATT.<sup>27</sup> NYPA calculates the NTAC by deducting from NYPA's revenue requirement, currently referred to as "RR," a number of directly-recovered revenue streams, such as revenues received directly from NYPA's interconnected customers and customers with grandfathered transmission contracts, the sale of transmission congestion contracts, and congestion rents.<sup>28</sup> That portion of NYPA's RR not recovered from those separate sources is recovered as a monthly surcharge assessed to all customers taking transmission service under the NYISO OATT. Section 14.2.2.4.1 of the NYISO OATT currently provides that NYPA's "Amended RR = \$175,500,000." This stated revenue requirement was the product of a settlement in Docket No. ER12-2317-000 that was approved by the Commission in 2013.<sup>29</sup> Anticipating rising costs, NYPA predicted in that proceeding that its "proposed transmission RR increase [would be] the first in a probable series of proposed RR increases that will likely culminate in NYPA requesting, in some future filing, authorization to implement a formula rate in order to make annual updates to its transmission RR."<sup>30</sup>

**C. NYPA Faces Rising Costs to Extend the Life of Its Existing Transmission System.**

As described in the attached testimony of NYPA Vice President Scott Tetenman, a sizable amount of 230 kV and 345 kV transmission assets comprising NYPA's transmission system date from the 1940s, 1950s and 1960s, the bulk of which were contemporaneous with the construction of NYPA's hydroelectric projects at Niagara and St. Lawrence.<sup>31</sup> Historically, these facilities were built to deliver Niagara and St. Lawrence-FDR hydropower as well as purchased power from the Canadian utilities Hydro-Québec and Ontario Hydro, and these facilities continue to perform these functions in the NYISO marketplace.<sup>32</sup> Additionally, the 765 kV Massena-Marcy line, which was completed in 1978 and contributes significant import capability and market integration with the Hydro-Québec system, is now over 35 years old and in need of life extension and modernization efforts.<sup>33</sup> In the long run, to ensure the reliability of its transmission facilities, NYPA anticipates significant capital investments and operation and maintenance expenses to repair and refurbish its existing facilities.<sup>34</sup> NYPA's "Strategic Vision 2014-2019" strongly emphasizes the need for NYPA to refurbish its

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<sup>27</sup> See *id.* § 14.2.2.

<sup>28</sup> *Id.* § 14.2.2.2.1.

<sup>29</sup> See *New York Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,017 (2013); see also Tetenman Testimony, Exh. No. PA-101 at 7.

<sup>30</sup> See Exh. No. PA-1, Prepared Direct Testimony of Thomas A. Davis at 4, Docket No. ER12-2317-000.

<sup>31</sup> Tetenman Testimony, Exh. No. PA-101 at 8.

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

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 10-11.

existing infrastructure for future generations.<sup>35</sup> The existing ATRR of \$175.5 million is not adequate to cover existing costs, and that deficiency will grow as repair and life-extension investments are made.<sup>36</sup>

#### **D. NYPA's July 2, 2015 Formula Rate Filing**

In order to address these expenditures in a manner that would avoid significant regulatory lag and the resulting strain on NYPA's finances, on July 2, 2015, NYPA filed for acceptance of a transmission Formula Rate template and implementation protocols to determine NYPA's ATRR used to recover NYPA's costs for providing transmission services under the NYISO OATT. The July 2 Filing provided extensive support demonstrating that NYPA's proposal was just and reasonable, and requested that the Commission accept for filing the Formula Rate and related tariff changes effective September 1, 2015. NYPA's July 2 Filing also included a request for the abandonment incentive to recover 100% of NYPA's prudently incurred costs associated with the development of the MSSC Project if it is abandoned for reasons outside of NYPA's control. Lastly, NYPA's proposed ROE included a request for an RTO Participation Adder for NYPA's continued participation in the NYISO.

In addition to requesting the abandonment incentive for the MSSC Project and proposing to convert NYPA's stated ATRR to a formulaic ATRR, NYPA's July 2 Filing proposed to eliminate the "NTAC Veto" contained in Section 14.2.2.2.3 of Attachment H of the NYISO OATT, which provides other New York transmission owners with the ability to unilaterally veto NYPA's recovery through the NTAC of costs for "[a]dditions to its system" exceeding \$5 million per year.<sup>37</sup>

On August 31, 2015, the Commission rejected NYPA's July 2 Filing.<sup>38</sup> The August 31 Order's sole substantive determination was a finding that NYPA failed to demonstrate that its proposal to eliminate the NTAC Veto from the NYISO OATT is just

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<sup>35</sup> See New York Power Authority, *Strategic Vision 2014-2019* at 30-31, available at <http://www.nypa.gov/PDFs/StraVis2014/C1B568998FA6919AE001FA29EBAAAD1F/STPLBK%209-236-13%5B1%5D.pdf>.

<sup>36</sup> Tetenman Testimony, Exh. No. PA-101 at 8, 10.

<sup>37</sup> Section 14.2.2.2.3 provides, in relevant part:

NYPA's recovery pursuant to NTAC initially is limited to expenses and return associated with its transmission system as that system exists at the time of FERC approval of the NTAC ("base period revenue requirement"). Additions to its system may be included in the computation of NTAC only if: a) upgrades or expansions do not exceed \$5 million on an annual basis; or b) such upgrades or expansions have been unanimously approved by the Transmission Owners. Notwithstanding the above, NYPA may invest in transmission facilities in excess of \$5 million annually without unanimous Transmission Owners' authorization outside the NTAC recovery mechanism. In that case, NYPA cannot recover any expenses or return associated with such additions under NTAC and any TCC or other revenues associated with such additions will not be considered NYPA transmission revenue for purposes of developing the NTAC nor be used as a credit in the allocation of NTAC to transmission system users.

<sup>38</sup> See August 31 Order.

and reasonable.<sup>39</sup> The Commission concluded that the elimination of the NTAC Veto was a “fundamental” aspect of NYPA’s filing and thus found it “appropriate to reject NYPA’s filing in its entirety.”<sup>40</sup> The Commission otherwise made no findings concerning the justness and reasonableness of NYPA’s proposed Formula Rate, and clarified that its rejection of the filing was “without prejudice to NYPA filing to request transmission rate incentives for the MSSC Project or to replace its existing stated rate for the [NTAC] with a formula rate.”<sup>41</sup>

#### **E. NYPA’s Role in Development of the MSSC Project**

The MSSC Project is one of the three Transmission Owner Transmission Solutions (“TOTS”) Projects included in the Reliability Contingency Plan adopted by the New York Public Service Commission (“NYPSC”) to address the possible closure of the Indian Point Energy Center nuclear facility in the Lower Hudson Valley.<sup>42</sup> The MSSC Project, incorporating the Fraser Substation-to-Coopers Corners Substation re-conductoring, will add switchable series compensation at the Fraser Substation to increase power transfer by reducing series impedance over existing 345 kV lines.<sup>43</sup> Specifically, the MSSC Project will consist of the installation of three series capacitor banks near the Fraser Substation, replacement of the conductor on approximately 21.8 miles of the New York State Electric & Gas Corporation’s (“NYSEG”) Fraser-Coopers Corners 345 kV line, and relay protection and communication system upgrades to NYPA’s Marcy and Blenheim-Gilboa Substations, as well as to other 345 kV substations in the surrounding region owned by National Grid, Orange & Rockland, Central Hudson, and Entergy.<sup>44</sup>

Part of the MSSC Project will be developed by NYSEG, through the NY Transco, while the remainder will be developed by NYPA.<sup>45</sup> NYPA will be responsible for installing two series capacitor (“SC”) banks near the Fraser Substation: a 915 MVAR SC bank on NYPA’s Marcy-Coopers Corners 345 kV line and a 315 MVAR SC bank on NYPA’s Edic-Fraser 345 kV line.<sup>46</sup> NYPA will also be responsible for upgrading the relay protection and communication systems at the 345 kV substations.<sup>47</sup> NYSEG will be responsible for installing one SC bank, also near the Fraser Substation, and for re-conductoring its Fraser-

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<sup>39</sup> *Id.* at P 59.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at P 64.

<sup>42</sup> See Case 12-E-0503, *Proceeding on Motion of the Commission to Review Generation Retirement Contingency Plans*, Order Accepting IPEC Reliability Contingency Plans, Establishing Cost Allocation and Recovery, and Denying Requests for Rehearing at 8 (Nov. 4, 2013), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={5AFE13E9-181F-40CF-A91C-5AEC0E066AC9}> (hereinafter “Order Accepting IPEC Reliability Contingency Plan”).

<sup>43</sup> See Tetenman Testimony, Exh. No. PA-101 at 30.

<sup>44</sup> *Id.* at 30-31.

<sup>45</sup> *Id.* at 30.

<sup>46</sup> *Id.* at 30.

<sup>47</sup> *Id.* at 30-31.

Coopers Corners 345 kV line.<sup>48</sup> The expected in-service date of the MSSC Project is June 2016.<sup>49</sup> After the MSSC Project is placed in service, operational control of the MSSC Project will be turned over to the NYISO.<sup>50</sup>

On December 4, 2014, the NY Transco and its investor-owned utility participants (the “NYTOs”)<sup>51</sup> filed an application for approval of a transmission formula rate as well as transmission rate incentives and cost allocation procedures for the TOTS Projects, including NYSEG’s (but not NYPA’s) share of the MSSC Project.<sup>52</sup> On April 2, 2015, the Commission partially granted the NY Transco’s application in Docket No. ER15-572-000.<sup>53</sup> The Commission conditionally accepted and suspended the formula rate, authorized certain rate incentives, and established hearing and settlement judge procedures for certain formula rate issues.<sup>54</sup> However, the Commission summarily rejected the NY Transco’s proposed cost allocation for the TOTS Projects, because the TOTS Projects did not qualify for regional cost allocation under any existing provision of the NYISO OATT, and not all transmission owners to whom the NY Transco proposed to allocate costs had agreed to such allocation through a participant-funded agreement.<sup>55</sup>

After numerous settlement conferences and discussions between the parties and FERC Staff, the parties reached an agreement which culminated in the filing of the NY Transco Settlement to resolve all outstanding issues associated with the TOTS Projects, including issues related to the TOTS Projects that were set for hearing and issues pending on rehearing before the Commission.<sup>56</sup> Relevant for the purposes of this filing, the parties to the NY Transco Settlement agreed to a participant-funded cost allocation agreement with respect to the TOTS Projects, set forth in the proposed new Rate Schedule 13 to Section 6 of the NYISO OATT. The participant-funded cost allocation allocates costs to each transmission district as follows: 63.18% to Consolidated Edison Co. of N.Y., Inc. and Orange and Rockland Utilities, Inc.; 8.55% to the Long Island Power Authority (“LIPA”); 12.16% to the Niagara Mohawk Power Corp. d/b/a National

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<sup>48</sup> *Id.* at 31.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> The NYTOs include Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc./Orange & Rockland Utilities, Inc., Niagara Mohawk Power Corporation d/b/a National Grid and New York State Electric & Gas Corporation/Rochester Gas and Electric Corporation.

<sup>52</sup> See New York Transco, LLC, Application for Acceptance of Transmission Formula Rate and Approval of Transmission Rate Incentives and Cost Allocation Method, Docket No. ER15-572-000 (filed Dec. 4, 2014) (hereinafter “NY Transco Rate Filing”); Tetenman Testimony, Exh. No. PA-101 at 30-31. Although the initial vision for the NY Transco included NYPA, the New York State legislature did not pass legislation authorizing NYPA to participate in the NY Transco and NYPA is therefore not a member of the NY Transco. Accordingly, NYPA did not join the NY Transco’s formula rate filing.

