

## Attachment B

### **14.2.3.2 NYPA Formula Rate Implementation Protocols**

#### **14.2.3.2.1 General**

- (a) NYPA employs the Formula Rate (contained in Section 14.2.3.1 (“Formula Rate Template” or “Formula”) of this Attachment) to calculate its Annual Transmission Revenue Requirement (“ATRR”) in accordance with the Protocols set forth herein. NYPA employs an Annual Update Process, which refreshes the calculation of the ATRR by populating the Formula in Section 14.2.3.1 of this Attachment with prior-year information from the Financial Report contained in the NYPA annual report and other historical data from NYPA’s books and records, which are maintained using the FERC Uniform System of Accounts. The Annual Update Process does not effect any changes to the Formula Rate itself. NYPA will hold an Open Meeting each year to provide an additional opportunity for Interested Parties to obtain information about the Annual Update, and will make the Open Meeting remotely accessible to Interested Parties.

#### **(b) Protocols Definitions:**

**“Accounting Change”** means any change in accounting that affects inputs to the Formula Rate or the resulting charges billed under the Formula Rate, including (A) any change in NYPA’s accounting policies, practices and procedures (including changes resulting from revisions to the U.S. generally accepted accounting principles) from those in effect during the Calendar Year upon which the most recent Actual ATRR was based that affects the Formula Rate or calculations under the Formula; (B) any change in NYPA’s cost allocation policies from those policies or methodologies in effect for the Initial Rate Year or Calendar Year upon which the immediately preceding True-Up Adjustment was based that affects the Formula Rate or calculations under the Formula; (C) the initial implementation of an accounting standard or policy; (D) the initial implementation of accounting practices for unusual or unconventional items where the Commission has not provided specific accounting direction; (E) the implementation of new estimation methods or policies that change prior estimates; and (F) the correction of errors and prior-period adjustments.

**“Actual Annual Transmission Revenue Requirement”** (“Actual ATRR”) means the actual net annual transmission revenue requirement calculated in accordance with the Formula Rate, using as inputs only those costs and credits properly recorded in NYPA’s most recent Financial Report (to the extent the Formula Rate specifies Financial Report data as the input source) or data reconcilable to the Financial Report by the application of clearly identified and supported information that is properly recorded in NYPA’s books and records, which books and records are maintained in accordance with (A) the FERC Uniform System of Accounts; (B) NYPA’s internal accounting policies and practices; (C) U.S. generally accepted accounting principles; and (D) NYPA’s cost allocation policies. Where the reconciliation to the Financial Report is provided through a workpaper, the inputs to the workpaper shall be either taken directly from the Financial Report or reconcilable to the Financial Report by the application of clearly identified and supported information.

**“Annual Review Procedures”** means the procedures for review of each Annual Update, as described in these Protocols.

**“Annual Update”** means the calculation and publication of the Actual ATRR for the prior Calendar Year, and the Projected ATRR (including the True-Up Adjustment and any Prior Period Adjustment, if applicable) to be applicable for the upcoming Rate Year.

**“Annual Update Process”** means the annual process by which NYPA calculates the Annual Update and makes it available to Interested Parties.

**“Calendar Year”** means January 1st through December 31st of a given year.

**“Discovery Period”** means the period for serving Information Requests pursuant to Section 14.2.3.2.3 of this Attachment, commencing as of the calendar day immediately following the Publication Date and ending one hundred twenty (120) calendar days after the Publication Date. The Discovery Period may be extended only as provided in Sections 14.2.3.2.3(a)(i) and 14.2.3.2.3(a)(v) of this Attachment.

**“Financial Report”** means the independently audited financial statements contained in the NYPA annual report which is issued in April of each year for the prior Calendar Year.

**“Formal Challenge”** means a dispute regarding an aspect of the Annual Update that is raised with FERC by an Interested Party pursuant to these Protocols, and served on NYPA by electronic service on the date of such filing.

**“Formula”** means the cost-of-service template and associated schedules shown in Section 14.2.3.1 of this Attachment.

**“Formula Rate”** means the Formula together with the Protocols.

**“Information Request”** means a request served upon NYPA by an Interested Party within the Discovery Period for information or documents relating to an Annual Update as provided for in these Protocols.

**“Initial Rate Year”** means the initial period, from the date the rates are first made effective by the Commission through June 30, 2016.

**“Interested Party”** includes, but is not limited to, customers under the Tariff, state utility regulatory commissions, consumer advocacy agencies, and state attorneys general.

**“NYPA Exploder List”** means an e-mail list maintained by NYPA that includes all Interested Parties who have notified NYPA of their intent to be included. Interested Parties can subscribe to the NYPA Exploder List on the NYPA website.

**“NYPA Form 1 Equivalent”** means a form developed by the parties to the settlement in Docket No. ER16-835-000 that presents NYPA’s financial information in substantially the same format as selected pages of the FERC Form No. 1.

**“Open Meeting”** means an open meeting and conference call (in webinar format) that shall permit NYPA to explain and clarify, and shall provide Interested Parties an opportunity to seek information and clarification concerning the Annual Update. The Open Meeting shall be held no earlier than twenty (20) calendar days and no later than forty (40) calendar days after the Publication Date. NYPA shall provide notice of the Open Meeting no less than fifteen (15) calendar days prior to such meeting via the NYPA Exploder List and by posting on the ISO website.

**“Other Developers”** is defined as that term is defined in Section 31.1.1 of Attachment Y of the ISO OATT.

**“Preliminary Challenge”** means a written notification by an Interested Party to NYPA, during the Review Period, of any specific challenge to the Annual Update.

**“Prior Period Adjustment”** means any change to the True-Up Adjustment agreed upon or determined through the review and challenge procedures outlined in these Protocols that is carried forward with interest to the subsequent True-Up Adjustment.

**“Projected Annual Transmission Revenue Requirement”** (“Projected ATRR”) means the Actual ATRR for the prior Calendar Year as adjusted to reflect the True-Up Adjustment and any Prior Period Adjustments.

**“Protocols”** means the Formula Rate implementation protocols set forth in Section 14.2.3.2 of this Attachment.

**“Publication Date”** means the date of the posting on the ISO website (in a workable Excel format with cell formulas and links intact) of the Annual Update. The Publication Date shall be no later than July 1st, provided, however, that if July 1st should fall on a weekend or a holiday recognized by FERC, then the posting or filing shall be due no later than the next business day, and the Publication Date shall correspond to the actual posting or filing date.

