David Lodemore
Senior Counsel

May 30, 2023

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

Re: Niagara Mohawk Power Corporation
Docket Nos. ER23-973-000 and ER23-974-000
Response to Deficiency Letter

Dear Secretary Bose:

On January 30, 2023 in Docket No. ER23-973-000, the New York Independent System Operator, Inc. ("NYISO") submitted for filing on behalf of Niagara Mohawk Power Corporation ("NMPC") proposed revisions to its Transmission Service Charge ("TSC") formula rate, which sets Niagara Mohawk's Wholesale TSC under Attachment H to the NYISO Open Access Transmission Tariff ("NYISO OATT")[1] and a proposed new Rate Schedule 18 to recover the costs of NMPC's investment in a new transmission project, the Smart Path Connect Project (the "SPC Project" or the "Project").[2] Concurrently with submission of the SPC Project Filing, NMPC submitted a Cost Allocation Agreement (the "CAA" or "Agreement") for NMPC's portion of the SPC Project for filing in Docket No. ER23-974-000 (together with the SPC Project Filing, the "January 30 Filings").[3]

On March 28, 2023, Commission staff issued a deficiency letter requesting that NMPC provide additional information with respect to the January 30 Filings. NMPC is submitting this letter and attachments in response to the March 28, 2023 deficiency letter.[4] On April 19, 2023, the Commission granted an extension of time until May 29, 2023,[5] to respond to the March 28, 2023 deficiency letter.

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[1] New York Independent System Operator, Inc., NYISO Tariffs, NYISO OATT, 14.1 OATT Att H TSC, NYISO OATT, 14.2-14.2.1 OATT Att H Attachment 1 to Attachment H ("TSC rate").

[2] NYISO OATT, (6.18 OATT Schedule 18 Rate Mechanism for the Recovery ("Rate Schedule 18"). The January 30 filing in Docket No. ER23-973-000—proposing changes to NMPC's TSC rate and requesting to establish Rate Schedule 18—is referred to herein as the "SPC Project Filing." Proposed Rate Schedule 18 sets forth the calculation and billing for NMPC's new Smart Path Connect Facilities Charge ("SPC-FC").

[3] On January 20, 2023, the NYISO submitted revisions to the NYISO OATT on NMPC's behalf in Docket No. ER23-907. The revisions submitted in Docket No. ER23-907 were accepted by the Commission in a letter order issued February 16, 2023, and are unrelated to the authorizations requested in this filing. *See N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER23-907-000 (Feb. 16, 2023) (delegated letter order). Following Commission action on the January 30 Filings, NMPC commits to submit a conforming compliance filing to reflect all changes accepted by the Commission in Docket Nos. ER23-907, ER23-973, and ER23-974.

[4] 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.

[5] Due to the Memorial Day holiday on May 29, 2023, NMPC is submitting this response on May 30, 2023. *See* 18 C.F.R. § 385.2007(a)(2).

The majority of Commission staff's additional information requests pertain to NMPC's request for Commission authorization to establish a regulatory asset for the SPC Project relating to the cost of removal ("COR") of certain transmission assets that will be removed to construct and place the SPC Project in service (the "COR Regulatory Asset"). The SPC Project Filing requested approval only to record the COR Regulatory Asset, with NMPC committing to making a subsequent filing under Section 205 of the Federal Power Act ("FPA")[6] to request the actual recovery of COR related to the SPC Project.[7]

Following consideration of the Commission's questions, and after further discussions regarding the COR Regulatory Asset proposal, NMPC hereby amends the SPC Project Filing to remove its request to establish the COR Regulatory Asset from consideration as part of the package of approvals requested in the SPC Project Filing. Removing the COR Regulatory Asset proposal will not impact the balance of the requests in the SPC Project Filing, as there are no tariff revisions associated with the COR Regulatory Asset proposal, and there will be no rate impacts as a result of the removal. NMPC reserves its right to submit one or more future filings with the Commission pertaining to the treatment of COR relating to the SPC Project.

I. BACKGROUND

The SPC Project was identified and selected as a "priority transmission project" by the New York State Public Service Commission and is needed on an expedited basis in order to meet New York State's legislatively enacted clean energy policies and provide benefits to consumers throughout the State. By alleviating existing and well-known transmission deliverability constraints, the SPC Project will unlock northern New York's potential as a significant site for renewable development, thereby significantly contributing to New York's ability to meet its clean energy goals. These outcomes are aligned with the Commission's espoused goals of bolstering investment in the nation's transmission infrastructure, promoting electric power reliability, and helping to facilitate the ongoing energy transition.

The scope of the Project is significant, requiring over 100 linear miles of transmission line rebuilds and associated substations, as well as other upgrades. The Project will be developed as a joint undertaking between NMPC and the New York Power Authority ("NYPA") and has a projected cost of approximately $1.2 billion, an estimated $535 million of which will be borne by NMPC. NMPC has already begun construction of the Project, and continues to incur significant costs to ensure that it can meet the aggressive in-service date goal of December 2025. In light of the significance of this undertaking, the associated costs, and the need for continued expedited implementation, it is of paramount importance that NMPC have reasonable certainty regarding cost

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6 16 U.S.C. § 824d.

7 *See, e.g.*, *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,033, at P 46 (2020); (allowing utility to record prudently incurred costs as a regulatory asset, but requiring a further Section 205 filing to demonstrate that the subject costs were just and reasonable before they could be included in rates); *PJM Interconnection, L.L.C.*, 166 FERC ¶ 61,216, at P 54 (2019) (noting that "[u]nder Commission regulations, the utility in the first instance determines whether a particular cost or set of costs is likely to be recoverable in future rates and therefore should be accounted for as a regulatory asset[,]" but "the Commission will determine whether those costs are appropriately recovered" only following a subsequent filing by the utility to recover those costs).

recovery for the Project as soon as possible. Therefore, NMPC respectfully requests that the Commission act expeditiously to authorize the requested incentive rate treatment and approve the associated revisions to the NYISO OATT and supporting CAA, as proposed in the January 30 Filings and modified herein, in order to enable NYPA and NMPC to place the Project in service by December 2025.

