UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Transco, LLC	**)**	
	)	
Central Hudson Gas & Electric Corp.	**)**	
Consolidated Edison Company of	**)**	
New York, Inc.	**)**	**Docket No. ER15-___-000**
Niagara Mohawk Power Corporation d/b/a	**)**	
National Grid	**)**	
New York State Electric & Gas Corp.	**)**	
Orange & Rockland Utilities, Inc.	**)**	
Rochester Gas and Electric Corp.	**)**	

APPLICATION FOR ACCEPTANCE OF TRANSMISSION FORMULA RATE AND APPROVAL OF TRANSMISSION RATE INCENTIVES AND COST ALLOCATION METHOD

December 4, 2014

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I. INTRODUCTION AND EXECUTIVE SUMMARY

Pursuant to Sections 205 and 219 of the Federal Power Act ("FPA"),[1] and Part 35 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") regulations,[2] New York Transco, LLC ("NY Transco"), Consolidated Edison Company of New York, Inc. ("Con Edison"), Orange & Rockland Utilities, Inc. ("O&R"), Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid"), New York State Electric & Gas Corp. ("NYSEG"), Rochester Gas and Electric Corp. ("RG&E"), and Central Hudson Gas & Electric Corp. ("Central Hudson") (collectively, the "Applicants")[3] submit this application to establish: (1) the rate incentives described and supported below for the initial portfolio of five interrelated high-voltage transmission projects that NY Transco will build, own and operate in New York State;

[1] 16 U.S.C. §§ 824d and 824s.
[2] 18 C.F.R. §§ 35.13 and 35.35 (2014).
[3] Con Edison, O&R, National Grid, NYSEG, RG&E and Central Hudson are sometimes referred to herein as the "New York Transmission Owners," or more simply, the "NYTOs."

(2) NY Transco's transmission formula rate and protocols, to be effective on April 3, 2015, which is 120 days after the date of this filing;[4] (3) NY Transco's return on equity ("ROE"); (4) proposed Attachment DD and Rate Schedule 13; and (5) the cost allocation method that will apply to NY Transco's initial portfolio of projects under the New York Independent Transmission System Operator, Inc.'s ("NYISO") open access transmission tariff ("OATT").[5]

1. Summary of Incentives for Five New High Voltage Transmission Projects Totaling Over $1.7 Billion.

It is well known that New York's transmission grid is in need of upgrades to improve the flow of electricity between upstate and downstate New York in order to ensure reliability and reduce congestion, lower the cost of delivering power to customers and increase the efficiency of generation dispatch, facilitate existing and new renewable generation, prepare for the potential retirement of existing generation, and enable continued reliable supplies in the decades ahead. As explained in the attached testimony of Messrs. Paul Haering of Central Hudson and Richard Allen of National Grid, New York's history of under-investment in high voltage transmission lines has produced persistent transmission congestion along corridors like the Upstate New York/Southeastern New York ("UPNY/SENY") interface in the Hudson River Valley near Albany that are among the most congested in the Nation.[6] Indeed, the Commission found that

[4] As discussed more fully herein, due to the timing of asset transfers to NY Transco from the NYTOs, following receipt of regulatory approvals, the Applicants anticipate that NY Transco will initially collect the revenue requirement under its formula rate beginning on January 1, 2016, following the completion of its initial formula rate template and distribution to stakeholders on or about September 30, 2015.

[5] Applicants are filing, contemporaneously herewith, a separate request for Commission approval pursuant to Section 203 of the FPA to transfer from individual NYTOs to NY Transco certain inactive transmission facilities, and related books, records and accounts, in connection with the development of the five projects.

