

March 4, 2022

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

**Re: Niagara Mohawk Power Corporation**  
**Docket No. ER22-\_\_\_\_\_**

Dear Secretary Bose:

Pursuant to sections 205 and 219 of the Federal Power Act (“FPA”),<sup>1</sup> Part 35 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) regulations,<sup>2</sup> and Order No. 679,<sup>3</sup> the New York Independent System Operator (“NYISO”), as administrator of the NYISO Open Access Transmission Tariff (“OATT” or “Tariff”), submits via eTariff on behalf of Niagara Mohawk Power Corporation<sup>4</sup> (“NMPC”) the following application consisting of (1) amendments to the NYISO OATT to allocate and recover the costs of NMPC’s investment in a new transmission project, the Smart Path Connect Project (alternatively, the “SPC Project” or the “Project”), that the State of New York has determined is needed on an expedited basis in order to meet its clean energy requirements,<sup>5</sup> and (2) authorization to establish certain incentive rate treatments associated with the Project.

The SPC Project was identified and selected by the New York Public Service Commission (“NYPSC”), pursuant to New York State legislation, as a “priority transmission project” that is needed on an expedited basis in order to meet the State’s legislatively enacted clean energy policies and provide benefits to consumers throughout

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 18 C.F.R. Part 35 (2016).

<sup>3</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 2006–2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,222, *order on reh’g*, Order No. 679-A, 2006–2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,236 (2006), *order on reh’g*, Order No. 679-B, 119 FERC ¶ 61,062 (2007) (“Order No. 679”).

<sup>4</sup> NYISO submits this filing on behalf of NMPC solely in its role as administrator of the NYISO OATT. The burden of demonstrating that the proposed tariff amendments are just and reasonable rests with NMPC, the sponsoring party. NYISO takes no position on any substantive aspect of this filing at this time. Capitalized terms not otherwise defined herein shall have the meaning specified in the NYISO OATT.

<sup>5</sup> As discussed below, certain of these proposed revisions to the NMPC formula rate are generic in nature so as to accommodate potential similar projects that NMPC might develop in the future.

New York State. In particular, the Smart Path Connect Project is needed to unlock both existing and planned renewable generation in northern New York, which will be a key component in New York's ability to achieve its ambitious clean energy mandates, which require a minimum 70% of statewide electric generation to be produced by renewable energy by 2030, and 100% renewables by 2040. The Smart Path Connect Project will alleviate existing and well-known transmission deliverability constraints by establishing, together with other transmission projects currently under construction in New York, a new and continuous 345 kilovolt ("kV") transmission path from northern New York to the downstate region that would help mitigate current and projected congestion. The Project will effectively unlock northern New York's potential as a significant site for renewable development for the rest of the State, serve as a foundation for the State to meet its clean energy goals, and result in substantial congestion cost savings and lower capacity market costs, reducing the cost of delivered power.

Pursuant to New York State law,<sup>6</sup> the selection of the SPC Project as a priority transmission project authorizes the New York Power Authority ("NYPA"), by itself or in collaboration with other parties, as NYPA determines appropriate, to develop the Project outside of the auspices of the NYISO public policy transmission planning process. Following a public process to solicit potential co-participants in the Project and assess whether joint development of the Project would provide for additional benefits, NYPA determined that it would jointly develop the Project with NMPC. This selection of NMPC as a co-developer was based in significant part on NMPC's extensive experience planning, developing, constructing, managing and operating similar scale projects as well as NMPC's ownership of and familiarity with property and transmission facilities that can be used to support the expeditious development of the project.

The SPC Project is an undertaking of significant scope, consisting of over 100 linear miles of transmission line rebuilds and associated substations and other upgrades. The Project is estimated to cost a total of approximately \$1.2 billion, with NMPC's share of the project estimated at approximately \$535 million. Consistent with its designation as a "priority transmission project" under New York State law, NYPA and NMPC plan to place the Project in service by December 2025. Moreover, in addition to its key role in facilitating the achievement of New York's climate plan by unbottling renewable generation in Northern New York, the Project is also expected to provide customers with substantial financial benefits in terms of delivered energy cost savings (costs paid by load) of approximately \$214 million annually in 2025 dollars and capacity market benefits of upwards of \$25 million – \$50 million annually. By enabling renewable resources to reach load centers, the Project will result in lower carbon dioxide ("CO2")

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<sup>6</sup> Accelerated Renewable Energy Growth and Community Benefit Act, 2020 N.Y. Laws, ch. 58, Part JJJ ("AREGCB").

emissions for New York of 1.16 million tons annually and lower nitrogen oxide (“NOx”) emissions of 160 tons annually.

Once the Project enters service, operational control of the Project will be turned over to NYISO and service over the Project will be provided pursuant to the terms and conditions of the NYISO OATT. In order to recover the costs of its portion of the SPC Project, NMPC is proposing amendments to the NYISO OATT consisting of the following key elements:

- NYISO will allocate and collect the costs of the Project statewide on a load ratio share basis. Although the Project was not identified through the NYISO’s transmission planning process, statewide cost allocation is appropriate due to the Project’s designation by the NYPSC as a priority transmission project, pursuant to New York State legislation, in order to meet New York clean energy mandates and benefit New York consumers. Statewide allocation is consistent with Commission policy and is not opposed<sup>7</sup> by New York’s other transmission owners.<sup>8</sup>
- A Project cost of capital determined using a base return on equity of 10.5%, developed in accordance with the Commission’s current return on equity (“ROE”) methodology, as demonstrated in testimony and analyses submitted in support of this filing, and using NMPC’s actual capital structure, capped at 50 percent equity.
- A robust cost-containment mechanism similar to those approved by the Commission for other transmission projects designed to address New York State policy goals.

NMPC also requests, in this filing, that the Commission approve the following transmission incentive rate treatments relating to its portion of the SPC Project: (1) a 50 basis point incentive ROE Risk Adder representing the risks and challenges not readily accounted for in NMPC’s base ROE; (2) a 50 basis point incentive ROE adder for participating in a Regional Transmission Organization (“RTO”), or alternatively based on

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<sup>7</sup> See Section II.E below regarding a statement that the other New York Transmission Owners have authorized NMPC to make regarding cost allocation. This does not bind the New York Transmission Owners with respect to any positions they might adopt regarding other aspects of the filing, including the proposed rate.

<sup>8</sup> In particular, this proposal is consistent with the Commission’s recent policy statement recognizing that transmission built under state initiatives “may allow state-prioritized transmission facilities to be planned and built more quickly than would comparable facilities that are planned through the regional transmission planning process(es).” *State Voluntary Agreements to Plan and Pay for Transmission Facilities*, 175 FERC ¶ 61,225 at P 2 (2021).

the benefits provided to customers, including congestion relief; (3) recovery of 100 percent of prudently incurred costs for construction work in progress (“CWIP”) in rate base (“100 Percent CWIP Request”); and (4) if the NMPC portion of the Project achieves significant cost savings when placed in-service, a performance-based rate in the form of an ROE adjustment consistent with the 80/20 risk mitigation proposed in the cost-containment mechanism proposed herein.<sup>9</sup> NMPC currently has pending before the Commission a petition to allow it authorization to recover 100 percent of prudently incurred costs if the SPC Project is abandoned, in whole or in part, as a result of factors beyond NMPC’s control (“Abandonment Incentive”).<sup>10</sup>

As demonstrated below and in the accompanying testimonies and supporting materials, there is a nexus between the incentives requested by NMPC and the risks and challenges that will be faced by NMPC in developing and constructing the Project. In addition, the incentives requested are narrowly tailored to address the unique risks and challenges faced by the Project. Accordingly, NMPC requests that the Commission authorize the requested incentive rate treatment and revisions to the NYISO OATT described herein, effective no later than May 4, 2022 (*i.e.*, the first day following the end of the statutory 60-day notice period).

## **I. BACKGROUND**

### **A. Description of Developing Companies**

#### **1. Niagara Mohawk Power Corporation**

NMPC is a Commission-regulated public utility company organized and operated under the laws of the State of New York. It provides electric service to over 1.5 million customers and natural gas service to over 540,000 customers in upstate New York. NMPC owns and operates transmission facilities in New York, all of which are subject to the operational control of the NYISO. NMPC recovers its transmission revenue requirements pursuant to formula rates under the NYISO OATT.<sup>11</sup>

The outstanding common shares of NMPC are wholly owned by National Grid USA. National Grid USA is an indirect, wholly owned subsidiary of National Grid plc, a company incorporated in England and Wales. National Grid USA is a public utility

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<sup>9</sup> NMPC submits these incentive requests pursuant to Sections 205 and 219 of the Federal Power Act, 16 U.S.C. §§ 824d, 824s, 18 C.F.R. Part 35 of the Federal Energy Regulatory Commission’s regulations, and Order Nos. 679 and 679-A.

<sup>10</sup> Petition for Declaratory Order Authorizing Abandonment Recovery, Docket No. EL22-17 (filed November 19, 2021).

<sup>11</sup> See NYISO OATT, Attachment H.

holding company; it is not a public utility because it does not directly own or operate FPA-jurisdictional facilities (or any electric facilities), nor does it engage in the sale, transmission, or distribution of electric power. Direct and indirect subsidiaries of National Grid USA are engaged in: (i) electric transmission under Commission jurisdiction in New York, Massachusetts, Rhode Island, Vermont, and New Hampshire;<sup>12</sup> (ii) electric distribution to residential, commercial, and industrial customers in New York, Massachusetts, and Rhode Island; and (iii) the distribution of natural gas to residential, commercial, and industrial customers in New York, Massachusetts, and Rhode Island. These various subsidiary companies operate and maintain power lines, substations, and/or natural gas distribution facilities; provide metering, billing, and customer service; design and build electric and/or gas facilities; and provide related products and services, including energy efficiency programs for customers. National Grid USA is also affiliated with entities that own, operate, or control qualifying facilities, distributed generation, behind-the-meter solar, and other renewable generating capacity in ISO-NE.

NMPC is the only National Grid USA subsidiary that owns or operates transmission facilities in New York. National Grid USA also indirectly owns four New York generation subsidiaries: (1) National Grid Generation LLC, (2) National Grid Glenwood Energy Center LLC, (3) National Grid Port Jefferson Energy Center LLC, and (4) National Grid Generation Ventures, LLC. The energy and capacity of these public utility subsidiaries on Long Island are wholly committed to the Long Island Power Authority under long-term contracts.

## **2. New York Power Authority**

NYPA is a corporate municipal instrumentality and a political subdivision of the State of New York, organized under the laws of the State, and operating pursuant to Title 1 of Article 5 of the New York Public Authorities Law. NYPA is a “municipality” within the meaning of section 3(7) of the FPA and is a “state instrumentality” within the meaning of section 201(f) of the FPA.<sup>13</sup> NYPA generates, transmits, and sells electric power and energy at wholesale and retail, throughout the state. NYPA’s customers include businesses and various large governmental customers located within the metropolitan area of New York City, including the City of New York and the Metropolitan Transportation Authority. NYPA is a transmission-owning member of the NYISO, and recovers its transmission revenue requirement through the NYPA Formula Rate included in section 14.2.3 of the NYISO OATT.

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<sup>12</sup> National Grid’s electric transmission facilities in New York and New England are under the operational control of the NYISO and ISO New England Inc. (“ISO-NE”), respectively.

<sup>13</sup> 16 U.S.C. §§ 796(7) and 824(f).

## **B. Description and History of the Smart Path Connect Project**

### **1. Project Overview**

The SPC Project consists of rebuilding approximately 100 miles of existing 230-kV transmission lines to either 230 kV or 345 kV along with associated substation construction and upgrades. The Project includes rebuilding all or parts of the following transmission lines primarily within existing rights-of-way (“ROW”): NYPA’s Moses-Willis 1&2, NYPA’s Willis-Patnode and NYPA’s Willis-Ryan; and NMPC’s Adirondack to Porter (Chases Lake-Porter Line 11, Adirondack-Porter Line 12, and Adirondack-Chases LakeLine 13), as well as connecting to NYPA’s Moses-Adirondack 1&2 (also known as “MA 1&2” or “Smart Path”) ROW.

Specifically, the Project consists of two components: the Moses-Willis-Patnode (“MW-Patnode”) component and the Adirondack-Porter component (the owner of each facility comprising each component is noted in parentheses).

The Adirondack-Porter component includes the following Project facilities: (1) the rebuild of NMPC’s Adirondack-Porter 230 kV lines (NMPC); (2) the construction of the proposed Adirondack Substation (NYPA); (3) the interface connection of the proposed Adirondack Substation to the MA 1 & 2 ROW (NYPA); (4) the construction of the proposed Austin Road Substation (NMPC); (5) the extension of the existing 230 kV Rector Road to Chases Lake Line 10 (NMPC); (6) the expansion of the Edic Substation (NMPC); (7) removal of the existing 230kV Edic to Porter Line 17 and equipment at the Porter and Chases Lakes Substations (NMPC); and (8) extension of the existing 345kV Marcy Substation (NYPA).

The MW-Patnode component includes the following Project facilities: (1) the rebuild of NYPA’s Moses-Willis 1&2, Willis-Patnode, and Willis-Ryan 230 kV lines and a short portion of the Ryan-Plattsburgh 230 kV line (NYPA); (2) rebuild of Willis-Patnode and Willis-Ryan 230 kV lines and a short portion of the Ryan-Plattsburgh 230 kV line resulting in single-circuit 230 kV lines upgraded to double-circuit 230 kV lines (3) the construction of the proposed Haverstock Substation (NYPA); (4) the interface connection of the proposed Haverstock Substation to the MA1&2 transmission facilities (NYPA); (5) the expansion of the Willis Substation (NYPA); (6) the modifications of the Ryan, Patnode, and Massena Substations within the existing fence lines (NYPA); and (7) a ROW expansion at the Ryan Substation (NYPA).

Together with other projects under construction in New York, the SPC Project will create a continuous 345 kV path from the northern border of the State to the downstate region. The Project will also involve the replacement of approximately 1,696 existing structures with approximately 1,248 new structures, predominantly

monopole, resulting in approximately 448 fewer structures within the ROW. Details regarding the configuration of the Project are set forth in the Prepared Direct Testimony of Brian Gemmell, Chief Clean Energy Development Officer, included as Exhibit No. NMPC-100 to this filing (“Gemmell Testimony”).

NMPC and NYPA estimate that the total capital cost of the SPC Project will be approximately \$1.2 billion.<sup>14</sup> Of that total cost, NYPA’s share is estimated to be approximately \$641.3 million, and NMPC’s share is estimated to be approximately \$534.5 million (\$495 million excluding financing costs).<sup>15</sup>

## **2. Smart Path Connect Originated With New York Climate Legislation Establishing Renewable Generation Requirements and Associated Transmission System Expansion Requirements**

In 2019, the New York legislature enacted the Climate Leadership and Community Protection Act (“CLCPA”).<sup>16</sup> The CLCPA is grounded in legislative findings that climate change is adversely affecting the economic well-being, public health, natural resources, and environment of New York, and that numerous benefits will accrue to New York residents through reducing and eliminating anthropogenic greenhouse gas emissions. CLCPA requires a 40% statewide reduction in greenhouse gas emissions from 1990 levels by 2030, and an 85% reduction by 2050. Further, CLCPA requires that 1) a minimum of 70% of statewide electric generation be produced by renewable energy by 2030 (the “70 x 30 Target”); 2) the electric demand system be

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<sup>14</sup> A more granular breakdown on project costs for the SPC Project for both NMPC and NYPA is set forth in Attachment F to NYPA’s recent FERC filing relating to the SPC Project. *New York Power Authority*, Docket No. ER22-1014 (filed February 10, 2022) (“NYPA SPC Project 205 Filing”), Attachment F.

<sup>15</sup> This estimate is based on the Article VII Application for a Certificate of Environmental Compatibility and Public Need submitted to the NYPSC for the Project, and is stated in 2025 dollars. As required under 16 NYCRR § 86.10 (a), the estimate includes the cost of: (1) right-of-way; (2) surveys; (3) materials; (4) labor; (5) engineering and inspection; (6) administrative overhead; (7) fees for legal and other services; (8) interest during construction; and (9) contingencies. *See Application of New York Power Authority and Niagara Mohawk Power Corporation d/b/a National Grid for a Certificate of Environmental Compatibility and Public Need for the Rebuild of Approximately 100 Linear Miles of Existing 230 kV to Either 230 kV or 345 kV along with Associated Substation Upgrades Along the Existing NYPA Moses-Willis 1&2, Willis-Patnode, Willis-Ryan, and National Grid’s Adirondack-Porter 11, 12 and 13 Lines in Clinton, Franklin, St. Lawrence, Lewis, and Oneida Counties, New York*, NYPSC Case 21-T-0340, Matter of Application at 4, (June 15, 2021) (“Article VII Application”), available at <https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=21-T-0340>. *See also* Gemmell Testimony at 17. As addressed in further detail in NYPA’s recent FERC filing relating to the SPC Project, NYPA’s portion of the total project costs has increased by approximately \$56 million based on the estimate provided in the Article VII application, resulting in the current total project cost estimate of approximately \$1.2 billion. NYPA SPC Project 205 Filing, Transmittal Letter at 32, n.175.