**“Rate Year”** means July 1st of a given Calendar Year through June 30th of the succeeding Calendar Year.

**“Review Period”** means the period during which an Interested Party may review the Annual Update calculations and make a Preliminary Challenge. The Review Period commences as of the calendar day immediately following the Publication Date and ends on the later of (1) January 15 following the Publication Date; (2) sixty (60) calendar days after the close of the Discovery Period; or (3) thirty (30) calendar days after NYPA has responded to all timely submitted information requests.

**“True-Up Adjustment”** means the amount of under- or over-collection of NYPA’s Actual ATRR during the preceding Calendar Year, measured by the difference between the Actual ATRR and the transmission revenues received by NYPA during the preceding Calendar Year, plus interest, as calculated on Schedule F3 of the Formula using the interest rates specified in 18 C.F.R. § 35.19a.

#### **14.2.3.2.2 Annual Update Process**

- (a) The Projected ATRR derived pursuant to the Formula Rate each year shall be applicable to services during the upcoming Rate Year.
- (b) On or before the Publication Date of each year, as part of the Annual Update Process, NYPA shall:
  - (i) Calculate the Actual ATRR for the preceding Calendar Year;
  - (ii) Calculate the Projected ATRR, reflecting the True-Up Adjustment and any Prior Period Adjustments, for the upcoming Rate Year;
  - (iii) Post on the ISO website (and on the NYPA website via a link to the ISO website):
    - (A) the Annual Update, including a data-populated Formula Rate Template and underlying workpapers in native “workable” Excel file format with all formulas and links intact;
    - (B) sufficiently detailed supporting documentation, including underlying data and calculations and a populated version of the NYPA Form 1 Equivalent, 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;

(C) the date, time, location, and call-in information for the Open Meeting;

(c) Within one (1) business day of the Publication Date, NYPA shall notify Interested Parties via the NYPA Exploder List of the posting of the Annual Update and the date, time, location, and call-in information for the Open Meeting.

(d) The Annual Update for the Rate Year:

(i) Shall identify and provide a narrative explanation of Accounting Changes and their impacts on inputs to the Formula Rate or resulting charges billed under the Formula Rate;

(ii) Shall identify and provide a narrative explanation of any items included in the Formula at an amount other than on a historic cost basis (e.g., fair value adjustments), and their impacts on inputs to the Formula Rate or resulting charges billed under the Formula Rate;

(iii) Shall be based on NYPA's Financial Report;

(iv) Shall provide the Formula Rate calculations and all inputs thereto, as well as supporting documentation and workpapers for data that are used in the Formula Rate that are not otherwise available in the Financial Report;<sup>1</sup>

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<sup>1</sup> It is the intent of the Formula Rate, including the supporting explanations and allocations described therein, that each input to the Formula Rate will be either taken directly from NYPA's Financial Report or reconcilable to the Financial Report by the application of clearly identified and supported information.

- (v) Shall provide underlying data for Formula Rate inputs that provide greater granularity than is required for the Financial Report;
- (vi) Shall be subject to challenge and review in accordance with the procedures set forth in these Protocols;
- (vii) Shall not seek to modify the Formula Rate and shall not be subject to challenge by anyone seeking to modify the Formula Rate (i.e., all such modifications/amendments to the Formula Rate shall require, as applicable, a Section 205 or Section 206 filing with FERC);
- (viii) Shall identify any changes in the Formula references to NYPA's Financial Report;
- (ix) Shall identify all material adjustments made to NYPA's Financial Report data in determining Formula inputs, including relevant footnotes to the Financial Report and any adjustments not shown in the Financial Report; and
- (x) Shall reflect any corrections or modifications to NYPA's Financial Report if said corrections or modifications are made prior to the Publication Date and would affect the True-Up Adjustment for a prior Rate Year. The True-Up Adjustment for each Rate Year(s) affected by the corrections or modifications shall be updated to reflect the corrected or modified Financial Report and the Annual Update and shall incorporate the changes in such True-Up Adjustment for the next effective Rate Year(s), with interest. Corrections or modifications to a Financial Report filed after the Publication Date of an Annual Update and not included in a revised Annual Update shall be incorporated in the next True-Up Adjustment or Annual Update, as applicable. NYPA shall report in a timely

manner to the ISO and to Interested Parties, via the NYPA Exploder List, any corrections or modifications to its Financial Report, that affect the past or present implementation of the Formula Rate, whether such corrections or modifications have the effect of increasing or decreasing the resulting transmission rates.

(e) Joint Informational Meeting

NYPA shall endeavor to coordinate with other Transmission Owners and Other Developers using formula rates to recover the costs of transmission projects under the ISO OATT that utilize the same regional cost sharing mechanism and to hold annual joint informational meetings to enable all Interested Parties to understand how those Transmission Owners and Other Developers are implementing their formula rates for recovering the costs of such projects. No less than fifteen (15) calendar days prior to such meeting, NYPA shall provide notice of the joint informational meeting, including the date, time, location, and call-in information, via the NYPA Exploder List and by posting this information on the ISO website (and on the NYPA website via a link to the ISO website). NYPA shall make the joint informational meeting remotely accessible to Interested Parties.

**14.2.3.2.3 Annual Review Procedures**

Each Annual Update shall be subject to the following Annual Review Procedures:

(a) Discovery Period

(i) Interested Parties shall have up to one hundred twenty (120) calendar days after the Publication Date (unless such period is extended with the written consent of NYPA or by FERC order) to serve Information Requests on NYPA. If the



deadline for Interested Parties should fall on a weekend or a holiday recognized by FERC, then Information Requests shall be due no later than the next business day. Such Information Requests shall be limited to what is or may reasonably be necessary to determine:

- (A) The extent or effect of an Accounting Change;
- (B) Whether the Annual Update fails to include data properly recorded in accordance with these Protocols;
- (C) The proper application of the Formula Rate and the procedures in these Protocols;
- (D) The accuracy of data and consistency with the Formula Rate of the calculations included in the Annual Update (including the Actual ATRR, Projected ATRR, True-Up Adjustment, and any Prior Period Adjustment) under review;
- (E) The prudence of the costs and expenditures included in the Annual Update under review, including information on procurement methods and cost control methodologies;
- (F) The effect of any change to the underlying Uniform System of Accounts or the Financial Report; and
- (G) Any other information that may reasonably have substantive effect on the calculation of the charge pursuant to the Formula Rate or aid in the understanding or derivation of such charge.