II. RESPONSES

A. Docket No. ER23-973

1. Excess and Deficient Accumulated Deferred Income Taxes (ADIT) Worksheet

In Order No. 864, the Commission required that public utilities provide in their ADIT Worksheets the accounting for any excess or deficient ADIT amounts in Accounts 182.3 and 254. Niagara Mohawk states that it added Schedules 15c and 15d to ensure the Project revenue requirement reflects the directives of Order No. 864. However, these schedules do not appear to contain the accounting for any excess or deficient amounts in Accounts 182.3 (Other Regulatory Assets) and 254 (Other Regulatory Liabilities) accepted by the Commission in the TSC formula rate in Docket No. ER20-2051-003. Please explain how Schedules 15c and 15d show the accounts in which excess and deficient ADIT are recorded and the accounting for any excess or deficient amounts in Accounts 182.3 and 254.

RESPONSE: Schedules 14 and 14a of Attachment 1 to Attachment H of the NYISO OATT reflect the recently approved permanent and remeasurement worksheets as directed in Order No. 864.[8] These schedules will account for any excess or deficient ADIT related to NMPC's transmission business, including the SPC Project facilities. The amounts reported on Schedule 14 will be fully reconcilable to amounts reported in either Account 182.3 or 254 of the NMPC FERC Form 1.

Proposed Schedules 15c and 15d will account for any excess or deficient ADIT that arises related specifically to the SPC Project. Any excess or deficient ADIT specific to the Project will be recorded to Account 182.3 or Account 254; however, the recorded amount will not be directly reconcilable to a FERC Form 1 line item, as it will be a subset of the total transmission-related excess or deficient ADIT reflected in Schedules 14 and 14a. Project-related excess or deficient ADIT will be a component of the revenue credit to the TSC revenue requirement to ensure TSC customers are not affected. NMPC omitted the reconciliation to Account 182.3 and 254 in proposed Schedule 15c (similar to lines 6, 7, and 8 of Schedule 14) for this reason. To provide additional clarity and reflect

[8] *See N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER20-2051-003 (Oct. 7, 2022) (delegated letter order); *Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, Order No. 864, 169 FERC ¶ 61,139 (2019), *order on reh'g and clarification*, Order No. 864-A, 171 FERC ¶ 61,033 (2020).

full compliance with the directives of Order No. 864, NMPC proposes to revise the language in footnote (a) of Schedule 15c to read as follows:[9]

> The affected ADIT accounts were remeasured by comparing Project Specific ADIT on cumulative temporary differences for each item in accounts 190, 282, and 283 at the current Federal, State & Local Income Tax rate to Project Specific ADIT balances at historical Federal, State & Local Income Tax rates. The difference between the two represents the excess or deficient ADIT recorded to Account 254 or Account 182.3, respectively. Amounts reflected on this schedule are a subset of total Transmission Related (Excess) Deficient ADIT shown on Schedule 14. Refer to Schedule 14 for the reconciliation of Total Transmission Related (Excess) Deficient ADIT to FF1 Page 232 for Account 182.3 and FF1 Page 278 for Account 254.

2. Regulatory Asset Treatment for Existing Facilities' Cost of Removal

As discussed above, NMPC's SPC Project Filing requested Commission authorization to establish the COR Regulatory Asset to facilitate NMPC's recordation and eventual recovery of the cost of removing certain transmission assets—such as substation equipment, poles, conductors, and other transmission fixtures—as will be necessary in the course of constructing and placing the SPC Project in service. To reduce regulatory uncertainty, the SPC Project Filing specifically requested confirmation from the Commission that the COR incurred due to the SPC Project is appropriately accounted for via the COR Regulatory Asset. NMPC's request was limited to Commission approval of the proposed COR Regulatory Asset. NMPC did not request in its filing that the Commission approve recovery through the Smart Path Connect Facilities Charge ("SPC-FC") rate of any costs associated with removing existing assets. Instead, NMPC recognized that a separate request would be necessary to demonstrate the justness and reasonableness of recovering such costs through the SPC-FC and committed to make a subsequent filing pursuant to Section 205 before recovering the costs of the COR Regulatory Asset through the SPC-FC rate.

Following careful consideration of the Commission's requests for additional information regarding the COR Regulatory Asset proposal, and further discussions, NMPC hereby amends the SPC Project Filing to remove its request for Commission approval to establish the COR Regulatory Asset as part of the package of approvals requested in the SPC Project Filing. Removing the COR Regulatory Asset proposal will not impact the balance of the requests in the SPC Project Filing, as there were no proposed tariff revisions associated with the COR Regulatory Asset proposal, and there will be no rate impacts as a result of the removal.[10] However, NMPC believes that additional time and consideration is necessary to ensure that any such future proposal is presented in a manner that best accomplishes the intended goals of regulatory certainty and transparency. To that end, prior to making any subsequent filing relating to COR, NMPC would consult with Commission staff.

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9 The proposed revisions to footnote (a) of Schedule 15c will be made in the conforming compliance filing to be submitted following Commission action on the January 30 Filings.

10 For instance, NMPC did not propose to revise its existing depreciation rates, which include forecasted cost of removal. *See* SPC Project Filing, Exhibit No. NMPC-400 (Escalona Testimony) at 18:11-19:14.