<sup>16</sup> 2019 N.Y. Laws, ch. 106.

100% emissions-free by 2040; and 3) the State meet the following procurement targets: 9 GW of offshore wind by 2035, 6 GW of photovoltaic solar generation by 2025, and 3 GW of energy storage resources by 2030 (collectively, the “CLCPA Requirements”).<sup>17</sup>

In recognition of the significant changes and upgrades that must be made to the New York power grid infrastructure to meet the CLCPA Requirements, the New York legislature in 2020 enacted the Accelerated Renewable Energy Growth and Community Benefit Act (“AREGCBA”). AREGCBA requires the State to provide for the construction of expanded transmission and distribution infrastructure sufficient to ensure the cost-effective and timely development of the renewable energy generation projects needed to meet the CLCPA Requirements.<sup>18</sup> In furtherance of this goal, AREGCBA directs the NYPSC to establish a bulk transmission investment program to be submitted to the NYISO for incorporation into its transmission studies and planning processes. To implement the bulk transmission investment program, AREGCBA effectively prescribes two pathways for project selection. The “default” process for identifying projects necessary to implement the plan is the NYISO’s public policy planning process, with AREGCBA stating that NYPSC “shall utilize the state grid operator’s public policy transmission planning process” for project selection.<sup>19</sup> However, for projects that the NYPSC determines are needed “expeditiously” in order to meet the CLCPA

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<sup>17</sup> CLCPA §§ 2(1)(a) and 7(a); Energy Conservation Law § 75–0107(1); Public Service Law (“PSL”) § 66-p(2), (5). While AREGCBA calls them “CLCPA targets,” the legislation indicates that these are binding requirements:

“CLCPA targets” shall mean the public policies established in the climate leadership and community protection act enacted in chapter one hundred six of the laws of two thousand nineteen, including the requirement that a minimum of seventy percent of the statewide electric generation be produced by renewable energy systems by two thousand thirty, that by the year two thousand forty the statewide electrical demand system will generate zero emissions and the procurement of at least nine gigawatts of offshore wind electricity generation by two thousand thirty-five, six gigawatts of photovoltaic solar generation by two thousand twenty-five and to support three gigawatts of statewide energy storage capacity by two thousand thirty.

AREGCBA § 4(2)(b).

<sup>18</sup> AREGCBA, § 2 (the state shall take appropriate action to ensure that . . . renewable energy can be efficiently and cost effectively injected into the state’s distribution and transmission system for delivery to regions of the state where it is needed. In particular, the state shall provide for timely and cost effective construction of new, expanded and upgraded distribution and transmission infrastructure as may be needed to access and deliver renewable energy resources.”). Consistent with these requirements, AREGCBA also provides that the public interest would be served by “expediting the regulatory review for the siting of major renewable energy facilities and transmission infrastructure necessary to meet the CLCPA [Requirements].” *Id.* § 4(a). Ultimately, it was determined that the SPC Project did not satisfy the criteria of the expedited process because NYPA and NMPC need to acquire some new property rights for certain Project facilities.

<sup>19</sup> AREGCBA § 7(4).



Requirements, AREGCBA forgoes the NYISO public policy transmission process and designates NYPA as the presumptive developer of such “priority transmission projects” (“PTPs”).

Due to the State’s need for the timely development of bulk transmission, AREGCBA specifically directs that PTPs be developed by NYPA, subject to the concurrence of NYPA’s Board of Trustees (“Trustees”).<sup>20</sup> Once a project has been designated as a PTP by the NYPSC, and the NYPA Trustees have concurred, NYPA is required to undertake a public solicitation process to assess whether joint development would provide for significant additional benefits in achieving the CLCPA Requirements.<sup>21</sup> NYPA may then determine to undertake development on its own, or develop the project jointly with one or more other parties on such terms and conditions as NYPA finds appropriate in order to undertake and timely complete the project.<sup>22</sup>

**3. The New York Transmission System Currently Lacks Transfer Capacity Sufficient To Deliver the Substantial Quantities of Renewable Resources That Have Already Been Built in, or Are Planned For, the Northern New York Region**

Substantial amounts of renewable generation necessary to meet the CLCPA Requirements will be located in upstate New York. The NYPSC projects that approximately 6,500 MW of renewable generation capacity will come online in NYISO Zones D and E, which are primarily in northern New York.<sup>23</sup> However, significant transmission upgrades and expansions are necessary in order to facilitate the delivery of this generation to load centers. In northern New York, the bulk transmission system is constrained into east-west and north-south orientations due to the physical boundaries of Adirondack State Park and historical limitations on construction of transmission projects within its boundaries. Both the east-west and north-south elements of the bulk transmission system in the northern New York region currently consist of 230 kV infrastructure, with the exception of a NYPA 765 kV transmission line that runs from Chateaugay to Massena to Utica paralleling the north-south 230 kV circuits. As currently configured, this transmission system does not provide sufficient transfer capability to deliver all of the available renewable generation in northern New York to load today. Existing renewable generation in the upstate region is currently vulnerable to

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

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

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

<sup>23</sup> Initial Report on the New York Power Grid Study, NYPSC, (Jan. 19, 2021), available at <https://www.nyserda.ny.gov/-/media/Files/Publications/NY-Power-Grid/full-report-NY-power-grid.pdf>. (“Initial Power Grid Study Report”).

periodic, and increasing, curtailment. NYISO data shows that wind curtailments alone are significant in nature, averaging approximately 66 GWh annually over the period 2018-2020.<sup>24</sup> On the basis of these constraints of existing renewable generation, NYISO has recently concluded that “[a]dditional transmission capability is necessary to alleviate constraints and maximize the potential contribution of these [existing] renewable resources to meet electric demand and achieve public policy goals.”<sup>25</sup>

The NYISO has called for the construction of additional transmission in northern New York for several years. In 2019 – even before the enactment of CLCPA and its ambitious climate goals – the NYISO noted that “additional transmission capability is needed [in upstate and northern New York] to deliver energy from renewable resources to New York consumers in order to achieve New York’s environmental and energy policies.”<sup>26</sup> In the same comments, the NYISO highlighted that “bottling of renewable resources is already occurring on the Moses South transfer path and will only be exacerbated by future growth of renewables in the northern New York region.”<sup>27</sup>

The need for additional transmission infrastructure in the region is further emphasized by the significant amount of additional renewable generation that will be needed in northern New York to meet the CLCPA Requirements. NYISO has studied renewable generation pockets within which curtailments would occur if renewable generation sufficient to meet the 70 x 30 Target were added to the grid, and those generation pockets include key transmission lines that would be upgraded as a part of the SPC Project.<sup>28</sup> As a part of that study, NYISO found that between 975 and 1,050 MW of increased transmission capability would be needed on the northern New York 230 kV and 115 kV systems to unbundle potentially curtailed renewable generation.<sup>29</sup>

#### **4. Smart Path Connect Will Provide Significant Congestion Relief and Cost Savings Benefits**

As discussed in further detail in Mr. Gemmell’s testimony, the SPC Project will provide a number of economic and environmental benefits, as well as benefits for the

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<sup>24</sup> NYISO, *Power Trends 2021 – New York’s Clean Energy Grid of the Future: The New York ISO Annual Grid & Markets Report*, at 16 (fig. 9) (2021) (“Power Trends 2021 Report”), available at <https://www.nyiso.com/documents/20142/2223020/2021-Power-Trends-Report.pdf>.

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

<sup>26</sup> NYISO Comments, NYPSC Case No. 18-E-0623, at 6 (Jan. 22, 2019) (“NYISO Jan. 22, 2019 Comments”).

<sup>27</sup> *Id.* at 6-7.

<sup>28</sup> See *Power Trends 2021 Report* at 39 (fig. 16).

<sup>29</sup> NYISO Jan. 22, 2019 Comments at 10.

reliability of the bulk power system in northern New York.<sup>30</sup> Also, by unbottling renewable generation in northern New York, the project will increase the diversity of fuel supply of resources serving New York consumers as well as help promote job growth and economic opportunities in an area of the State that has seen significant economic hardships over the past several decades.<sup>31</sup>

The SPC Project will facilitate the deliverability of both existing renewable generators and planned generation expected to come online in the near future by avoiding potential congestion that could impede their delivery. In addition to the significant curtailments already imposed on existing renewable generation in northern New York, the NYISO interconnection queue<sup>32</sup> currently contains more than 2,460 MW of planned renewable generation in the northern New York region that will not be deliverable to load centers on a firm basis without significant expansion of the transmission network in northern New York. To meet the CLCPA Requirements, all these proposed renewable generation projects will need to be brought online without delay, and a significant portion of their output will need to be delivered to load.

Transmission planning studies performed by NYPA have found that the Smart Path Connect Project will accommodate an additional 1,000 MW of firm transfer capability for renewable energy generation in the northern New York region.<sup>33</sup> This compares with the 975 to 1,050 MW of increased transmission capability that NYISO has estimated would be necessary on the northern New York system to eliminate potential curtailments of the renewable generation that will be built in this region to meet New York's CLCPA Requirements. Indeed, analysis performed by NYPA shows that the SPC Project would eliminate curtailments from existing generators in upstate New York, resulting in 7.5 TWh of avoided renewable generation curtailments annually.<sup>34</sup>

Additionally, the SPC Project is expected to provide substantial cost savings to New York consumers, reducing the cost of delivered power in the State. Studies performed by NYPA show an estimated delivered energy cost savings (costs paid by load) of \$214 million per year (nearly \$3 billion based on a 20-year Net Present Value ("NPV") and capacity market benefits of \$25 - \$50 million annually (\$500 million NPV

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<sup>30</sup> Gemmell Testimony at 23-31.

<sup>31</sup> *Id.* at 25-26.

<sup>32</sup> See NYISO, Interconnection Process (select Prior Interconnection Queues, NYISO Interconnection Queue 5/31/2020 (published June 10, 2020)), available at <https://www.nyiso.com/interconnections>.

<sup>33</sup> See Article VII Application, Engineering Justification at E-4-10.

<sup>34</sup> *Id.* See also Gemmell Testimony at 10-11.

utilizing the midpoint of this range).<sup>35</sup> The Project is also expected to lead to emissions reductions of 1.16 million tons of CO<sub>2</sub> and 160 tons of NO<sub>x</sub> on an annual basis, with these reductions being valued at \$981 million based on a 20-year NPV. Moreover, the Project is expected to reduce the future costs of refurbishing or replacing aging transmission infrastructure, valued at \$270 million based on a 20-year NPV.<sup>36</sup> These benefits total over \$4 billion based on a 20-year NPV.<sup>37</sup>

### **5. The NYPSC Has Determined That the Smart Path Connect Project Is Needed on an Expedited Basis for New York to Meet Its Clean Energy Requirements**

On October 15, 2020, the NYPSC, pursuant to its authority under AREGCBA, issued an order establishing two general criteria by which it would determine whether a project qualifies as a PTP.<sup>38</sup> First, the NYPSC determined that “a key and perhaps determinative factor” for the analysis of whether a transmission project qualifies as a PTP is whether the project addresses the deliverability of existing generation.<sup>39</sup> The fact that operating generators “are not able to offer their full capacity due to transmission constraints is a strong indicator of whether traditional planning processes have kept pace with State policy.”<sup>40</sup> Additionally, the NYPSC noted that the presence of generation in the planning queue that will benefit from solving a transmission constraint affecting existing generation should be given weight.<sup>41</sup> The NYPSC summarized these considerations into a single criterion it will consider for designating a PTP as follows:

The transmission investment’s potential for unbottling existing renewable generation, as well as projects that are in the NYISO interconnection process, for delivery to load centers in the State, thereby reducing the amount of new generation that must be constructed to meet the CLCPA [Requirements].<sup>42</sup>

The NYPSC separately noted that, where solving a transmission problem outside of the NYISO Public Policy Transmission Planning Process “will increase the likelihood

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<sup>35</sup> Gemmell Testimony at 28-29; Exhibit Nos. NMPC-101 - NMPC-103.

<sup>36</sup> Gemmell Testimony at 29-30.

<sup>37</sup> *Id.*

<sup>38</sup> *Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*, NYPSC Case 20-E-0197, Order on Priority Transmission Projects (Oct. 15, 2020) (“Priority Project Order”) (attached hereto as Attachment J).

<sup>39</sup> *Id.* at 16.

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

<sup>41</sup> *Id.* at 17.

<sup>42</sup> *Id.*

of meeting the CLCPA deadlines, the proposed transmission project may qualify as a PTP.”<sup>43</sup> Accordingly, the NYPSC established a second general criterion for selection of a PTP as follows:

Whether an early in-service date for the transmission investment would: (a) increase the likelihood that the State will meet the CLCPA [Requirements]; and/or (b) enhance the value of recent, ongoing or anticipated distribution, local transmission, and/or bulk transmission investments, and/or help the State realize benefits from such investments because it can be placed in-service sooner than the NYISO process would allow.<sup>44</sup>

Projects selected via the PTP designation pathway do not directly participate in the NYISO public policy transmission planning process. However, as NYISO pointed out in comments filed in the NYPSC proceeding that resulted in the issuance of the Priority Project Order, and as reflected in the NYPSC’s PTP designation criteria, the process for designating priority transmission projects can operate “in tandem” with the NYISO public policy transmission planning process.<sup>45</sup>

After setting forth the PTP criteria, the NYPSC in the Priority Project Order found that the Smart Path Connect Project met these criteria and designated it a PTP. With respect to the first criterion, concerning the unbottling of generation, the NYPSC found that “the State’s investments in renewable generation in the northern region are not being fully realized due to transmission limitations.”<sup>46</sup> The NYPSC noted NYPA’s analysis indicating that with respect to existing generation, the Project will avoid 7.5 TWh of renewable generation curtailments annually; and found that “the presence of a significant amount of existing renewable generation that is currently not served by the transmission system indicates that a project to unbundle that generation is ‘needed expeditiously.’”<sup>47</sup> The NYPSC also noted NYPA’s identification of approximately 2,400 MW of planned generation that would not be deliverable to downstate load without additional transmission capacity in northern New York, and found “that the number of interconnection applications that are being studied by the NYISO suggests there is strong developer interest in this area of the State, and that advancing the [SPC] Project would

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<sup>43</sup> *Id.* at 18.

<sup>44</sup> *Id.* The final language of this criterion resulted from the NYPSC accepting the criterion proposed by New York Department of Public Service (“NY DPS”) Staff, with the addition of the language stipulating that the project could be placed in-service sooner than the NYISO process would allow. *Id.*

<sup>45</sup> *Id.* at 11-12 (citing NYISO Comments at 7-8).

<sup>46</sup> *Id.* at 25.

<sup>47</sup> *Id.* at 21.

help capture the investment these applications represent, increasing the overall benefits of the project.”<sup>48</sup>

With respect to the second general criterion, the NYPSC found that given that the NYISO 2020 public policy planning cycle had only recently been initiated, the SPC Project would likely be placed in service earlier than a comparable project selected via the NYISO public policy transmission planning process.<sup>49</sup> The NYPSC accordingly found that “the NYISO process cannot meet the same goals in the same time frame that NYPA may achieve” and concluded that the SPC Project is needed expeditiously.<sup>50</sup>

The NYPSC concluded its analysis by stating that NYPA had shown a sufficient basis for identifying the Project as a PTP based on the NYPSC’s established criteria. Following its designation of the Project as a PTP, the NYPSC included the Project as a baseline assumption in the Initial Power Grid Study Report.<sup>51</sup>

#### **5. NYPA Selected NMPC as a Co-Developer of the Smart Path Connect Project Through a Public Solicitation Process**

Following designation of the Project as a PTP, NYPA, consistent with its statutory obligations,<sup>52</sup> publicly solicited interest from potential co-participants to assess whether joint development of the Project would provide for significant additional benefits in achieving the CLCPA Requirements.<sup>53</sup> NYPA issued a press release on October 30, 2020 announcing that it was issuing a written Solicitation of Interest to invite expressions of interest by parties that wish to be considered as co-developers.<sup>54</sup> On December 21, 2020, NMPC submitted a written response. The public solicitation process was conducted over a five-month period.<sup>55</sup> On March 30, 2021, after completing its public solicitation process, the NYPA Board of Trustees issued an Approval Press Release

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

<sup>49</sup> *Id.* at 22-23.

<sup>50</sup> *Id.* at 25.

<sup>51</sup> Initial Power Grid Study Report at 2 n.2, 79 n.76, and Appendix E at E-4, E-38.

<sup>52</sup> *See* AREGCBA, §7(5).

<sup>53</sup> “NYPA Invites Interested Parties to Propose Co-Participant Roles for the Development of the Northern New York Priority Transmission Project,” NYPA Press Release, <https://www.nypa.gov/news/press-releases/2020/20201030-nny> (last accessed Oct. 7, 2021). This solicitation was conducted consistent with the AREGCBA requirements. *See* AREGCBA, § 7(5).

<sup>54</sup> Gemmell Testimony 20:9 -27.