The Information Requests shall not otherwise be directed to ascertaining whether the Formula Rate is just and reasonable under the FPA.

(ii) NYPA shall make a good faith effort to respond to Information Requests pertaining to the Annual Update within ten (10) business days of receipt of such requests. NYPA shall respond to all Information Requests submitted during the Discovery Period by no later than November 30 following the Publication Date, or thirty (30) calendar days after the close of the Discovery Period, whichever is later. If the deadline should fall on a weekend or a holiday recognized by FERC, then NYPA's responses to Information Requests shall be due no later than the next business day.

(iii) NYPA shall post all Information Requests, and NYPA's responses to Information Requests, on the ISO website and will distribute a link to the website to Interested Parties via the NYPA Exploder List; except, however, if responses to Information Requests include material deemed by NYPA to be confidential, such information will not be publicly posted, but confidential information will be made available to requesting parties provided that a confidentiality agreement is executed by NYPA and the requesting party.

(iv) NYPA shall be precluded from claiming settlement privilege with respect to responses to Information Requests pursuant to these Protocols in any subsequent FERC proceeding addressing NYPA's Annual Update.

(v) To the extent NYPA and any Interested Party are unable to resolve disputes related to Information Requests submitted in accordance with these Protocols, NYPA or the Interested Party may petition FERC to appoint an Administrative Law Judge as a discovery master. The discovery master shall have the power to issue binding orders to resolve discovery disputes, and compel

the production of discovery, as appropriate, in accordance with these Protocols, and, if deemed appropriate, to extend the Discovery Period and Review Period to permit completion of the discovery process.

(vi) All information produced pursuant to these Protocols may be included in any Preliminary or Formal Challenge, in any other proceeding concerning the Formula Rate initiated at FERC pursuant to the FPA, or in any proceeding before the U.S. Court of Appeals to review a FERC decision involving the Formula Rate. NYPA may, however, designate any response to an Information Request as confidential if the information conveyed is not publicly available and if NYPA in good faith believes the information should be treated as confidential. Interested Parties' representatives shall treat such response as confidential in connection with any of the proceedings discussed in this Section 14.2.3.2 of this Attachment; provided, however, that when so used, such response shall initially be filed under seal (unless the claim of confidentiality is waived by NYPA), subject to a later determination by the presiding authority that the material is, in whole or part, not entitled to confidential treatment.

(b) Challenges and Resolution of Challenges

(i) Any Interested Party shall have the duration of the Review Period to review the inputs, supporting explanations, allocations, and calculations, and to submit a Preliminary Challenge. The Review Period ends on the later of (1) January 15 following the Publication Date; (2) sixty (60) calendar days after the close of the Discovery Period; or (3) thirty (30) calendar days after NYPA has responded to all timely submitted information requests. If the deadline for

Interested Parties to submit Preliminary Challenges should fall on a weekend or a holiday recognized by FERC, then Preliminary Challenges shall be due no later than the next business day. An Interested Party submitting a Preliminary Challenge must specify the inputs, supporting explanations, allocations, calculations, or other information to which it objects, and provide an appropriate explanation and documents to support its challenge.

(ii) NYPA shall promptly post all Preliminary Challenges, and written responses by NYPA to Preliminary Challenges, on the ISO website and will distribute a link to the website to Interested Parties via the NYPA Exploder List; except, however, if Preliminary Challenges or responses to Preliminary Challenges include material deemed by NYPA to be confidential, such information will not be publicly posted, but confidential information will be made available to requesting parties provided that a confidentiality agreement is executed by NYPA and the requesting party.

(iii) NYPA shall make a good faith effort to respond to a Preliminary Challenge within twenty (20) business days, and NYPA and any Interested Party raising a Preliminary Challenge shall attempt in good faith to resolve the Preliminary Challenge in a timely manner. Where applicable, NYPA shall appoint senior representatives to work with Interested Parties to resolve Preliminary Challenges. If NYPA disagrees with such challenge, NYPA will provide the Interested Party(ies) with an explanation supporting the inputs, supporting explanations, allocations, calculations, or other information. NYPA shall respond to all Preliminary Challenges submitted during the Review Period

by no later than February 15 following the Publication Date or thirty (30) calendar days after the close of the Review Period, whichever is later. If the deadline should fall on a weekend or a holiday recognized by FERC, then NYPA's response to Preliminary Challenges shall be due no later than the next business day.

(iv) An Interested Party shall make a good faith effort to raise all issues in a Preliminary Challenge; however, the failure to raise an issue in a Preliminary Challenge shall not act as a bar to raising the issue in a Formal Challenge provided the Interested Party raised one or more other issues in a Preliminary Challenge.

(v) An Interested Party that submitted a Preliminary Challenge shall have until April 15 following the Publication Date or thirty (30) calendar days after NYPA makes its informational filing, whichever is later, to make a Formal Challenge with FERC, which shall be served on NYPA by electronic service on the date of such filing. If the deadline for Interested Parties should fall on a weekend or a holiday recognized by FERC, then Formal Challenges shall be due no later than the next business day. An Interested Party shall file a Formal Challenge in the new docket assigned to NYPA's informational filing. Nothing in this paragraph shall alter the rights of any party to file a complaint under Section 206 of the FPA regarding NYPA's Formula Rate.

- (vi) Formal Challenges shall satisfy all of the following requirements<sup>2</sup>:
- (A) Clearly identify the action or inaction which is alleged to violate the Formula Rate or Protocols;
  - (B) Explain how the action or inaction violates the Formula Rate or Protocols;
  - (C) Set forth the business, commercial, economic or other issues presented by the action or inaction as such relate to or affect the party filing the Formal Challenge, including:
    - (1) The extent or effect of an Accounting Change;
    - (2) Whether the Annual Update fails to include data properly recorded in accordance with these Protocols;
    - (3) The proper application of the Formula Rate and procedures in these Protocols;
    - (4) The accuracy of data and consistency with the Formula Rate of the calculations shown in the Annual Update (including the Actual ATRR, Projected ATRR, True-Up Adjustment, and any Prior Period Adjustment) under review;
    - (5) The prudence of actual costs and expenditures;
    - (6) The effect of any change to the underlying Uniform System of Accounts or the Financial Report; or

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<sup>2</sup> Requiring interested parties to satisfy filing requirements for formal challenges “does not improperly shift the burden of persuasion to interested parties.” See *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,025 at P 51 (2015) (internal quotations omitted).