Because NMPC is removing its request to establish the COR Regulatory Asset in the instant proceeding, NMPC's responses to Commission Staff's COR-related questions are limited to providing information that may be helpful in order for the Commission to be assured that there are no rate impacts as a result of removing this request.[11] However, NMPC will provide any and all information, including information requested by Commission staff in the March 28 deficiency letter, as necessary to support any future filing relating to the treatment of SPC Project-related COR.

a. ***Niagara Mohawk states that there are several existing transmission facilities that will be removed to accommodate the Project and gives a few examples, such as the removal of the existing 230 kV Edic to Porter Line 17 and equipment at the Porter and Chase Lakes Substations. Niagara Mohawk states that some other existing facilities will be expanded (rather than removed), such as the extension of the existing 230 kV Rector Road to Chases Lake Line 10. Niagara Mohawk states that it began construction on the Project in December 2022.***

(i) ***Please identify all of the existing facilities that will be or have been removed or replaced to accommodate the Project.***

RESPONSE: As indicated above, NMPC is removing its request for Commission authorization to establish the COR Regulatory Asset. If helpful to inform the Commission's review of the balance of the requests in the January 30 Filings, a listing of the facilities that will be or have been removed or replaced to accommodate the Project is provided in "Tab 2 – Detail" of Attachment A hereto.

(ii) ***For each facility identified in response to Question 2a(i), indicate how much each facility will contribute to the Project-Related Depreciation and Amortization Reserves in Schedule 15a, line 3, and the date when they will be included. Please also identify the existing facilities, associated land, and rights of way that will not be removed. Indicate which of these facilities will be transferred to the Project Gross Plant In-Service in Schedule 15a, line 1, and the date when they will be included.***

RESPONSE: As indicated above, NMPC is removing its request for Commission authorization to establish the COR Regulatory Asset. If helpful to inform the Commission's review of the balance of the requests in the January 30 Filings, NMPC notes that the facilities identified in response to Question 2a(i) will be retired from service on NMPC's books and will not be transferred to the Project Gross Plant In-Service in Schedule 15a, line 1. The Project-Related Depreciation and Amortization Reserves recorded in Schedule 15a, line 3 will be determined based on the new

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[11] If the Commission nevertheless determines that even with the removal of the COR Regulatory Asset request, it cannot approve the SPC Project Filing as just and reasonable due to the treatment of COR, NMPC respectfully requests that the Commission approve the remaining aspects of the SPC Project Filing and direct appropriate modifications relating to COR on compliance. To the extent necessary, NMPC consents to such modifications in accordance with the D.C. Circuit's decision in *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017).

Project's Gross Plant investment. The facilities identified in response to Question 2a(i) will therefore not contribute to the Project-Related Depreciation and Amortization Reserves recorded in Schedule 15a, line 3.

All other existing NMPC transmission assets will remain in service and will continue to be included in TSC rates. None of the existing remaining facilities will be transferred to the Project Gross Plant-in-Service in Schedule 15a, line 1.

(iii) ***Identify the total amount of cost of removal that has been collected from TSC ratepayers up to the requested effective date of April 1, 2023, and the amount that will be charged to TSC and retail customers from April 1, 2023, until the Project in-service date.***

RESPONSE: As indicated above, NMPC is removing its request for Commission authorization to establish the COR Regulatory Asset. If helpful to inform the Commission's review of the balance of the requests in the January 30 Filings, NMPC notes that it utilizes the mass (group) depreciation accounting method. Accordingly, NMPC books and tracks depreciation and accumulated depreciation reserves by utility plant account, rather than by specific asset. Therefore, NMPC is not able to identify the total depreciation reserve or its components, including COR, at a specific asset level. Depreciation rates include a life component and a net salvage (*i.e.*, salvage less COR) component, and the rates are applied to all assets with the understanding that specific assets will be in service shorter or longer than the average service life, and will incur less or more COR than is embedded in depreciation rates. As a result, included in the book depreciation reserve is depreciation expense, under- and over-recovered net investments from previous retirements, and actual COR/salvage incurred. To estimate the book reserve at a specific asset level, a theoretical reserve is calculated based on the current approved depreciation rates considering the average service life, net salvage factor, and depreciation curve approved in rates. The theoretical reserve is compared to the actual book reserve at a plant account level, and then an allocation of the book reserve is made at an asset level split by the life and net salvage components. Please see Attachment A, "Tab 2 – Detail," provided in response to Question 2a(i), for a summary of the estimated allocated life reserve (column K) and net salvage reserve as reflected in the "Allocated FCOR Reserve" (column L), at the asset level, as of March 2023. Column P reflects the estimated monthly future COR to be booked for these assets from April 1, 2023, until the Project in-service date.

Assuming the Project will be in-service as of December 2025, NMPC estimates that the future COR that will be charged from April until November 2025, is approximately $143,328 (*i.e.*, $4,479/month multiplied by 32 months).

(iv) ***For each facility identified in response to Question 2a(i), identify whether the facility is fully depreciated. If the facility is not fully depreciated, identify the remaining life and amounts to be depreciated for each facility, the cost of removal, and the salvage values as required by 18 C.F.R. § 35.13(h)(10). Please identify the remaining depreciable amount, cost of removal and salvage value for each facility and show how the sum equates to $36 million.***

RESPONSE: As indicated above, NMPC is removing its request for Commission authorization to establish the COR Regulatory Asset. If helpful to inform the Commission's review of the balance of the requests in the January 30 Filings, please see Attachment A, "Tab 2 – Detail," provided in response to Question 2a(i), for a summary of the estimated net book value (column J) for each asset and the estimated remaining life (column M). Both the net book values and remaining lives were developed utilizing the theoretical reserve calculation explained in response to Question 2a(iii). There is not an estimate of salvage for these assets, since typically salvage received for retired assets is either *de minimis* or nonexistent.