[6] The U.S. Department of Energy has included southeastern New York in its designation of the Mid-Atlantic region as a National Interest Electric Transmission Corridor ("NEITC") under FPA Section 216 through studies that are available at: http://energy.gov/oe/downloads/2009-electric-transmission-congestion-study. DOE's 2014 draft study making the same determination is available at: http://www.energy.gov/oe/downloads/national-electric-transmission-congestion-study-draft-public-comment-august-2014. The NEITC designation makes new transmission investment in southeastern New York a congressional priority. 16 U.S.C. § 824s(a)(4)(B).

these lines have "been ***overloaded*** since 2008" and continue to raise "***long-term reliability concerns***" that require price signals to encourage new transmission and generation investment.[7]

The New York Transmission Owners and the State's leading policy makers have been working hard for several years to develop an effective plan to address the need. As Governor Cuomo's 2012 New York Energy Highway Task Force's Request for Information ("RFI") stated: "[w]e must modernize the transmission system and eliminate the bottlenecks."[8] To do so, the State's *Energy Highway Blueprint* ("*Energy Blueprint*") called for the expansion of transmission facilities in order to transmit electricity from upstate to downstate including renewable energy; address the potential retirement of large generating stations; and promote economic development activity to create additional jobs as well as providing an increased opportunity for exiting generators to remain in service, thereby preserving existing energy jobs.[9]

The NY Transco represents an historic effort by the investor-owned utilities in New York. As explained by NY Transco's president, Mr. Stuart Nachmias,[10] NY Transco is a partnership of New York State's investor-owned utilities which will facilitate the planning, development, construction, and ownership of new transmission projects that will enhance the current capabilities of the bulk power system across New York State. The five projects that are the subject of this filing involve additions to or modifications of the individual transmission systems of the NYTOs and are currently estimated to cost approximately $1.7 billion (in nominal dollars) to complete.

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[7] *New York Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,152, at P 13 (2014) (emphasis added). The problem is so severe that the Commission worried about the risk of "a 1,431 MW ***capacity reserve shortage*** during the upcoming summer in Southeast New York under extreme weather conditions, in part due to the constrained UPNY/SENY transmission constraint." *Id*. at P 17 (emphasis added).

[8] RFI, p. 5. The RFI is available at: http://nyenergyhighway.com.

[9] *Energy Highway Blueprin*t at p. 27, available at: http://nyenergyhighway.com/PDFs/Blueprint/EHBPPT/. A copy is attached as Exhibit No. NYT-2.

[10] Testimony of Stuart Nachmias, Exhibit No. NYT-1, at p. 5.

The New York Public Service Commission ("NYPSC") has already reviewed and approved three of NY Transco's projects in proceedings to implement the Governor's *Energy Blueprint*. It used a statewide competitive process to select projects to provide a "contingency reliability plan" in the event that the 2,040 MW Indian Point Energy Center ("IPEC") retires at the end of 2015.[11] As the NYPSC has found, the three "Transmission Owner Transmission Solutions," or "TOTS Projects" described below, will provide long-term benefits to consumers through a more reliable and efficient transmission grid.[12] The TOTS Projects are expected to enter service by June 2016, and are included in the base case of the latest NYISO Reliability Needs Assessment ("RNA").[13]

Also in response to the *Energy Blueprint*, Applicants have proposed two 345 kV transmission projects that are in early stages of review by the NYPSC in its competitive solicitation siting proceeding to identify "alternating current" solutions to the State's transmission congestion. The "AC Projects" described herein will provide significant relief to UPNY/SENY, Central East, and other congested corridors. The AC Projects will also upgrade or replace existing transmission infrastructure, which will improve its resiliency and reliability. If selected by the NYPSC next year, and included by the NYISO in its transmission plan for cost allocation purposes, the NY Transco will seek to place them into service as early as the Summer of 2019.

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[11] NYPSC Case 12-E-0503 – Proceeding on Motion of the Commission to Review Generation Retirement Contingency Plans (issued Nov. 4, 2013) ("Reliability Contingency Plan Order") (attached as Exhibit No. NYT-7).

[12] The NYPSC found that "the TOTS projects . . . provide a significant portion of the resources needed to address the potential reliability needs in the event IPEC is retired in December 2015" and do so through a "least-cost and least-risk portfolio . . . ." *Id.* at p. 7.