(7) Any other information that may reasonably have substantive effect on the calculation of the charge pursuant to the Formula.

(D) State whether the issues presented are pending in an existing Commission proceeding or a proceeding in any other forum in which the filing party is a party, and if so, provide an explanation why timely resolution cannot be achieved in that forum;

(E) State the specific relief or remedy requested, including any request for stay or extension of time, and the basis for that relief;

(F) Include all documents that support the facts in the Formal Challenge in possession of, or otherwise attainable by, the filing party, including, but not limited to, contracts and affidavits; and

(G) State whether the filing party utilized the Preliminary Challenge procedures described in these Protocols to dispute the action or inaction raised by the Formal Challenge, and, if not, describe why not.

(vii) Any response by NYPA to a Formal Challenge must be submitted to FERC within thirty (30) calendar days following the date of the filing of the Formal Challenge and shall be served by NYPA on the filing party(ies) by electronic service on the date of such filing and shall also be sent to the NYPA Exploder List on the date of such filing. If the deadline should fall on a weekend or a holiday recognized by FERC, then NYPA's response to the Formal Challenge shall be due no later than the next business day.

(viii) Preliminary and Formal Challenges shall be limited to all issues that may be necessary to determine: (1) the extent or effect of an Accounting Change; (2)

whether the Annual Update fails to include data properly recorded in accordance with these Protocols; (3) the proper application of the Formula Rate and procedures in these Protocols; (4) the accuracy of data and consistency with the Formula Rate of the calculations shown in the Annual Update (including the Actual ATRR, Projected ATRR, True-Up Adjustment, and any Prior Period Adjustment) under review; (5) the prudence of actual costs and expenditures; (6) the effect of any change to the underlying Uniform System of Accounts or the Financial Report; or (7) any other information that may reasonably have substantive effect on the calculation of the charge pursuant to the Formula.

(ix) In any proceeding on a Formal Challenge, or proceeding initiated sua sponte by FERC challenging an Annual Update or an Accounting Change, NYPA shall bear the burden of proof, consistent with Section 205 of the FPA, with respect to the correctness of its Annual Update and/or the Accounting Change, and with respect to proving that it has correctly applied the terms of the Formula Rate consistent with these Protocols. Nothing herein is intended to alter the burdens applied by FERC with respect to prudence challenges.<sup>3</sup>

(x) Failure to make a Preliminary Challenge or Formal Challenge as to any Annual Update shall not act as a bar to a Preliminary Challenge or Formal Challenge related to the same issue in any subsequent Annual Update to the extent such issue affects the subsequent Annual Update.

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<sup>3</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 at P 121 (2013) (“[P]arties 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.”).



(c) Challenges to Accounting Changes

(i) Preliminary Challenges or Formal Challenges related to Accounting

Changes are not intended to serve as a means of pursuing changes to the Formula Rate.

(ii) Failure to make a Preliminary Challenge with respect to an Accounting

Change to an Annual Update shall not act as a bar with respect to making a

Formal Challenge regarding the Accounting Change to that Annual Update,

provided the Interested Party submitted a Preliminary Challenge with respect to

one or more other issues. Nor shall failure to make a Preliminary Challenge or

Formal Challenge with respect to an Accounting Change as to any Annual Update

act as a bar to a Preliminary Challenge or Formal Challenge related to that

Accounting Change in any subsequent Annual Update to the extent such

Accounting Change affects the subsequent Annual Update.

(iii) Preliminary Challenges or Formal Challenges related to Accounting

Changes shall be subject to the procedures and limitations in Section 14.2.3.2.3(b)

of this Attachment. It is recognized that resolution of Formal Challenges

concerning Accounting Changes may necessitate adjustments to the Formula

input data for the applicable Annual Update or changes to the Formula to achieve

a just and reasonable end result consistent with the intent of the Formula.

**14.2.3.2.4 Changes Pursuant to Annual Update Process**

Any changes to the data inputs, including but not limited to revisions to NYPA's

Financial Report, or as the result of any FERC proceeding to consider the Annual Update, or as a

result of the Annual Review Procedures set forth herein, shall be incorporated into the Formula

and into the charges produced by the Formula (with interest determined in accordance with 18 C.F.R. § 35.19a) in the Annual Update for the next effective Rate Year as a Prior Period Adjustment. This reconciliation mechanism shall apply in lieu of mid-Rate Year adjustments and any associated refunds or surcharges. However, actual refunds or surcharges (with interest determined in accordance with 18 C.F.R. § 35.19a) shall be made, as appropriate, in the event that the Formula Rate is replaced by a stated rate for NYPA.

#### **14.2.3.2.5 Changes to the Formula Rate**

- (a) Any modification to the Formula or to these Protocols requires a filing under FPA Section 205 or Section 206. The following Formula inputs shall be stated values to be used in the Formula until changed pursuant to an FPA Section 205 or Section 206 proceeding: (i) rate of return on common equity; (ii) Post-Retirement Benefits other than Pensions (“PBOPs”) expense; (iii) the depreciation and/or amortization rates as set forth in Schedule B3 to the Formula; and (iv) the caps on the equity percentage component of NYPA’s capital structure for the Marcy-South Series Compensation Project (53% equity) and the assets recovered through the NTAC (50% equity).
- (b) Except as specifically provided herein, nothing in these Protocols shall be deemed to limit in any way (i) the right of NYPA to file unilaterally, pursuant to Section 205 of the FPA and the regulations thereunder, to change the Formula Rate or any of its stated inputs or to replace the Formula Rate with a stated rate, or (ii) the right of any other party to challenge inputs to, or the implementation of, or to request changes to, the Formula Rate pursuant to Section 206, or any other applicable provision, of the FPA and the regulations thereunder.