Note that the $36 million COR estimate included in the Company's initial proposal is unrelated to the net book value of the assets to be retired. The $36 million COR represents NMPC's best estimate as to the actual costs it will incur in order to remove the facilities listed in Attachment A. Thus, the sum of the remaining depreciable amount for these assets, plus COR and salvage value, does not equate to the $36 million in estimated COR.

(v) ***Provide copies of the depreciation studies and analyses used to determine the depreciation rates for the facilities identified in response to Questions 2a(i) and (ii) above as required by 18 C.F.R. § 35.13(h)(10).***

RESPONSE: As indicated above, NMPC is removing its request for Commission authorization to establish the COR Regulatory Asset. If helpful to inform the Commission's review of the balance of the requests in the January 30 Filings, please see the latest NMPC Depreciation Study, provided as Attachment B hereto, that was included in NMPC's retail rate case filing with the New York State Public Service Commission in Case 17-E-0238. As a normal course of rate case filings, the New York State Department of Public Service Staff and other parties provide depreciation rate recommendations. If a settlement can be reached, agreed-upon depreciation rates are set in a Joint Proposal, which often involves compromises between the various parties. Attachment C is the depreciation rates currently in effect for NMPC's TSC and retail rates, which were set in the Joint Proposal in Case 17-E-0238. The currently effective depreciation rates were approved by this Commission on December 4, 2018.[12]

The discussion of accounts 353.01, 353.55, 354.00, 355.00 and 356.01, which relate to the facilities identified in response to Question 2a(i), is shown on Depreciation Study pages 130-148, 149-161, 162-180, 181-199, and 200-218, respectively. In addition to the current approved depreciation rates in effect, NMPC has historically filed depreciation studies as part of its rate case filings, and therefore depreciation rates have changed over time.

(vi) ***Provide the most recent dismantling studies used to determine terminal removal costs, demolition costs, and salvage specific to each facility identified in response to Question 2a(i).***

RESPONSE: As indicated above, NMPC is removing its request for Commission authorization to establish the COR Regulatory Asset. If helpful to inform the Commission's review

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12 *See N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER19-132-000 (Dec. 4, 2018) (delegated letter order).

of the balance of the requests in the January 30 Filings, NMPC notes that its COR estimate has evolved since submission of the SPC Project Filing, and NMPC now expects to incur approximately $32.5 million in Project-related COR (*see* Attachment B hereto). There is not an estimate of salvage for these assets, as salvage received for retired assets is typically either *de minimis* or nonexistent.

(vii) ***For each facility identified in response to Question 2a(i), explain the status of removal (e.g., whether and on what date removal is complete, commenced, or not yet started).***

RESPONSE: As indicated above, NMPC is removing its request for Commission authorization to establish the COR Regulatory Asset. If helpful to inform the Commission's review of the balance of the requests in the January 30 Filings, NMPC notes that, as of April 2023, a total of 168 structures with a circuit length of 18.2 miles have been removed.

b. ***As noted, Niagara Mohawk states that the cost of removing existing facilities is, and has been, in the existing TSC as part of depreciation. However, Niagara Mohawk states that Project ratepayers, rather than TSC and retail customers, should pay for the cost of removal because the Project is the "but for" cause of the facilities' removal.***

(i) ***Please explain how Project ratepayers are the "but for" cause of the facilities' removal and identify any precedent supporting of the use of "but for" causation for the shifting of costs of removal, as well as identifying any other basis and related precedent for the justness and reasonableness of shifting the costs of removal from TSC ratepayers to Project ratepayers.***

RESPONSE: As indicated above, NMPC is removing its request for Commission authorization to establish the COR Regulatory Asset. Because the COR Regulatory Asset request is no longer before the Commission for consideration, NMPC respectfully asserts that responsive information regarding this request is not required to enable the Commission to process the January 30 Filings. Notwithstanding the removal of the COR Regulatory Asset request in the instant case, NMPC commits to providing information that is fully responsive to the Commission's questions as necessary to support any subsequent filings pertaining to the treatment of SPC Project-related COR.

(ii) ***Does the $36 million cost of removal represent the additional cost of removal for the facilities that have not been funded by the TSC customers to date? If the answer is no, please explain.***

RESPONSE: As indicated above, NMPC is removing its request for Commission authorization to establish the COR Regulatory Asset. If helpful to inform the Commission's review of the balance of the requests in the January 30 Filings, NMPC notes that the estimated COR represents the amount NMPC expects to actually pay to remove the facilities identified in response to Question 2a(i). It does not represent additional COR for facilities that have not previously been funded by TSC customers.

c. ***Niagara Mohawk states that it began construction on the Project in December 2022 and requests an April 1, 2023 effective date for the proposals in this filing. Niagara Mohawk requests authorization to establish a regulatory asset in FERC Account 182.3 (Other Regulatory Assets) to include the cost of removal of the existing facilities in the Project Rate in Schedule 15a, line 5 and expense that cost over 10 years in line 13, effective from the date the Project goes into service.***

(i) ***The Commission has typically allowed utilities to use regulatory assets to recover already-incurred costs in two types of cases: (1) to defer recovery of future project costs until future project rates go into effect when the applicant neither provides service at the time of cost-incurrence nor has an effective rate for that service; and (2) to defer recovery of non-routine costs to a different period than the existing rates provide when the applicant already has existing formula rate authority to make cost adjustments. Please explain whether Niagara Mohawk proposes to use a regulatory asset to recover costs in the Project Rate that were already incurred and charged in the TSC rate before the proposed Project Rate takes effect, and if so, how that is consistent with the Commission's precedent on regulatory asset treatment and the rule against retroactive ratemaking, citing to such precedent.***

RESPONSE: As indicated above, NMPC is removing its request for Commission authorization to establish the COR Regulatory Asset. Because the COR Regulatory Asset request is no longer before the Commission for consideration, NMPC respectfully asserts that responsive information regarding this request is not required to enable the Commission to process the January 30 Filings. Notwithstanding the removal of the COR Regulatory Asset request in the instant case, NMPC commits to providing information that is fully responsive to the Commission's questions as necessary to support any subsequent filings pertaining to the treatment of SPC Project-related COR.