[13] New York Independent System Operator 2014 Reliability Needs Assessment, Final Report, at p. 14 (Sept. 16, 2014) (available at: http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Planning_Studies/Reliability_Planning_Studies/Reliability_Assessment_Documents/2014%20RNA_final_09162014.pdf) ("NYISO 2014 RNA"). A copy is attached at Exh. No. NYT-10.

The projects being proposed are eligible for all of the transmission rate incentives afforded under the FPA and the Commission's regulations for transmission infrastructure investment.[14] NY Transco is requesting the following risk-reducing incentives for its initial five projects: preauthorization to recover prudently incurred abandoned plant costs to the extent the abandonment is due to circumstances beyond NY Transco's control; a hypothetical capital structure pending permanent financing with 60% equity and 40% debt; and regulatory asset treatment to allow for the recovery of all project costs that are not capitalized and included in Construction Work in Progress ("CWIP"). In addition, NY Transco is requesting 100% of CWIP in rate base for its two AC Projects. NY Transco is not requesting 100% of CWIP recovery for the three TOTS Projects because, as shown below, due to timing and other issues, this incentive will not provide meaningful cash flow to mitigate the financing risks associated with the three TOTS projects.

Because the Commission's "risk reducing" incentives do not fully offset the risks and challenges faced by NY Transco in pursuing these projects, ROE adders are justified. Indeed, the ROE incentives are appropriate under the Commission's policies because NY Transco will: (1) turn over operational control of its projects to the NYISO, (2) build "projects to relieve chronic or severe grid congestion that has had demonstrated cost impacts to consumers" and "projects that unlock location constrained generation resources that previously had limited or no access to the wholesale electricity markets,"[15] (3) address public policy needs, including facilitating the ability of the State to meet long-term Federal and State clean energy goals and aid economic development throughout the state, and (4) encounter significant development, construction, regulatory and financing risks. Moreover, NY Transco is eligible for an ROE

[14] 18 C.F.R. § 35.35(d)(1) (2014).
[15] *Promoting Transmission Investment Through Pricing Reform*, Policy Statement, 141 FERC ¶ 61,129, at P 21 (2012) ("Incentives Policy Statement").

adder as a "Transco" that is solely focused on developing new transmission investment both in the near term and the decades ahead.[16]

NY Transco has tailored its requests for incentives narrowly to offset the risks and challenges of developing the projects, provide cash flow and remove disincentives to investment. NY Transco has followed the Commission's guidance in its policy statement on transmission investment by requesting risk-reducing incentives before requesting return on equity incentives to compensate for the construction and financing risks of the projects.[17] The specific incentives requested by the NY Transco are described and supported by the testimonies of Applicants' witnesses Ms. Ellen Lapson, which is attached as Exhibit No. NYT-18, and Messrs. Paul Haering and Richard Allen, which is attached as Exhibit No. NYT-4.

It has become possible for the NYTOs to pursue the five transmission projects described herein in large part because they were able to agree to coordinate them through a new joint entity, NY Transco, resolve joint development issues, and achieve a fair allocation of costs to all customers across the State. The lack of alignment of these issues has stymied past development efforts, but now, with the help of the Commission, the State of New York, and this structure, we are turning the corner. In fact, the NYTOs are also hopeful that a similar structure could be used for future development of gas transmission facilities that would support electric system needs. While this will require additional discussion, the collaboration that has resulted in the formation of the NY Transco may open the door to additional future cooperation and innovation.

[16] 18 C.F.R. § 35.35(d)(2) (2014).

[17] The Applicants believe that requesting all incentives in a single filing is an appropriate approach to reconcile the Commission's statement in the Incentives Policy Statement that it expects applicants to request risk reducing incentives before requesting an ROE adder (Incentives Policy Statement at P 16) with its holding in Order No. 679-B: "Though we encourage applicants to seek all requested incentives in the same proceeding (whether in a request for declaratory order or a section 205 filing), we do not require it." *Promoting Transmission Investment Through Pricing Reform*, Order on Rehearing, 119 FERC ¶ 61,062, at P 12 (2007).