<sup>53</sup> See *New York Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,004 (2015) (hereinafter “NY Transco Order”).

<sup>54</sup> See *id.*

<sup>55</sup> *Id.* at PP 185-90.

<sup>56</sup> *New York Transco, LLC, et al.*, Offer of Partial Settlement, Article 1, Docket No. ER15-572-000 (filed Nov. 5, 2015).

Grid (“Niagara Mohawk”); 10.12% to the New York State Gas & Electric Corp. and Rochester Gas and Electric Corp. (“NYSEG/RGE”); and 5.99% to Central Hudson Gas & Electric Corp.<sup>57</sup> Under the cost allocation, NYPA’s load shall be treated the same as all other load serving entities (“LSEs”) and NYPA will be allocated costs for the TOTS Projects using the same percentage as the LSEs in each transmission district where NYPA serves its customers.<sup>58</sup> The settling parties further stipulated that they would either support or not oppose a proposal by NYPA in a subsequent FPA section 205 proceeding to recover its revenue requirement associated with the MSSC Project using the same participant-funded cost allocation. Specifically, the NY Transco “Applicants and LIPA agree[d] to support,” and the other settling parties “agree[d] either to support or not to oppose a proposal made in . . . a [section 205] filing by NYPA to apply these same cost allocation percentages to NYPA’s MSSC Project through the NYISO tariff[.]”<sup>59</sup>

The NY Transco Settlement has not yet been approved by the Commission. However, Article 7.6 of the NY Transco Settlement provides an exception to Rule 602(e)’s limitation on use of non-approved offers of settlement as evidence. Article 7.6 provides, in relevant part: “Except for the NYPA filing contemplated by Article 3.3(c) above, the Settlement Agreement shall not be admissible in evidence or in any way described or discussed in any proceeding before any court or regulatory body (except in comments on the Settlement in this proceeding).”<sup>60</sup> Therefore, NYPA’s discussion herein of the NY Transco Settlement is consistent with Article 7.6 of that agreement, and does not violate Rule 602(e). Moreover, this Application constitutes the section 205 filing contemplated in the NY Transco Settlement, as will be explained in more detail below.<sup>61</sup>

### **III. SUMMARY OF REQUESTED ACTIONS**

#### **A. Formula Rate**

As discussed above, the August 31 Order rejected NYPA’s July 2 Filing without prejudice to NYPA re-filing its request for a formula transmission rate. Accordingly, NYPA is re-filing its proposed Formula Rate, with some changes, in this filing.

NYPA’s proposed Formula Rate includes a formula rate template (“Template”) and implementation protocols (“Protocols”), and is designed to be included in a new Section 14.2.3 of Attachment H of the NYISO OATT. NYPA requests that the Commission accept for filing, effective April 1, 2016, the Template and Protocols

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<sup>57</sup> *Id.* at Article 3.3(a).

<sup>58</sup> *Id.* at Article 3.3(b)

<sup>59</sup> *Id.* at Article 3.3(c).

<sup>60</sup> *Id.* at Article 7.6.

<sup>61</sup> Sections III.B and V, *infra*, describe in greater detail NYPA’s proposed Rate Schedule 15 to Section 6 of the NYISO OATT to recover its ATRR associated with the MSSC Project using the participant-funded cost allocation stipulated in the NY Transco Settlement, as contemplated by Article 3.3(c) of the NY Transco Settlement.

included in Appendix A, which is a clean version of the NYISO OATT with NYPA's proposed amendments. As discussed below, the Template will determine NYPA's ATRR, which will include NYPA's NTAC ATRR and any project-specific ATRRs, such as the MSSC Project ATRR.

NYPA has populated the Template with calendar year 2014 data<sup>62</sup> from its Annual Report to produce a projected NTAC ATRR of \$189,954,660 for the Initial Rate Year.<sup>63</sup> NYPA asks that the Commission allow the NYISO to begin collecting NYPA's projected NTAC ATRR produced by the Template effective April 1, 2016 through the duration of the Initial Rate Year ending June 30, 2016, subject to true-up in accordance with the Annual Update Process defined in the Protocols.<sup>64</sup>

NYPA asks that the Commission accept its proposed Formula Rate in Section 14.2.3 and related changes to Section 14.2.2 of Attachment H of the NYISO OATT without modification or condition. Should the Commission direct any modifications or revisions to the Formula Rate in this proceeding that would alter NYPA's calculation of the projected ATRR for the Initial Rate Year, NYPA respectfully asks that the Commission allow such modifications to be carried forward with interest and reflected in the True-Up Adjustments corresponding to calendar year 2016, in lieu of customer-specific refunds.

The proposed Formula Rate is similar in many respects to that proposed in the July 2 Filing, with some revisions and updates as appropriate. Importantly, however, this filing does not request any change to the NTAC Veto provision as it exists in the NYISO OATT, and thereby does not implicate the concern that prompted the Commission to reject the July 2 Filing. The rights of other New York transmission owners remain unchanged by the instant filing.

It is anticipated that the cost of certain NYPA projects, including the MSSC Project, will be recovered through alternative cost recovery mechanisms outside the NTAC, such as through a participant-funded agreement similar to the NY Transco Settlement or through NYISO's Order No. 1000 regional planning process.<sup>65</sup> Accordingly, Schedule F1 of the Template is designed to, and is capable of, developing independent revenue requirements for the NTAC, the MSSC Project, and any other

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<sup>62</sup> The Template incorporates 2014 calendar year costs, because NYPA's Formula Rate is designed to allow NYPA to recover its ATRR across a July to June Rate Year using the prior calendar year's historical cost of service as a proxy projection for the Rate Year revenue requirement. Calendar year actual costs are determined the following year as a part of NYPA's Annual Update Process defined in the Protocols, and any difference between transmission revenues received and actual costs during a calendar year are reflected as a True-Up Adjustment during the subsequent Rate Year.

<sup>63</sup> See Exh. No. PA-102; see also Tetenman Testimony, Exh. No. PA-101 at 26. This ATRR does not reflect any costs related to the MSSC Project. See Tetenman Testimony, Exh. No. PA-101 at 34-35.

<sup>64</sup> Because NYPA's current stated rate remained in place for the duration of the 2015 calendar year, NYPA will not true up 2015 calendar year costs against 2015 calendar year revenues as a part of the July 1, 2016 Annual Update, because no Formula Rate revenues were collected during calendar year 2015. A more detailed discussion of the True-Up Adjustment for the Initial Rate Year is provided in Section IV.F, *infra*.

<sup>65</sup> See August 31 Order at PP 62-63.

projects for which a separate revenue requirement is necessary under the relevant provisions of the NYISO OATT.<sup>66</sup> Any such project-specific revenue requirements will be separately identified and determined, along with the NTAC ATRR, using Schedule F1, and will sum to NYPA's overall ATRR. This feature ensures that the Formula Rate can accommodate NYPA's ability to recover costs through alternative cost recovery mechanisms outside of the NTAC, as the Commission explicitly stated NYPA is entitled to do in the August 31 Order.<sup>67</sup>

Because there are no project-specific ATRRs generated by the Template in the Initial Rate Year, the NTAC ATRR for the Initial Rate Year is equal to NYPA's total ATRR of \$189,954,660. The NTAC ATRR will continue to equal the total ATRR until the MSSC Project is placed into service and the Template produces an MSSC Project ATRR. At that point, the total ATRR will equal the NTAC ATRR plus the MSSC Project ATRR. It is anticipated that the Template will first produce an MSSC Project ATRR with the July 1, 2017 Formula Rate Annual Update, because the MSSC Project's anticipated in-service date is in 2016.

#### **B. Rate Schedule 15**

NYPA proposes to add a new Rate Schedule 15 to Section 6 of the NYISO OATT, which will allow NYPA to recover the MSSC Project ATRR utilizing a new charge that reflects the participant-funded cost allocation agreement stipulated in the NY Transco Settlement. Specifically, Rate Schedule 15 will produce an MSSC Facilities Charge to be recovered from NYISO LSEs using this same participant-funded cost allocation. The NYPA MSSCFC will be administered by the NYISO and will be developed in the same manner as the "Transco Facilities Charge" proposed by the NY Transco to be included in Rate Schedule 13 to recover its costs for the TOTS Projects. In determining the MSSCFC, Rate Schedule 15 will incorporate as an input and recover NYPA's MSSC Project ATRR, as determined by Schedule F1 of the Formula Rate Template and identified on Line 11a of the Template's "Transmission Revenue Requirement Summary."

#### **IV. THE PROPOSED FORMULA RATE IS JUST AND REASONABLE.**

NYPA files the attached Formula Rate and requests that it be accepted for filing effective April 1, 2016. The Formula Rate will be included as a new Section 14.2.3 of Attachment H, where it will produce an overall formulaic ATRR for NYPA that includes both (1) a formulaic NTAC ATRR to replace the current stated revenue requirement used to determine the NTAC, and (2) any separate project-specific ATRRs.<sup>68</sup>

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<sup>66</sup> As proposed, Schedule F1 can accommodate the inclusion of the MSSC Project in anticipation of its costs being added at a future date. Schedule F1 would produce a separate project-specific ATRR for the MSSC Project on Schedule F1, page 2, line 1b, column 16.

<sup>67</sup> August 31 Order at P 63; *see also* NYISO OATT, Attachment H, § 14.2.2.2.3 ("Notwithstanding the above, NYPA may invest in transmission facilities in excess of \$5 million annually without unanimous Transmission Owners' authorization outside the NTAC recovery mechanism.").

<sup>68</sup> Tetenman Testimony, Exh. No. PA-101 at 11-12.

**A. NYPA's Request to Utilize a Formula Rate to Recover Its Annual Transmission Revenue Requirement Is Just and Reasonable, Because It Will Allow NYPA to Mitigate Regulatory Lag During a Period of Rising Costs While Ensuring That Customers Pay No More Than NYPA's Cost of Service.**

As discussed above, NYPA currently recovers its costs for the transmission services it provides to the State of New York through the NTAC, which is determined using a stated revenue requirement. NYPA seeks to convert its current stated revenue requirement of \$175.5 million into a formulaic revenue requirement subdivided into an NTAC ATRR and separate project-specific ATRRs, because (i) NYPA anticipates the need for significant transmission life extension and maintenance projects on its existing transmission system that will require increased capital expenditures in the next decade;<sup>69</sup> and (ii) NYPA needs a mechanism for determining a revenue requirement for its interest in the MSSC Project and any other projects NYPA may invest in through FERC's Order No. 1000-mandated regional planning process.

Despite their age, NYPA's existing facilities continue to perform vital transmission functions for New York electricity consumers.<sup>70</sup> Additionally, the 765 kV Massena-Marcy line, which was completed in 1978 and contributes significant import capability and market integration with the Hydro-Québec system, is now over 35 years old and in need of life extension and modernization efforts.<sup>71</sup> As stated by Mr. Tetenman, in December 2012, NYPA's Trustees approved a transmission life extension and modernization ("T-LEM") program, following a comprehensive analysis of NYPA's transmission system and facilities.<sup>72</sup> The assessment of critical areas included: assessing the overall condition of the equipment and other transmission assets; assessing risk of failure; providing recommendations for replacement; and prioritizing work and developing schedules for implementation and developing cost estimates for each task addressed.<sup>73</sup> The multi-year T-LEM program will allow NYPA's existing transmission system to maintain availability, increase reliability, and ensure regulatory compliance. The program consists of approximately 20 tasks to be completed at existing facilities over a period extending through the late-2020s.<sup>74</sup>

Because of these maintenance and life extension expenses anticipated in the coming years, a stated revenue requirement can no longer be expected to keep pace with NYPA's increasing cost of service.<sup>75</sup> The Commission should accept as just and

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<sup>69</sup> As explained in Mr. Tetenman's testimony, these projects are needed to modernize and extend the life of NYPA's aging infrastructure. *See id.* at 7-9.