(ii) ***Generally, Commission ratemaking regulations require that cost of removal be recovered over time as part of the cost of service for existing facilities unless there is an agreement with a contributor to pay these amounts as part of a contribution in aid of construction. Please explain why it is just and reasonable to treat the cost of removal differently than other costs incurred in the construction of the Project by creating a regulatory asset to amortize the $36 million cost of removal of existing facilities over ten years instead of over the life of the Project.***

RESPONSE: As indicated above, NMPC is removing its request for Commission authorization to establish the COR Regulatory Asset. Because the COR Regulatory Asset request is no longer before the Commission for consideration, NMPC respectfully asserts that responsive information regarding this request is not required to enable the Commission to process the January 30

Filings. Notwithstanding the removal of the COR Regulatory Asset request in the instant case, NMPC commits to providing information that is fully responsive to the Commission's questions as necessary to support any subsequent filings pertaining to the treatment of SPC Project-related COR.

3. Functional Allocations

a. ***Please provide all studies and analyses performed to support your proposed allocations for A&G expenses and General Plant in Schedule 15a.***

RESPONSE: The proposed allocations for A&G expenses and General Plant in Schedule 15a are based on the existing allocations used in the TSC formula rate under Section 14.2.1 to Attachment H of the NYISO OATT, as detailed further in Schedule 5 thereto. General Plant in the TSC formula rate is functionalized based on a Salaries and Wage allocator. Functionalization of A&G Expense in the TSC formula rate is expense dependent and based on a combination of the Plant and Salaries and Wage allocators. As the Project-related A&G expense and General Plant allocation will be a derivative of A&G expense and General Plant under the TSC formula rate, NMPC proposes to allocate those components to the SPC-FC revenue requirement based on the ratio of SPC Project to Total NMPC transmission plant.

Functionalization already occurs with respect to allocations to NMPC's transmission plant in service at the TSC level. NMPC has not yet incurred A&G related labor costs specific to the SPC Project as the Project is not in service, so does not have the historical labor data necessary to develop a Project-specific Salaries and Wage allocator. Even after the Project is placed into service, A&G labor costs will not be tracked by specific project. It is also relevant to note that the existing Salaries and Wage allocator used in the TSC formula rate is the result of a settlement.[13]

b. ***Identify the amount of costs produced by the two methods (allocation using a labor allocator, as compared to a plant allocator) for the Project Rate test periods.***

RESPONSE: As discussed in the response to Question 3a above, NMPC does not track historical A&G labor data at the project level. However, an illustrative example of the estimated A&G expense allocation, prepared using the proposed Cost Cap for the Project and actual 2021 TSC formula rate data, is provided as Attachment E hereto.

c. ***Please explain how it is just and reasonable to use a labor allocator for the TSC rate, but a plant allocator for the Project Rate, which will be credited to offset the TSC rate.***

[13] The Transmission Wages and Salaries Allocation Factor was fixed at 13% as part of a negotiated settlement providing for the transition of components of the TSC from stated values to formula rates. *See* Settlement Agreement and Offer of Settlement, Docket No. ER08-552-000, Attachment A (revised tariff sheets), Section 9.1, Paragraph 3 (Apr. 6, 2009) ("2009 TSC Settlement"). The Commission accepted the 2009 TSC Settlement in an order issued June 22, 2009. *See Niagara Mohawk Power Corp.*, 127 FERC ¶ 61,289 (2009).

RESPONSE: The use of labor allocators is not mandated in all cases.[14] In instances where the use of labor allocators proves unreasonable,[15] a utility is only required to show that the alternative allocation method used by that utility *is* reasonable, and the fact that a subjectively 'more reasonable' method may exist is irrelevant.[16] Acknowledging that Commission policy favors functionalization on the basis of labor ratios, NMPC respectfully asserts that it would be unreasonable to require NMPC to use a labor ratio-based allocator for purposes of allocating a portion of the A&G and General Plant already functionalized to transmission to the SPC Project. NMPC does not track salaries on a project basis. Doing so would require modification to NMPC's systems and processes that would likely increase the administrative burden of shared services employees and result in additional costs that would ultimately be borne by customers.

The use of a plant allocator, however, is just and reasonable in the case of the SPC-FC.[17] Allocation to total NMPC transmission plant under the TSC already occurs on a salaries and wage basis. It is therefore reasonable that the sub-allocation of that amount to the SPC Project would be determined on the basis of the SPC Project plant relative to NMPC's total transmission plant.

4. Tariff Sheets

a. ***Niagara Mohawk's filing does not contain tariff provisions to implement the proposed cost containment mechanism. Please submit the necessary tariff records to implement the proposed cost containment mechanism or explain why the cost containment mechanism tariff provisions are not included in the Project Rate.***

RESPONSE: NMPC proposes to amend its formula rate templates set forth in Section 14.2.1 to Attachment H of the NYISO OATT to incorporate a new Schedule 15e— reflected as a redline addition to Attachment F hereto—in order to implement the proposed cost containment mechanism for the SPC Project.[18] As shown in Attachment F, NMPC will also update line 21 of proposed Schedule 15a to specifically reference new Schedule 15e and will update the Table of Contents for Section 14.2.1 to Attachment H of the NYISO OATT to reflect the proposed addition of Schedule 15e.

Schedule 15e implements the cost containment mechanism as described in the SPC Project Filing,[19] which is substantially identical to the mechanism proposed in NYPA's filing relating to the

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14 *Idaho Power Co.*, Opinion No. 13, 3 FERC ¶ 61,108, at 61,295 (1978).