2. Formula Rate and Protocols.

NY Transco's formula rate will be included in a new proposed Attachment DD to the NYISO OATT which will provide: (a) a statement of the basis for NY Transco's annual transmission revenue requirement to be charged to transmission service customers; (b) a table for each project showing the cost allocation factors; (c) the formula rate and protocols (together, the "formula rate") that, among other things, governs how NY Transco will update the formula each year, and describes the customer review and challenge procedures. Attachment DD also describes the procedures that NY Transco will follow under the formula rate to track CWIP expenses recovered through the formula rate pursuant to Commission orders authorizing recovery of CWIP as an incentive. These protocols are modeled after protocols recently adopted by the Commission in other proceedings as well as recent guidance provided by FERC Staff.[18] The costs associated with NY Transco's projects will be billed and collected by the NYISO under a new Rate Schedule 13 proposed herein. NY Transco's proposed forward-looking formula rate in Attachment DD is described generally below and in more detail in the supporting testimony of Mr. Alan Heintz at Exhibit No. NYT-41. Rate Schedule 13 is explained in the testimony of Ms. Marie Berninger, and Messrs. Raymond Kinney and Bart Franey, and attached as Exhibit No. NYT-40.[19]

3. Base Return on Equity.

The NY Transco Formula Rate includes a base ROE value of 10.60%. The base ROE is supported by the analysis and testimony of Dr. William E. Avera and Mr. Adrien M. McKenzie,

[18] FERC Staff's Guidance on Formula Rate Updates (issued July 17, 2014).

[19] Since the tariff provisions proposed herein governing the collection of NY Transco's revenue requirement will become part of the NYISO tariff, the NYISO is submitting this filing in FERC's e-Tariff system on the Applicants' behalf solely in its role as the Tariff Administrator. However, the burden of demonstrating that this filing and proposed tariffs and schedules are just and reasonable rests on NY Transco and the NYTOs as the filing parties. NYISO takes no position on any aspect of the filing and reserves the right to comment on any issue in the proceeding.

whose testimony is attached as Exhibit NYT-24. As explained by Dr. Avera and Mr. McKenzie, the requested base ROE of 10.60% is well within the zone of reasonableness of 6.25% and 11.63% or 6.45% and 13.59% established by the Commission's two-step discounted cash flow ("DCF") methodology applied using IBES and Value Line growth rates, respectively.

4. Relationship to the NYISO.

NY Transco will join the NYISO and will sign the appropriate NYISO enabling agreements and comply with all applicable NYISO tariffs. It will turn over operational control of its facilities to the NYISO and service over these facilities will be subject to the terms and conditions of the NYISO OATT. The NY Transco's revenue requirement will be billed and collected by the NYISO pursuant to the terms of the NYISO OATT.

5. Cost Allocation Methodology.

As more fully described herein, the agreement to form NY Transco and the related agreement on cost allocation will address a longstanding obstacle to new transmission in the State. The NYTO parties to this filing provide electric service to approximately 85% of the customers in the State. They have worked hard to arrive at a methodology that fairly allocates costs to customers in a manner that is commensurate with the benefits received. And, as explained in more detail below and by Ms. Marie Berninger, and Messrs. Raymond Kinney and Bart Franey, NY Transco proposes a cost allocation plan that allocates more of the costs for NY Transco's initial five transmission projects to "downstate" consumers than would be allocated under the NYISO load ratio share default method. The load ratio share method would allocate 60% of NY Transco's costs to downstate consumers, and 40% to those located upstate, but under NY Transco's proposal downstate consumers will bear about 75% of the costs and upstate consumers will pay about 25%. This adjustment to the default method under Attachment Y to the NYISO tariff is intended to recognize that the projects benefit the entire State but provide

substantial economic benefits to downstate consumers. The cost allocation proposal is consistent with the Commission's cost allocation principles in Order Nos. 890 and 1000. The cost allocation was also endorsed by the NYPSC in approving the three TOTS Projects due to the statewide benefits they will provide. As demonstrated herein, the AC Projects will provide similar statewide benefits as well.