<sup>70</sup> *See id.* at 8.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 8-9.

<sup>75</sup> *See id.* at 10-11.

reasonable NYPA's Application for a Formula Rate to determine and update its NTAC ATRR and any project-specific ATRRs on an annual basis. The Commission has sanctioned the use of formula rates, and has encouraged transmission owners in New York and elsewhere to transition from stated rates to formula rates.<sup>76</sup> Specifically, "[t]he Commission has found that the use of formula rates encourages the construction and timely placement into service of needed transmission infrastructure and has approved the use of formula rates by a number of transmission-owning utilities."<sup>77</sup> The Commission has also acknowledged that "having a formula cost recovery system in place should eliminate the need for frequent rate adjustment filings, ensure that rates reflect the actual cost of providing transmission service, and incent needed transmission investment."<sup>78</sup> Accordingly, the Commission "continue[s] to encourage public utilities to explore the benefits of filing transmission-related formula rates."<sup>79</sup> As a result, transmission owners now regularly file forward-looking formula rates, and FERC often accepts them with no more than a nominal suspension.<sup>80</sup>

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<sup>76</sup> *Niagara Mohawk Power Corp.*, 124 FERC ¶ 61,106 at P 33 (2008), *order on reh'g*, 126 FERC ¶ 61,173 (2009) ("The Commission has found that the use of formula rates encourages the construction and timely placement into service of needed transmission infrastructure and has approved the use of formula rates by a number of transmission-owning utilities.") (footnote omitted); *New York Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,372 at P 29 (2004) ("We support NYISO's plan to develop a full cost allocation methodology and also encourage the parties to explore whether adopting formula rates for recovery of the costs of both the [NYISO Transmission Owners'] existing facilities and new transmission facilities would be a more reasonable rate design."), *reh'g denied*, 111 FERC ¶ 61,182 at P 24 (2005) ("We also add that the Commission would prefer to see a formula rate mechanism in place that would both avoid separate rates for certain transmission upgrade costs as well as avoid contested proceedings directed at determining appropriate overall cost recovery."); *see also, e.g., Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308 at P 51 (2005) ("the Commission has, in fact, urged transmission owners to move from stated rates to formula rates"), *order on reh'g and clarification*, 115 FERC ¶ 61,156 (2006); *Southwest Power Pool, Inc.*, 111 FERC ¶ 61,118 at P 32 (2005) (encouraging "utilities to consider adopting formula rates to facilitate" recovery of costs for new transmission upgrades), *order on reh'g*, 112 FERC ¶ 61,319 (2005); *Allegheny*, 106 FERC ¶ 61,003 at P 32 (2004) ("The parties may explore whether adopting formula rates for recovery of the costs of both the [Transmission Owners' ('TO')] existing transmission facilities and new transmission facilities would be best. Specifically, we note that other TOs that we have approved incentive rates for also have formula rates."), *order on reh'g*, 106 FERC ¶ 61,016 (2004).

<sup>77</sup> *Niagara Mohawk Power Corp.*, 124 FERC ¶ 61,106 at P 33 (footnote omitted).

<sup>78</sup> *Id.*

<sup>79</sup> Order No. 679 at P 386 (citations omitted). For instance, the Commission has recognized that formula rates can facilitate and incentivize upgrades by transmission owners as a part of regional transmission planning processes. *See, e.g., Commonwealth Edison Co.*, 119 FERC ¶ 61,238 at P 75 (2007) (imposing nominal suspension because "the Commission has, in fact, urged transmission owners to move from stated rates to formula rates, and . . . customers would also benefit from the incentive provided by these rate changes to [the transmission owner] to commence construction of [Regional Transmission Expansion Plan] upgrades"), *order on reh'g*, 122 FERC ¶ 61,037 (2008); *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219 at P 38 (same), *reh'g denied*, 121 FERC ¶ 61,009 (2007); *Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308 at P 51 (same).

<sup>80</sup> *See, e.g., Virginia Elec. & Power Co.*, 123 FERC ¶ 61,098 at P 28 (2008) (accepting forward-looking formula rate with no suspension) ("VEPCo"); *Duquesne Light Co.*, 118 FERC ¶ 61,087 at P 3 (2007) (accepting forward-looking transmission formula rate filing to recover cost of transmission additions and upgrades with nominal suspension); *Xcel Energy Servs., Inc.*, 121 FERC ¶ 61,284 at P 69 (2007) (accepting forward-looking transmission formula rate with true-up mechanism with no suspension); *Michigan Elec. Transmission Co.*, 117 FERC ¶ 61,314 at P 17 (2006) (same), *order on reh'g*, 118 FERC ¶ 61,139 (2007);

The Commission should accept NYPA's proposed Formula Rate as just and reasonable, because it will allow NYPA to effectively undertake the life extension investments necessary to ensure that New York's grid remains reliable, while eliminating the regulatory lag and inefficiencies associated with frequent rate filings to update a stated revenue requirement to reflect NYPA's true costs. Additionally, a formula rate will allow NYPA to develop a separate revenue requirement for any new projects developed by NYPA—such as the MSSC Project—for which costs are not recovered through the NTAC.

In order to implement its proposed Formula Rate, NYPA proposes to add a new Section 14.2.3 to Attachment H, and to make conforming revisions to Section 14.2.2 of Attachment H to reflect the discontinuation of NYPA's stated ATRR.<sup>81</sup> The Formula Rate Template, which would appear as new Section 14.2.3.1, will be used to determine the NTAC ATRR, and Schedule F1 of the Template is capable of calculating a separate project-specific revenue requirement for project costs that are not recoverable through the NTAC if it is determined that the costs of such projects should be allocated using some other mechanism. For example, it is expected that in the 2017 Formula Rate Annual Update, Schedule F1 of the Template will produce a project-specific ATRR for the MSSC Project which will be recovered through the proposed new Rate Schedule 15, rather than through the NTAC.

The Formula Rate Protocols would appear as a new Section 14.2.3.2, and describe the customer review procedures pertaining to NYPA's Annual Update of the Template.

## **B. Formula Rate Design**

NYPA's proposed Formula Rate reflects established cost-of-service principles for electric utilities and is consistent with Commission policy. The Formula Rate has two parts. The first part is the cost-of-service Template that underlies the ATRR calculation. The second part contains the Protocols, discussed *infra* Section IV.G.

The Template provides for the recovery of a return on rate base, depreciation and amortization expense, operation and maintenance ("O&M") expense, and administrative and general ("A&G") expense, less any revenue credits.<sup>82</sup> NYPA employs the Commission's accepted methods of calculating the cost of debt and equity in order to calculate the return on rate base. The values for PBOP, the ROE, and amortization/depreciation rates are stated terms and may only be changed pursuant to an FPA section 205 or section 206 filing.<sup>83</sup>

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*International Transmission Co.*, 116 FERC ¶ 61,036 at P 19 (2006) (same); *see also Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308 at P 51 (accepting formula rate filing with only nominal suspension).

<sup>81</sup> Tetenman Testimony, Exh. No. PA-101 at 11-12.

<sup>82</sup> There is no expense category for taxes, because NYPA's income and properties it acquires for projects are exempt from taxation.

<sup>83</sup> Tetenman Testimony, Exh. No. PA-101 at 13; Appendix A, Attachment H, § 14.2.3.2.5(a).

NYPA's proposed Formula Rate computes NYPA's total ATRR, which is composed of (1) the NTAC ATRR and (2) any project-specific ATRRs, including the MSSC Project ATRR, where it is determined that the costs of such projects should be allocated using some mechanism other than the NTAC.<sup>84</sup> Schedule F1 of the Formula Rate Template is able to independently determine individual project-specific revenue requirements to recover the costs of NYPA projects that are allocated and recovered through some mechanism other than the NTAC, such as through a participant-funded agreement or the Order No. 1000 regional planning process.<sup>85</sup> For example, after NYPA's MSSC Project is placed into service, Schedule F1 of the Template will produce an ATRR for NYPA's share of the MSSC Project, and separately determine an ATRR for NYPA's NTAC assets. This feature could also be used if NYPA is directed to build an Order No. 1000 project by the NYISO for which there is a beneficiaries-pay cost allocation specified in the NYISO OATT or identified through the regional planning and developer selection process. This Formula Rate will pose no risk of double recovery,<sup>86</sup> because all of NYPA's costs will be recovered through a single Formula Rate, and the Template will independently determine a distinct ATRR for the NTAC, as well as individual project-specific ATRRs for any costs that are assigned to specific non-NTAC projects. The Transmission Revenue Requirement Summary included in the Template compares the sum of these separate ATRRs determined on Schedule F1 to NYPA's overall net ATRR so as to transparently demonstrate that, in total, NYPA will recover no more than its just and reasonable cost of service.<sup>87</sup>

To calculate the ATRR, NYPA will forecast the values that will populate the Template for each July – June Rate Year using prior calendar year actual data from NYPA's Annual Report as a proxy for Rate Year costs.<sup>88</sup> During the subsequent Annual Update, NYPA will determine a true-up of the forecasted ATRR collected during the prior calendar year when the actual data become available from the independently-audited financial statements contained in NYPA's Annual Report. If there is any

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<sup>84</sup> If there are no project-specific ATRRs, which is the case for the Initial Rate Year, then the NTAC ATRR would equal the total ATRR.

<sup>85</sup> See Exh. No. PA-102; *see also* Prepared Direct Testimony of Alan C. Heintz, Exh. No. PA-201 at 10-12 (hereinafter "Heintz Testimony").

<sup>86</sup> See NY Transco Order at PP 146-47.

<sup>87</sup> See Exh. No. PA-102. Specifically, line 10 of the Template's "Transmission Revenue Requirement Summary" sheet identifies NYPA's overall net ATRR developed using the Formula Rate. Schedule F1 of the Template independently determines an NTAC ATRR and any individual project-specific ATRRs. The Template's "Transmission Revenue Requirement Summary" sheet replicates the NTAC ATRR and project-specific ATRRs, as determined by Schedule F1, on lines 11, 11a, 11b, *etc.* of the "Transmission Revenue Requirement Summary." The NTAC ATRR would be stated on line 11, while the MSSC Project ATRR would be separately stated on line 11a. Any future project-specific revenue requirements would also be stated separately from the NTAC ATRR and would be identified on lines 11b, 11c, *etc.* Line 12 of the "Transmission Revenue Requirement Summary" sums of all of the ATRRs on lines 11, 11a, 11b, *etc.* to demonstrate that the sum of the individual ATRRs equals NYPA's total net ATRR, as shown on line 10 of the "Transmission Revenue Requirement Summary." This check demonstrates that NYPA is not over- or under-recovering its ATRR, by demonstrating that the sum of the NTAC ATRR and any project-specific ATRRs equals NYPA's overall net ATRR. See Heintz Testimony, Exh. No. PA-201 at 8.