- (c) NYPA may, at its discretion and at a time of its choosing, make a limited filing pursuant to Section 205 to change stated values in the Formula Rate for amortization/depreciation rates and PBOPs expense. The sole issue in any such limited Section 205 filing shall be whether such proposed changes or recovery are just and reasonable, and shall not include other aspects of the Formula Rate.

#### **14.2.3.2.6 Informational Filing**

By March 15 following the Publication Date or by sixty (60) calendar days following the close of the Review Period, whichever is later, NYPA shall submit to FERC an informational filing of its Annual Update for the Rate Year. If the deadline should fall on a weekend or a holiday recognized by FERC, then the informational filing shall be due no later than the next business day. Within one (1) business day of submitting the informational filing, NYPA shall notify Interested Parties via the NYPA Exploder List that it has made its informational filing, and shall post the docket number assigned to the informational filing on the ISO website. This informational filing must include the information that is reasonably necessary to determine: (1) that input data under the Formula Rate are properly recorded in any underlying schedules and workpapers; (2) that NYPA has properly applied the Formula and these Protocols; (3) the accuracy of data and the consistency with the Formula Rate of the Actual ATRR, Projected ATRR (including any True-Up Adjustment and Prior Period Adjustments), and rates under review; (4) the extent and effects of Accounting Changes that affect Formula inputs; and (5) the reasonableness of projected costs. The informational filing must also describe any corrections or adjustments made during the Review Period or as a result of the Preliminary Challenge process, and must describe all aspects of the Annual Update or its inputs that are the subject of an ongoing dispute under the Preliminary Challenge procedures. Any challenges to the

implementation of the Formula must be made through the annual review and challenge procedures described in these Protocols or in a separate complaint proceeding, and not in response to the informational filing.

#### **14.2.3.2.7 Bounds on NTAC Recovery of Capital Expenditures**

The following terms, for the purposes of this Section 14.2.3.2.7, shall be defined as follows:

**“Annual Incremental Capital Expenditures”** means incremental capital expenditures incurred during a calendar year irrespective of whether the plant that is the product of these capital expenditures has been placed in service during the calendar year, except that (i) capital expenditures for Repairs or Replacements, (ii) capital expenditures for projects meeting the requirements of Section 14.2.3.2.7(a)(ii)(b), and (iii) capital expenditures for projects meeting the requirements of Section 14.2.3.2.7(a)(iv), shall not be included as “Annual Incremental Capital Expenditures” and shall not be counted against the \$40 million annual cap described in Section 14.2.3.2.7(a)(iii).

**“Substantive Cost Allocation Order”** means an order from which rehearing may be sought on the issue of cost recovery for the purposes of Section 14.2.3.2.7(b)(x) (i.e., an order accepting a cost allocation without setting the matter for hearing, an order approving a settlement agreement stipulating a cost allocation for the contested project, or an order on exceptions to an initial decision following an evidentiary hearing; but not a tolling order or some other procedural order that refers the issue of cost allocation for a hearing or settlement judge procedures).

**“Gross ATRR for the Major Y-49 Reconstruction or Replacement”** means the ATRR attributable to the Major Y-49 Reconstruction or Replacement, including but not limited to return on rate base, depreciation expense, operation and maintenance expense, and allocated administrative and general costs.

**“Major Y-49 Reconstruction or Replacement”** means a major reconstruction or replacement of the Y-49 Facility with a projected capital cost of greater than \$150 million in 2016 dollars (as adjusted annually by the Consumer Price Index).

**“Moses to Adirondack Line”** means the Moses-Adirondack 1 and 2 transmission lines that originate at the Moses Switchyard at the St. Lawrence-FDR project in Massena, New York and continue south to the NYPA Adirondack switching station in Croghan, New York for a distance of approximately 85 miles. The lines consist of eight miles of double circuit steel lattice structures and seventy-seven miles of single circuit wooden H-frame structures.

**“NYPA Backbone System”** means the facilities that are listed and defined in Exhibit C to the settlement approved by the Commission in Docket No. ER16-835-000. This list of facilities that comprise the NYPA Backbone System is not anticipated to be static, and will be updated

periodically to include, for example, projects NYPA is required to construct as contemplated by Section 14.2.3.2.7(a)(iv) below.

**“NYPA-LIPA Y-49 Contract”** means the existing 1987 contract for the sale of transmission service on the Y-49 Facility by NYPA to LIPA.

**“Remaining Y-49 ATRR”** has the meaning set forth in Section 14.2.3.2.7(a)(ii)(a)(i) of this Attachment.

**“Repair or Replacement”** means any capitalized repair or replacement of an existing NYPA transmission facility that comprises a part of the NYPA Backbone System provided that the repair or replacement, to the extent it involves installation of new equipment, utilizes items with substantially the same capacity rating as the existing equipment (or that any increase in facility rating is limited to the smallest change possible with commercially available replacements, or is no more costly than the price of a like-for-like replacement plus 10%).

**“Voting Member Systems”** means: (1) Central Hudson Gas and Electric Corporation; (2) Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (as a single Voting Member System); (3) Niagara Mohawk Power Corporation d/b/a National Grid; (4) New York State Electric and Gas Corporation and Rochester Gas and Electric Corporation (as a single Voting Member System); and (5) Long Island Power Authority.

**“Y-49 Facility”** means the Y-49 transmission facility interconnecting Westchester County, New York and Long Island that is included as part of the NYPA Backbone System as reflected in Exhibit C to the settlement approved by the Commission in Docket No. ER16-835-000.

**“Y-49 TCC Revenue”** means revenue related to Transmission Congestion Contracts (“TCCs”) associated with the Y-49 Facility.

(a) Cap on New NTAC Capital Expenditures

(i) As provided in Section 14.2.2.2 of this Attachment, the NTAC allows NYPA to recover the portion of NYPA’s ATRR that is not recovered via existing customer transmission service agreements or from other revenue streams identified in the NTAC Formula described in Section 14.2.2.2.1 of this Attachment. The following provisions in this Section 14.2.3.2.7 shall apply only to the NYPA Backbone System. No other NYPA capital expenditures, other than those contemplated by this Section 14.2.3.2.7, may be recovered via the NTAC absent express approval by FERC, subject to Section 14.2.3.2.7(b)(x) below.