II. BACKGROUND

A. NY Transco and the New York Transmission Owners.

NY Transco

NY Transco is a New York limited liability company that is owned by the following affiliates of the New York Transmission Owners:

- Consolidated Edison Transmission, LLC
- Grid NY LLC
- Iberdrola USA Networks New York Transco, LLC
- Central Hudson Electric Transmission, LLC

NY Transco's sole business focus will be to plan, develop, construct, and own major new high voltage electric transmission projects in the State, and to operate and maintain those projects under the functional and operational control of the NYISO. Initially, NY Transco will complete the development and construction of five transmission projects that, among other things, are necessary to address persistent congestion on major transmission lines that move power between northern and western New York and southeastern New York. Service over NY Transco's transmission facilities will be provided through the NYISO's OATT. NYISO will

collect NY Transco's FERC-authorized revenue requirement from load serving entity ("LSE") transmission customers taking service under NYISO's OATT.[20]

Con Edison/O&R

Con Edison and O&R are wholly-owned subsidiaries of Consolidated Edison, Inc., an investor-owned utility holding company. Con Edison has approximately 1,180 circuit miles of transmission lines, and provides electric service to more than 3.3 million customers in New York City and most of Westchester County. Con Edison also provides natural gas service in parts of New York City. O&R and its utility subsidiaries, Rockland Electric Company and Pike County Light and Power Company, serve a 1,350-square-mile area in Orange, Rockland, and part of Sullivan counties in New York State, and in parts of Pennsylvania and New Jersey. O&R provides electric service to approximately 300,000 customers.

Con Edison and O&R have transferred functional control over their transmission facilities to NYISO. Transmission service over Con Edison's and O&R's transmission facilities is provided pursuant to NYISO's OATT. Con Edison's and O&R's retail and distribution sales are regulated by the NYPSC. Retail service and distribution provided by O&R in Pennsylvania and New Jersey are regulated by the Pennsylvania Public Utility Commission and the New Jersey Board of Public Utilities, respectively.

National Grid

Niagara Mohawk Power Corporation d/b/a National Grid is a New York corporation and an indirect wholly-owned subsidiary of National Grid USA, which is a public utility holding company with other subsidiaries engaged in the generation of electricity for sale at wholesale, and the transmission, distribution and sale of both natural gas and electricity. National Grid USA is an indirectly-owned subsidiary of National Grid plc, a public limited company

[20] More information about NY Transco is available at: http//www.nytransco.com.

incorporated under the laws of England and Wales. In New York, National Grid owns over 6,000 circuit miles of electric transmission lines and over 700 substations to provide service to approximately 1.6 million electric customers in eastern, central, northern and western parts of the State. National Grid has transferred functional control over its transmission facilities in New York to NYISO. Transmission service over National Grid's transmission facilities in New York is provided pursuant to NYISO's OATT. National Grid's retail and distribution sales in New York are regulated by the NYPSC.

NYSEG/RG&E

NYSEG and RG&E are wholly-owned subsidiaries of Iberdrola USA, Inc., which in turn is a subsidiary of Iberdrola, S.A., an international energy company listed on the Madrid Stock Exchange. NYSEG owns approximately 4,583 miles of electric transmission lines, 32,881 miles of distribution lines and 444 substations. NYSEG provides electric service to about 878,000 customers in 42 counties in New York. RG&E owns approximately 1,017 miles of electric transmission lines, 7,597 miles of electric distribution lines, and 177 substations. RG&E provides electric service to about 367,000 customers in nine counties in New York. NYSEG and RG&E have transferred functional control over their transmission facilities to NYISO. Transmission service over NYSEG's and RG&E's transmission facilities is provided pursuant to NYISO's OATT. NYSEG's and RG&E's retail and distribution sales are regulated by the NYPSC.