<sup>88</sup> See Heintz Testimony, Exh. No. PA-201 at 5.

difference between the actual calendar year ATRR and the transmission revenues received by NYPA during the preceding calendar year, the difference, along with interest calculated in accordance with section 35.19a of the Commission's regulations, will be reflected as a True-Up Adjustment to the forecasted ATRR during the following Rate Year.<sup>89</sup> This ensures that neither the customers nor the transmission owner are harmed if NYPA's revenues received during a calendar year differ from its actual cost of service.

### **C. Source of Inputs to the Formula Rate Template**

#### **1. The Commission Allows Non-Jurisdictional Entities to Provide Alternative Cost Support.**

Due to its status as a non-jurisdictional utility under the FPA,<sup>90</sup> NYPA is not required to file FERC Form No. 1. Indeed, the Commission has recognized that NYPA is not subject to section 205 of the FPA, and is thus "not subject to the Commission's regulatory filing requirements."<sup>91</sup> Accordingly, in NYPA's most recent rate filing in 2012, the Commission waived the requirement that NYPA submit cost data using the section 35.13(h) cost of service statements, provided that a sufficient record was developed for the Commission to make its just and reasonable determination.<sup>92</sup>

In the context of formula rates, the Commission has taken a flexible approach with non-jurisdictional transmission owners that do not file FERC Form No. 1. For instance, the Commission accepted the Nebraska Public Power District's ("NPPD") formula rate, which derives its inputs from NPPD's actual data as recorded in accordance with FERC's Uniform System of Accounts ("USofA").<sup>93</sup> The Commission also accepted

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<sup>89</sup> *Id.*

<sup>90</sup> See 16 U.S.C. § 824(f); *City of Vernon*, Opinion No. 479, 111 FERC ¶ 61,092 at P 42, *order on reh'g*, 112 FERC ¶ 61,207, Opinion No. 479-A (2005), *order on reh'g*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006), *vacated and remanded on other grounds sub nom.*, *Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663 (D.C. Cir. 2007) ("*Vernon*"); *New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,240 at PP 28-30.

<sup>91</sup> *New York Indep. Sys. Operator*, 140 FERC ¶ 61,240 at P 36 ("[W]e grant NYPA's requested waiver of section 35.13 of the Commission's regulations. Because NYPA is not subject to section 205 of the FPA, it is not subject to the Commission's regulatory filing requirements."); *see also Vernon*, 111 FERC ¶ 61,092 at P 44 & n.55 (excusing municipality from Commission's regulatory filing requirements, subject to caveat that "sufficient record [must be] developed upon which the Commission can evaluate the justness and reasonableness of the Participating Transmission Owner's TRR").

<sup>92</sup> *New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,240 at P 36 (granting "NYPA's requested waiver of section 35.13 of the Commission's regulations" and finding that NYPA "is not subject to the Commission's regulatory filing requirements," but requiring NYPA to develop a sufficient record in order to permit the Commission to make its required just and reasonable determination).

<sup>93</sup> See *Southwest Power Pool, Inc.*, NPPD Transmittal Letter and Formula Rate Filing at 10, Exh. No. NPP-1 at 6, Docket No. ER09-255-000 (filed Nov. 7, 2008); *Southwest Power Pool, Inc.*, Letter Order, Docket No. ER09-255-000 (issued Jan. 27, 2009) (letter order accepting tariff revisions implementing NPPD formula rate); *see also* Southwest Power Pool Open Access Transmission Tariff, Attachment H, Annual Transmission Revenue Requirement for Network Integration Transmission Service § II.4.2.1, version 29.1.4 (effective June 1, 2015) ("For each year, NPPD will complete and make available for review, on its website, actual data as recorded in accordance with FERC's Uniform System of Accounts, including an

the Omaha Public Power District's ("OPPD") formula rate, which derives its inputs—like NYPA—from OPPD's audited financial statements, which are summarized in OPPD's annual report.<sup>94</sup> More recently, the Commission has accepted formula rates proposed by the non-jurisdictional Mid-Kansas Electric Company and Sunflower Electric Power Corporation, both of which use Annual Report data in conjunction with company books and records maintained in accordance with the USofA as inputs to the formula rate.<sup>95</sup> Similarly, the Michigan Public Power Agency ("MPPA") also uses actual cost data as reported in MPPA's Audited Financial Report to derive its ATRR (but uses the EIA Form 412 as the direct input into the template).<sup>96</sup> In each instance, the Commission waived the requirement that the non-jurisdictional entity comply with section 35.13 of the Commission's filing regulations, notwithstanding the fact that the proposed formula rate was not rooted in the FERC Form No. 1.

**2. NYPA's Independently-Audited Financial Statements, in Conjunction with Extensive Workpapers Included in the Formula Rate, Provide Sufficient Detail and Transparency for Interested Parties to Verify NYPA's Computation of the ATRR.**

In light of the Commission's recognition that non-jurisdictional entities should be able to use alternative sources of information to populate their formula rate templates and the Commission's acceptance of templates that use a variety of different inputs, NYPA respectfully requests waiver of the requirements of section 35.13 of the Commission's regulations to the extent necessary to permit the population of the Formula Rate Template using cost data from NYPA's Annual Report that, in conjunction with detailed workpapers included in the Formula Rate, meet the substance of FERC Form No. 1. Specifically, NYPA will use information contained in its independently-audited financial statements, which can be found in the Financial Report section of NYPA's Annual

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affidavit of the Chief Financial Officer of NPPD attesting to the accuracy of the cost and revenue data set forth therein.”).

<sup>94</sup> See *Southwest Power Pool, Inc.*, OPPD Transmittal Letter and Formula Rate Filing at 4, Exh. No. OPP-1 at 8, Exh. No. OPP-4 at 6, Docket No. ER09-256-000 (filed Nov. 7, 2008); *Southwest Power Pool, Inc.*, Letter Order, Docket No. ER09-256-000 (issued Jan. 27, 2009) (letter order accepting tariff revisions implementing OPPD formula rate).

<sup>95</sup> See *Southwest Power Pool, Inc.*, Sunflower Electric Power Corporation Transmittal Letter and Formula Rate Filing, Docket No. ER14-228-000 (filed Oct. 30, 2013) (using Annual Report data as inputs to formula rate); *Southwest Power Pool, Inc.*, Letter Order, Docket No. ER14-228-000 (issued Dec. 19, 2013) (letter order accepting tariff revisions implementing Sunflower Electric formula rate); Southwest Power Pool Open Access Transmission Tariff, Attachment H, Addendum 20, Part 2 at 90 (“The FBR specifies in detail the manner in which . . . [t]he most recent Annual Report data shall be used as inputs . . . ;” “The True-Up Adjustment for the prior Rate Year shall . . . [b]e based upon Sunflower’s Annual Report for that Rate Year and upon the books and records of Sunflower . . . to be maintained consistently with the [USofA] and FERC accounting policies and practice[.]”); see also *supra* note 13 (describing Mid-Kansas Electric Company’s use of Annual Report data in conjunction with company books and records maintained in accordance with the USofA as inputs to its formula rate).

<sup>96</sup> Michigan Public Power Agency, Informational Filing of Annual Rate Formula Update at 1, 3, Docket No. ER15-1090-000 (filed Feb. 23, 2015).

Report, which is published on NYPA's website each year in April and attached as Exhibit No. PA-105 to this Application.<sup>97</sup>

The Financial Report section of the Annual Report compiles information contained in NYPA's books and records. The testimony of Mr. Tetenman provides an overview of the accounting procedures used by NYPA to record transmission investments and expenses. As a hydroelectric licensee under Part I of the FPA,<sup>98</sup> NYPA is required to maintain its books and records related to its hydroelectric plant, consistent with the USofA, and is subject to audit by FERC with respect to such books and records.<sup>99</sup> To avoid maintaining multiple sets of books and records, NYPA utilizes the USofA for all utility property, including transmission and general plant and operations and maintenance for which NYPA will seek recovery in this Formula Rate.<sup>100</sup> Therefore, the information contained in NYPA's financial statements reconciles to information contained in conformance with FERC's numbered accounting system.

Mr. Tetenman provides additional details about the controls in place to ensure the accuracy of the information in the financial statements contained in the Annual Report. NYPA prepares its financial statements in conformity with generally accepted accounting principles ("GAAP"),<sup>101</sup> and complies with all applicable pronouncements of the Governmental Accounting Standards Board.<sup>102</sup> NYPA further maintains a layered system of controls to ensure the accuracy and integrity of NYPA's financial statements and the information contained in the Annual Report. First, NYPA employs internal controls to provide reasonable assurances "that transactions are executed in accordance with management's authorization, that financial statements are prepared in accordance

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<sup>97</sup> New York Power Authority, Annual Report 2014 (2014), Exh. No. PA-105, *available at* <http://www.nypa.gov/NYPA-2014-AnnualReport.pdf> (hereinafter "2014 Annual Report").

<sup>98</sup> *See, e.g., New York Power Auth.*, 118 FERC ¶ 61,206 at p. 61,952, *reh'g denied*, 120 FERC ¶ 61,266 (2007) ("This license is issued to the New York Power Authority (Licensee) for a period of 50 years, effective September 1, 2007, to operate and maintain the Niagara Project No. 2216. This license is subject to the terms and conditions of the [FPA], which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.").

<sup>99</sup> *See* 18 C.F.R. pt. 101; *Trafalgar Power Inc.*, 87 FERC ¶ 61,207 at p. 61,798 (1999) ("[A]ll licensees are required to comply with the requirements of the [USofA] to the extent necessary to carry out their responsibilities under Sections 4(b), 10(d) and 14 of the FPA . . ."); *Seneca Generation, LLC*, 145 FERC ¶ 61,096 at P 23 n.20 (2013) ("All hydropower licensees are required to comply with the requirements of the [USofA] pursuant to 18 C.F.R. Part 101 to the extent necessary to carry out their responsibilities under Part I of the FPA. We further note that a licensee's status as a market-based rate seller under Part II of the FPA does not exempt it from these accounting responsibilities as a licensee under Part I of the FPA."); *see also* 16 U.S.C. § 797(b) ("The Commission is authorized and empowered . . . [t]o determine the actual legitimate original cost of and the net investment in a licensed project, and . . . each licensee shall . . . file with the Commission in such detail as the Commission may require, a statement . . . showing the actual legitimate original cost of construction of such project, addition, or betterment . . . . The licensee shall grant to the Commission . . . at all reasonable times, free access to such project, addition, or betterment, . . . accounts, books, records, and all other papers and documents relating thereto.").

<sup>100</sup> Tetenman Testimony, Exh. No. PA-101 at 14, 17-20.

<sup>101</sup> 2014 Annual Report, Exh. No. PA-105 at 20, 23; Tetenman Testimony, Exh. No. PA-101 at 14.