<sup>55</sup> Gemmell Testimony 21:1-20.

announcing its decision to “accept, develop and operate” the Project and its selection of National Grid as a co-participant in the development of the Project.<sup>56</sup>

In its Approval Press Release, the NYPA Board discussed its reasoning for selecting NMPC as a co-developer:

In selecting National Grid as a co-participant on the project, NYPA cited among other things, National Grid’s extensive experience planning, developing, constructing, managing and operating transmission projects similar in type and scale to [the Project] as well as ownership and familiarity of property and transmission facilities that can be used to support the expeditious development of the project. National Grid also has a longstanding relationship with communities in the North Country, working with them to meet their needs.<sup>57</sup>

In the Approval Press Release, the NYPA Board also announced that NMPC’s selection as co-developer was subject to the parties reaching agreement on the terms for development of the Project. On May 25, 2021, NYPA issued a press release to announce that the NYPA Board of Trustees approved a Joint Development Agreement between NYPA and NMPC to establish the terms under which the parties would jointly develop the Project.<sup>58</sup>

**6. NMPC and NYPA Have Coordinated and Will Continue To Coordinate with the NYISO in Developing the Smart Path Connect Project**

As noted above, in the NYPSC PTP Proceeding the NYISO acknowledged that PTPs such as the SPC Project could proceed in tandem with the NYISO regional transmission planning process. In order to ensure a smooth development process and implementation of the Project, NMPC and NYPA have been closely coordinating with the NYISO. The Project’s System Impact Study (“SIS”) was completed in July 2021. On October 14, 2021, the SIS received final Operating Subcommittee approval, which signifies that NYISO has determined that the Project meets the NYISO minimum interconnection standard.<sup>59</sup> The Project will be added to the NYISO’s “baseline” for planning purposes once the NYISO completes its Facilities Study, initiated on October

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<sup>56</sup> Article VII Application at 3.

<sup>57</sup> “NYPA Board of Trustees Approves Northern New York Priority Transmission Project Plan,” NYPA Press Release (Mar. 30, 2021), available at <https://www.nypa.gov/news/press-releases/2021/20210330-nny>.

<sup>58</sup> See Gemmell Testimony at 19-20.

<sup>59</sup> *Id.* at 22-23.

22, 2021, and expected to be completed in May or June of 2022.<sup>60</sup> Finally, once the Project is commissioned, operational control of the Project will be turned over to the NYISO.<sup>61</sup>

## **II. THE NYISO OATT AMENDMENTS PROVIDING FOR THE ALLOCATION AND RECOVERY OF THE COSTS OF THE SMART PATH CONNECT PROJECT ARE JUST AND REASONABLE**

In order to allocate and recover the costs of the NMPC portion of the Smart Path Connect Project, NMPC proposes to incorporate in the NYISO OATT a new Smart Path Connect Facilities Charge (“SPC-FC”). Because the SPC Project is being developed and constructed pursuant to New York State legislation designed to ensure the achievement of New York’s CLCPA Requirements and because the SPC Project benefits consumers across New York State in numerous ways, the Smart Path Connect Charge is appropriately allocated and collected from all New York load-serving entities (“LSEs”) on a volumetric load-ratio share basis.

The calculation and billing of the SPC-FC is set forth in a new proposed Rate Schedule 18 to the NYISO OATT, Section 6.18 of the NYISO OATT. As explained below, the SPC-FC is a cost-of-service formula rate, the revenue requirement for which will be determined on an annual basis using actual costs in accordance with new schedules that NMPC proposes to include in the formula rate templates associated with its existing wholesale Transmission Service Charge (“TSC”).<sup>62</sup> In addition to the amendments to its TSC to reflect the SPC-FC, NMPC is also proposing in this filing ministerial modifications to its TSC to address issues relating to populating FERC Form No. 1 references in light of recent changes to FERC’s reporting software.

### **A. Rate Schedule 18**

NMPC is proposing to add a new Rate Schedule 18 to the NYISO OATT. Rate Schedule 18 establishes the SPC-FC, the rate mechanism for the recovery of the facilities that comprise NMPC’s portion of the SPC Project (the “NMPC Smart Path Connect Facilities”). Rate Schedule 18 is modeled on NYISO OATT rate schedules previously accepted by the Commission that established charges for public policy projects in New York where the costs are allocated on a statewide basis, such as Rate Schedule 13 (establishing the Transco Facilities Charge) and Rate Schedule 17 (establishing the Western New York Facilities Charge).

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 22.

<sup>62</sup> NYISO OATT, Attachment H, Section 14.2.1.



Rate Schedule 18 provides that the SPC-FC will be allocated on a load ratio share basis, calculated volumetrically based on Actual Energy Withdrawals by all Load Serving Entities serving load in the New York Control Area (each a “Responsible LSE”). The rationale and support for statewide allocation of the costs of the NMPC portion of the SPC Project is discussed in Section II.E below. The SPC-FC charged by the NYISO to each Responsible LSE for each NYISO Billing Period will be based on an annual revenue requirement, which will be calculated by NMPC and provided to the NYISO in accordance with new schedules to be added to NMPC’s existing TSC formula rate template, using data from NMPC’s filed FERC Form No. 1 for the most recent calendar year and based on the books and records of NMPC consistent with FERC accounting policies. Rate Schedule 18 also sets forth the ROE and capital structure that will apply to the project, addressed in Section II.C below.

The Commission-accepted formula rate protocols that apply to NMPC’s TSC will also apply to the determination of the SPC-FC revenue requirement. NMPC will recalculate the revenue requirement for the SPC-FC each year as part of the Annual Update process that it uses to calculate the TSC, as set forth in Section 14.1.9.4 of Attachment H. The SPC-FC revenue requirement will be separately stated in the Annual Update, and NMPC will provide supporting documentation for the calculation of the SPC-FC as part of that process. Each Responsible LSE shall be an “Interested Party” that will have the right to review and challenge the calculation of the SPC-FC revenue requirement. The SPC-FC revenue requirement for the first year will be calculated retroactively to include any CWIP amounts authorized by the Commission for recovery in rate base.

Rate Schedule 18 also expressly provides that the “Base Revenue Requirement” portion of the revenues that NMPC receives from the SPC-FC will be applied as a revenue credit in the revenue requirement for NMPC’s TSC, and that after considering the revenue credit for the SPC-FC, the net cost for the NMPC Smart Path Connect Facilities included in NMPC’s TSC will be zero. This crediting mechanism is explained in further detail in the discussion of the TSC amendments below, but the overall purpose is to ensure that no costs of the NMPC Smart Path Connect Facilities are recovered through the TSC.

NMPC will request incremental transmission congestion contracts (“Incremental TCCs”) with respect to the NMPC Smart Path Connect Facilities in accordance with Attachment M to the NYISO OATT.<sup>63</sup> The NYISO will disburse the associated auction

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<sup>63</sup> Incremental TCCs are new transmission congestion contracts awarded by the NYISO for incremental increases in transfer capacity from new transmission expansions and improvements.

revenues to NMPC.<sup>64</sup> These Incremental TCC revenues associated with the NMPC Smart Path Connect Facilities will be subtracted from the SPC-FC revenue requirement when the NYISO calculates the SPC-FC rate. Schedule 18 also addresses the treatment of outage charges related to any Incremental TCCs awarded by the NYISO for the Smart Path Connect Facilities.

The billing units for the SPC-FC Rate for each applicable Billing Period will be based on the Actual Energy Withdrawals available for the current Billing Period for each Responsible LSE. The NYISO will determine the applicable SPC-FC rate and collect the appropriate SPC-FC charges from the Responsible LSEs in each Billing Period and remit those revenues to NMPC in accordance with the NYISO's billing and settlement procedures.

NMPC has discussed the proposed design of the SPC-FC rate recovery mechanism with the NYISO, and the NYISO has indicated that it can accommodate the administration of the SPC-FC.

#### **B. Amendments to Attachment H of NYISO OATT**

As discussed more fully in the testimony of Ms. Tiffany Escalona, Director of New England Regulation, Exhibit No. NMPC-500 ("Escalona Testimony"), NMPC is proposing the following amendments to its formula rate templates set forth in Section 14.2.1 to Attachment H of the NYISO OATT:

- Addition of new Schedules 15, 15a, 15b, 15c and 15d in order to calculate the SPC-FC revenue requirement, as well as revenue requirements for potential future NMPC projects which will not be collected under NMPC's existing TSC (referred to as "Project Specific Revenue Requirements").
- Revisions to Schedule 1 (Historical TRR) and Schedule 10 (Other – Billing Adjustments, Bad Debt Expense, Revenue Credits and Transmission Rents) to include the appropriate revenue credit for any Project Specific Revenue Requirements (such as the SPC-FC revenue requirement) in the TSC rate calculation to ensure that there is no over-recovery from TSC customers.
- Ministerial revisions to certain other TSC schedules to update FERC Form No. 1 page references and remove certain fixed line references as the result of

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<sup>64</sup> Any Incremental TCCs that do not sell in the auctions will receive congestion payments pursuant to Section 20.2.3 of Attachment N of the NYISO OATT.

implementation of the XBRL FERC Form No. 1 filing process, along with a minor correction to a formula in Schedule 7.<sup>65</sup>

Schedule 15 is the Project Specific Revenue Requirement Summary. It will show the revenue requirements for each transmission project, including the SPC Project, whose revenue requirement will be collected through a rate separate from NMPC's TSC. The data for this summary sheet will be sourced from Schedules 15a through 15d, as applicable, separate versions of which will be prepared for the SPC Project and any future projects whose revenue requirement is not charged via the TSC.<sup>66</sup> Populated versions of these schedules will be provided by NMPC as part of the Annual Update process set forth in Section 14.1.9.4 of Attachment H.<sup>67</sup>

Under Schedule 15, the total revenue requirement for each NMPC transmission project whose revenue requirement will not be collected through the TSC is comprised of the sum of the applicable project's Base Revenue Requirement, Differential Revenue Requirement, and Annual True-up, including interest.<sup>68</sup> The Base Revenue Requirement reflects the revenue requirement for the applicable project calculated using the same cost of capital inputs as used in calculating the TSC revenue requirement, while the Differential Revenue Requirement reflects those components of an applicable project's revenue requirement that are not reflected in the annual TSC revenue requirement, such as the cost of capital inputs for a specific project, to the extent they differ from those reflected in the TSC,<sup>69</sup> as well as the impact of any cost containment commitments approved by the Commission.<sup>70</sup> Calculating the Base Revenue Requirement and Differential Revenue Requirement components separately in this manner ensures that TSC customers are not impacted by any differences between the components included in the TSC and the components specific to individual projects whose revenue requirements are not charged through the TSC, such as the SPC Project. Using the Base Revenue Requirement amount to determine this credit will ensure TSC customers are not double-charged for the costs associated with the SPC Project and any similar projects, while also ensuring that the credit does not include a project-specific ROE or other project-specific components approved by the Commission.<sup>71</sup>

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<sup>65</sup> Escalona Testimony at 15.

<sup>66</sup> *Id.* at 4.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 4-6.

<sup>69</sup> The proposed ROE and capital structure for the SPC Project are discussed in Section II.C below.

<sup>70</sup> *Id.*

<sup>71</sup> For example, the ROE set forth in the TSC is 10.3%. The ROE, including incentives, requested herein for the SPC Project is 11.5%. If the Commission were to approve an 11.5% ROE for the SPC Project, and

Schedule 15a calculates the revenue requirement for each NMPC transmission project, including the SPC Project, whose revenue requirements will be collected through rates other than NMPC's TSC (such as the SPC-FC). It shows the determination of the components of the net investment base for each project, the components of the Base Revenue Requirement and Differential Revenue Requirement, and the calculation of the Annual True-up amount, including interest.<sup>72</sup> For components where the source column includes "Workpaper \_", the Company will provide an appropriate workpaper during the Annual Update process supporting the input amount for the applicable transmission project. The data for these components will be sourced from the Company's general ledger records and will show reconciliations to filed FERC Form No. 1 amounts. Similarly, where the definitions column indicates "Authorized by FERC Order," those inputs will be populated only upon approval by the Commission.<sup>73</sup>

Schedule 15b will calculate the project-specific return and associated income taxes for projects whose revenue requirements are not recovered through the TSC. This is comprised of a Base Return and Associated Income Taxes, calculated using the cost of capital inputs from the TSC, and an Allowed Return and Associated Income Taxes, which is calculated using the cost of capital inputs approved by the Commission for the specific project. The calculation of these amounts is explained in Ms. Escalona's testimony.<sup>74</sup> The difference between these amounts represents the Differential Return and Associated Income Tax item on Schedule 15a, which is one of the three components of a project's Differential Revenue Requirement.

Schedules 15c and 15d are to be utilized in the event there is excess or deficient Accumulated Deferred Income Taxes ("ADIT") due to changes in federal, state or local income taxes that can be directly attributed to the SPC Project or other projects included in Schedule 15. This will ensure that project balances relating to excess or deficient ADIT are appropriately refunded or charged to the correct customer groups, in accordance with Order No 864.<sup>75</sup> These schedules are modeled on the proposed Schedules 14 and 14a submitted to the Commission by NMPC in Docket No. ER20-

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NMPC were to calculate the credit to its TSC customers using that amount (assuming other return components are identical), this would result in an excessive credit to NMPC's TSC customers.

<sup>72</sup> *Id.* at 6-11.

<sup>73</sup> *Id.* at 6, 9. For instance, Line 2 will include any CWIP that the Commission authorizes NMPC to include in rate base for the specific project.

<sup>74</sup> *Id.* at 11-12.

<sup>75</sup> *Id.* at 12.

2051-001 to account for any excess or deficient ADIT in the TSC, in compliance with Order No. 864.<sup>76</sup>

NMPC is also proposing revisions to Schedules 1 and 10 to ensure the proper credits associated with the revenue requirement for the SPC Project and any similar projects included in Schedule 15 flow through the TSC.<sup>77</sup>

**C. NMPC Is Proposing a Just and Reasonable Base Return on Equity and Capital Structure for the SPC Project**

**1. Base Return on Equity**

NMPC proposes to calculate the Smart Path Connect revenue requirement using a base ROE of 10.5% pursuant to the analysis set forth in the Direct Testimony of Mr. Adrien M. McKenzie, President of FINCAP, Exhibit No. NMPC-300 (“McKenzie Testimony”). Mr. McKenzie performed an independent analysis of and provides a recommendation for a just and reasonable base ROE for NMPC, including determining the zone of reasonableness to be applied to the base ROE plus the requested incentives associated with the SPC Project.<sup>78</sup>

Mr. McKenzie generally describes current economic and capital market conditions, and how those conditions show an increase in investment risk perception with respect to electric utilities such as NMPC.<sup>79</sup> As Mr. McKenzie explains, there is a consensus that the cost of capital will rise over the timeframe during which the SPC Project will be developed and constructed.<sup>80</sup>

Mr. McKenzie goes on to calculate recommended ROEs for NMPC under two approaches consistent with the Commission’s current ROE methodology as set forth in Opinion Nos. 569-A and 569-B.<sup>81</sup> His analysis includes application of the “Three-Model

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<sup>76</sup> These revisions to the TSC are still pending before the Commission. To the extent that the Commission directs additional changes on compliance, those changes will be reflected in Schedules 15c and 15d and submitted to the Commission in a compliance filing after the Commission acts on the instant filing.

<sup>77</sup> Escalona Testimony at 13.

<sup>78</sup> McKenzie Testimony at 19-20. Note that although NMPC is proposing to utilize this base ROE for purposes of determining the Smart Path Connect revenue requirement, it is not proposing to update the ROE applicable to NMPC’s TSC rate (10.3%) at this time.

<sup>79</sup> McKenzie Testimony at 8-19.

<sup>80</sup> *Id.* at 13-16.

<sup>81</sup> *Ass’n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569-A, 171 FERC ¶ 61,154, *order addressing arguments raised on reh’g, & setting aside prior order, in part*, Opinion No. 569-B, 173 FERC ¶ 61,159 (2020).

Approach,” which is comprised of the two-step discounted cash flow (“DCF”) model, the Capital Asset Pricing Model (“CAPM”), and the Risk Premium method.<sup>82</sup> In addition, Mr. McKenzie’s testimony supports supplementing the Three-Model Approach to include the results of the Expected Earnings method (as permitted by Opinion No. 569-A), the combination of which Mr. McKenzie refers to as the “Four-Model Approach.”<sup>83</sup> In calculating these ROEs, Mr. McKenzie utilized a proxy group of twenty-six risk comparable electric utilities (the “Electric Group”) identified based on the Commission’s criteria.<sup>84</sup>

Mr. McKenzie’s analysis for the Three-Model Approach results in a composite ROE range of 7.89% - 12.72%, resulting in a median value of 10.50% and a midpoint value of 10.31%.<sup>85</sup> For the Four-Model Approach, Mr. McKenzie determines a composite range of 7.91% - 13.19%, resulting in a median value of 10.68% and a midpoint of 10.55%.<sup>86</sup> As Mr. McKenzie explains, because NMPC’s credit ratings are identical to, or within one notch of the average for the Electric Group, the median and midpoint values appropriately correspond to a utility of average risk, and therefore he does not consider the risk-based ranges that the Commission adopted in Opinion No. 569-A.<sup>87</sup> The Commission has stated that in cases involving a single utility the median is the appropriate measure of central tendency for a single utility of average risks.<sup>88</sup>

Although the Commission did not adopt the Expected Earnings method in Opinion Nos. 569-A and 569-B, the Commission also did not preclude its use in future cases.<sup>89</sup> In his testimony, Mr. McKenzie explains the various reasons why the Expected Earnings approach offers a meaningful and necessary benchmark in assessing adequate utility returns.<sup>90</sup> For these reasons, it would be entirely just and reasonable for NMPC to propose a base ROE of 10.68% in this instance, representing the median value of Mr. McKenzie’s Four-Model Approach analysis. Notwithstanding this, NMPC is proposing to adopt a base ROE for the SPC Project that is nearly 20 basis points lower - the 10.5% median value determined by the Three-Model Approach.