Central Hudson

Central Hudson is a public utility within the meaning of the FPA and is a corporation organized under the laws of the State of New York. Central Hudson is a wholly-owned subsidiary of CH Energy Group, Inc., and an indirect wholly-owned subsidiary of Fortis, Inc., a

publicly traded Canadian utility holding company.[21] Central Hudson is engaged in the transmission and distribution of electric power and natural gas, and provides electric service to 300,000 customers within eight counties of New York State. Central Hudson has transferred functional control over its transmission facilities to NYISO. Transmission service over Central Hudson's facilities is provided pursuant to NYISO's OATT. Central Hudson's distribution of power for sale at retail is regulated by the NYPSC.

B. Historical Congestion, Aging Infrastructure and Reliability Concerns Due to Generation Retirements.

New York has long-standing needs to upgrade its transmission networks to relieve historical congestion, replace aging infrastructure, support continued reliable transmission service in the future, and support the development of clean renewable energy sources. New transmission lines will also help improve the operational efficiencies of existing generation by allowing dispatch of generating units that might have been otherwise constrained, and reduce the output of more costly generation supplies. These needs have been documented through a series of transmission studies performed by the NYTOs, the NYISO and the NYPSC in recent years, and have been outlined in the Governor's *Energy Blueprint*. The risk that major generating stations may retire in the near future has added urgency to the search for solutions to these well-known problems. NY Transco's five transmission projects result from studies that led to the Governor's *Energy Blueprint*, which in turn led to the NYPSC proceedings whereby the three TOTS projects were selected to meet these needs, and where the two AC Projects are pending approval. The Applicants briefly review the major studies and the common transmission needs they identified.

[21] *Fortis, Inc.*, 140 FERC ¶ 62,004 (2012).

1. The STARS Phase II Report.

New York has a reliable transmission grid, but it is in need of new investment to continue to achieve both near-term and longer-term reliability, congestion and other public policy objectives. The New York grid needs additional transmission investment that can reduce transmission congestion and enable more competitive energy prices by reducing the need to rely on higher-cost, less efficient generation during many hours each year. This will provide benefits to all New Yorkers, including downstate customers as well as upstate customers, with the latter seeing more indirect benefits of stabilized generation resources, and the potential additional benefit of new renewable energy sources.[22] As Messrs. Haering and Allen explain, the last major statewide 345 kV transmission line was built in the 1980s, while 85 percent of the State's high voltage transmission lines were built before 1980.[23] According to the NYISO, the result has been transfer capability limitations along congested transmission pathways between upstate and downstate that in recent years has cost New Yorkers between $765 million[24] and $1.1 billion a year.[25] Looking ahead, the costs may be compounded by generation retirements driven by environmental regulations or inadequate revenues because of dispatch limitations, and the potential retirement of the Indian Point nuclear generating station, which provides baseload energy to New Yorkers.

The New York Transmission Owners have not sat idly by. With input from NYISO and stakeholders in New York, on April 30, 2012, the NYTOs published the results of a second

[22] There are seven major well-known constrained transmission interfaces in the New York Control Area: (1) West Central interface, (2) Volney East interface, (3) Central East interface, (4) Zone F-to-G interface, (5) Moses South interface, (6) Total East interface, and (7) UPNY/SENY interface.
[23] Testimony of Haering and Allen at 6-7.
[24] *Id.* at 7.
[25] *Id.* (citing 2013 Congestion Assessment and Resource Integration Study ("2013 CARIS Report") at pp. 15-16 (attached as Exh. No. NYT-6) *and* 2011 Congestion Assessment and Resource Integration Study ("2011 CARIS Report") at p. 43, *available at*: http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Planning_Studies/Economic_Planning_Studies_(CARIS)/Caris_Final_Reports/2011_CARIS_Final_Report__3-20-12.pdf).