<sup>102</sup> 2014 Annual Report, Exh. No. PA-105 at 42.

with [GAAP],” and that NYPA’s assets are safeguarded.<sup>103</sup> This system of controls is “documented, evaluated, and tested on a continuing basis.”<sup>104</sup> Second, NYPA retains an external auditor—KPMG, LLP—to independently audit NYPA’s financial statements.<sup>105</sup> Lastly, NYPA’s Board of Trustees adds a final layer of oversight. The Board’s Audit Committee meets with NYPA’s management, Senior Vice President of Internal Audit, and KPMG periodically during the year to discuss internal controls, accounting matters, financial statements, NYPA’s internal auditing program, and the scope and results of KPMG’s audit, as well as the results of periodic audits by the Office of the State Comptroller.<sup>106</sup>

Among other things, the financial statements contain NYPA’s capital assets, aggregate operating expenses and values for more specific categories of expenses, such as O&M and depreciation, as well as operating revenues, such as transmission charges.<sup>107</sup> They further provide NYPA’s long-term debt and NYPA’s net position, which comprise NYPA’s capital structure.<sup>108</sup>

NYPA proposes to use the information contained in the independently-audited financial statements in the Annual Report, as supplemented by 27 workpapers in the Template, to transparently populate the cost of service schedules in its Template each year, just as a jurisdictional utility would use the FERC Form No. 1. As described in Mr. Tetenman’s testimony, NYPA’s plant in service, accumulated depreciation, depreciation expense, and capital structure can be verified and reconciled from NYPA’s financial statements.<sup>109</sup> NYPA’s O&M can be verified in the aggregate.<sup>110</sup> Generally speaking, the Template develops NYPA’s ATRR on the Transmission Revenue Requirement Summary attachment by aggregating values from Schedules A1-F3.<sup>111</sup> The workpapers are used to input data from the financial statements and company records and translate it to useable form for Schedules A1-F3. This process is described in greater detail in Mr. Tetenman’s testimony.<sup>112</sup>

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<sup>103</sup> *Id.* at 20.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 21.

<sup>106</sup> *Id.* at 20.

<sup>107</sup> *See id.* at 37, 39, 51; *see also* Tetenman Testimony, Exh. No. PA-101 at 16.

<sup>108</sup> *See* 2014 Annual Report, Exh. No. PA-105 at 29, 38-39, 53-54.

<sup>109</sup> Tetenman Testimony, Exh. No. PA-101 at 16.

<sup>110</sup> *Id.*

<sup>111</sup> *See* Heintz Testimony, Exh. No. PA-201 at 8-9.

<sup>112</sup> For example, with respect to the Plant in Service component of NYPA’s transmission rate base, Mr. Tetenman’s testimony explains that Workpaper AR-BS of the Formula Rate exactly replicates the Statement of Net Position from page 38 of the publicly available Annual Report, and page 51 of the Annual Report (“Capital Assets”) is exactly replicated on Workpaper AR-Cap Assets of the Formula Rate. The year-end Net Electric Plant in Service values of \$4.77 billion (2013) and \$4.73 billion (2014) are functionalized into production, transmission, and general plant by FERC USofA on Workpaper BC, with significant detail concerning the contribution of individual assets to the plant total. On Workpaper WP-Reconciliations the individual project FERC accounts are aggregated and aligned to show that they equal,

As a part of the Annual Update Process, NYPA will publicly post the completed workpapers and all supporting documentation and data used to derive any inputs that are not drawn directly from NYPA's Annual Report. Specifically, NYPA's Protocols require NYPA to post to the NYISO website

sufficiently detailed supporting documentation, including underlying data and calculations, that explains the source and derivation of any data affecting the Formula that is not drawn directly from NYPA's Financial Report, such that Interested Parties can replicate the calculation of the Formula results using the Financial Report and can verify that each input is consistent with the requirements of the Formula Rate[.]<sup>113</sup>

This process will ensure that NYPA's Annual Update of its Formula Rate will occur in a transparent and just and reasonable manner.

#### **D. Other Formula Rate Components**

##### **1. Return on Equity**

###### **a. The Base ROE Proposed by NYPA Is Just and Reasonable and Within the Zone of Reasonableness Calculated Using the Commission's Two-Step DCF Methodology.**

The Commission has held that, while non-jurisdictional public power entities do not raise equity capital through the issuance of stock, they nevertheless provide internal sources of funding for investment and such funding comes at a cost.<sup>114</sup> Consistent with

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save for any rounding, the figures for transmission plant in service and accumulated depreciation for transmission plant in service, as contained in NYPA's financial statements. *See* Tetenman Testimony at 15-17. In this way, the Formula Rate ties the net transmission and general plant component of NYPA's rate base to publicly available numbers taken directly from NYPA's Financial Report, which are replicated on Workpaper WP-Reconciliations, and provides even greater detail as to their derivation than the typical formula rate of a jurisdictional transmission owner that files FERC Form No. 1. This is but one example from Mr. Tetenman's testimony, which also explains the reconciliation of NYPA's capital structure, cost of debt, O&M, and other Formula Rate revenue requirement components to numbers included in NYPA's publicly available Annual Report using the workpapers included in the Formula Rate.

<sup>113</sup> Appendix A, Attachment H, § 14.2.3.2.2(b)(iii)(B).

<sup>114</sup> *See, e.g., AES Power Inc.*, 74 FERC ¶ 61,220 at p. 61,745 (1996) ("We find that it is reasonable for [governmental utility Tennessee Valley Authority ("TVA")] to include a 10 percent margin in its rate. First, it is extremely unlikely that a business enterprise the size of TVA could rely solely on debt financing because lenders would be unwilling to make such loans or the cost would be prohibitive (reflecting the risk of 100 percent debt financing). TVA, like any other similar business, must provide internal funding for a portion of its expenses. The fact that the financing is funded internally rather than through the sale of common stock makes it no less of a cost."); *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,219 at P 31 (2004) ("Consistent with our policy outlined in Order No. 2000, we continue to encourage participation of all transmission owners in RTOs, including cooperatives and municipals. Their participation will enhance the reliability and economic benefit of RTOs and ensure appropriate RTO size and scope. It is unlikely that Wolverine or any other small transmission owner will participate in an RTO

this precedent, NYPA proposes to recover a base ROE of 8.65% based on the recommendation of Mr. Richard L. Ansaldo. Mr. Ansaldo performed a two-step DCF analysis that is consistent with the Commission's latest guidance in Opinion No. 531.<sup>115</sup> Mr. Ansaldo expanded the proxy group to include utilities rated more than one notch below NYPA's AA/Aa1 credit rating in order to achieve a group of sufficient size, because there are no otherwise includable utilities rated one notch below NYPA's rating using both ratings systems, and there would therefore be no utilities in the proxy group.<sup>116</sup> However, as Mr. Ansaldo explains, this adaptation provides an appropriate proxy group because the utilities included represent the highest-rated and most risk-comparable utilities to NYPA.<sup>117</sup>

Mr. Ansaldo identifies a range of reasonable returns of 6.37% to 10.29% and recommends a base ROE of 8.65% for NYPA based on the median of the proxy group, which is consistent with FERC precedent.<sup>118</sup> Mr. Ansaldo concludes that NYPA's requested ROE of 9.15% (after the 50 basis point RTO Participation Adder) will provide a sufficient return to support NYPA's bond rating.<sup>119</sup> Although market conditions are now very similar to what they were during the period used in Opinion No. 531—and would thus justify an upward adjustment to the average of the measure of central tendency and the highpoint—NYPA is conservatively not requesting the upward adjustment from the measure of central tendency to reflect these anomalous economic conditions.<sup>120</sup> Mr. Ansaldo's testimony and exhibits can be found at Appendix E.

**b. The RTO Participation Adder Incentive Is Appropriate Because NYPA Is a Member of the NYISO, NYPA Has Turned over Operational Control Over Its Transmission Assets to the NYISO, and the Resulting Total ROE Will Remain Within the Zone of Reasonableness.**

Consistent with section 219(c) of the FPA and Commission precedent, NYPA requests a 50 basis point adder to its base ROE for RTO participation.<sup>121</sup> The

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without proper and equitable compensation for their transmission facilities. We find that once Wolverine [Power Supply Cooperative, Inc.] and [the Michigan Public Power Agency] become participating members of Midwest ISO by turning over control of their transmission facilities to Midwest ISO, they should receive the same 12.88 percent ROE afforded to other transmission owners in Midwest ISO.”).

<sup>115</sup> *Coakley, Mass. Atty. Gen. v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234, *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014), *order on reh'g*, Opinion No. 531-B, 150 FERC ¶ 61,165 (2015).

<sup>116</sup> Prepared Direct Testimony of Richard L. Ansaldo, Exh. No. PA-301 at 6 (hereinafter “Ansaldo Testimony”). One utility, Madison G&E, has a rating one notch below NYPA's rating using S&P ratings, but not Moody's ratings.

<sup>117</sup> *See id.* at 6-7 (describing proxy group selection procedure).

<sup>118</sup> *Id.* at 8-9.

<sup>119</sup> *Id.* at 10-12.

<sup>120</sup> *Id.* at 9-10.

<sup>121</sup> *See* 16 U.S.C. § 824s(c).

Commission determined in Order No. 679 that it will approve ROE adders “for public utilities that join *and/or continue* to be a member of an [independent system operator], RTO, or other Commission-approved Transmission Organization.”<sup>122</sup> The Commission has found that the incentive recognizes the benefits that flow from RTO/ISO membership, and that a “utility is presumed eligible for an RTO incentive ‘if it can demonstrate that it has joined an RTO, ISO, or other Commission-approved Transmission Organization, and that its membership is on-going’ and need not provide additional justification as to the necessity or benefits of the incentive.”<sup>123</sup> The Commission has thus emphasized that “entities that have already joined, and that remain members of, an RTO, ISO, or other Commission approved transmission organization, are eligible to receive this incentive.”<sup>124</sup> Accordingly, the Commission has routinely approved the incentive for RTO participation as long as the resultant ROE after application of the RTO Participation Adder is within the ROE zone of reasonableness.<sup>125</sup> Consistent with this practice, the Commission recently approved the use of the adder by the NY Transco for the three TOTS Projects provided that the total ROE does not exceed the top end of the zone of reasonableness and the NY Transco joins the NYISO and turns over operational control of the projects to the NYISO.<sup>126</sup> The Commission has also consistently granted this incentive to non-jurisdictional utilities.<sup>127</sup>

As described above, NYPA is a member of the NYISO and has turned over operational control of its transmission facilities to the NYISO and will do the same for any future projects, including the MSSC Project. NYPA’s requested total ROE of 9.15% is within the top end of the zone of reasonableness determined using the Commission’s two-step DCF analysis. The Commission should therefore find that NYPA’s request to

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<sup>122</sup> Order No. 679 at P 326 (emphasis added); Order No. 679-A at P 86; *see also Ass’n of Businesses Advocating Tariff Equity Coal. of MISO Transmission Customers v. Midcontinent Indep. Sys. Operator Inc.*, 149 FERC ¶ 61,049 at P 200 (2014) (“*Tariff Equity Coal.*”) (“The Commission stated in Order No. 679 that entities that have already joined, and that remain members of, an RTO, ISO, or other Commission approved transmission organization, are eligible to receive this incentive.”).

<sup>123</sup> NY Transco Order at P 90 (quoting Order No. 679 at P 327); *see also Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,004 at PP 41-44 (2015); *Pacific Gas & Elec. Co.*, 141 FERC ¶ 61,168 at P 25 (2012) (determining that granting incentive ROE for “participation in the CAISO is consistent with the stated purpose of FPA section 219 . . . and is intended to encourage [transmission owner’s] continued involvement in the CAISO,” despite arguments that such incentive is no longer necessary) (footnotes omitted); *Niagara Mohawk Power Corp.*, 124 FERC ¶ 61,106 at P 35 (2008) (We will grant up to 50 basis points of incentive ROE for Niagara Mohawk’s continued participation in NYISO . . . . Our decision to grant Niagara Mohawk an incentive for participation in the NYISO is consistent with the stated purpose of section 219 of the FPA—that the incentive applies to all utilities joining the transmission organization—and is intended to encourage Niagara Mohawk’s continued involvement with NYISO.”) (footnotes omitted).