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<sup>82</sup> McKenzie Testimony at 19-20; 33-52.

<sup>83</sup> *Id.* at 20-21; 52-62.

<sup>84</sup> *Id.* at 31-33.

<sup>85</sup> *Id.* at 19.

<sup>86</sup> *Id.* at 20-21.

<sup>87</sup> *Id.* at 19-20.

<sup>88</sup> Opinion No. 569 at P 398.

<sup>89</sup> McKenzie Testimony at 8.

<sup>90</sup> *Id.* at 52-62.

Mr. McKenzie also presents alternative benchmarks that should be considered as additional reference points in evaluating a just and reasonable base ROE for the Project. Specifically, Mr. McKenzie applies the constant growth DCF model to the proxy group of electric utilities he evaluated, as well as to a low-risk group of non-utility companies. As Mr. McKenzie explains, the constant growth DCF model is a well-established methodology that is widely relied upon to evaluate investors' required ROE.<sup>91</sup> The implied range derived from the application of the constant growth DCF model to the proxy group, and the low-risk group of non-utility companies, provides additional support for the finding that NMPC's requested 10.5% base ROE is just and reasonable.<sup>92</sup>

As discussed above, a base ROE of 10.5% for the Project corresponds to the median value produced by the Three-Model Approach. Setting the base ROE at that percentage is just and reasonable and meets the Commission's policy goal of supporting investment in electric transmission infrastructure. Although, as Mr. McKenzie shows, using the two-step DCF model and the Three-Model Approach would understate the ROE resulting from the supported Four-Model Approach, NMPC still requests an ROE based on the results of the Three-Model Approach.

## 2. Capital Structure

NMPC proposes to determine the weighted cost of capital for the SPC Project using the same approach set forth in its existing TSC, which utilizes NMPC's actual capital structure with the common equity ratio capped at 50 percent.<sup>93</sup> This approach is just and reasonable, as it utilizes the Commission-accepted TSC cost of capital formula and is consistent with Commission precedent on capital structure. Commission precedent reflects a long and clear preference for using the actual capital structure of the utility in establishing the overall rate of return.<sup>94</sup> Moreover, this approach satisfies the Commission's test for utilizing a company's actual capital structure for ratemaking purposes.<sup>95</sup> In particular, the common equity ratio of 50 percent or less is well within the range of capitalization ratios that the Commission has previously approved. Historically,

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<sup>91</sup> *Id.* at 62-72.

<sup>92</sup> *Id.* at 72.

<sup>93</sup> See NYISO OATT, Section 41.2.1 of Attachment H, Schedule 8.

<sup>94</sup> See, e.g., *Kentucky West Virginia*, 2 FERC ¶ 61,139 (1978) ("In our opinion a utility should be regulated on the basis of its being an independent entity; that is, a utility should be considered as nearly as possible on its own merits."); *Transcontinental Gas Pipeline Corp.*, 84 FERC ¶ 61,084 (1998).

<sup>95</sup> See *ITC Holdings Corp.*, 143 FERC ¶ 61,257, at P 78 (2013) (stating that the Commission will use an operating company's actual capital structure where it (1) issues its own debt without guarantees; (2) has its own bond rating; and (3) has a capital structure within the range of capital structures approved by the Commission).

“the Commission has allowed a maximum equity ratio of 68.86% (minimum debt ratio of 31.14%) and a maximum debt ratio of 64.76% (minimum equity ratio of 35.24%).”<sup>96</sup>

**D. NMPC Is Proposing to Adopt a Robust Cost Containment Mechanism for the SPC Project That Is Substantially Similar to Those Approved for Other New York Public Policy-Driven Transmission Projects**

NMPC is proposing to adopt a robust “80/20” cost containment commitment that will apply to the calculation of the ROE for the SPC Project. This cost containment mechanism, which is substantially identical to the mechanism proposed in NYPA’s filing relating to the SPC Project,<sup>97</sup> will incentivize NMPC to develop and place into service its portion the SPC Project at or below a specified Cost Cap by aligning NMPC’s incentives as the developer with customer interests in minimizing costs. The 80/20 cost containment mechanism is also substantially similar to cost containment mechanisms accepted by the Commission for other public-policy driven transmission projects in New York, most notably with respect to both NYPA<sup>98</sup> and LS Power Grid New York Corporation (“LSPG-NY”),<sup>99</sup> the two entities developing the Central East Energy Connect project.<sup>100</sup>

This cost containment commitment is explained in the Prepared Direct Testimony of Andrew Byrne, Commercial Development Director, Clean Energy Development, Exhibit No. NMPC-200 (“Byrne Testimony”), Under the proposed cost containment mechanism, where Eligible Project Costs exceed the Cost Cap, NMPC will earn no ROE on 20% of the equity portion of the actual costs that exceed the Cost Cap. For the other 80% of the equity portion of any actual costs that exceed the Cost Cap, NMPC will earn only its base ROE of 10.5%.<sup>101</sup> See Table 1.

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<sup>96</sup> See Opinion No. 572, 173 FERC ¶ 61,045 at P 53 (2020) (citing 165 FERC ¶ 63,001, at P 195; *Pac. Gas Transmission Co.*, 62 FERC ¶ 61,109, at 61,778-79 (1993); *Allegheny Power*, 106 FERC ¶ 61,241, at PP 25-27 (2004)).

<sup>97</sup> NYPA SPC Project 205 Filing, Transmittal Letter at 31-36.

<sup>98</sup> *New York Indep. Sys. Operator, Inc.*, 176 FERC ¶ 61,211 (2021).

<sup>99</sup> *New York Indep. Sys. Operator, Inc.*, 175 FERC ¶ 61,210 (2021).

<sup>100</sup> In the relevant proceedings, this project was referred to as the “Segment A Project.”

<sup>101</sup> Byrne Testimony at 35.



**Table 1: Cost Containment Mechanism**

<b>Percentage of Total Project Costs Over Cost Cap</b>	<b>Base ROE</b>	<b>ROE Incentives</b>
20%	No	No
80%	Yes	No

NMPC will still remain eligible to recover the depreciation and debt costs on its share of all actual Project-related costs. Moreover, as discussed further below, NMPC is requesting a sliding-scale performance-based rate incentive to allow it to earn an additional incentive ROE if NMPC is able to place its portion of the SPC Project into service at a cost below an Adjusted Cost Cap. The Cost Cap is calculated based on the SPC Project cost estimate, prepared in mid-2021 and submitted to the NYPSC by NMPC and NYPA as part of the permitting process before the NYPSC under Article VII of the New York Public Service Law, less interconnection and network upgrades resulting from the NYISO evaluation process and financing costs. For NMPC’s portion of the project, the Cost Cap is \$481.8 million.<sup>102</sup>

Eligible Project Costs are defined as all capital costs incurred to develop, construct, and place the SPC Project into service excluding Third Party Costs and Unforeseeable Costs in excess of 2.5% of the Cost Cap.<sup>103</sup>

Third Party Costs include: (i) interconnection and network upgrade costs resulting from the NYISO evaluation process; (ii) property taxes; and (iii) any increased costs, *i.e.*, costs incurred related to the rescheduling of outages or to the relocation of

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<sup>102</sup> Byrne Testimony at 35-36. Throughout this transmittal letter, references to the Cost Cap, and to the Adjusted Cost Cap discussed below, mean the Cost Cap and the Adjusted Cost Cap that applies solely to NMPC. Although the cost containment structure proposed herein is substantially similar in operation to the one proposed by NYPA in its own SPC-related filing with the Commission, NYPA is subject to its own Cost Cap and Adjusted Cost Cap, which are dollar amounts different from the Cost Cap and Adjusted Cost Cap amounts applicable to NMPC.

<sup>103</sup> *Id.* at 36. Unlike the cost containment mechanism for the Central East Energy Connect project, NMPC is proposing to include costs associated with project development in the determination of Project Costs. The cost cap used for the Central East Energy Connect Cost project did not include project development costs because they were not included in the bids provided as part of the NYISO competitive solicitation for that project. In contrast, the estimate provided by NYPA and NMPC to the NYPSC as part of their Article VII application for the SPC Project, which is what the Cost Cap here is based on, included project development-related costs. *Id.*

utility assets, which are beyond the ability of NMPC to control or mitigate.<sup>104</sup> Third Party Costs will be excluded from Eligible Project Costs, exempted from application of the Cost Cap, and recovered under the SPC-FC.

Unforeseeable Costs are defined in terms of costs that NMPC could not have reasonably anticipated at the time the estimate was submitted to the NYPSC as part of the Article VII application process.<sup>105</sup> Because these Unforeseeable Costs were not included in the estimate, they are appropriately excluded from Eligible Project Costs. More specifically, Unforeseeable Costs include the following costs:<sup>106</sup>

1. Costs associated with material modifications to the routing or scope of work of the Project that results from a PSC order, negotiation, or settlement agreement 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 NMPC as a normal part of the siting process, shall not be deemed to be Unforeseeable Costs;
2. Costs associated with changes in applicable laws and regulations, or interpretations thereof by governmental agencies;
3. Costs incurred as a result of orders of courts or action, or inaction, by governmental agencies;
4. Related to destruction, damage, interruption, suspension, or interference of or with the Project caused by landslides, lightning, earthquakes, hurricanes, tornadoes, severe weather, fires, explosions, floods, epidemics, pandemics,<sup>107</sup> acts of public enemy, acts of terrorism, wars, blockades, riots, rebellions, sabotage, insurrections, environmental contamination or damage, or strike or

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<sup>104</sup> *Id.* at 36-37. Third-Party Costs are defined the same way they were for the Central East Energy Connect project, with the exception of two items that were excluded from the cost cap for the Central Energy Connect Project but are included in NMPC's Cost Cap for the SPC Project: 1) payments to third parties for real estate acquisitions; and 2) sales tax payments. *Id.* at 37.

<sup>105</sup> *Id.* at 37.

<sup>106</sup> *Id.* at 37-39

<sup>107</sup> NMPC proposes to add "pandemics" to the force majeure provision of Unforeseeable Costs in recognition of the ongoing global health emergency. *See e.g., Business Continuity of Energy Infrastructure*, 171 FERC ¶ 61,007 (2020) (acknowledging the impact of the national emergency caused by COVID-19 on business continuity of regulated entities).

otherwise unavailability of skilled labor, provided that (i) the cause was not reasonably within the control of NMPC, (ii) NMPC made reasonable efforts to avoid or minimize the adverse impacts of any of the above-listed events, and (iii) NMPC took reasonable steps to expeditiously resolve the event after it occurred;

5. Steel cost escalation that is greater than the Construction Cost Index applied to steel costs in determining the Cost Cap;<sup>108</sup> and
6. Total actual project cost escalation, excluding steel costs that are greater than 150% of the Construction Cost Index applied to non-steel costs in determining the Cost Cap.

Only Unforeseeable Costs that exceed 2.5% of the Cost Cap will be excluded from Eligible Project Costs, exempted from application of the Cost Cap, and recovered under the SPC-FC.<sup>109</sup>

**E. Statewide Cost Allocation on the Basis of Load-Ratio Share for the NMPC Portion of the SPC Project Is Just and Reasonable**

**1. Allocating the Costs of Priority Transmission Projects Such as the SPC Project on a Statewide Basis Is Consistent with New York State Legislation and Commission Policy**

As discussed above, NYPA and NMPC are developing and constructing the SPC Project pursuant to the process set forth in New York State's CLCPA and AREGCBA clean energy statutes. The SPC Project was designated by the NYPSC as a PTP due to its determination that the Project will increase the likelihood that New York will meet the CLCPA Requirements and because it can be placed in-service sooner than selection through the NYISO public policy transmission planning process would allow. Because the SPC Project is designed to achieve statewide policy goals, the costs of the Project should be allocated on a statewide basis. Statewide allocation of the costs of the SPC Project is fully consistent with not only New York State law, but also the Commission's precedent and recent policy pronouncements.

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<sup>108</sup> Steel cost escalation is measured by the Handy Whitman Construction Cost Index.

<sup>109</sup> As explained in Mr. Byrne's testimony, NMPC is proposing to reduce the threshold for exclusion of "unforeseeable costs" from Eligible Project Costs from the 5% used by LSPG-NY for the Central East Energy Connect project. Byrne Testimony at 39.

The Commission has consistently recognized that selection through a FERC-jurisdictional regional planning process is not the only permissible pathway by which the costs of a project can be allocated to entities beyond the specific transmission owner constructing the project. In Order No. 1000, while the Commission required public utilities to have in place methods for allocating on a region-wide basis the costs of transmission facilities selected in regional transmission plans for purposes of cost allocation,<sup>110</sup> the Commission did not prohibit alternative cost allocation arrangements. In particular, the Commission indicated that its regional cost allocation requirements did not “in any way foreclose” the use of “participant funding” approaches by which a developer, groups of developers or one or more transmission customers voluntarily assume the costs of a new transmission facility.<sup>111</sup>

More recently, the Commission issued a policy statement addressing state efforts to develop transmission facilities through voluntary arrangements to plan and pay for such facilities. Therein, the Commission acknowledged that voluntary agreements between States and public utility transmission providers “may allow state-prioritized transmission facilities to be planned and built more quickly than would comparable facilities that are planned through the regional transmission planning process(es).”<sup>112</sup> Such agreements can further the Commission’s priority of “[d]eveloping cost-effective and reliable transmission facilities” by “providing states with a way to prioritize, plan, and pay for transmission facilities that . . . are not being developed pursuant to the regional transmission planning processes.”<sup>113</sup> Moreover, the Commission affirmed that Order No. 1000 permits market participants, including states, to negotiate cost sharing arrangements that are distinct from the relevant regional cost allocation methods.<sup>114</sup>

Statewide allocation of the costs of NMPC’s portion of the SPC Project is consistent with the Commission’s voluntary funding policies. First, it appears that the New York utilities representing most of the load that will receive an allocation of the SPC-FC do not oppose this methodology. Both NMPC and NYPA have held meetings with various New York stakeholders, including all of the other New York Transmission

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<sup>110</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323, at P 622 (2011) (“Order No. 1000”).

<sup>111</sup> See Order No. 1000 at P 724.

<sup>112</sup> *State Voluntary Agreements to Plan and Pay for Transmission Facilities*, 175 FERC ¶ 61,225 at P 2 (2021). (“State Agreement Policy Statement”).

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at P 3.

Owners,<sup>115</sup> to discuss the SPC Project and the various ratemaking implications, including a proposed mechanism for allocating NMPC's portion of the Project. The New York Transmission Owners have authorized NMPC to state that they (1) understand the public policy benefits of the Project as presented by the project sponsors and the designation of the SPC Project as a Priority Transmission Project, pursuant to AREGCBA and (2) do not oppose the allocation and recovery of the costs of the NMPC portion of the SPC Project from all New York load based on a volumetric load-ratio share methodology.<sup>116</sup> Also NYPA, the lead project developer, submitted a proposal for recovery of its share of SPC Project costs through its NYPA Transmission Adjustment Charge ("NTAC") to its Voting Member Systems for their consideration. The NTAC is recovered from all load in New York using a load-ratio share approach. None of the Voting Member Systems, consisting of New York electric distribution companies representing the majority of load in the NYCA, voiced opposition to a state-wide cost allocation mechanism or exercised their right to require a vote on the cost allocation mechanism proposed for the Project.<sup>117</sup>

Also, the PTP mechanism adopted in AREGCBA fits squarely in the mold of a voluntary funding arrangement. AREGCBA expresses a "public interest of the people of the state of New York" in the "timely development" of bulk transmission investments necessary to meet the CLCPA Requirements, such that certain projects needed on an expedited basis (*i.e.* PTP projects) should be identified by the NYPSC and developed by NYPA and its selected co-developers outside of the NYISO public policy transmission planning process.<sup>118</sup> And although AREGCBA does not expressly reference a specific cost allocation mechanism for PTP projects, the only logical conclusion is that it contemplates statewide cost allocation for these facilities. First, the public policy purposes and benefits that AREGCBA (and by extension, CLPA) is designed to achieve are clearly statewide in scope; the emissions-reduction requirements and associated benefits are designed to benefit all New Yorkers, and are not exclusive to particular New York customers or regions.<sup>119</sup> In addition, AREGCBA designates NYPA as the presumptive developer for PTP projects, with NYPA having the ability to select co-participants for these projects.<sup>120</sup> NYPA recovers the costs of its transmission facilities

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<sup>115</sup> These consist of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc., the Long Island Power Authority, and New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation.