phase of their comprehensive transmission planning assessment known as the New York State Transmission Assessment and Reliability Study ("STARS Phase II Report").[26] The STARS Phase II Report was the culmination of a multi-year analysis of the State's long-term transmission needs that was performed with the technical support of the NYISO and consulting firm ABB Ltd. The STARS Phase II Report looked beyond the NYISO's 10-year planning horizon to identify $25 billion of transmission upgrades that may be necessary over the next 30 years to replace aging transmission infrastructure, and identified $2.5 billion of near-term projects that include both new lines and upgrades to existing lines that will reduce transmission congestion, improve system reliability, improve the environment and boost New York's economy.

The STARS Phase II Report summarizes a series of analyses to assess the condition of the transmission grid, the upgrades that would be needed to achieve an unconstrained grid, and a benefit-to-cost analysis to identify the most economically beneficial projects. The initial "condition assessment" identified about 4,700 miles of transmission lines that will reach the end of their useful service lives within the next 30 years and require replacement. The Report identified a number of transmission projects to address these congestion and age-related concerns. NY Transco's projects are derived from the recommendations contained in the STARS Phase II Report.

2. The New York Energy Task Force and the Governor's *Energy Blueprint*.

The STARS Phase II Report initially envisioned three phases of analysis, but the third phase was overtaken by the State Governor's initiative to improve grid reliability, reduce the cost

[26] The STARS Phase II Report is posted on the NYISO website and is attached as Exhibit No. NYT-5. The report is available at: http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Documents_and_Resources/special_Studies/STARS/Phase_2_Final_Report_Attachments_4_30_2012.pdf.

of delivering energy to consumers, and to promote renewable energy and other public policy objectives. On April 11, 2012, Governor Cuomo's New York Energy Highway Task Force issued its RFI inviting parties to submit transmission proposals to meet the State's policy goals, which are to "modernize the transmission system and eliminate the bottlenecks."[27] The invitation drew responses from 85 private developers, investor-owned utilities, financial institutions and other entities.[28] The NYTOs responded to the RFI with a proposal to construct transmission projects identified through the STARS Phase II Report, and ranked them in priority according to whether they solved New York's most pressing needs.[29]

The *Energy Blueprint* considered the proposals submitted in response to the RFI in setting an ambitious plan "to solve a decades-old problem: the limitations of the State's electric grid to transmit available, cheaper upstate power to downstate when demand is high."[30] It identified transmission lines traversing the Central East and UPNY/SENY interfaces as the area in need of the most immediate attention where the Central East-New Scotland-Leeds-Pleasant Valley corridor has long had the most heavily congested facilities in the State.[31] In addition, the *Energy Blueprint* took note of the reliability risks to the transmission grid in the event that the Nuclear Regulatory Commission does not renew the license for the 2,040 MW IPEC plant near New York City.[32]

3. NYPSC Proceedings.

The NYPSC implemented the *Energy Blueprint* by initiating two proceedings. These are the *Proceeding on Motion to Examine Alternating Current Transmission Upgrades* ("AC