<sup>124</sup> *Tariff Equity Coal.*, 149 FERC ¶ 61,049 at P 200.

<sup>125</sup> *See id.*; *see also* NY Transco Order at P 91.

<sup>126</sup> NY Transco Order at P 88.

<sup>127</sup> *See, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,166 (2015); *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,137 (2015); *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,050 (2015) (RTO adder granted to four municipal utility entities); *Valley Elec. Ass’n, Inc.*, 141 FERC ¶ 61,238 (2012) (RTO adder granted to an electric cooperative in the California ISO).

include the RTO Participation Adder incentive in its total ROE proposal is just and reasonable.

## 2. Capital Structure

As explained in Mr. Ansaldo's testimony, NYPA proposes to use its actual capital structure, which is comprised of long-term debt and its net position, as updated each year in NYPA's financial statements, capped at a maximum of 60% equity.<sup>128</sup> NYPA does not have traditional common stock and thus its "equity" is retained income listed on its financial statements as its "net position."<sup>129</sup>

As populated with 2014 calendar year data, NYPA's Template produces a capital structure of 23.6% debt and 76.4% equity based on its ratio of long-term debt to net position.<sup>130</sup> NYPA's long-term capitalization target, which it intends to achieve through the issuance of long-term debt to finance capital investments, is 65% equity.<sup>131</sup> However, NYPA is proposing to voluntarily cap the equity component of its capital structure at 60% to minimize rate impacts to NYISO customers during a period of anticipated capital spending over the coming years. The Commission should accept as just and reasonable NYPA's proposal to cap the equity component of its capital structure at 60% equity, because it is slightly lower than NYPA's long-term capitalization goal and will help reduce rate impacts to consumers as NYPA modernizes its transmission infrastructure in the coming years.<sup>132</sup>

NYPA's proposal to use its actual capital structure is consistent with FERC precedent and policy, which has consistently held that an entity's actual capital structure is preferable to an imputed one unless there is an "overriding reason not to do so."<sup>133</sup> In particular, the Commission has a strong preference for using an entity's actual capital structure "if the utility issues its own debt without guarantees, has its own bond rating, and has a capital structure within the range of capital structures approved by the Commission."<sup>134</sup> The Commission should accept NYPA's use of its actual capital

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<sup>128</sup> Ansaldo Testimony, Exh. No. PA-301 at 13-14.

<sup>129</sup> *Id.* at 3; *see also* Tetenman Testimony, Exh. No. PA-101 at 18-19.

<sup>130</sup> Ansaldo Testimony, Exh. No. PA-301 at 13-14; *see also* Tetenman Testimony, Exh. No. PA-101 at 18-19.

<sup>131</sup> Ansaldo Testimony, Exh. No. PA-301 at 14-15, 17.

<sup>132</sup> The Commission has accepted voluntary proposals by an entity to cap the equity component of its capital structure. *See Transource Wis., LLC*, 149 FERC ¶ 61,180 at P 34 (2014) ("We also grant Transource Wisconsin's proposal to cap the equity component of its capital structure at 55 percent. We note that the Commission traditionally does not require applicants to cap the capital structures used for ratemaking at a particular numerical value. Here, however, Transource Wisconsin has voluntarily proposed to cap the equity component of its capital structure, and we accept this voluntary cap.").

<sup>133</sup> *VEPCo.*, 123 FERC ¶ 61,098 at P 73; *see also Tariff Equity Coal.*, 149 FERC ¶ 61,049 at P 190 ("[T]he Commission has not dictated the level of common equity in utility capital structures used in ratemaking beyond very limited and specific circumstances . . .").

<sup>134</sup> *ITC Holdings Corp.*, 121 FERC ¶ 61,229 at P 49 (2007); *see also Tariff Equity Coal.*, 149 FERC ¶ 61,049 at P 190.

structure, capped at 60% equity, because NYPA meets all three of these criteria. NYPA issues its own debt without guarantees, NYPA has its own bond rating,<sup>135</sup> and NYPA's voluntary proposal to cap its equity ratio at 60% will ensure that its capital structure remains within the range of capital structures approved by the Commission.<sup>136</sup>

Furthermore, as Mr. Ansaldo describes, imposing a lower cap on NYPA's equity capitalization would be inconsistent with NYPA's strong credit rating of AA/Aa1 and resulting low cost of debt.<sup>137</sup> NYPA's conservative use of debt financing (low leverage) significantly contributes to NYPA's high bond rating.<sup>138</sup> However, if a more leveraged financial structure is imputed to NYPA, then one cannot assume the historical or prospective financing rates of an AA/Aa1 rated entity. NYPA's cost of debt under such a structure would therefore need to increase, raising the overall cost of capital produced by the Template. Furthermore, as Mr. Ansaldo notes, capping NYPA's equity capitalization at less than 60% would also warrant reexamination of NYPA's conservative ROE request because, as discussed below, the proxy group used to perform the DCF analysis utilized to calculate NYPA's proposed ROE included only those utilities with the highest credit ratings.<sup>139</sup> If a capital structure is imputed to NYPA that is similar to that of utilities with lower credit ratings, such lower-rated utilities should arguably also be included in the proxy group for the purposes of the DCF analysis.<sup>140</sup>

Mr. Ansaldo's testimony demonstrates that NYPA's high bond rating does not come at an increased cost for ratepayers than a lower bond rating, due to the fact that NYPA does not pay income taxes and therefore does not collect an income tax

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<sup>135</sup> See Ansaldo Testimony, Exh. No. PA-301 at 2-3.

<sup>136</sup> The Commission has approved capital structures composed of 60% equity and 40% debt, without setting the issue for hearing, and has rejected arguments that 60% equity is too high. For instance, in *ITC Holdings Corp.*, the Commission approved "ITC Midwest's proposal to use its actual capital structure with a target equity ratio of 60 percent[.]" and "disagree[d] with [a protestor] that ITC Midwest's equity ratio is unusually high" finding that "ITC Midwest's target capital structure is within the range of the capital structures used in the Attachment O rate formula by other investor-owned Midwest ISO TOs." *ITC Holdings Corp.*, 121 FERC ¶ 61,229 at P 49; see also *ITC Holdings Corp.*, 143 FERC ¶ 61,257 at P 78 (2013) ("Therefore, we find that the proposal to use the actual capital structures of the New ITC Operating Companies, targeted at 60 percent equity and 40 percent debt, to be just and reasonable and consistent with Commission policy."), *order on reh'g*, 146 FERC ¶ 61,111 (2014), *reh'g denied*, 151 FERC ¶ 61,263 (2015). Similarly, in *Green Power Express LP*, the Commission approved a 60% equity–40% debt hypothetical capital structure for the construction phase of a project, rejected arguments that the equity ratio was too high, and found "that the proposed hypothetical capital structure is within the range of actual capital structures for transmission owners." *Green Power Express LP*, 127 FERC ¶ 61,031 at P 75 & n.74 (2009), *reh'g denied*, 135 FERC ¶ 61,141 (2011). Most recently, in *Tariff Equity Coalition*, the Commission rejected, without a hearing, a proposed 50% cap on equity that certain complainants sought to impose on Midcontinent Independent System Operator, Inc. ("MISO") transmission owners. See *Tariff Equity Coal.*, 149 FERC ¶ 61,049 at P 195 (noting that proposed 50% cap on equity "ignores the numerous capital structures . . . with more than 50 percent common equity that the Commission has approved").

<sup>137</sup> Ansaldo Testimony, Exh. No. PA-301 at 15-16.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 16.

<sup>140</sup> See *id.*

allowance.<sup>141</sup> Mr. Ansaldo also demonstrates that NYPA's overall rate of return is already about 25% less than a typical investor-owned utility's pre-tax overall return because NYPA does not require an allowance for income taxes.<sup>142</sup> Thus, there is no compelling reason to depart from the Commission's strong preference to use an entity's actual capital structure,<sup>143</sup> and NYPA should be permitted to use its actual capital structure, capped at 60% equity.

### 3. Depreciation Rates

NYPA proposes to adopt stated depreciation rates for transmission and general plant using two depreciation studies of NYPA's transmission assets dated September 30, 1996 ("1996 Depreciation Study") and August 13, 1982 ("1982 Depreciation Study"). The depreciation rates for transmission plant are based on the 1996 Depreciation Study, while the depreciation rates for general plant are based on the 1982 Depreciation Study.<sup>144</sup> The testimony of Mr. Austin O. Davis corroborates the methodology used in preparing the 1982 Depreciation Study, as well as the methodology utilized by Mr. Julius Breitling, P.E. in preparing the 1996 Depreciation Study.<sup>145</sup> As Mr. Davis explains, the depreciation rates proposed for NYPA are based on average service life, mortality dispersion (Iowa Curve), and net salvage (gross salvage less cost of removal).<sup>146</sup> A percent is developed for each account or subaccount based on service lives and net salvage percentages estimated for transmission and general plant currently included in NYPA rates. Mr. Davis's testimony and exhibits, including the 1996 Depreciation Study and the 1982 Depreciation Study, are attached to this Application as Appendix F.

Although these two depreciation studies are somewhat older in vintage, they remain viable. As Mr. Davis explains, the depreciation rates used in the Formula for transmission plant are directly supported by the 1996 Depreciation Study and, notwithstanding the vintage of the study, these rates are just and reasonable given the fact that NYPA has not added any major capital assets to its transmission system since the 1996 Depreciation Study was completed.<sup>147</sup> In addition, the depreciation rates that NYPA proposes to use for general plant, inclusive of updates made to reflect evolutionary changes in general plant assets, are supported by the 1982 Depreciation Study and are also just and reasonable.

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<sup>141</sup> *Id.* at 15-18.

<sup>142</sup> *Id.*

<sup>143</sup> See, e.g., *VEPCo.*, 123 FERC ¶ 61,098 at P 73 ("The Commission has a strong preference for using the actual capital structure of the company in developing its rate of return, unless there is an overriding reason not to do so."); *ITC Holdings Corp.*, 121 FERC ¶ 61,229 at P 49 ("Use of the transmission-owning operating company's actual capital structure . . . reflects the Commission's preference to use a utility's own capital structure if the utility issues its own debt without guarantees, has its own bond rating, and has a capital structure within the range of capital structures approved by the Commission.").

<sup>144</sup> Prepared Direct Testimony of Austin O. Davis, Exh. No. PA-401 at 3.

<sup>145</sup> *Id.* at 2-3.

<sup>146</sup> *Id.* at 4-5.

<sup>147</sup> See *id.* at 3.