<sup>116</sup> These statements do not bind the New York Transmission Owners with respect to any positions they might adopt regarding other aspects of the filing, including the proposed rate.

<sup>117</sup> See Testimony of Bart D. Franey, Exhibit No. NMPC-400 at 9-10 ("Franey Testimony").

<sup>118</sup> AREGCBA § 7(5).

<sup>119</sup> See Franey Testimony at 7-8 (citing CLCPA § 1).

<sup>120</sup> AREGCBA § 7(5).

on a statewide basis through its NTAC rate.<sup>121</sup> There is no reason to treat the costs incurred by a PTP project co-participant such as NMPC any differently.<sup>122</sup> In short, through AREGCBA, the State of New York has essentially volunteered New York customers to pay for PTP projects. This approach is analogous to the cost allocation method set forth under the PJM State Agreement Approach (“SAA”) accepted by the Commission as a component of PJM’s Order No. 1000 compliance filings.<sup>123</sup> As the Commission explained in the State Agreement Policy Statement, under the SAA approach, state governmental entities, individually or jointly, “may agree voluntarily to be responsible for the allocation of all costs of a proposed transmission facility that addresses state public policy requirements identified or accepted by the relevant state(s) in the PJM region.”<sup>124</sup>

Additionally, statewide allocation of the costs of the SPC Project is also consistent with precedent and Commission policy requiring that costs must be allocated in a manner “roughly commensurate with estimated benefits,” and establishing that such benefits may include “meeting Public Policy Requirements.”<sup>125</sup> Accordingly, the costs associated with the development and construction of the SPC Project, a project selected to meet public policy goals adopted to benefit all New York residents, are appropriately allocated on a statewide basis. Such statewide allocation is consistent with statewide allocation of projects previously developed to satisfy public policy requirements.<sup>126</sup> In addition to the established public policy benefits, the SPC Project will benefit customers of New York by delivering control area-wide load savings, capacity market savings, and reduction of transmission congestion that will permit the delivery of transmission-

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<sup>121</sup> NYISO OATT, Attachment H, Section 14.2.2.2.

<sup>122</sup> Indeed, the NYPSC, in addressing “local” transmission upgrades being planned pursuant to AREGCBA as necessary to meet the same CLCPA Mandates as bulk transmission projects such as the SPC Project, explicitly found that the costs of such upgrades should be allocated statewide. *Order on Local Transmission and Distribution Planning Process and Phase 2 Project Proposals*, Case 20-E-0197 (Sept. 9, 2021) at 22-23. It would make no sense to allocate those costs to lower voltage transmission facilities statewide but allocate differently for bulk facilities.

<sup>123</sup> See *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at PP 142-44 (2013) (“if a State decides, through the State Agreement Approach to support a transmission project that serves only the state public policy requirements, then a state may do so”), *order on reh’g and compliance*, 147 FERC ¶ 61,128, at P 92 (2014); PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, section 1.5.9(a).

<sup>124</sup> State Agreement Policy Statement at P 4, n.5.

<sup>125</sup> See, e.g., *Illinois Commerce Commission v. FERC*, 576 F.3d 470 (2009); Order No. 1000 at P 622.

<sup>126</sup> In *New York Independent System Operator, Inc.*, 161 FERC ¶ 61,160 (2017), the Commission approved partial state-wide allocation for the public policy-driven AC Transmission Upgrades Project that reflects both state-wide benefits and more targeted benefits, as determined by the NYPSC. The PSC determined that 25% of the benefits of the project are policy driven and are appropriately allocated state-wide on a load ratio share basis.

constrained northern New York generation across the state.<sup>127</sup> These benefits are not limited to any one zone or Transmission Owner service territory.<sup>128</sup> Accordingly, statewide cost allocation would still be roughly commensurate with benefits even if public policy benefits were not considered.

As discussed above, the statewide cost allocation methodology proposed by NMPC for the SPC Project is consistent with Commission policy, as articulated in Order No. 1000 and the State Agreement Policy Statement, and the NYISO tariff. Nevertheless, NMPC acknowledges that projects developed under these circumstances exist between two regulatory regimes. The Commission acknowledged such challenges in its order soliciting nominations for a joint federal state task force:

Developing new transmission infrastructure implicates a host of different issues, including how to plan and pay for these facilities. Federal and state regulators each have authority over transmission-related issues, meaning that transmission developers must successfully navigate different federal and state regulatory processes.<sup>129</sup>

Therefore, even if the Commission believes that statewide allocation of the costs of the NMPC portion of the SPC Project would require a revision or extension of its current cost allocation policies, NMPC urges the Commission to do so.<sup>130</sup> Novel State approaches for planning and funding transmission such as AREGCBA will likely play an increasingly important role in helping to spur the significant transmission buildout that will be necessary over the coming decade to meet clean energy policy goals, and the Commission should adapt as necessary its policies in order to help States such as New York meet these challenges.

## **2. Load Ratio Share Is a Just and Reasonable Means to Implement Statewide Allocation of the Costs of NMPC's Portion of the SPC Project**

The load-ratio cost allocation mechanism proposed by NMPC for its share of the Project costs is set forth in Rate Schedule 18, as described above. This methodology is

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<sup>127</sup> Gemmell Testimony at 26-30.

<sup>128</sup> Franey Testimony at 11.

<sup>129</sup> *Joint Federal-State Task Force on Electric Transmission*, Order Establishing Task Force and Soliciting Nominations, 175 FERC ¶ 61,224 at P 2 (2021).

<sup>130</sup> See State Agreement Policy Statement at P 6 (“To the extent that states or public utility transmission providers believe there are barriers to Voluntary Agreements in Commission-jurisdictional tariffs or other agreements, we encourage them to . . . consider making filings before this Commission to address those barriers.”).

substantially similar to the allocation mechanism contained in NYPA's commission-approved NTAC rate, through which NYPA will recover the costs of its portion of the SPC Project.<sup>131</sup> Under this approach, costs will be allocated to all New York LSEs, on a state-wide load ratio share basis.<sup>132</sup> As discussed above, the other New York Transmission Owners do not oppose this methodology. Also, load ratio share cost allocation is "roughly commensurate" with the statewide policy benefits of the Project.<sup>133</sup> The load ratio share cost allocation methodology is also consistent with the cost allocation methodology utilized by NYISO for projects selected to meet public policy requirements established by the NYPSC.<sup>134</sup> Moreover, the NYPSC made clear that "local" transmission upgrades necessary to meet New York's clean energy mandates should be allocated statewide on a load-ratio share basis.<sup>135</sup> Given that the regulatory and statutory requirements for bulk-transmission PTPs, such as the SPC Project, are the same as those driving the need for and approval of local transmission upgrades, it is reasonable to adopt the same cost allocation approach for both.<sup>136</sup>

### III. NMPC'S INCENTIVE REQUESTS FOR THE SPC PROJECT

NMPC seeks the following transmission incentives for its portion of the SPC Project: (1) a 50 basis-point incentive ROE Risk Adder representing the risks and challenges associated with the Project not readily accounted for in NMPC's base ROE; (2) a 50 basis-point incentive ROE for RTO Participation, or in the alternative to account for benefits to customers, including congestion benefits; (3) recovery of 100 percent of prudently incurred costs for CWIP in rate base ("100 Percent CWIP Request"); (4) recovery of 100 percent of prudently incurred costs if SPC is abandoned, in whole or in part, as a result of factors beyond NMPC's control ("Abandonment Incentive");<sup>137</sup> and (5) a performance-based rate associated with the implementation of the cost containment commitment that NMPC is making for the Project.

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<sup>131</sup> See NYISO OATT, Attachment H, Section 14.2.2.

<sup>132</sup> Franey Testimony at 4-5.

<sup>133</sup> Franey Testimony at 10-11.

<sup>134</sup> NYISO OATT, Attachment Y, Section 31.5.5.4.3 ("[u]nless the Commission has accepted an alternative cost allocation methodology pursuant to this Section, the ISO shall allocate the costs of the Public Policy Transmission Project to all Load Serving Entities in the NYCA using the default cost allocation methodology, based upon a load ratio share methodology.").

<sup>135</sup> See *supra* fn 122.

<sup>136</sup> See Franey Testimony at 8-9.

<sup>137</sup> As discussed below, the Abandonment Incentive is the subject of a Petition for Declaratory Order pending before the Commission in Docket No. EL22-17.



**A. The Smart Path Connect Project Is Eligible for Incentive Rate Treatments Because It Promotes Reliability and Reduces the Cost of Delivered Power**

**1. The Smart Path Connect Project Qualifies for the Rebuttable Presumption That It Promotes Reliability or Reduces the Cost of Delivered Power**

Order No. 679 establishes a rebuttable presumption that a project promotes reliability or reduces the cost of delivered power if: (1) the transmission project results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion; or (2) the transmission project has received construction approval from an appropriate state commission or state siting authority.<sup>138</sup> The SPC Project qualifies for the rebuttable presumption under both prongs of the rebuttable presumption test.

The SPC Project satisfies the rebuttable presumption test due to its selection as a PTP by the NYPSC. In Order No. 679, the Commission stated that it “carefully consider[s] the views of any state bodies having jurisdiction” over project siting and permitting in determining whether a project qualifies for incentives, and that it will adopt the rebuttable presumption for “projects approved by an appropriate state commission or siting authority.”<sup>139</sup> In Order No. 679-A, the Commission further clarified that it created the rebuttable presumption “for the purpose of avoiding duplication in determining whether a project maintains reliability or reduces congestion,” stating that the Commission “do[es] not wish to repeat the work of state siting authorities, regional planning processes, or the DOE in evaluating these issues.”<sup>140</sup>

The NYPSC has determined that the Smart Path Connect Project is needed as a PTP as a part of its mandate under New York State law (AREGCBA) to expedite bulk transmission investments needed to achieve the CLCPA Mandates. In the Priority Project Order, the NYPSC found that the Project is “needed expeditiously” to meet the State’s CLCPA Requirements because it would unbottle a significant amount of existing renewable generation in the northern New York region.<sup>141</sup> In making this determination, the NYPSC specifically found that “the State’s investments in renewable generation in the northern region are not being fully realized due to transmission limitations” and that “a significant amount of existing renewable generation is subject to curtailment because

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<sup>138</sup> Order No. 679 at P 58.

<sup>139</sup> Order No. 679 at P 54.

<sup>140</sup> Order No. 679-A at P 46.

<sup>141</sup> Priority Project Order at 21.

of those limitations.”<sup>142</sup> The NYPSC also noted that advancing the Project would help facilitate the development of planned renewable generation in the area.<sup>143</sup>

Moreover, in evaluating the Project, the NYPSC reviewed the costs and benefits of addressing the curtailment of existing renewable generation through construction of the Project and found that the engineering and economic justifications presented by NYPA, which demonstrated benefits, such as reduced congestion costs, were sufficient to evaluate the SPC Project and ultimately approve it as needed on an expedited basis.<sup>144</sup>

Although the Project must still complete the Article VII application process, the NYPSC is clear in its expectation that this project will be constructed expeditiously. Following designation of the Project as a PTP, the Project was included as a part of the baseline transmission system in the Initial Power Grid Study, which is a foundational element of the NYPSC’s transmission and distribution planning process to meet the CLCPA Mandates.<sup>145</sup> Thus, the Project has been approved in substance by the NYPSC. A failure to grant the rebuttable presumption here would require the Commission to duplicate the NYPSC’s review and analysis of transmission congestion in northern New York, and solutions that effectively address it, which the Commission stated it will avoid.<sup>146</sup>

The SPC Project also meets the rebuttable presumption test because the process in which the NYPSC determined that the Project is needed (the “PTP Proceeding”) was a fair and open public planning process.<sup>147</sup> Through this open and transparent NYPSC proceeding to “implement transmission planning,” the Project was determined to be needed on an expedited basis to meet the State’s CLCPA Mandates, and to provide significant congestion relief benefits. The fact that this planning process was conducted pursuant to New York State law rather than a federal tariff should not affect the eligibility of the Project for the rebuttable presumption. As the Commission has recently made clear, both federal and state regulators have authority over transmission-related issues, and given this, and the numerous federal and state priorities implicated by transmission planning, “the area is ripe for greater federal-state coordination and cooperation.”<sup>148</sup>

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<sup>142</sup> *Id.* at 25.

<sup>143</sup> *Id.* at 21.

<sup>144</sup> *Id.* at 27.

<sup>145</sup> Initial Power Grid Study at 2, n.2, 79, n.76, and Appendix E at E-4, E-38.

<sup>146</sup> Order No. 679-A at P 46.

<sup>147</sup> NYPSC Case 20-E-0197, *Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*.

<sup>148</sup> *Joint Federal-State Task Force on Electric Transmission*, Order Establishing Task Force, 175 FERC ¶ 61,224 at P 2.

Consistent with this goal of improved coordination and cooperation, the Commission should find that the rebuttable presumption applies equally to federal planning mechanisms and robust state planning mechanisms, like the PTP Proceeding.

In the PTP Proceeding, the NYPSC both established the criteria for identifying a Priority Transmission Project and evaluated whether the SPC Project satisfied the PTP Criteria. The proceeding was open to the public and the NYPSC provided an opportunity to comment on both the PTP Criteria and the proposed SPC Project. Stakeholder concerns were ultimately addressed by the NYPSC in its Priority Project Order. Additionally, consistent with Commission guidance set forth in Order No. 679-A for invoking the rebuttable presumption, the NYPSC appropriately considered whether the SPC Project reduces congestion.<sup>149</sup> In fact, the NYPSC established “the transmission investment’s potential for unbottling existing renewable generation,”<sup>150</sup> *i.e.*, reducing congestion that is preventing renewable generation from being delivered, as a cornerstone of its PTP criteria.

## **2. Even if the Smart Path Connect Project Does Not Qualify for the Rebuttable Presumption, the Project Is Eligible for Transmission Rate Incentives**

The Commission has held that where an applicant does not qualify for Order No. 679’s rebuttable presumption, applicants may still qualify for incentives if they “demonstrate that their project is needed to maintain reliability or reduce congestion by presenting a factual record that would support such [a] finding.”<sup>151</sup> The SPC Project qualifies for the rebuttable presumption for the reasons set forth above. Nevertheless, if the Commission finds that the Project does not qualify for the rebuttable presumption, the Commission should still find that the Project is eligible for transmission rate incentives because there is ample factual support showing that the Project will significantly reduce congestion associated with the delivery of renewable generation in northern New York State to load centers across the state. As discussed in Section I.A.4 above and in Mr. Gemmell’s testimony, transmission planning studies performed by NYPA have found that the Smart Path Connect Project will accommodate an additional 1,000 MW of firm transfer capability for renewable energy generation in the northern New York region, which corresponds to the transmission capability deficiencies identified by NYISO.<sup>152</sup>

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<sup>149</sup> Order No. 679-A at P 49. (“[W]e will . . . require each applicant seeking to invoke the rebuttable presumption to explain in its filing how the applicable process (regional planning or state approval) in fact considered whether the project . . . reduce[s] congestion.”).

<sup>150</sup> Priority Project Order at 17.

<sup>151</sup> Order No. 679 at P 57.

<sup>152</sup> Gemmell Testimony at 28.

Moreover, simulation studies performed by NYPA show that placing the Project into service would result in 7.5 TWh of avoided renewable generation curtailments on an annual basis and also provide a series of related economic and environmental benefits.<sup>153</sup> NYPA studies also show that the Project would provide capacity market benefits of \$25 - \$50 million annually.<sup>154</sup>

The Project will also facilitate the deliverability of renewable generators that are expected to come online in the near future by avoiding potential congestion that could impede their delivery. As explained above, the NYISO interconnection queue contains more than 2,460 MW of planned renewable generation in the northern New York region that will not be deliverable to load centers on firm basis without significant expansion of the transmission network in northern New York.<sup>155</sup>

## **B. NMPC Faces Significant Financial, Regulatory, Project Construction, and Other Risks in Connection with the Development of the Smart Path Connect Project**

### **1. Financial Risks**

There are a variety of significant financial risks and challenges facing NMPC in connection with the development of the SPC Project. The Project represents a major transmission investment for NMPC that has the potential to adversely impact NMPC's finances. Given the size of NMPC's proposed investment compared to its current average annual transmission investment, NMPC will face financial risk as a result of its development of the Project. In terms of all transmission capital projects undertaken by NMPC, most are much smaller than the Project, with 85% of all capital projects budgeted at less than \$20 million.<sup>156</sup>

There are risks inherent in the construction of major bulk power transmission lines. The Commission has recognized a number of the risks, including cash flow prior to facilities being placed in service. In New York, these risks are particularly challenging. The Commission has acknowledged that "no single utility [is] obligated to build" new high voltage lines and upgraded infrastructure necessary to support the wholesale power markets no matter the generation source.<sup>157</sup> The lack of obligation to

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<sup>153</sup> Gemmell Testimony at 11.

<sup>154</sup> Gemmell Testimony at 30.

<sup>155</sup> See *supra* Section I.A.4; Gemmell Testimony at 26.