15 *See Minn. Power & Light Co.*, Opinion No. 20, 4 FERC ¶ 61,116, at 61,268 (1978), *aff'd*, Opinion No. 20-A, 5 FERC ¶ 61,091, at 61,150-51 (1978) ("[A] utility may use some basis for functionalization other than labor ratios only if it can show that labor ratios are unreasonable in its situation.").

16 *See id.*

17 *See* Opinion No. 20-A, 5 FERC ¶ 61,091, at 61,150-51.

18 The revisions to Section 14.2.1 to Attachment H of the NYISO OATT proposed herein are shown as incremental redline revisions to the version of Section 14.2.1 to Attachment H proposed in the SPC Project Filing. In contrast, Attachments H and K(a) hereto, which present the TSC formula rate in its native format, reflect all cumulative revisions thereto in red. As discussed above, NMPC will submit a compliance filing to conform all accepted revisions to Section 14.2.1 to Attachment H following Commission action on the January 30 Filings.

19 *See* SPC Project Filing at 21-24; *id.*, Attachment F, Byrne Testimony at 26:9-32:19.

SPC Project and subsequently accepted by the Commission.[20] Schedule 15e first defines the cost containment mechanism whereby if Eligible Project Costs exceed the Cost Cap for the Project, NMPC will earn no ROE on 20% of the equity portion of the actual costs that exceed the Cost Cap. Schedule 15e provides the definitions of both Eligible Project Costs and the Cost Cap, and also sets forth the two categories of exemptions from Eligible Project Costs: (i) Third-Party Costs, and (ii) Unforeseeable Costs in excess of 2.5% of the Cost Cap. These categories are defined in the same manner as explained in the SPC Project Filing.

Third Party Costs and Unforeseeable Costs are subtracted from total capital costs of the Project to arrive at Total Eligible Project Costs (line 16). The Cost Cap amount is then subtracted from this value to arrive at the amount above or below the Cost Cap. If there is any amount above the Cost Cap, that amount is multiplied by the Equity return and federal and state tax rates to arrive at the total cost containment adjustment, which is then included on line 21 of Schedule 15a.

5. Rate Schedule 18

a. ***Niagara Mohawk's Rate Schedule 18, § 6.18.3.8 states that "[t]he SPC-FC revenue requirement for the first year will be calculated retroactively to include any construction work in progress ('CWIP') amounts authorized by the Commission for recovery in rate base." Please provide an illustrative example of this calculation for the first year, with a narrative explaining the retroactive calculation.***

RESPONSE: An illustrative example of this calculation, is provided as Attachment H hereto. The calculation, as illustrated in Attachment H, shows the first year revenue requirement if the Commission approves NMPC's request to recover 100 percent of prudently incurred CWIP in rate base ("100 Percent CWIP Request"). The "retroactive" nature of the calculation merely ensures that any return on CWIP is prorated and recovered as of the date when the Commission approves the inclusion of CWIP in rate base.[21] The illustrative calculation in Attachment H is based on a hypothetical May 1 effective date approving CWIP in rate base, and therefore shows the revenue requirement true-up amount prorated for 8 out of 12 months and the revenue requirement for the current year. To provide additional clarity, NMPC is proposing to add an additional note—note (a)—to Schedule 15a, line 32, stating that the first year revenue requirement will be prorated based on the Commission's approval of CWIP recovery (*see* Attachment F to this response). NMPC is also proposing a minor revision to Schedule 15a, line 33 to better align with the interest calculation in the lines below. Specifically, line 33 has been revised to note that it reflects the value for "(Over) Under recovery," as calculated by taking the difference of Schedule 15a, line 32 and Schedule 15a, line 30.

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20 *See N.Y. Power Auth.*, 182 FERC ¶ 61,017, at P 20 (2023).

21 Of course, if the Commission were not to approve such treatment, this provision would have no effect.

b. ***Niagara Mohawk's Rate Schedule 18, § 6.18.3.8 provides that "[e]ach Responsible LSE shall be an 'Interested Party' with respect to any portion of the Annual Update related to the [Project Rate]." Please explain how this is consistent with Commission policy regarding who can participate in the formula rate review process.***

RESPONSE: The inclusion of Responsible LSEs as "Interested Parties" under proposed Rate Schedule 18 for purposes of participation in the Annual Update Process is wholly consistent with Commission policy regarding who can participate in the formula rate review process. In addition to the quoted language, proposed Rate Schedule 18, Section 6.18.3.8, notes that "NMPC shall recalculate the SPC-FC revenue requirement each year as part of the Annual Update process set forth in Section 14.1.9.4 of Attachment H of the ISO OATT." Section 6.18.3.8 additionally provides that "Capitalized terms used in this Section 6.18.3.8, but not otherwise defined in Section 1 of the ISO OATT or this rate schedule shall have the meaning specified in Section 14.1.9 of Attachment H of the ISO OATT."

The language indicating that Responsible LSEs are "Interested Parties" therefore functions as an expansion of, rather than a restriction of, the scope of participation in the Annual Update Process. Section 14.1.9.4 of Attachment H of the NYISO OATT defines "Interested Party" to mean a person that is "(i) a party to FERC Docket No. ER08-552, (ii) the New York State Public Service Commission; (iii) a transmission customer under this Tariff that pays charges based on the Formula Rate during the calendar year prior to the submission of the Informational Filing or (iv) a state regulatory authority having jurisdiction over the retail electric rates of such a transmission customer[.]"[22] Proposed Rate Schedule 18 expands this Commission-approved definition further, and consistent with Commission policy, affords a broad category of interested parties with adequate opportunity for participation and access to information.[23]

c. ***Rate Schedule 18, § 6.18.3.3 states: "[t]he [Project Rate] associated with the implementation of the NMPC Smart Path Connect Facilities shall not . . . be dependent upon a reopening or review of . . . NMPC's revenue requirements for charges set forth in its TSC set forth in Attachment H of the ISO OATT." Please explain whether Niagara Mohawk believes this provision affects Commission review of the items set forth in this deficiency letter. For example, please explain whether the Commission or parties will be able to review or reconcile the amounts for the cost of removal between the TSC and the Project Rate mechanisms or the functional allocations between the two rates described above if this provision is accepted. Please also explain whether this provision limits the information TSC ratepayers may seek to review to ensure the appropriate amounts of revenues from the Project Rate are credited to TSC ratepayers.***

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[22] The definition of "Interested Party" was agreed to as part of the 2009 TSC Settlement. *See* 2009 TSC Settlement, Attachment A (revised tariff sheets), Section 9.1, Paragraph 60.