#### 4. Post-Retirement Benefits Other Than Pensions

The Template includes a stated PBOP expense, consistent with Commission policy.<sup>148</sup> NYPA's 2014 PBOP expense will thus remain fixed unless changed pursuant to sections 205 or 206 of the FPA.<sup>149</sup> As explained in the testimony of Mr. Tetenman, the 2014 Annual Report shows a PBOP expense of approximately \$38.1 million.<sup>150</sup> The source of this value is an actuarial report produced by Buck Consultants, LLC which is attached to the testimony of Mr. Tetenman.<sup>151</sup> Mr. Tetenman describes the components of the PBOP expense identified in the actuarial report, and explains how it is allocated and assigned to NYPA's transmission function.<sup>152</sup>

Specifically, the \$38.1 million of 2014 PBOP cost shown in NYPA's actuarial study has two primary components: (1) the amortization payment of \$25.0 million, and (2) the "normal cost" of \$13.1 million.<sup>153</sup> The amortization payment of approximately \$25.0 million represents the amortizing of unfunded actuarial accrued liabilities associated with post-employment benefits earned in previous years.<sup>154</sup> These costs are allocated in the same manner as A&G expenses using the actual 2014 labor ratio of 28.41% produced by the Template.<sup>155</sup> Applying the labor ratio of 28.41%, \$7.1 million of the \$25 million amortization payment is functionalized to transmission and allocated to the ATRR.<sup>156</sup> The "normal cost" of \$13.1 million is the estimate of post-employment benefits earned by current employees during 2014.<sup>157</sup> As shown on Workpaper WP-AF, \$2.3 million of the \$13.1 million in PBOP expense earned by current NYPA employees during 2014 was associated with work on ongoing generation and transmission capital projects, and was therefore capitalized and excluded from the base NYPA PBOP expense on WP-AF.<sup>158</sup> After subtracting the \$2.3 million in capitalized PBOPs, the remaining \$10.8 million in normal cost is incorporated into NYPA's fringe benefits with the costs directly loaded upon NYPA labor applied to the various NYPA production and transmission facilities and projects.<sup>159</sup> While these labor loaders appear in various O&M and A&G account balances in the Formula Rate, it is a fair generalization that the

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<sup>148</sup> This treatment is consistent with the treatment approved in *Trans-Allegheny Interstate Line Co.*, 124 FERC ¶ 61,075 (2008). See *Trans-Allegheny Interstate Line Co.*, 121 FERC ¶ 61,009 at PP 18-19 (2007) (accepting revision to tariff sheet providing stated value for PBOP).

<sup>149</sup> Tetenman Testimony, Exh. No. PA-101 at 13.

<sup>150</sup> *Id.* at 20; 2014 Annual Report, Exh. No. PA-105 at 65.

<sup>151</sup> Tetenman Testimony, Exh. No. PA-101 at 20.

<sup>152</sup> *Id.* at 20-22.

<sup>153</sup> *Id.* at 21.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 22.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* at 21.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* at 21-22.

allocation of these costs between transmission and production is similar in magnitude to the 28.41% labor ratio used for allocating the unfunded actuarial accrued liabilities, which would mean approximately \$3.07 million of the \$10.8 million “normal cost” component is included in NYPA’s ATRR.<sup>160</sup>

#### **E. Determination of a Projected ATRR for the Initial Rate Year**

The Initial Rate Year is defined in the Protocols as the “initial period, from the date the rates are first made effective by the Commission through June 30, 2016.”<sup>161</sup> Thus, if the Commission grants NYPA’s request for an effective date of April 1, 2016, the Initial Rate Year will run from April 1, 2016 through June 30, 2016 and will last for only three months.

In order to determine NYPA’s ATRR for the Initial Rate Year, NYPA used calendar year 2014 data. This is because the Formula Rate determines NYPA’s Projected ATRR for each Rate Year using the prior calendar year’s historical cost of service as a proxy projection for the Rate Year revenue requirement. While it is now nearly a month into 2016, NYPA’s actual 2015 costs will not be compiled and published in the Annual Report for several months. Accordingly, and consistent with the Protocols, NYPA’s ATRR for through June 30, 2016 has been projected using 2014 calendar year costs. Using inputs from NYPA’s calendar year 2014 financial statements contained in the Annual Report, NYPA’s NTAC ATRR for the Initial Rate Year will be \$189,954,660.<sup>162</sup> This NTAC ATRR will be incorporated as an input to the NTAC formula located in Section 14.2.2.2 of Attachment H, and will be used by the NYISO to calculate the NTAC \$/MWh charge assessed to energy withdrawals during the 3-month Initial Rate Year. For January-March 2016, the NTAC charge will be calculated using NYPA’s current stated ATRR. However, for April-June 2016—the duration of the Initial Rate Year—the NTAC charge will be calculated using NYPA’s formulaic NTAC ATRR of \$189,954,660, as determined by the Formula Rate.

#### **F. Description of First Annual Update and True-Up of 2016 Calendar Year Costs**

NYPA’s first Annual Update will occur on July 1, 2016, in accordance with the Protocols. As a part of the July 1, 2016 Annual Update, NYPA will refresh its calculation of the Projected ATRR to determine the Projected ATRR for the July 2016-June 2017 Rate Year based on calendar year 2015 actual costs reported in NYPA’s most

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<sup>160</sup> *Id.* at 22.

<sup>161</sup> Appendix A, Attachment H, § 14.2.3.2.1(b).

<sup>162</sup> As noted in Section III.A., *supra*, the NTAC ATRR equals the total ATRR for the Initial Rate Year, because NYPA is not recovering any project-specific revenue requirements in the Initial Rate Year. The total ATRR thus does not reflect any costs related to the MSSC Project. Because the MSSC Project is anticipated to be placed in service during calendar year 2016, NYPA will not recover any revenue for the MSSC Project in the Initial Rate Year. Even after the MSSC Project is placed in service, MSSC Project costs would not be recoverable through the NTAC, but rather through the MSSCFC calculated by Rate Schedule 15 consistent with the participant-funded cost allocation that the parties agreed to in Docket No. ER15-572-000.

recent Annual Report. However, unlike subsequent Annual Updates, the July 1, 2016 Annual Update will not calculate or include a True-Up Adjustment, because there were no revenues collected under the Formula Rate during calendar year 2015 to true up. This is because the Formula Rate will not take effect until April 1, 2016. Thus, because all of the Initial Rate Year will take place in 2016, revenues collected by NYPA under the Formula Rate during the Initial Rate Year will be trued up as a part of the July 1, 2017 Annual Update Process, when 2016 calendar year actual costs are available and trued up. Thus, the first True-Up Adjustment will take place as a part of the July 1, 2017 Annual Update.

To true up 2016 calendar year revenues against 2016 actual costs, Schedule F3 of the Template will compare NYPA's transmission revenues collected under the Formula Rate during the last 9 months of calendar year 2016 (April-December) to a pro-rated 2016 actual revenue requirement that reflects the fact that NYPA's Formula Rate will have been in effect for only 9 months of the year; *i.e.*, nine-twelfths of NYPA's actual 2016 ATRR.<sup>163</sup> In this way, customers will pay an NTAC based on the currently stated ATRR through March 31, 2016, and the application of the Formula Rate ATRR will be limited to the remainder of the 2016 calendar year—after the Formula Rate becomes effective.

NYPA proposes that any changes to NYPA's Formula Rate resulting from settlement or litigation of this proceeding be incorporated, with FERC interest, into the next True-Up Adjustment following the conclusion of this proceeding in lieu of customer-specific refunds. Allowing refunds resulting from settlement or litigation to pass through the natural True-Up mechanism of the Formula Rate will ease NYISO's administrative burden, particularly in light of the already complex NTAC charge which is assessed on all energy withdrawals state-wide and would be difficult to adjust on a customer or transaction-specific basis.

#### **G. Formula Rate Implementation Protocols**

Mr. Alan C. Heintz describes the Protocols for populating and updating the Template in his testimony. NYPA proposes to add the Protocols to a new Section 14.2.3.2 of Attachment H to the NYISO OATT.<sup>164</sup> The Protocols prescribe NYPA's Annual Update Process, which refreshes the calculation of NYPA's ATRR. The Protocols also govern the specific procedures for notice, requests for information, and

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<sup>163</sup> Because the MSSC Project is expected to be placed in service during 2016, but *after* the Formula Rate's requested April 1 effective date, the actual 2016 MSSC ATRR will not need to be pro-rated by nine-twelfths when developing a true-up adjustment to be included in the Projected ATRR for the MSSC Project used to establish the MSSCFC that will be collected by the NYISO from July 1, 2017 through June 30, 2018. Instead, unlike the NTAC ATRR, NYPA's full 2016 MSSC ATRR (which will only reflect actual plant balances and costs incurred during the months when the MSSC Project is in service during 2016) will be trued up against 2016 revenues related to the MSSC Project to determine the MSSC component of the 2016 True-Up Adjustment.

<sup>164</sup> See Heintz Testimony, Exh. No. PA-201 at 4.

review and challenges to the Annual Update.<sup>165</sup> The Protocols provide for a July 1st to June 30th rate year,<sup>166</sup> and provide that the Annual Update will be publicly posted on the NYISO's website no later than July 1.<sup>167</sup> As part of the Annual Update Process, NYPA will determine a True-Up Adjustment by comparing the prior calendar year's actual ATRR—using data from NYPA's independently-audited financial statements contained in NYPA's Annual Report—against transmission revenues received by NYPA during the preceding calendar year.<sup>168</sup> Any True-Up Adjustments will be calculated with interest in accordance with 18 C.F.R. § 35.19a.<sup>169</sup>

Following the publication of the Annual Update, including the True-Up Adjustment of the prior calendar year's rates based on actual data from NYPA's independently-audited financial statements, NYPA will hold a remotely-accessible open meeting for interested parties between 20 and 40 days later.<sup>170</sup> Interested parties will have a 120-day discovery period during which to submit information requests, and a review period of at least 180 days to submit preliminary challenges.<sup>171</sup> Interested parties will have until April 15 or 30 days after NYPA submits its informational filing to FERC,<sup>172</sup> whichever is later, to submit formal challenges to the Commission, including challenges to the prudence of expenditures included in the ATRR.<sup>173</sup> Any changes to the True-Up Adjustment resulting from the review period will be reflected, with interest, in the following year's True-Up Adjustment. Parties at all times retain their rights under sections 205 and 206 of the FPA, without regard to the Protocols' review process.

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<sup>165</sup> However, consistent with Commission precedent, the proposed Protocols do not limit a customer's or the Commission's rights under section 206 of the FPA. *See, e.g., Tampa Elec. Co.*, 133 FERC ¶ 61,023 at P 61 (2010); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 at P 113 (2009), *order on clarification*, 130 FERC ¶ 61,044 (2010).

<sup>166</sup> As discussed above, however, the Initial Rate Year will only run from April 1, 2016 to June 30, 2016.

<sup>167</sup> *See* Appendix A, Attachment H, § 14.2.3.2.1(b). If July 1 falls on a weekend or FERC-recognized holiday, then the posting or filing shall be due no later than the next business day. *See id.*

<sup>168</sup> *See* Heintz Testimony, Exh. No. PA-201 at 5-6.

<sup>169</sup> *See id.* at 5.

<sup>170</sup> *See* Appendix A, Attachment H, § 14.2.3.2.1(a), (b).

<sup>171</sup> *See id.* § 14.2.3.2.3.

<sup>172</sup> *See id.* § 14.2.3.2.6 (requiring NYPA to submit to FERC an informational filing of its Annual Update, including its True-Up Adjustment and other supporting information, by March 15 or 60 days after the close of the Review Period, whichever is later).