(ii) Capitalized expenditures incurred by NYPA that may be recovered through the NTAC without Voting Member System review and approval, as described in Section 14.2.3.2.7(b) below, are:

(a) Any Repair or Replacement provided that the estimated project cost of any such Repair or Replacement is less than \$90 million in 2016 dollars (as adjusted annually using the Consumer Price Index), except that the Y-49 Facility and the Moses to Adirondack Line will be treated as follows:

(i) With respect to the Y-49 Facility, after the date that the NYPA-LIPA Y-49 Contract is terminated, the cost of normal repairs and maintenance of the Y-49 Facility will be included in the NTAC, subject to the otherwise applicable provisions of this Section 14.2.3.2.7(a), along with revenue credits related to Y-49 TCC Revenue. However a major reconstruction or replacement shall be treated as follows: whether or not the NYPA-LIPA Y-49 Contract has been terminated, the first year a Major Y-49 Reconstruction or Replacement appears in NYPA's five-year capital expenditure plan (described in Section 14.2.3.2.7(b) below), NYPA will initiate an FPA section 205 proceeding to determine whether the Major Y-49 Reconstruction or Replacement, as proposed or as NYPA may modify it on its own or in response to issues raised by other parties, is a prudent investment and, if so, the appropriate allocation of project costs that are not otherwise recoverable through the NTAC. After the date that the NYPA-LIPA Y-49 Contract is terminated, and if the Major Y-49 Reconstruction or Replacement is found prudent by FERC in that section 205 proceeding, the parties agree that (a) unless reduced by the formula below, \$20

million in 2016 dollars (as adjusted annually by the Consumer Price Index) of ATRR attributable to the Major Y-49 Reconstruction or Replacement cost shall be automatically recovered in the NTAC but only after the later of the NYPA-LIPA Y-49 Contract's expiration or the in-service date of the Major Y-49 Reconstruction or Replacement; and (b) the allocation of the Remaining Y-49 ATRR shall be in accord with the result of the section 205 proceeding. For purposes of this provision, the Remaining Y-49 ATRR shall be calculated annually after the later of the NYPA-LIPA Y-49 Contract's expiration or the in-service date of the Major Y-49 Reconstruction or Replacement as:

**Remaining Y-49 ATRR = (Gross ATRR for the Major Y-49 Reconstruction or Replacement) – (Y-49 TCC Revenue) – (\$20 million + Consumer Price Index adjustment)**

To the extent the Remaining Y-49 ATRR is negative it shall be applied to the NTAC ATRR. For the avoidance of doubt, there shall be no double-crediting of the same Y-49 TCC Revenue between (i) the above "Remaining Y-49 ATRR" formula, and (ii) the first sentence of this Section 14.2.3.2.7(a)(ii)(a)(i), which requires NYPA to include revenue credits related to Y-49 TCC Revenue in the NTAC after the date that the NYPA-LIPA Y-49 Contract is terminated. If the Remaining Y-49 ATRR is positive, it will be recovered pursuant to the project-specific cost allocation determined in the section 205 proceeding described above and included in this Tariff.

(ii) With respect to the Moses to Adirondack Line, reconstruction or complete replacement of that line will be subject to a Voting Member System vote as described in Section 14.2.3.2.7(b). Repairs and

maintenance-type replacement of the Moses to Adirondack Line will be subject to the otherwise applicable limitations of this Section 14.2.3.2.7(a).

(b) Emergency projects undertaken in response to damage caused by storms, vandalism, or terrorism, or in response to any force majeure events.

Where appropriate, NYPA will apply for Federal Emergency Management Agency (“FEMA”) reimbursement for such projects, and any FEMA or insurance reimbursements shall be applied to the NTAC as a credit against the cost of such projects.

(iii) For capital expenditures related to the NYPA Backbone System that do not meet the requirements of Section 14.2.3.2.7(a)(ii) above or Section 14.2.3.2.7(a)(iv) below, NYPA’s Annual Incremental Capital Expenditures that may be recovered through the NTAC, absent Voting Member System review and approval, are capped at \$40 million in 2016 dollars (as adjusted annually using the Consumer Price Index).

(iv) Any capital expenditures related to the NYPA Backbone System incurred (i) as a result of directives issued by NERC, FERC, the New York State Reliability Council, or in compliance with the ISO OATT or manuals to build, maintain, or operate required interconnections of a generation or transmission facility, except for the costs that have been otherwise recovered from third parties such as generator or transmission developers or insurance companies or, (ii) as a result of directives issued by some other regulatory agency in the event that, due to changes in the New York Public Authorities Law or other legislative action, such regulatory agency obtains legal authority to order NYPA to undertake capital



projects, shall be excluded from Voting Member System review and approval and excluded from the \$40 million annual cap described in Section 14.2.3.2.7(a)(iii) above. For the avoidance of doubt, future capital expenditures in such facilities will be subject to this Section 14.2.3.2.7(a).

(b) Voting Member System Review of Expenditures that Exceed Applicable Caps Described in Section 14.2.3.2.7(a)

(i) NYPA will conduct an annual meeting, on no less than three weeks' advance notice to the Voting Member Systems and other Interested Parties that have subscribed to the NYPA Exploder List, at which it will present to the Voting Member Systems and other Interested Parties a five-year capital expenditure plan. This meeting will occur prior to the commencement of the Annual Update Process described in these Protocols. NYPA may conduct additional meetings on no less than three weeks' advance notice to the Voting Member Systems and other Interested Parties that have subscribed to the NYPA Exploder List.

(ii) NYPA's presentation of the capital expenditure plan will identify for each project under construction or anticipated to begin construction within the five-year planning horizon:

- (a) Description of the project;
- (b) Total project cost;
- (c) Anticipated start and end date of construction;
- (d) Whether the project is a Repair or Replacement of a NYPA

Backbone System facility; and

(e) Whether the project is subject to any of the exclusions identified in Section 14.2.3.2.7(a) above.

(iii) The Voting Member Systems and other Interested Parties may issue data requests concerning NYPA's capital expenditure plan for forty (40) calendar days following the annual capital expenditure plan meeting, and NYPA will make commercially reasonable efforts to respond within fourteen (14) calendar days of receipt of a data request.