[23] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127, at P 12 (2012).

RESPONSE: The cited provision, which arises in the context of the Incremental Transmission Congestion Contracts ("Incremental TCCs") associated with the SPC Project and mirrors the language in Rate Schedule 17, § 6.17.3.3, as previously accepted by the Commission, does not affect the ability of the Commission or other parties to review the items set forth in this deficiency letter, including the proposed functional allocations for A&G expenses and General Plant in Schedule 15a. With regard to the review and reconciliation of any COR amounts, as indicated above, NMPC is removing its request for Commission authorization to establish the COR Regulatory Asset. However, Rate Schedule 18, § 6.18.3.3 will similarly not impede the ability of the Commission or other parties to review any such amounts that NMPC may seek to recover in a future proceeding.

As is the case under the approved TSC formula rate, TCC-related settlements for the SPC-FC will occur each Billing Period and will be administered separately from the Annual Update process for NMPC's TSC. Proposed § 6.18.3.3 of Rate Schedule 18 is intended to make clear that no further filings or adjustments related to NMPC's revenue requirements are necessary to enable the NYISO to commence TCC-related adjustments upon assessing the SPC-FC.

Nothing in the proposed provision is intended to prevent the Commission or any other party from reviewing and/or challenging the underlying revenue requirement for the SPC-FC itself, including the appropriate amount of revenues credited to TSC ratepayers. In order to clarify this, NMPC is proposing a modest revision to remove the reference to "The SPC-FC" at the beginning of the sentence at issue, so that the sentence only refers to the TCC revenue offset. *See* Attachment I hereto.[24]

d. ***Rate Schedule 18, § 6.18.3.1 states: "The SPC-FC will be allocated on a load ratio share basis, calculated volumetrically based on Actual Energy Withdrawals by LSEs, excluding Withdrawal Billing Units for Exports and Wheels Through." However, Rate Schedule 18 does not specify if the points of withdrawal are measured from the Project or from the New York transmission system across the state. Please describe the points at which the withdrawals will be determined, i.e., whether the withdrawals are from the Project's substations or from points on the NYISO transmission system and provide the estimated allocations and rate design information consistent with regulations.***

RESPONSE: Under Rate Schedule 18, withdrawals will be measured based on where a particular LSE withdraws energy from the NYISO system as a whole, and do not depend on the Project's substations. Under the NYISO OATT, NYISO measures energy withdrawals at "Points of Withdrawal" which are in turn defined as the "point(s) on the NYS Transmission System or Proxy Generator Buses where Energy will be made available to the Transmission Customer or Customers under the ISO Tariffs." As stated in § 6.18.3.1, each LSE's load ratio share allocation is based on its "Actual Energy Withdrawals" which is defined as follows in relevant part under § 1.1 of the NYISO OATT:

[24] The revisions to Section 6.18 of the NYISO OATT proposed herein are shown as incremental redline revisions to the version of Section 6.18 proposed in the SPC Project Filing.

> <u>Actual Energy Withdrawals</u>: Energy withdrawals which are either: (1) measured with a revenue-quality real-time meter; (2) assessed (in the case of LSEs serving retail customers where withdrawals are not measured by revenue-quality real-time meters) on the basis provided for in a Transmission Owner's retail access program; or (3) calculated (in the case of wholesale customers where withdrawals are not measured by revenue-quality real-time meters), until such time as revenue-quality real-time metering is available on a basis agreed upon by the unmetered wholesale customers.

Thus, each LSE's load ratio share will be calculated based on its Actual Energy Withdrawals at any point(s) on the NYISO transmission system where it withdraws energy. This measurement does not depend on where power is injected, or over which facilities it flows, but only concerns where power is withdrawn from the NYISO system.

A summary of the estimated allocation, based on 2022 New York Control Area internal load consumption data provided by the NYISO and NMPC TSC data for rate year 2022, is included as Attachment K(b) hereto. Although the NYISO will calculate and bill the rate to individual New York LSEs, the estimated allocation in Attachment K(b) is shown on a NYISO zonal and sub-zonal level. The estimated allocation utilizes an estimated revenue requirement (excluding true-up) shown in Attachment K(a) based on the Project's proposed Cost Cap and does not include any estimates for settlements related to Incremental TCCs. For simplicity, the accumulated reserve, depreciation expense, property tax expense and accumulated deferred income taxes components reflect an estimated year 1 value after the Project is placed in service and assumes a 35-year book life and 15-year tax life. All other components were derived based on the proposed allocation of the NMPC TSC data. Note that the 2022 TSC data inputs were not changed and the change in the TSC rate shown on Attachment K(a) does not represent the impact when the Project is placed in service.

B. Docket No. ER23-974

Please explain whether Niagara Mohawk's proposal to recover the cost of removal of existing assets in the Project Rate through the use of a regulatory asset is part of the Cost Allocation Agreement, or if there are other contractual agreements with Project ratepayers addressing the cost of removal of existing facilities.