<sup>156</sup> Byrne Testimony at 8.

<sup>157</sup> Order No. 679 at P 25.

assume the financial risks of the construction of bulk power transmission to support wholesale power markets, makes clear why there has been only limited New York transmission development in the past 30 years, even in historically constrained areas of the State. Accordingly, NMPC's investment in the Project is by definition an effort that "exceed[s] the normal risks undertaken by a utility."<sup>158</sup>

During the project development and construction phases of the Project, NMPC will expend large amounts of capital – up to nearly \$150 million in a single year.<sup>159</sup> Should the project be abandoned, the costs incurred would be borne by NMPC shareholders.<sup>160</sup> The subsequent balance sheet impairment would have negative impacts on key financial ratios, *i.e.*, credit metrics, and may negatively impact NMPC's ability to attract debt on favorable terms. The scale of this project when considered in conjunction with its origin as a public policy project mandated by state legislation, magnifies the risk that the project could be abandoned, through no fault of NMPC, thus saddling NMPC's shareholders with costs they are not authorized to recover. The choices NMPC must make to account for this risk when choosing how to deploy the capital necessary to develop the SPC and other projects could slow the development of much needed transmission infrastructure

The financial risk to NMPC of expending large amounts of capital is still significant even if the Project is not abandoned. The expenditures required to develop and construct this Project will place downward pressure on NMPC's credit metrics. Moreover, the SPC Project is being developed during a period where NMPC is already planning significant additional transmission investment.<sup>161</sup> As explained in Mr. Byrne's testimony, while NMPC's investments in transmission infrastructure are continuing to increase, its credit metrics have deteriorated.<sup>162</sup> In November 2021, Moody's Investor Services downgraded NMPC's credit rating to Baa1, stating that its credit quality was constrained by downward pressure on cash flows, and noting the company's large and growing capital expenditures.<sup>163</sup> Given the limited room for further deterioration based on current projections, reduced cash flows or increased debt caused by transmission projects such as the SPC Project have the potential to negatively impact NMPC's credit metrics, and ultimately, its credit rating.<sup>164</sup> In order to maintain its current metrics, it is

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<sup>158</sup> *Id.* at P 27.

<sup>159</sup> Byrne Testimony at 30.

<sup>160</sup> The Abandonment Incentive requested by NMPC only applies in certain circumstances. That incentive also only provides NMPC the right to make an FPA Section 205 filing to seek abandoned plant recovery.

<sup>161</sup> Byrne Testimony at 30.

<sup>162</sup> Byrne Testimony at 9.

<sup>163</sup> Byrne Testimony at 12.

<sup>164</sup> Byrne Testimony at 14.

important that the SPC Project generate sufficient cashflows both during construction and throughout the life of the asset. A lower credit rating would increase NMPC's cost of debt and make access to capital markets more difficult, which could limit its ability to develop future projects and would necessarily increase the costs to NMPC's ratepayers.<sup>165</sup>

These financial risks can extend beyond the Project's in-service date. A project developer must obtain rates of return adequate to enable it to raise capital on reasonable terms. However, the methodologies used to determine the ROE a project developer is authorized to recover are based on expectations formed prior to placing the project in service. This presents a risk for the project developer that rates it is authorized to receive will not reflect the economic conditions it will face while operating the project. The risk is greater for large transmission projects. For extremely large projects requiring significant amounts of capital, an insufficient ROE has the potential to negatively impact its ability to raise the capital necessary to develop other projects at rates that do not harm consumers or delay needed projects. The effect is magnified during periods where capital is scarce, competition for capital is heightened, or inflation is high, and the rates required to attract capital are increasing.

The aforementioned risks are exacerbated by current economic trends. For example, there is a consensus among economic forecasters that bond yields will increase significantly over the near term, thus increasing the cost of permanent capital.<sup>166</sup> Expectations regarding the increase are supported by the actions of the Federal Reserve, as evidenced by its plans to significantly wind down its asset purchases over the coming months.<sup>167</sup> Such increases suggest that the current cost of capital estimates will likely underestimate what investors will demand over the period in which this project is developed.<sup>168</sup> The expected inflationary pressures significantly increase risk for highly regulated project developers pursuing capital intensive projects in an environment where the cost of capital is increasing and their ability to recover increasing costs may be limited.

## **2. Regulatory Risks**

Factors beyond the control of NMPC could impact whether or not the Project will ultimately be built. The Project was approved as a PTP based on the NYPSC's finding that the Project is needed expeditiously to meet the State's CLCPA Mandates. Even transmission projects that have received regulatory approvals are subject to ongoing

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<sup>165</sup> Byrne Testimony at 15.

<sup>166</sup> McKenzie Testimony at 14.

<sup>167</sup> McKenzie Testimony at 15

<sup>168</sup> McKenzie Testimony at 14.

challenges, as evidenced by the dramatic turn of events that derailed the New England NECEC project.<sup>169</sup> Legal challenges could lead to cancellation or significant modification of the Project. Similarly, changes in the legislative or executive leadership of the State could introduce changes to CLCPA, AREGCBA, or other state laws that could result in cancellation or modification of the Project. These risks are significant and will only grow as NMPC continues development of, and increases its investment in, the Project.<sup>170</sup>

There are also a number of known environmental, regulatory, and siting risks associated with the development of the Project. Most significantly, although the NYPSC has already designated the Project as a PTP, NMPC and NYPA still need to obtain all necessary permits and approvals, including siting approvals required under Article VII of the New York Public Service Law. Under Article VII, the Project will require a Certificate of Environmental Compatibility and Public Need (“Certificate”) and an approved Environmental Management and Construction Plan (EM&CP) from the NYPSC before Project construction may begin.<sup>171</sup> The NYPSC has broad authority and discretion to impose in the Certificate any terms, conditions, limitations, or modifications of the proposed project that it deems appropriate.<sup>172</sup> These Certificate conditions can include facility location requirements, construction activity restrictions, required environmental or agricultural inspections, and applicant reporting requirements to regulators.<sup>173</sup> NMPC and NYPA jointly submitted their Article VII application on June 15, 2021. On December 24, 2021, the NYPSC issued the Project a completeness determination.<sup>174</sup>

The Article VII approval process may involve significant additional public consultation, opening the Project up to public opposition to the construction of these new facilities by affected landowners, elected officials, and other stakeholders. The public consultation may be particularly challenging and could play a significant role in the Article VII permitting process.<sup>175</sup> If a party challenges NMPC and NYPA’s Article VII application, NMPC may be required to offer evidentiary proof in support of the application, defend its positions, and demonstrate compliance with applicable statutes and

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<sup>169</sup> Byrne Testimony at 20.

<sup>170</sup> *Id.*

<sup>171</sup> Byrne Testimony at 15.

<sup>172</sup> N.Y. Pub. Serv. Law § 121; *see also* *Cty. of Orange v. PSC*, 353 N.Y.S.2d 916 (N.Y. App. Div. 3d Dep’t 1974), *modified*, 37 N.Y. 2d 762 (N.Y. 1975).

<sup>173</sup> Byrne Testimony at 18.

<sup>174</sup> Byrne Testimony at 16.

<sup>175</sup> Byrne Testimony at 19.

regulations. This adjudicatory process could take months or years, resulting in significant construction delays, or, ultimately, abandonment of the Project.<sup>176</sup> NMPC and NYPA issued a notice of impending settlement negotiations on December 27, 2021, and settlement discussions commenced on January 10, 2022.<sup>177</sup>

Prior to construction the Project will also need to apply to the U.S. Army Corps of Engineers (“USACE”) for sections 10 and 404 permits for wetlands and waterbody crossings.<sup>178</sup> USACE requires that wetlands and waterbody impacts be mitigated or minimized. Finally, several other stand-alone permits will need to be obtained prior to the Project’s construction, including but not limited to: New York State Department of Environmental Conservation State Pollution Discharge Elimination System General Permit for Stormwater Discharge During Construction Activities; Utility Work Permit from the New York State Department of Transportation; Coastal Consistency Certificate from the New York State Department of State; historic and archaeological clearances from the New York State Historic Preservation Office/New York Office of Parks, Recreation and Historic Preservation.<sup>179</sup>

To minimize costs and environmental impacts, NMPC and NYPA have proposed to develop the majority of the Project within their existing rights-of-way.<sup>180</sup> However, NMPC and NYPA will need to engage in good faith negotiations with third party property owners to obtain certain property rights necessary to construct the Project as proposed. Although NMPC has experience in negotiating and obtaining easements, including from other incumbent utilities and private landowners, it is possible that NMPC’s and NYPA’s efforts to obtain the existing rights of way may result in disputes or challenges that could, at a minimum, jeopardize the Project’s in-service date or require a material modification to the Project as proposed. To the extent the Project must be modified as a result of any of these processes, the Project could be significantly delayed or could be jeopardized entirely.

### **3. Project Construction Risks**

Mr. Byrne’s Testimony details several Project construction-related risks, many of which are heightened as a result of the COVID-19 pandemic and current economic environment. For instance, the SPC Project may face issues with material procurement. The SPC Project’s material procurement risks include raw materials, particularly steel

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<sup>176</sup> Byrne Testimony at 17.

<sup>177</sup> *Id.*

<sup>178</sup> Byrne Testimony at 16.

<sup>179</sup> See Exhibit No. NMPC-202.

<sup>180</sup> See Article VII Application at 4.



price volatility, which has been heightened due to the aforementioned pandemic.<sup>181</sup> Further, manufacturing availability, quality, and delivery logistics-related risks are significant for a project of this scale.<sup>182</sup>

The SPC Project also faces potential labor and equipment shortages, risks that have likewise been exacerbated by the COVID-19 pandemic and are anticipated to pose a significant challenge. The large number of transmission projects undertaken in New York and nationally over the same time period as the SPC Project are expected to strain the availability of transmission line contractors and crews, particularly if there are project delays. This could have an impact on Project cost and schedule.<sup>183</sup>

Both NMPC and NYPA will also require system outages which at times may not be granted by NYISO due to system operation constraints. These outages will need to be coordinated to ensure continued system reliability. Moreover, the existing transmission facilities to be upgraded in connection with the Project provide a significant amount of power across the state. Requested outages to perform the necessary facility work may be restricted, *i.e.* shorter outage/construction durations or the need for temporary transmission lines may be required to mitigate reliability concerns, resulting in additional costs to the Project.<sup>184</sup> As a result, the scale of the Project and the volume of additional transmission projects currently underway across New York raises the risk that required system outages may not be obtainable in the timeframe needed for Project completion. This could impact the Project schedule and impose additional costs.<sup>185</sup>

NMPC or NYPA may face unexpected underground risks, including the potential for unexpected geotechnical conditions during construction, such as rocks which would require rerouting or drilling. Such unforeseen underground risks would result in schedule delays and increase costs.<sup>186</sup>

Finally, as described in Mr. Byrne's Testimony, other risks include (i) delays and increased project costs due to an unusually wet environment that requires an increased use of matting; (ii) wet conditions during construction that could lead to delays to the Storm Water Pollution Prevention Plan inspection schedule and increased costs for maintenance and sediment control; and (iii) extreme weather related issues that may

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<sup>181</sup> Byrne Testimony at 22.

<sup>182</sup> Byrne Testimony at 23.

<sup>183</sup> Byrne Testimony at 22.

<sup>184</sup> Byrne Testimony at 21.

<sup>185</sup> Byrne Testimony at 22.

<sup>186</sup> Byrne Testimony at 23.

include, but are not limited to, rain, ice, hurricanes and blizzards that could lead to schedule delays and additional costs.<sup>187</sup>

**C. NMPC Should Be Granted Risk Reducing and ROE Adder Incentives to Address the Risks Encountered in the Development of the Smart Path Connect Project and the Need to Obtain Financing on Favorable Terms**

NMPC is requesting a package of incentives and treatments that appropriately recognize the risks and challenges faced and the benefits provided by the SPC Project. NMPC requests a total incentive ROE of 11.5%, which is comprised of a 10.5% base ROE and 100 basis points of incentive ROE adders. NMPC also requests a performance-based adder intended to share savings created through the cost containment mechanism. The performance-based rate adder ranges from 0.05% to 0.71% based on NMPC's ability to develop the project below the Cost Cap. Thus, the total ROE requested by NMPC, including the performance-based rate, will fall within the range of 11.5% (assuming no performance-based incentive) and 12.21% (assuming a maximum performance-based incentive). The maximum ROE available under this request falls below the top end of the zone of reasonableness, as established in Mr. McKenzie's analysis, which is 12.72%; resulting from his Three Model Approach.<sup>188</sup>

Because NMPC is requesting an incentive ROE adder for the risks and challenges of the Project, the requested risk reducing incentives will be discussed first, in accordance with the Commission's 2012 Incentive Policy Statement.<sup>189</sup>

**1. 100% CWIP in Rate Base**

The Commission has found that authorizing the inclusion of 100 percent CWIP in rate base can spur transmission investment, provide up-front regulatory certainty and rate stability, and improve cash flow.<sup>190</sup> As discussed in Mr. Byrne's testimony, granting this incentive will mitigate the financial risks and downward pressure on credit metrics that NMPC will endure during project development.<sup>191</sup> The SPC Project represents a substantial transmission investment for NMPC and requires large capital expenditures

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<sup>187</sup> *Id.*

<sup>188</sup> See Exhibit No. NMPC-303.

<sup>189</sup> *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 at P 11 (2012) ("Incentives Policy Statement") ("risk-reducing incentives may mitigate risk not accounted for in the base ROE, and we therefore expect incentives applicants to first examine the use of risk-reducing incentives before seeking an incentive ROE based on a project's risks and challenges.")

<sup>190</sup> Order No. 679 at P 115.

<sup>191</sup> Byrne Testimony at 27.

during the construction period, that will negatively impact the cash flows and debt levels that influence NMPC's credit metrics.<sup>192</sup> 100 percent CWIP recovery will ensure that the decrease in cash flow and the increase in debt that are likely to occur due to the development of this large project are mitigated, so that NMPC's credit metrics are not as negatively impacted during the construction period.<sup>193</sup>

Granting 100 percent CWIP will also help NMPC raise debt from investors who may be discouraged by long delays in the recovery of costs and decide to deploy their capital elsewhere. The competition for capital can be greater for entities that have agreed to cost containment provisions for their projects, as NMPC has, which places increased financial risk on such project developers, particularly where other transmission projects are not subject to such limitations. As the Commission has recognized, granting the 100 percent CWIP incentive will help the construction of large-scale transmission projects, such as the SPC Project.<sup>194</sup>

The inclusion of 100 percent CWIP in rate base will also reduce rate shock to ratepayers that would otherwise occur under an approach strictly based on Allowance for Funds Used During Construction ("AFUDC").<sup>195</sup> Reducing rate shock will enable NMPC to provide ratepayers with greater rate stability compared to capitalizing such costs as AFUDC.<sup>196</sup> As the Commission has held:

Without any CWIP in rate base, a new plant has no direct effect on consumer prices until it begins to provide service. Then, when it does come on line, consumer's rates must be increased to give the company a cash return on both the direct cost of the plant and the capitalized AFUDC as well as a return of capital through depreciation. If the plant is large relative to the existing rate base, the result can be a rate increase that is both large and sudden, producing a so-called "rate shock" . . . . In contrast, with all CWIP in rate base, the impact of new plant is spread over the entire construction period, and the rates when the plant begins to provide

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<sup>192</sup> *Id.*

<sup>193</sup> Byrne Testimony at 10.

<sup>194</sup> *The United Illuminating Company*, 119 FERC ¶ 61,182 (2007) ("UI Incentive Order") at P 66 ("The Commission also agrees with UI that allowing the 100 percent CWIP incentive will help ensure completion of the Project.").

<sup>195</sup> See Order No. 298, 48 Fed. Reg. 24,323 at 30,445 (1983) ("Order No. 298") ("a CWIP policy would reduce the current cost of capital, thereby reducing current revenue requirements, and benefiting current ratepayers").

<sup>196</sup> See e.g., *PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.*, 135 FERC ¶ 61,229 (2011). See also *PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068 at P 43 (2008), *reh'g denied*, 124 FERC ¶ 61,229.

service are lower because they do not include a return on and of capitalized AFUDC.<sup>197</sup>

Accordingly, in addition to the risk reducing benefits to NMPC discussed above, the 100 percent CWIP incentive directly benefits ratepayers by altering the timing of cost recovery and improving rate stability. It also results in a lower overall revenue requirement over its life compared to AFUDC.