(iv) (a) If the capital expenditure plan as presented by NYPA, or in the opinion of the Voting Member Systems, includes (i) a Repair or Replacement that exceeds \$90 million (as adjusted annually using the Consumer Price Index); (ii) a suite of projects subject to Section 14.2.3.2.7(a)(iii) above for which NYPA plans to spend more than \$40 million (as adjusted annually using the Consumer Price Index) in a single calendar year; or (iii) a project that NYPA proposes to recover through the NTAC which the Voting Member Systems believe is not related to the NYPA Backbone System, the Voting Member Systems must notify NYPA of their intent to vote on whether to allow NYPA to recover in the NTAC any project or suite of projects meeting the criteria above within sixty (60) calendar days of the publication of the capital expenditure plan that first identifies the project or annual suite of projects, with a vote to occur within thirty (30) calendar days after such notification. The Voting Member Systems must notify NYPA of the outcome of the vote by the end of the next business day after such vote is made.

(b) Subject to Section 14.2.3.2.7(b)(ix) below, and with regard to a project or suite of projects for which the Voting Member Systems have provided timely notice to NYPA under Section 14.2.3.2.7(b)(iv)(a), a 3/5 majority vote in favor is required for NYPA to recover the costs of such project or suite of projects contained in the capital expenditure plan through the NTAC. The five Voting Member Systems shall have one vote each.

(v) If the Voting Member Systems elect not to vote on a Repair or Replacement that exceeds \$90 million (as adjusted annually using the Consumer Price Index), or an annual suite of projects under Section 14.2.3.2.7(a)(iii) that exceeds \$40 million (as adjusted annually using the Consumer Price Index), or 3/5 of the Voting Member Systems vote to approve the Repair or Replacement or annual suite of projects, then no further voting shall be permitted with respect to such Repair or Replacement or annual suite of projects and NYPA shall recover the cost of such Repair or Replacement or suite of projects through the NTAC subject to the Annual Update Process set forth in these Protocols. This provision shall not apply to Repairs or Replacements or annual suites of projects that are modified in a subsequent five-year capital expenditure plan where such modification would either (i) change the categorization of a project or suite of projects under Section 14.2.3.2.7(a); or (ii) would result in a 10% increase in the original project costs the Voting Member Systems previously had a right to vote on, and either approved or elected not to vote on.

(vi) If 3/5 of the Voting Member Systems vote against allowing NTAC recovery of a NYPA project or suite of projects meeting the criteria set forth in

14.2.3.2.7(b)(iv)(a), the Voting Member Systems that voted against NTAC recovery must provide a written statement explaining their rationale for their negative votes within sixty (60) calendar days of notifying NYPA of the outcome of the vote. Such rationale may include, but is not limited to, whether those Voting Member Systems voting against the project believed the project or suite of projects in question: (i) was segmented; (ii) is inconsistent with good utility practice; (iii) should be expanded beyond Repair or Replacement and submitted as a project fitting the definition of one of the categories of projects identified in the ISO's Comprehensive System Planning Process; (iv) has costs that have been improperly estimated or are too high; and/or (v) has been inaccurately categorized by NYPA as a Repair or Replacement (for projects subject to the \$90 million cap). The Voting Member Systems will not assert that a project is not a Repair or Replacement where the New York Public Service Commission has determined that a project is a Repair or Replacement in response to a petition for a declaratory ruling from NYPA with prior notice to the Voting Member Systems. The explanation of any "no" vote with respect to a suite of projects exceeding the limit prescribed in Section 14.2.3.2.7(a)(iii) could include a description of one or more specific objectionable projects.

(vii) NYPA shall have the opportunity to submit a revised package of capital expenditures in response to a "no" vote by the Voting Member Systems. If a revised package is submitted, the Voting Member System voting process described above shall be repeated starting with Section 14.2.3.2.7(b)(iii) above.

(viii) In the event of a “no” vote, the Voting Member Systems and NYPA agree to convene a meeting that includes senior management within sixty (60) calendar days of the Voting Member Systems providing NYPA with a written explanation of the vote.

(ix) NYPA may make a filing at FERC to include capital expenditures rejected by 3/5 of the Voting Member Systems in the NTAC ATRR. In any such proceeding, NYPA would bear the burden of demonstrating (i) that its proposed rate treatment and cost allocation is just and reasonable, (ii) that the reasons offered by the Voting Member Systems for voting against the project or suite of projects are arbitrary, unduly discriminatory, or otherwise not supported by substantial evidence, and (iii) that the proposed costs are eligible to be recovered using the NTAC. The settlement in Docket No. ER16-835-000 shall not preclude or inhibit the ability of a party to that settlement to submit comments or protests on any such filing by NYPA.

(x) If NYPA makes a filing as contemplated in Section 14.2.3.2.7(b)(ix) above, NYPA shall not be entitled to recover the costs of any such project or suite of projects through the NTAC until FERC issues a Substantive Cost Allocation Order and subject to any adjustments directed by FERC in such Substantive Cost Allocation Order; provided, however, if a Substantive Cost Allocation Order has not been issued as of a contested project’s in-service date, NYPA shall record the expenses and return related to any such project or projects in a regulatory asset, with carrying costs accruing at NYPA’s weighted average cost of capital as determined by the Formula Rate Template. Such costs may be amortized and

recovered over the useful life of the project once FERC issues a Substantive Cost Allocation Order approving NTAC recovery for the project or directing NYPA to recover the costs of the project according to some other allocation, subject to any adjustments directed by FERC.

#### **14.2.3.2.8 Costs Excluded from Formula Rate**

Costs allocated to NYPA as a part of PJM Interconnection, L.L.C.'s Regional Transmission Expansion Plan, and costs and expenses related to the New York State Canal Corporation, shall be excluded from recovery under the Formula Rate.

#### **14.2.3.2.9 AC Project Segment A Cost Containment**

##### **A. Definitions**

1. "Segment A Project" shall mean the various components of the double-circuit Marcy to New Scotland project proposed jointly by LSPGNY and NYPA that was selected by the ISO Board of Directors as the more efficient or cost-effective transmission solution from the competing projects to address the public policy-based transmission need to increase Central East transfer capability by at least 350 MW and identified in a decision and Public Policy Transmission Planning Report issued April 8, 2019 (i.e., the project was identified therein as "Project T027").
2. "LSPGNY" shall mean LS Power Grid New York Corporation I, the joint developer with NYPA of the Segment A Project.
3. "NYPA Segment A Project" shall mean the portion of the Segment A Project owned by NYPA.