<sup>173</sup> *See id.* § 14.2.3.2.3(b)(v), (viii). The Protocols will thus provide all interested parties with the opportunity to challenge the prudence of NYPA's costs. If a challenge creates "serious doubt" as to the prudence of the expenditure, the burden would shift to NYPA to demonstrate prudence before the Commission. *Kentucky Utils. Co.*, 62 FERC ¶ 61,097 at p. 61,698 (1993); *see also Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 at P 121 (2013) ("We will, however, continue to apply our well-established precedent with respect to challenges to the prudence of costs incurred by a transmission owner. . . . Consequently, parties seeking to challenge the prudence of a transmission owner's expenditures must first create a serious doubt as to the prudence of those expenditures before the burden of proof shifts to the transmission owner.") (footnotes omitted), *reh'g denied*, 146 FERC ¶ 61,209 (2014).

The Protocols provide for review procedures that are consistent with the Commission's recent pronouncements on (i) scope of participation in the information exchange process; (ii) the transparency of the information exchange; and (iii) the ability of interested parties to challenge NYPA's implementation of the Formula Rate as a result of the information exchange.<sup>174</sup> The Protocols are also consistent with the Commission's guidance on timing, sequence, transparency, and other specifications in the recent proceedings concerning the protocols of transmission owning members of MISO.<sup>175</sup>

**V. PROPOSED RATE SCHEDULE 15 IS JUST AND REASONABLE AND CONSISTENT WITH THE SETTLEMENT IN DOCKET NO. ER15-572-000.**

As discussed above, the parties to the NY Transco Settlement in Docket No. ER15-572-000 agreed to a participant-funded cost allocation agreement with respect to the TOTS Projects. The NY Transco applicants and LIPA agreed to support, and the other settling parties agreed that they would support or not oppose a proposal by NYPA in a subsequent FPA section 205 proceeding to recover its revenue requirement associated with the MSSC Project using the same participant-funded cost allocation. Accordingly, NYPA has included with this filing a proposed Rate Schedule 15 to be included in Section 6 of the NYISO OATT that is similar to the NY Transco's proposed Rate Schedule 13, which produces a Transco Facilities Charge to recover the NY Transco's investment in the TOTS Projects. Rate Schedule 15 establishes an MSSCFC to be recovered from NYISO LSEs utilizing the same participant-funded cost allocation agreed upon in the NY Transco Settlement.

Rate Schedule 15 provides that the MSSCFC will incorporate as an input and recover NYPA's MSSC Project ATRR, as determined by the Formula Rate Template.<sup>176</sup> Rate Schedule 15 identifies the negotiated cost allocation percentage for each transmission district, which represents the percentage of NYPA's MSSC Project ATRR that will be recovered through the MSSCFC from that district – 63.18% to Consolidated Edison Co. of N.Y., Inc. and Orange and Rockland Utilities, Inc., 8.55% to LIPA, 12.16% to Niagara Mohawk, 10.12% to NYSEG/RGE, and 5.99% to Central Hudson Gas & Electric Corp. Consistent with the NY Transco Settlement, NYPA's load will be treated the same as all other LSEs, and NYPA will be allocated costs under the MSSCFC using the same percentage as the LSEs in each transmission district where NYPA serves its customers.<sup>177</sup>

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<sup>174</sup> See, e.g., *Empire Dist. Elec. Co.*, 150 FERC ¶ 61,200 (2015).

<sup>175</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 at P 8 (2012), *order on investigation of formula rate protocols*, *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013), *order on reh'g*, 146 FERC ¶ 61,209 (2014), *order on compliance*, 146 FERC ¶ 61,212, *order on compliance*, *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,025 (2015).

<sup>176</sup> The Template will produce the MSSC Project ATRR on line 1b, column 16, page 2 of Schedule F1, and also identify it on line 11a of the "Transmission Revenue Requirement Summary."

<sup>177</sup> Rate Schedule 15 includes a provision to address a billing and collection issue that the NYISO identified shortly after the NY Transco Settlement was filed. Specifically, Rate Schedule 15 states that NYPA customers that are geographically located in the NYSEG/RGE and Niagara Mohawk transmission districts, but are connected directly to NYPA transmission facilities (identified by NYISO for billing purposes as

NYPA's proposed Rate Schedule 15 embodies the statewide participant-funded cost allocation negotiated in the NY Transco Settlement, and as part of this FPA section 205 proceeding filed by NYPA, should not engender any opposition by any signatory to the NY Transco Settlement in accordance with Article 3.3(c) of that settlement. Moreover, this proposed schedule is consistent with Section 14.2.2.2.3 of Attachment H of the NYISO OATT which authorizes NYPA to recover costs through a cost-recovery mechanism other than the NTAC. Therefore, the Commission should accept as just and reasonable NYPA's proposed Rate Schedule 15 to be included in the NYISO OATT.

## **VI. PROPOSED EFFECTIVE DATE**

NYPA requests that the Commission accept the Formula Rate effective 60 days after this filing, on April 1, 2016, without suspension or hearing. Alternatively, NYPA requests that the Commission limit the issues set for hearing and impose a nominal suspension period.

The Commission should accept NYPA's Formula Rate without suspension, because the Commission has found that, as a non-jurisdictional utility, "NYPA is not subject to Commission-imposed rate suspension and refund obligations under section 205 of the FPA."<sup>178</sup> Furthermore, a suspension period would be unnecessary in these circumstances, because any potential over-collection will be compensated for when NYPA's completes its annual True-Up of its ATRR.<sup>179</sup> As discussed above, FERC frequently accepts forward-looking formula rates with no more than a nominal suspension—especially when there is a true-up mechanism in place.<sup>180</sup> Additionally, although NYPA is not subject to Commission order directing payment of refunds, NYPA will agree to make all appropriate refunds to customers for any collections based on an ATRR that exceeds what FERC ultimately accepts as just and reasonable. In lieu of

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"NYPA North" customers) shall be included in the Niagara Mohawk transmission district for purposes of billing and collection. The NY Transco has proposed that this issue be handled in the same way for the TOTS Projects, and has explained in post-settlement comments to the Commission that all settlement signatories consent to this billing and collection method for NYPA North customers with respect to the NY Transco's cost recovery for those projects, and that the NYISO will include appropriate tariff language in its compliance filing. *See New York Transco, LLC, et al.*, Applicants' Reply Comments on the Offer of Partial Settlement at 11-12, Docket No. ER15-572-000 (filed Dec. 14, 2015). Moreover, the FERC settlement judge accepted the NY Transco's explanation of this issue in certifying the NY Transco Settlement to the Commission as uncontested. *New York Transco, LLC*, 154 FERC ¶ 63,007 at P 106 (2016).

<sup>178</sup> *New York Indep. Sys. Operator*, 140 FERC ¶ 61,240 at PP 29, 31 ("In *TANC*, the court ruled that the Commission had no authority to order Vernon to pay refunds under section 205 of the FPA. The court held that the structure of the FPA clearly reflects Congress's intent to exempt governmental entities and non-public utilities from the Commission's refund authority under section 205 of the FPA over wholesale electric energy sales."); *see also Transmission Agency of N. Cal. v. FERC*, 495 F.3d at 673-74; *City of Azusa, Cal.*, 138 FERC ¶ 61,049 at P 20 (2012) (municipality not subject to Commission-imposed rate suspension and refund obligations under FPA section 205); *City of Pasadena, Cal.*, 137 FERC ¶ 61,045 at P 20 (2011) (same).

<sup>179</sup> *See* Heintz Testimony, Exh. No. PA-201 at 5.

<sup>180</sup> *See supra* note 80.

customer-specific refunds, NYPA asks that, for ease of NYISO billing administration, any refunds be accomplished, with interest, through the annual True-Up mechanism built into the Formula Rate.<sup>181</sup>

For Rate Schedule 15, NYPA also requests an effective date of April 1, 2016. However, the NYISO will not collect the MSSCFC under Rate Schedule 15, by its terms, unless and until the Commission issues an order approving the NY Transco Settlement.<sup>182</sup> Accordingly, the NYISO's customers are appropriately protected such that Rate Schedule 15 may be accepted by the Commission effective April 1, 2016, even if the Commission has not yet acted on the NY Transco Settlement by that date.

## **VII. CONTENTS OF THE FILING**

In addition to this Application, which provides a detailed description of the approvals requested and the bases for those requests, this filing contains the following components:

Appendix A:	Clean Version of NYISO OATT;
Appendix B:	Redline Version of NYISO OATT;
Appendix C:	Prepared Direct Testimony of Scott Tetenman (Exhibit Nos. PA-101-109);
Appendix D:	Prepared Direct Testimony of Alan C. Heintz (Exhibit Nos. PA-201-203);
Appendix E:	Prepared Direct Testimony of Richard L. Ansaldo (Exhibit Nos. PA-301-310);
Appendix F:	Prepared Direct Testimony of Austin O. Davis (Exhibit Nos. PA-401-403).

## **VIII. REQUESTED WAIVERS**

Based on its status as a non-jurisdictional utility, NYPA respectfully requests that it be exempt from FERC's filing fees and from compliance with any requirements of

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<sup>181</sup> Notwithstanding its commitments made here in the instant Formula Rate filing, NYPA, as a municipal entity, does not waive its non-jurisdictional status under Part II of the FPA. 16 U.S.C. § 824(f); *see also supra* note 15.

<sup>182</sup> By its own terms, Rate Schedule 15 provides that no charge would be collected unless or until the Commission approves the NY Transco Settlement. *See* Appendix A, Rate Schedule 15, § 6.15.4.2 ("In any event, the ISO will not collect the MSSCFC from LSEs under this Schedule 15 unless and until the Commission issues an order approving a settlement in Docket No. ER15-572-000 that includes the cost allocation described in Section 6.15.3.7."). Even without this provision, NYPA would not expect to begin recovering an ATRR associated with the MSSC Project through Rate Schedule 15 until July 1, 2017, due to the retrospective nature of its Formula Rate and the project's anticipated 2016 in-service date.

section 35.13 of the Commission's regulations not otherwise satisfied by this filing.<sup>183</sup> In the event any additional waivers are required in connection with this filing, NYPA respectfully requests that the Commission grant such waivers.

## **IX. CORRESPONDENCE AND COMMUNICATIONS**

The following persons are authorized to receive notices and communications with respect to this Application:

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NYPA respectfully requests that the individuals identified above with an asterisk be placed on the Commission's official service list in this proceeding and be designated for service pursuant to Rule 2010.<sup>184</sup>

NYPA understands that the NYISO will provide an e-mail notification of this filing to all NYISO market participants on NYPA's behalf.

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<sup>183</sup> See 18 C.F.R. § 381.108 ("States, municipalities and anyone who is engaged in the official business of the Federal Government are exempt from the fees required by this part and may file a petition for exemption in lieu of the applicable fee."); *New York Indep. Sys. Operator*, 140 FERC ¶ 61,240 at PP 36-37 (granting NYPA's requested waiver of section 35.13 of the Commission's regulations because NYPA is not subject to the Commission's regulatory filing requirements, and granting NYPA's requested exemption from the filing fee); *Vernon*, 111 FERC ¶ 61,092 at P 44 ("Vernon in and of itself is not subject to section 205. It is for this reason we affirm the judge's excusing Vernon from the Commission's regulatory filing requirements.").

<sup>184</sup> 18 C.F.R. § 385.2010. To the extent necessary, NYPA requests waiver of Rule 2010(k) so as to allow the individuals indicated above to be placed on the official service list.

**X. CONCLUSION**

For the reasons set forth above, NYPA requests that the Commission accept for filing, effective April 1, 2016: (i) the Formula Rate and related tariff revisions filed herewith, and (ii) new Rate Schedule 15 to Section 6 of the NYISO OATT.

Respectfully submitted,

/s/ Gary D. Bachman

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Attachments: Appendices A-F