To prevent double recovery, NMPC will implement accounting procedures as described in Ms. Escalona's testimony.<sup>198</sup> Specifically, NMPC will monitor and specifically tag all project work orders associated with the Project to prevent AFUDC from accruing on the work orders. NMPC will also provide footnote disclosures in the notes to the financial statements of NMPC's annual FERC Form No. 1 and quarterly FERC Form 3-Q which will fully explain the impact of CWIP in rate base, including details of AFUDC non-capitalized because of the inclusion of CWIP in rate base for the current year, the previous two years, and the sum of all years. The proposed disclosure will also include a partial balance sheet which includes an Assets and Other Debit section with a line item for AFUDC non-capitalized due to the inclusion of CWIP in rate base.<sup>199</sup>

To implement this incentive, NMPC respectfully requests waiver of the Commission's other filing requirements related to CWIP, including, (i) Section 18 C.F.R. § 35.13(h)(38), which requires an applicant to submit a Statement BM, which serves as an applicant's description of its long-range program for providing reliable and economic power, including an assessment of alternatives and an explanation of why the program is consistent with a least-cost energy supply program; (ii) Section 18 C.F.R. § 35.25(c)(4), which requires the development of forward-looking allocation ratios and an evaluation of potential anticompetitive effects of CWIP recovery including "price squeeze" and "double whammy" concerns; and (iii) Section 18 C.F.R. § 35.25(g), which requires an applicant to provide additional information regarding the potential anti-competitive impacts of CWIP recovery, including the proposed CWIP levels included in wholesale and retail rates. NMPC notes that the Commission has recognized that Statement BM was designed primarily for CWIP associated with new generation projects,<sup>200</sup> and that the Commission has waived the requirement to submit Statement BM for utilities that have, or have a pending proposal to have, formula transmission rates.<sup>201</sup> Similarly, the

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<sup>197</sup> Order No. 298 at 30,445.

<sup>198</sup> Escalona Testimony at 13.

<sup>199</sup> Escalona Testimony at 14.

<sup>200</sup> *Mid-Tex Elec. Coop. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985).

<sup>201</sup> *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at PP 92, 94 (2007); *See also New York Transco, LLC*, 151 FERC ¶ 61,004 at PP 48, 80-83 (2015).

Commission's "double whammy" and "price squeeze" requirements relate to concerns that are not present in the case of transmission upgrades in rate base, and the Commission has previously permitted waiver of these requirements for other transmission rate incentive applicants.<sup>202</sup>

## 2. Abandonment Incentive

As discussed above, NMPC will be subject to significant financial, regulatory, and other risks when developing the Project, and therefore faces a substantial risk that the Project will need to be abandoned for reasons outside of NMPC's control. Accordingly, NMPC has requested in a separate petition for declaratory order in Docket No. EL22-17 authorization to recover 100% of prudently incurred costs if the Project is abandoned due to factors beyond its control.<sup>203</sup> NMPC's request for the abandonment incentive directly addresses, and is tailored to, the specific risks posed by NMPC's investment of capital in the Project.

The Commission has held that recovery of 100% of abandoned plant costs is an "effective means of encouraging transmission development by reducing the risk of non-recovery of costs" in the event the project is abandoned for reasons "outside [the developer's] control."<sup>204</sup> The Commission has found that "in addition to the challenges presented by the scope and size of a project, factors like various federal and state siting approvals introduce a significant element of risk" that can be mitigated by the Abandonment Incentive.<sup>205</sup> As a result, the Commission has determined that abandoned plant recovery is appropriate when a project developer, for instance, is unable to obtain the requisite regulatory approvals or necessary property rights,<sup>206</sup> or cannot complete the project because a relevant planning entity determines that the project is no longer needed.<sup>207</sup>

As discussed in NMPC's petition, the Project faces a number of risks and challenges that could lead to eventual abandonment for reasons outside of NMPC's

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<sup>202</sup> See *N. Ind. Pub. Serv. Co.*, 141 FERC ¶ 61,231 at PP 31-34 (2012).

<sup>203</sup> Consistent with the Commission's precedent, in the event the Commission approves the Abandonment Incentive, National Grid would submit an FPA section 205 filing demonstrating that any costs it seeks to recover were prudently incurred and that the abandonment was due to events outside of National Grid's reasonable control. Order No. 679 at P 166.

<sup>204</sup> *N. Ind. Pub. Serv. Co.*, 141 FERC ¶ 61,231 at PP 36-37.

<sup>205</sup> Incentives Policy Statement at P 14.

<sup>206</sup> Order No. 679 at P 165; see also *S. Cal. Edison Co.*, 129 FERC ¶ 61,246 at P 68 (2009), *reh'g denied*, 134 FERC ¶ 61,200 (2011); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009), *clarified by*, 130 FERC ¶ 61,044 (2010).

<sup>207</sup> *PJM Interconnection, LLC*, 141 FERC ¶ 61,177 (2012), *reh'g denied*, 153 FERC ¶ 61,308 (2015).

control. The abandonment incentive will help mitigate these risks and ensure NMPC's credit profile is not compromised due to its participation in the Project. This will result in lower costs to customers and enhance NMPC's ability to continue to finance important capital projects in New York State, including projects necessary to ensure continued reliable service to its customers. The Commission has previously approved abandonment recovery for projects of similar scale and complexity in New York.<sup>208</sup> To reduce the loss of capital risk associated with the potential cancellation of NMPC's approximately \$0.5 billion portion of the Project, the Commission has good cause to grant NMPC the requested abandonment incentive.<sup>209</sup>

### **3. 50 bp Risks and Challenges ROE Incentive Adder**

#### **a. The Risk-Reducing Incentives Discussed Above Do Not Fully Mitigate NMPC's Risks**

The Commission should grant NMPC an ROE incentive adder of 50 basis points for the risks and challenges faced due to the development of the SPC Project in recognition that: (1) the Project will relieve transmission bottlenecks that the NYPSC and NYISO have determined are preventing the delivery of renewable generation across the State, and (2) an incentive ROE is necessary to protect against the substantial risks to NMPC's finances that will be exacerbated by projected increases in capital spending required to meet statewide public policy goals.

Specifically, NMPC requests a 50 basis point adder to its ROE based on the many risks and challenges facing the Project. NMPC will face a number of serious financial, regulatory, and other risks and challenges that will not be accounted for in its base ROE or adequately addressed by the risk-reducing incentives discussed above. Although the abandonment and CWIP incentives will help mitigate certain financial and regulatory risks associated with the construction phase of the project, they do not address all of these risks or the longer-term risks NMPC faces in obtaining capital on favorable terms during periods in which capital expenditures on transmission development are expected to increase. An ROE incentive adder will help protect cash flows as NMPC raises the capital needed for increasing transmission investment associated with the SPC Project and other infrastructure needed to meet the CLCPA requirements.<sup>210</sup> Also, as Mr. McKenzie explains, economic and capital market conditions arising in large part from the impacts of the ongoing COVID-19 pandemic have led to extreme volatility in the capital

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<sup>208</sup> See, e.g., *LS Power Grid New York, LLC*, 167 FERC ¶ 61,139 (2019) ("LS Power Incentive Order"); *New York Power Authority*, 169 FERC ¶ 61,125 (2019) ("NYPA Incentive Order").

<sup>209</sup> NMPC understands that, in the event of abandonment, it is required to file a Section 205 request with the Commission.

<sup>210</sup> Byrne Testimony at 29.

markets. This volatility, along with other market forces discussed by Mr. McKenzie will pose an increasing challenge to utilities, such as NMPC, to attract necessary levels of capital, particularly in light of the significant new investments that will be required to support clean energy goals, such as the extremely ambitious mandates imposed by New York.<sup>211</sup>

Moreover, this Project is the first of its kind in New York, insofar as it represents the product of a State-mandated planning process aimed at expediting the construction of transmission infrastructure to meet clean energy policy goals. While NMPC is fully committed to developing the SPC Project and other transmission and distribution infrastructure necessary to meet these policy goals, there are significant risks in developing these types of large policy-driven projects due to potential shifts in New York State public policy and other similar political and regulatory risks. These risks are inherent in the development of this type of project. And these risks are not merely speculative, as the recent example of New England's NECEC project demonstrates all too vividly.<sup>212</sup> Yet these are precisely the types of ambitious, large-scale projects that the Commission can and should incentivize utilities to undertake in order to support the transmission buildout that will be needed to meet the rapidly changing electricity sector.<sup>213</sup>

Although NMPC recognizes that each project is somewhat different, the Commission has approved identical 50 bp incentive ROE adders for previous projects designed to meet similar public policy needs in New York. These include the Central East Energy Connect Project,<sup>214</sup> the Edic-to-Pleasant Valley 345 kV Line developed by New York Transco,<sup>215</sup> and the Empire State Line Project.<sup>216</sup> For instance, with respect to the Edic-to-Pleasant Valley 345 kV Line, the Commission determined that unlike other projects for which New York Transco requested incentives, New York Transco demonstrated project risks not mitigated by other risk-reducing incentives. The Commission pointed to the fact that the project involved an investment of more than \$1 billion in capital, itself a major financial risk, and would be constructed to relieve chronic and severe grid congestion that has had demonstrated cost impacts to consumers. In particular, the Edic-to-Pleasant Valley 345 kV Line would provide a significant amount

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<sup>211</sup> McKenzie Testimony at 25-28.

<sup>212</sup> Byrne Testimony at 20.

<sup>213</sup> See *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17-000.

<sup>214</sup> *New York Indep. Sys. Operator, Inc.*, 171 FERC ¶ 61,159 (2020).

<sup>215</sup> *New York Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,004 (2015) ("Transco Order").

<sup>216</sup> *NextEra Energy Transmission New York, Inc.*, 162 FERC ¶ 61,196 (2018).

of congestion relief by enabling approximately 1,000 MW of increased transfer capability between upstate New York and the Southeastern New York interface.<sup>217</sup>

The Commission's reasoning in the New York Transco case applies with equal force to the SPC Project. Between NYPA and NMPC, the total investment in the SPC Project will exceed \$1 billion in capital costs. As discussed above and in Mr. Byrne's testimony, the large investment associated with NMPC's portion of the Project will involve significant financial risks to NMPC. And like the Edic-to-Pleasant Valley 345kV Line, the SPC Project will provide substantial congestion relief by virtue of enabling approximately 1,000 MW of increased transfer capability on the transmission system in northern New York that has been identified as needing upgrades in order to unbottle significant amounts of existing and future renewable generation.

**b. The Requested ROE Risk Adder Satisfies the Incentives Policy Statement**

The Incentives Policy Statement provided further guidance on the applicability of incentives based on a Project's risks and challenges, and the items that applicants must address in their requests. These items are discussed below.

**i. Types of Projects That May Qualify**

The Incentives Policy Statement states that Investments in the following types of transmission projects may face the types of risks and challenges that may warrant an incentive ROE based on the project's risks and challenges that are not either already accounted for in the applicant's base ROE or could be addressed through risk-reducing incentives:

1. projects to relieve chronic or severe grid congestion that has had demonstrated cost impacts to consumers;
2. projects that unlock location constrained generation resources that previously had limited or no access to the wholesale electricity markets;
3. projects that apply new technologies to facilitate more efficient and reliable usage and operation of existing or new facilities.<sup>218</sup>

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<sup>217</sup> Transco Order at P 97.

<sup>218</sup> Incentives Policy Statement at P 21.



The SPC Project meets these criteria. As explained in the testimony of Mr. Gemmell, and discussed above, the severe grid congestion in northern New York has resulted in substantial congestion costs for New York customers across the New York Control Area, which the Project will significantly address.<sup>219</sup> The Project also will unlock location constrained generation – specifically, renewable generation resources in northern New York that currently have limited ability to serve loads across the state.<sup>220</sup> Indeed, these benefits were a key element of the NYPSC’s decision to approve the project as needed on an expedited basis to meet New York State’s clean energy mandates. Lastly, the Project will utilize advanced technologies, as discussed below.

## **ii. Minimization of Risks**

The Incentives Policy Statement also states

The Commission expects an applicant that requests an incentive ROE based on a project’s risks and challenges to demonstrate that it is taking appropriate steps and using appropriate mechanisms to minimize its risks during project development.<sup>221</sup>

NMPC has taken numerous steps to minimize the risks and challenges presented by the Project, including first seeking risk reducing incentives.

The Incentives Policy Statement identifies joint ownership arrangements as a measure to mitigate siting and environmental risks and diversifying financial risks across multiple owners. NMPC and NYPA, as co-developers of the Project, have utilized this measure to mitigate risks. Each entity will be responsible to fund and finance its portion of the Project.

Additionally, NMPC and NYPA will utilize best-in-class project management practices.<sup>222</sup> This includes the development of a detailed schedule identifying all project tasks, resources, and sequences for such tasks. The schedule will serve to ensure that the entire project team knows what needs to be completed, by when, and by whom. Furthermore, standard procurement and contracting processes will be utilized to secure the materials and labor resources at competitive prices, which may include the use of a competitive bid process. NMPC and NYPA, as co-developers, also intend to lean heavily

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<sup>219</sup> See *supra* Section I.A.4; Gemmell Testimony at 26.

<sup>220</sup> *Id.*

<sup>221</sup> Incentives Policy Statement at P 24.

<sup>222</sup> Byrne Testimony at 25.

on their extensive project development experience to minimize risks by implementing practices to assist in incorporating lessons learned on previous projects.

NMPC and NYPA have also sought to maximize the use of existing rights of way already owned or controlled by NMPC and NYPA. While there are still land rights that NMPC and NYPA will need to obtain to build the Project, the intentional use of existing ROWs will significantly reduce the risks associated with the need for additional land rights. Further, NMPC continues to build upon its long-established relationship with NYPA along this shared ROW which mitigates coordination challenges.<sup>223</sup>

NMPC's portion of the SPC Project builds on NYPA's experience with the ongoing Smart Path Project, a project rebuilding aging transmission infrastructure and allowing for greater transmission of energy from renewable resources in Northern New York. To mitigate construction risks, NMPC is incorporating lessons learned from the ongoing NYPA Smart Path Project. NMPC's numerous visits to the construction site have enabled NMPC to develop best practices for its own SPC Project construction execution plans. These include outage execution sequencing and helicopter soft line stringing to reduce cost and environmental impact.<sup>224</sup>

Notwithstanding the measures NMPC has taken to mitigate the myriad risks it faces in the development and financing of the SPC Project, NMPC's risks and challenges are not fully offset by the requested risk reducing incentives, the steps it has taken to mitigate risk, or the requested base ROE. Therefore, the Commission should approve the requested 50 basis point ROE incentive adder.

### **iii. Alternatives**

The Incentives Policy Statement requires that alternatives to a project be considered as a supplemental demonstration of the consumer benefits created by a project:

The Commission expects applicants for an incentive ROE based on a project's risks and challenges to demonstrate that alternatives to the project have been, or will be, considered in either a relevant transmission planning process or another appropriate forum. Such a showing should help identify the demonstrable consumer benefits of the proposed project

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<sup>223</sup> Byrne Testimony at 25-26.

<sup>224</sup> Byrne Testimony at 26.

and its role in promoting a more efficient, reliable and cost-effective transmission system.<sup>225</sup>

The Commission has indicated that this can be satisfied by showing that the project “was considered by a local regulatory body, such as a state utility commission, that evaluated alternatives to its proposed project (transmission or non-transmission alternatives) and determined that the proposed transmission project is preferable to the alternatives evaluated.”<sup>226</sup>

Alternatives to the SPC Project were considered at each stage of this project’s evaluation. First, as one of the criteria for determining whether a project qualifies as a PTP, the NYPSC’s analysis of the SPC Project in the Priority Project Order considered whether “acting to solve a transmission problem outside of the NYISO process will increase the likelihood of meeting the CLCPA deadlines.”<sup>227</sup> The evaluation of such criterion demonstrates the NYPSC’s consideration of any proposed solution resulting from the NYISO public policy transmission planning process, and its intentional decision to forego such solution based on its finding that the Project is needed more quickly than any solution resulting from the NYISO process could be constructed.

Also, alternative routes are being considered as Part of the Article VII application process. Consistent with its obligations under the Article VII application process, NYPA and NMPC, together as joint applicants, submitted as part of the application an exhibit:

explaining what consideration, if any, was given to: (1) any alternative route; (2) the expansion of any existing right-of-way of the applicant or of another; (3) any alternate method which would fulfill the energy requirements with comparable costs. Such statement shall include the comparative advantages and disadvantages of any alternative considered.<sup>228</sup>

Exhibit 3 of the Article VII application demonstrates the consideration given by NYPA and NMPC to alternative routes and how the access to existing rights-of-way, and the potential such access provides to expedite development in a “region of the State where obtaining new rights may be especially difficult,” were factors in the evaluation of alternative routes.<sup>229</sup> In addition to alternative routes, underground alternatives,

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<sup>225</sup> Incentives Policy Statement at P 25.

<sup>226</sup> Incentives Policy Statement at P 26.

<sup>227</sup> Priority Project Order at 18.

<sup>228</sup> 16 NYCRR § 86.4.

<sup>229</sup> Article VII Application, Exhibit 3 at 3-5

alternative methods, *e.g.*, energy efficiency, demand-side management, and distributed generation, and alternative technologies, *e.g.*, HVDC lines, were considered.