RESPONSE: NMPC's COR Regulatory Asset proposal is not addressed under the CAA for NMPC's portion of the SPC Project submitted in Docket No. ER23-974-000. The CAA memorializes an agreement among NMPC and the other New York transmission owners[25] that the revenue requirement for NMPC's portion of the SPC Project should be allocated state-wide in New York on a volumetric load-ratio share basis. The COR Regulatory Asset proposal, in contrast, related solely to NMPC's proposed accounting treatment of a specific class of Project-related costs.

Because the COR Regulatory Asset proposal involved the determination of the underlying revenue requirement for the SPC Project, rather than the appropriate allocation thereof, it was not

[25] The other New York transmission owners consist of Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corporation; Orange and Rockland Utilities, Inc.; Rochester Gas and Electric Corporation; Long Island Power Authority; and the New York Power Authority.

directly addressed in the CAA, nor under any other contractual agreements with Project ratepayers. Additionally, as indicated above, NMPC is amending its proposals in the January 30 Filings to reflect the removal of its request for Commission authorization to establish the COR Regulatory Asset. As such, responsive information regarding this request is neither relevant nor required for purposes of processing the CAA.

III. DOCUMENTS INCLUDED IN THIS FILING

In addition to this transmittal letter, NMPC submits the following in support of this compliance filing:

Attachment A	Overview of Existing Facilities That Will Be or Have Been Removed or Replaced to Accommodate the Project
Attachment B	NMPC 2018 Depreciation Rate Filing
Attachment C	Current Approved and Effective NMPC Depreciation Rates
Attachment D	Estimated Cost of Removal of Existing Facilities
Attachment E	Illustrative Example of the Estimated A&G Expense Allocation
Attachment F	Revised Section 14.2.1 of Attachment H of NYISO OATT (Marked)
Attachment G	Revised Section 14.2.1 of Attachment H of NYISO OATT (Clean)
Attachment H	Illustrative Example of the CWIP Calculation for the Initial Rate Year
Attachment I	Revised Section 6.18 of NYISO OATT - Rate Schedule 18 (Marked)
Attachment J	Revised Section 6.18 of NYISO OATT - Rate Schedule 18 (Clean)
Attachment K(a)	Estimated Revenue Requirement Based on Proposed Project Cost Cap
Attachment K(b)	Summary of the Estimated Allocations and Related Rate Design Information, Based on 2022 New York Control Area Internal Load Consumption Data

IV. REQUESTED WAIVERS AND EFFECTIVE DATE

The January 30 Filings requested an effective date of April 1, 2023 for the proposals submitted therein. However, the March 28, 2023 deficiency letter stated that "the Commission will consider any amendment or supplemental filing filed after a utility's initial filing . . . to establish a new filing date for the filing in question."[26] In light of Commission precedent permitting applicants

[26] March 28, 2023 deficiency letter at 10, n.30 (citing *Duke Power Co.*, 57 FERC ¶ 61,215, at 61,713 (1991)).

to retain their originally requested effective date when a filing is amended in good faith to cure a deficiency,[27] NMPC respectfully requests that the Commission grant waiver of its sixty-day prior notice requirement,[28] and renews its request for an effective date of April 1, 2023 for the January 30 Filings. Granting this request will not prejudice any other entities. No party protested the January 30 Filings, and NMPC is not proposing significant substantive modifications to its January 30 Filings herein.

To the extent that waivers of any applicable requirements in 18 C.F.R. § 35.13 are necessary, NMPC continues to respectfully request such waivers. As explained in the January 30 Filings, good cause exists for waiver, and NMPC also continues to request a waiver of any other applicable requirement of Part 35 or other Commission regulations, as necessary, in order to permit the January 30 Filings to become effective as proposed. The Commission typically grants requests for waiver of full cost of service filing requirements in transmission formula rate cases.[29] NMPC submits that the information provided in the SPC Project Filing, along with the cost support information accompanying this filing, will provide sufficient support for the justness and reasonableness of the proposed SPC-FC formula rate.

V. CONCLUSION

For the reasons set forth above, and in the January 30 Filings, NMPC respectfully submits that this filing, and the further clarifications provided and amendments proposed herein, address all issues raised in the March 28, 2023 deficiency letter. Accordingly, NMPC respectfully requests that the Commission grant its 100 Percent CWIP Request for the SPC Project and approve the tariff amendments included in the SPC Project Filing, together with the incremental revisions proposed herein, effective as April 1, 2023. NMPC additionally requests that the Commission find that the CAA is just and reasonable and issue any approvals necessary to allow the CAA to become effective concurrent with the effective date of the tariff amendments included in the SPC Project Filing in Docket No. ER23-973.

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[27] *See, e.g.*, *Niagara Mohawk Power Corp.*, 126 FERC ¶ 61,173 (2009) at PP 9-10 (the Commission has discretion under FPA Section 205(d) to make changes effective on less than sixty days' notice from the date a deficiency response is received and the filing is deemed complete); *Midwest Indep. Transmission Sys. Operator, Inc.*, 105 FERC ¶ 61,076, at PP 4 and Ordering Para. (A) (2003) (granting requested effective date following supplemental filing in response to deficiency letter); *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 62,339 n.10 ("In circumstances where a rate increase filing is amended in a good faith effort to cure a deficiency and no customer contests the rate increase or the proposed effective date, we will also measure the 60-day notice period from the initial filing date, rather than the date the filing was completed.") *order on reh'g*, 61 FERC ¶ 61,089 (1992).

[28] 18 C.F.R. § 35.3(a)(2).

[29] *S. Cal. 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)); *Okla. 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).

Respectfully submitted,

<u>/s/ David Lodemore</u>

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the above-referenced proceeding, pursuant to the requirements of rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 30th day of May, 2023.

/s/ Daniel Klein

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