4. “Other Project Capitalized Costs” are capitalized costs incurred other than to develop, construct, and place the Segment A Project in service, such as capitalized spare parts, and are recoverable in the Formula Rate.

5. “Third Party Costs” are costs that result from: (i) ISO modifications or further ISO requirements, including interconnection costs and upgrades resulting from the ISO interconnection process; (ii) payments to an incumbent transmission owner, including real estate-related costs incurred in any lease arrangements, purchases related to the acquisition of rights-of-way or access to rights-of-way, purchases of rights to access utility facilities and payments for assets to be retired; (iii) increased costs, such as costs incurred related to the rescheduling of outages or the relocation of utility assets, due to an action or inaction by the incumbent transmission owner and that are beyond the ability of NYPA to control or mitigate; or (iv) all sales and property taxes. Third Party Costs are recoverable in the Formula Rate and includable in FERC Account 107 during construction and the appropriate account after being placed in service.

6. “Project Costs” are all capital costs incurred to develop, construct, and place the Segment A Project in service, excluding Third Party Costs, Project Development Costs, Other Project Capitalized Costs, and Unforeseeable Costs in excess of 5% of the Cost Cap (as defined below).

7. “Project Development Costs” are costs incurred for the Segment A Project prior to its selection by the ISO Board of Directors, were not included in the Capital Cost Bid submitted to the ISO, are not subject to the Cost Cap (as defined below), and are recoverable in the Formula Rate.

8. “Unforeseeable Costs” shall mean costs and savings that, with the exercise of commercially reasonable due diligence, could not have been anticipated at the time the Capital Cost Bid for the Segment A Project was submitted to the ISO on April 29, 2016. Unforeseeable Costs in excess of 5% of the Cost Cap are recoverable in the Formula Rate. Unforeseeable Costs are costs:

(a) Associated with material modifications to the routing or scope of work of the Segment A Project that results from a PSC order, negotiation, or settlement agreements within the siting process, or are imposed or required by any other governmental agency. For the avoidance of doubt, foreseeable obligations as included in the New York State Article VII certificate application, or non-material obligations imposed upon LSPGNY and NYPA as a normal part of the siting process, shall not be deemed to be Unforeseeable Costs;

(b) Associated with changes in applicable laws and regulations, or interpretations thereof by governmental agencies;

(c) As a result of orders of courts or action or inaction by governmental agencies;  
or

(d) related to destruction, damage, interruption, suspension, or interference of or with the Segment A Project caused by landslides, lightning, earthquakes, hurricanes, tornadoes, severe weather, fires, explosions, floods, epidemics, acts of public enemy, acts of terrorism, wars, blockades, riots, rebellions, sabotage, insurrections, environmental contamination or damage, or strike, provided that (i) the cause was not reasonably within the control of LSPGNY or NYPA, (ii) LSPGNY and NYPA made reasonable efforts to avoid or minimize the adverse



impacts of any of the above-listed events, and (iii) LSPGNY and NYPA took reasonable steps to expeditiously resolve the event after it occurred.

9. “Capital Cost Bid” is defined as the bid submitted by LSPGNY and NYPA to the ISO on April 29, 2016 for the Segment A Project.

#### **B. Return on Equity Incentive Adders**

For the NYPA Segment A Project, a 100 basis point (“bp”) adder to the base return on equity (“ROE”) will apply to Project Costs incurred up to the Cost Cap (as defined in Section 14.2.3.2.9.C below). A 100 bp ROE adder shall also apply to Unforeseeable Costs (that are more than five (5) percent of the Cost Cap), Third Party Costs, and Project Development Costs. The 100 bp consists of (1) a 50 bp incentive adder for RTO participation authorized by the Commission in Docket No. ER16-835, 154 FERC ¶ 61,268 at PP21-22 (2016) and that was subject to negotiation, compromise and adoption in the uncontested settlement in the same proceeding (Offer of Settlement, § 3.1 (filed September 30, 2016)), and (2) a 50 bp incentive adder for risks and challenges in developing the Segment A Project authorized in Docket No. EL19-88, 169 FERC ¶ 61,125 at P 37 (2019).

#### **C. Cost Cap, Cost Containment and Risk Sharing**

A Cost Cap equal to \$189,900,000 (“Cost Cap”) shall apply to the NYPA Segment A Project. All prudently incurred costs below the Cost Cap are fully recoverable in the Formula Rate, including with respect to the base ROE, ROE incentive adders (as described in Section 14.2.3.2.9.B), depreciation, and debt costs. The following cost containment provisions (“Cost Containment Mechanism”) apply for the life of the

Segment A Project. The Cost Containment Mechanism applies to NYPA's share of Project Costs as follows:

1. Cost Containment Mechanism For Prudently Incurred Actual Project Costs Above Cost Cap
  - a. 20% of any prudently incurred Project Costs above the Cost Cap that are subject to the Cost Containment Mechanism will not earn any ROE on the equity portion of such costs, but NYPA will be allowed to recover the associated depreciation and debt cost.
  - b. 80% of any prudently incurred Project Costs above the Cost Cap that are subject to the Cost Containment Mechanism will not earn any ROE incentive adders (as described in Section 14.2.3.2.9.B) on the equity portion of such costs, but NYPA will be allowed to earn the base ROE, associated depreciation, and debt cost.
2. Additional ROE Adder for Actual Project Costs Below the Cost Cap
  - a. For purposes of providing an incentive to reduce costs, NYPA may utilize an additional ROE adder when the actual Project Costs are below the "Adjusted Cost Cap."
  - b. The Adjusted Cost Cap shall be \$156,600,000.
3. NYPA will receive an additional ROE adder, as set forth in Table A

below, when prudently incurred Project Costs are less than the Adjusted Cost Cap:

<u>TABLE A</u>	
<u>Project Costs Below Adjusted Cost Cap</u>	<u>ROE Adder</u>
<u>0% to &lt;=5%</u>	<u>0.05%</u>

<u>&gt;5% to &lt;=10%</u>	<u>0.17%</u>
<u>&gt;10% to &lt;=15%</u>	<u>0.30%</u>
<u>&gt;15% to &lt;=20%</u>	<u>0.45%</u>
<u>&gt;20% to &lt;=25%</u>	<u>0.62%</u>
<u>&gt;25%</u>	<u>0.71%</u>