#### **iv. Cost Containment Mechanism**

The Incentives Policy Statement calls for “applicants for an incentive ROE based on a project’s risks and challenges to commit to limiting the application of the incentive ROE based on a project’s risks and challenges to a cost estimate.”<sup>230</sup> NMPC’s Cost Containment mechanism, as explained above, will ensure that application of any incentive ROE will be limited to the Project’s Cost Cap and goes a step further. Under the 80/20 Cost Containment mechanism, NMPC will receive no incentive return on equity for the equity portion of costs in excess of the Cost Cap, and no ROE whatsoever, whether base or incentive, on 20% of the equity portion of the excess amount.<sup>231</sup>

#### **4. 50 bp RTO/ISO Participation ROE Incentive/Customer Benefit Adder**

In Order No. 679, the Commission stated that, to implement Congressional mandates in Section 219 of the Federal Power Act, it will approve an ROE adder for RTO/ISO participation “for public utilities that join and/or continue to be a member of an ISO, RTO, or other Commission-approved Transmission Organization.” The incentive for RTO/ISO participation appropriately recognizes the considerable benefits associated with a utility’s membership in an RTO/ISO. NMPC is fully entitled to the 50 bp incentive adder relating to RTO/ISO participation for its portion of the SPC Project. The Commission has previously determined that NMPC is eligible for the RTO/ISO adder with respect to those NMPC facilities placed under NYISO’s operational control.<sup>232</sup> As explained above, NYPA and NMPC will turn over operational control of the SPC Project once it enters service, and transmission service over the Project will be provided pursuant to the terms of the NYISO OATT. Moreover, NMPC’s membership in the NYISO meets the Commission’s recent decisions regarding voluntary RTO/ISO participation.<sup>233</sup>

However, even if the Commission were to determine that NMPC is not eligible for the RTO/ISO participation adder, it should alternatively approve a 50 basis point

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<sup>230</sup> Incentives Policy Statement at P 28.

<sup>231</sup> See *supra* Section II.D.

<sup>232</sup> *Niagara Mohawk Power Corp.*, 126 FERC ¶ 61,173 at P 24 (2009).

<sup>233</sup> See *Next Era Energy Transmission New York, Inc.*, 162 FERC ¶ 61,186 at P 8 (2018) (The Commission found “involuntary RTO/ISO participation is inconsistent with NYISO’s own governing documents.”); See *also id.* at P 7 (“Turning over operational control of its facilities once constructed is part and parcel of that process [of joining an RTO]”).

adder due to the customer benefits that will be provided by the SPC Project. Recent settlements approved by the Commission relating to public policy projects in New York, most notably those relating to the Central East Energy Connect Project, have permitted the project developer to earn a 50 bp incentive ROE adder “to account for benefits to customers, including congestion relief.”<sup>234</sup> As the Commission noted in its order approving the settlement relating to LSPG-NY’s portion of the Central East Energy Connect project, this adder is a recharacterization of the RTO/ISO adder that the Commission had previously granted LSPG-NY.<sup>235</sup> Approving a 50 basis point adder for customer benefits for the SPC Project in lieu of the RTO/ISO participation adder, were the Commission to decline to grant it here, would be appropriate. Such an outcome is fully consistent with Commission policy<sup>236</sup> and recognizes the significant benefits, detailed above and in the testimony of Mr. Gemmell, that the SPC Project will provide to customers in New York, including, but not limited to, congestion relief. These benefits are no less robust than the benefits provided by previous projects for which this incentive was ultimately accepted by the Commission.

#### **5. Performance-Based Rate to Implement 80/20 Cost Containment Mechanism**

As discussed above in Section III.D, under NMPC’s implementation of the 80/20 cost containment mechanism, if NMPC’s Eligible Project Costs exceed the Cost Cap then NMPC will receive no ROE, either base or incentive, for 20% of the equity portion of the Eligible Project costs that exceed the Cost Cap and will recover no incentive ROE adders on the remaining 80% of the equity portion of the Eligible Project Costs that exceed the Cost Cap. NMPC will recover the depreciation and debt costs on its share of all Eligible Project Costs.

If NMPC’s Eligible Project Costs are below the Adjusted Cost Cap, which the cost containment mechanism defines to mean the Cost Cap less 50% of the Project cost contingency included in the Cost Cap,<sup>237</sup> then NMPC proposes to share in the savings through a sliding scale ROE adder based on the level of savings, as set forth in Table 2,

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<sup>234</sup> See, e.g., Offer of Settlement, Docket No. ER20-716 (filed April 9, 2021) at p. 11.

<sup>235</sup> *New York Indep. Sys. Operator*, 175 FERC ¶ 61,210.

<sup>236</sup> Order No. 679 at P 55 (“Applicants also may request incentives that are not listed in the Final Rule. The Commission will not use the Final Rule to identify each and every incentive an applicant may request.”).

<sup>237</sup> Byrne Testimony at 26.

thereby addressing concerns regarding implementation of performance-based rates under Order 679.<sup>238</sup>

**Table 2**  
**Performance-Based Rate to Implement 80/20 Cost Containment**

<b>Actual SPC Project Costs Below Adjusted Cost Cap</b>	<b>ROE Adder on Total Investment</b>
0% to ≤ 5%	0.05%
>5% to ≤ 10%	0.17%
>10% to ≤ 15%	0.30%
>15% to ≤ 20%	0.45%
>20% to ≤ 25%	0.62%
>25%	0.71%

Because the ROE adder is based on consumer savings, if NMPC is able to place the Project in service at a cost below the Adjusted Cost Cap, the relevant ROE adder would be applicable. This is the same structure that the Commission has accepted for NYPA and LSPG-NY with respect to their portions of the Central East Energy Connect project, which as explained above, include a substantially similar cost containment mechanism to the one that NMPC has proposed for its portion of the SPC Project.<sup>239</sup> The Commission should approve the performance-based rate mechanism here as well.

**D. Application of the Nexus Test**

In addition to satisfying the Section 219 eligibility requirements, an applicant must demonstrate that there is a nexus between the incentives sought and the investment being made, *i.e.*, the applicant must show that the incentives requested are rationally related to the investments being proposed. The Incentives Policy Statement provides that

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<sup>238</sup> Order No. 679 at PP 270-72 (encouraging development of performance-based rate proposals). Because the proposed performance-based rate is a ROE adder tied directly with the implementation cost of the project, whether NMPC meets the requirements for the ‘performance’ rate will be known based on a one-time determination and not subject to ongoing performance measurement.

<sup>239</sup> See *supra* fn. 98 and 99.

the applicant “demonstrate how the total package of incentives requested is tailored to address demonstrable risks and challenges.”<sup>240</sup>

The preceding sections identified each of the risks faced by NMPC in connection with the development of the Project and the incentives sought to address them. The table below reiterates where requested incentives serve to mitigate specific risks and challenges described in this application, and how NMPC has specifically tailored the incentives requested to the risks faced.

<b>Incentive Requested</b>	<b>Financial Risks and Challenges</b>	<b>Regulatory or Other Risks and Challenges</b>
Abandonment Incentive	Financial risk of assuming burden of project development and construction costs, <i>e.g.</i> , purchased materials and equipment, if project is unexpectedly abandoned through no fault of NMPC	Risk of denial of necessary permits or regulatory approvals, changes in policy that negate the need for the project
100% CWIP Recovery	Downward pressure on cash flows and increased need for debt during project construction that could negatively impact NMPC’s credit metrics and lead to increased costs for customers	Regulatory delays that could extend project development time and project cost
ROE Adder Based on Risks and Challenges	Financial risk faced by NMPC after the project is placed into service due to economic trends and NMPC-specific metrics	Regulatory and political risks, including siting challenges and the fact that this is the first project developed under New York’s AREGCBA statute

<sup>240</sup> Incentives Policy Statement at P 10.

ROE Adder Based RTO/ISO Participation or Consumer Benefits	Financial risk of developing project at the scale needed to provide statewide benefits	Giving up control to NYISO; Project provides substantial congestion relief and other public policy benefits
Performance-based Rate Incentive	Financial risk of failing to earn return on cost overruns	

**E. Advanced Technology Statement**

The Commission requires an applicant seeking incentive rates to provide an advanced technology statement. In the Incentives Policy Statement the Commission stated that it would “consider deployment of advanced technologies as part of the overall nexus analysis when an incentive ROE is sought.”<sup>241</sup>

NMPC anticipates employing elements considered to be advanced technology under Section 1223(a). The technology described below meets the standards set forth in Order No. 679 and Section 219 of the Federal Power Act because it will “increase the capacity, efficiency, or reliability” of the Project and overall transmission system.

The Project is expected to employ International Electrotechnical Commission (“IEC”) 61850 protocols. IEC 61850 protocols will be used to upgrade existing substation communication and to construct new substation communication systems to improve efficiency and bolster system reliability. Pursuant to IEC 61850 protocols, all substations will be outfitted with fiberoptic cables (replacing copper wires in existing substations) and transitioned to digital control. Utilizing IEC 61850 protocols will provide greater insight into asset conditions and operations and reduce operating expenditures. Additionally, because substations will be digital, system settings will be able to be adjusted in real-time, permitting a more efficient flow of power.

**F. Even if the Commission Is Unable To Grant the Requested Incentives Under Its Section 219 Analysis, NMPC’s Request for Incentives Should Be Granted Under the Commission’s Section 205 Authority Because Incentivizing the Project Is Consistent with Commission Policy**

The Commission has the authority to grant transmission rate incentives pursuant to its authority under Section 205. It has long been established that the Commission has the

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<sup>241</sup> Incentives Policy Statement at P 23.



authority to grant the requested incentives under Section 205 even if the Commission is unable to do so under Section 219.<sup>242</sup> The courts have recognized that one of the primary purposes of the FPA is to encourage plentiful supplies of energy at reasonable prices through the development of transmission infrastructure.<sup>243</sup> Accordingly, the Commission has discretion within its ratemaking authority to consider both cost-related factors and policy-related factors when setting rates, *e.g.*, to incent transmission investment to meet policy goals.<sup>244</sup>

For example, the courts reviewed the Commission’s authority to approve incentive rates, and held that the Commission’s determinations “involve matters of rate design, which are technical and involve policy judgments at the core of [the Commission’s] regulatory responsibilities.”<sup>245</sup> In *Maine Public Utilities Commission v. FERC*, the court also rejected the argument that the Commission was required to calibrate the level of benefits that an incentive is designed to produce beyond a finding that the incentive at issue is within the zone of reasonableness.<sup>246</sup>

Among other things, in deciding whether to grant rate incentives under Section 205, the Commission considers “whether the incentive encourages the development of much-needed transmission facilities, improves the performance of the grid by increasing the transfer capability of the grid and providing reliability benefits to the grid, and is intended to increase the supply of energy to the grid. Further . . . [it has] considered whether the proposed project helps to access renewable energy to meet state RPS

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<sup>242</sup> *W. Area Power Admin.*, 99 FERC ¶ 61,306, *reh’g denied*, 100 FERC ¶ 61,331 (2002), *aff’d sub nom. Pub. Utils. Comm’n of the State of California v. FERC*, 367 F.3d 925 (D.C. Cir. 2004) (“CPUC v. FERC”); *Michigan Elec. Transmission Co., LLC*, 105 FERC ¶ 61,214 (2003); *Am. Transmission Co., L.L.C.*, 105 FERC ¶ 61,388 (2003), *order approving settlement*, 107 FERC ¶ 61,117 (2004); *ITC Holdings Corp.*, 102 FERC ¶ 61,182, *reh’g denied*, 104 FERC ¶ 61,033 (2003); *Trans Bay Cable LLC*, 112 FERC ¶ 61,095 (2005), *order granting clarification*, 114 FERC ¶ 61,104 (2006); *see Allegheny Energy, Inc.*, 118 FERC ¶ 61,042, at P 10 (2007) (rejecting the argument that FERC can grant transmission rate incentives only under Section 219).

<sup>243</sup> *See, e.g., CPUC v. FERC*, 367 F.3d at 929 (*citing NAACP v. FPC*, 425 U.S. 662, 670 (1976)).

<sup>244</sup> *See Xcel Energy Southwest Transmission Co., LLC*, 149 FERC ¶ 61,182 at P 22 (2014) (noting the Commission’s section 205 authority to grant rate incentives to promote public policy goals); *Xcel Energy Transmission Development Company, LLC*, 149 FERC ¶ 61,181 at P 13 (2014); *Transource Wisconsin, LLC*, 149 FERC ¶ 61,180 at P 19 (2014). *See also S Cal. Edison Co.*, 133 FERC ¶ 61,107 (2010); *Pacific Gas and Elec. Co.*, 123 FERC ¶ 61,067 (2008).

<sup>245</sup> *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 287 (D.C. Cir. 2006); *see also Permian Basin Area Rate Cases*, 390 U.S. 747 (1968); *see Order 679-A* at n.37 (“We also note that the Commission retains its discretion to provide policy-based incentives. As the courts have said, even prior to our new authority in section 219, the Commission’s incentive rate determinations ‘involve matters of rate design . . . [and] policy judgments [that go to] the core of [the Commission’s] regulatory responsibilities.’”) (citations omitted).

<sup>246</sup> *Maine PUC*, 454 F.3d at 287-89.

requirements.”<sup>247</sup> The incentives requested here by NMPC are intended to facilitate the development and construction of transmission facilities, determined to be needed on an expedited basis by the NYPS&C, that will increase the transfer capacity of the New York transmission system, improve system reliability, and improve access to renewable energy resources needed for New York state to satisfy its renewable targets. Thus, even if the Commission determines that it is unable, for some reason, to grant one or more of the incentives discussed herein under Section 219, the Commission should do so under Section 205.

#### IV. CORRESPONDENCE AND COMMUNICATIONS

All notices, correspondence, and communications regarding this filing should be directed to the following individuals:

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#### V. REQUESTED WAIVERS AND SERVICE

To the extent that waivers of any applicable requirements in 18 C.F.R. § 35.13 are necessary, NMPC respectfully requests such waivers. Good cause exists for waiver. Cost of service statements typically are not needed where the proposed rates are formulaic and will be based on actual costs as reflected in the applicant’s FERC Form No. 1s and audited books and records.<sup>248</sup> As a result, waiver would be consistent with Commission precedent for a formula rate filing of this nature. NMPC also requests a

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<sup>247</sup> *Southern Cal. Edison Co.*, 133 FERC ¶ 61,107 at P 60 (2010).

<sup>248</sup> *Southern California Edison Co.*, 136 FERC ¶ 61,074 at P 29 (2011) (granting waiver of Period I and II data); *Pub. Serv. Elec. & Gas Co.*, 124 FERC ¶ 61,303 at PP 23-24 (2008) (granting waiver of Sections 35.13(d)(1)-(2), 35.13(d)(5) and 35.13(h)); *Oklahoma Gas & Elec. Co.*, 122 FERC ¶ 61,071 at P 41 (2008); *Am. Elec. Power Serv. Corp.*, 120 FERC ¶ 61,205 at P 41 (2007) (granting waiver of Period I and II data); *Commonwealth Edison Co.*, 119 FERC ¶ 61,238 at PP 92-94 (2007) (granting waiver of Period I and II data and cost-of-service statements); *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219 at P 57 (2007) (same); *Duquesne Light Co.*, 118 FERC ¶ 61,087 at P 79 (2007) (granting waiver of Sections 35.13(d)(1)-(2) and 35.13(h)); *Idaho Power Co.*, 115 FERC ¶ 61,281 at P 20 (2006) (granting waiver of Period II data); *Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308 at PP 55-56 (2005) (granting waiver of Period I and II data).

waiver of any other applicable requirement of Part 35 or other Commission regulations for which a waiver is not specifically requested, if necessary, in order to permit this filing to become effective as proposed.

NMPC has served a copy of this filing electronically on the New York State Public Service Commission and on the NYISO. NMPC has confirmed with the NYISO that a complete copy of this filing will be posted on the NYISO's website at [www.nyiso.com](http://www.nyiso.com). The NYISO has also informed NMPC that it will send an electronic link to this filing to the official representative of each of its customers and to each participant on its stakeholder committees. This will ensure that all New York LSEs receive notice of this filing.

## **VI. CONTENTS OF FILING**

In addition to this transmittal letter, this filing contains the following supporting exhibits:

Attachment A:	Revised Section 14.2.1 of Attachment H of NYISO OATT (Clean)
Attachment B:	Revised Section 14.2.1 of Attachment H of NYISO OATT (Marked)
Attachment C:	Section 6.18 of NYISO OATT - Rate Schedule 18 (Clean)
Attachment D:	Section 6.18 of NYISO OATT - Rate Schedule 18 (Marked)
Attachment E:	Prepared Direct Testimony and Exhibits of Brian Gemmell (Exhibit Nos. NMPC-100 through 103)
Attachment F:	Prepared Direct Testimony and Exhibits of Andrew Byrne (Exhibit Nos. NMPC-200 through 202)
Attachment G:	Prepared Direct Testimony and Exhibits of Adrien M. McKenzie (Exhibit Nos. NMPC-300 through 311)
Attachment H:	Prepared Direct Testimony of Bart D. Franey (Exhibit No. NMPC-400)
Attachment I:	Prepared Direct Testimony of Tiffany M. Escalona (Exhibit No. NMPC-500)

Attachment J: NYPSC Priority Project Order

**VII. CONCLUSION**

For the reasons set forth above, NMPC respectfully requests that the Commission grants its requests for incentive rate treatments for the Smart Path Connect Project and the tariff amendments included in this filing effective no later than May 4, 2022 (*i.e.*, the first day following the end of the statutory 60-day notice period).

Respectfully submitted,

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