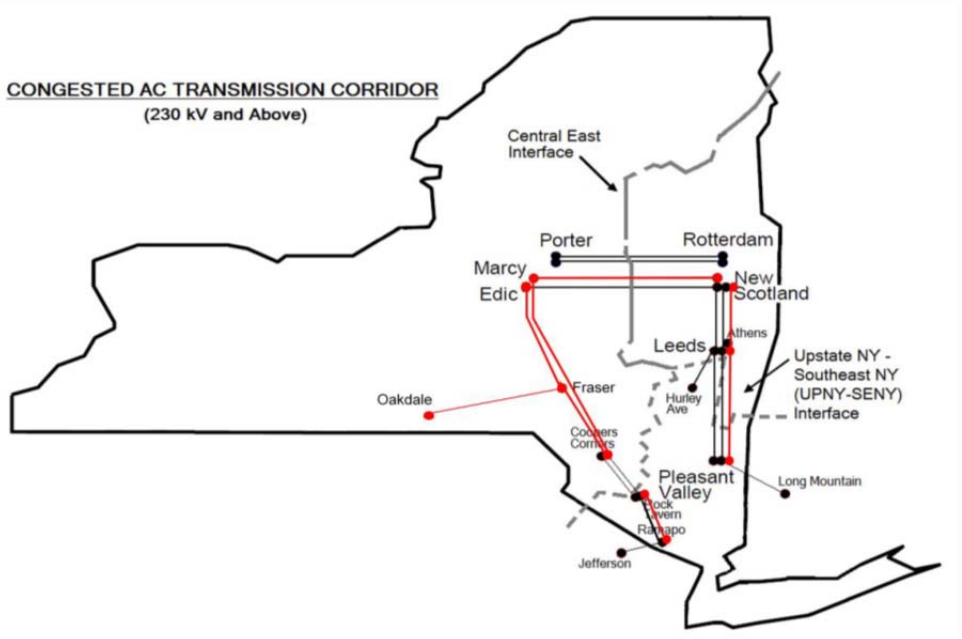
[27] RFI at p. 5.
[28] According to the *Energy Highway Blueprint*, the RFI resulted in 130 proposals from 85 private developers, investor-owned utilities, financial institutions and other entities that represent more than 25,000 MW of potential new generation and transmission capacity. *Id*. at p. 27.
[29] *Available at*: http://www.nyenergyhighway.com/Content/documents/68.pdf.
[30] *Energy Highway Blueprint* at p. 13.
[31] *Id*. at pp. 40-41. As noted at n.6, DOE has included this area in its NEITC designation under FPA Section 216.
[32] *Id*. at pp. 48-49. The *Blueprint* assumed IPEC capacity will need to be replaced by the summer of 2016.

Proceeding") in Case 12-T-0502, and the *Proceeding on Motion of the Commission to Review Generation Retirement Contingency Plans* ("Reliability Contingency Plan Proceeding") in Case 12-E-0503.

On November 30, 2012, the NYPSC issued an order in Case 12-E-0502 ("AC Order") adopting several recommendations contained in the *Energy Blueprint* and requesting:

> written public Statements of Intent from developers and transmission owners proposing projects that will increase transfer capacity through the congested transmission corridor, which includes the Central East and UPNY/SENY interfaces as described above, and meet the objectives of the Energy Highway Blueprint.[33]

As the AC Order explained, this congested corridor "includes facilities connected to Marcy, New Scotland, Leeds, and Pleasant Valley substations," and four major electrical interfaces (*i.e.*, groups of circuits) that are often referred to as Central East and UPNY/SENY.[34] The major choke points are identified in the following illustration:



[33] Proceeding on Motion to Examine Alternating Current Transmission Upgrades, Order Instituting Proceeding, NYPSC Case 12-t-0502 (issued Nov. 30, 2012) at p. 2.
[34] *Id.* at pp. 1-2.

The NYPSC found that "[u]pgrading this section of the transmission system has the potential to bring a number of benefits to New York's ratepayers," including:

> enhanced system reliability, flexibility, and efficiency, reduced environmental and health impacts, increased diversity of supply, and long-term benefits in terms of job growth, development of efficient new generating resources at lower cost in upstate areas and mitigation of reliability problems that may arise with expected generator retirements.[35]

On January 25, 2013 in response to the AC Order, the NYTOs (which at the time of that filing included the New York Power Authority ("NYPA") and the Long Island Power Authority ("LIPA")) on behalf of NY Transco, submitted a Statement of Intent ("SOI") to construct new AC transmission projects.[36] Those projects were identified in the SOI as: (1) the Marcy South Series Compensation and Fraser-to-Coopers Corners Reconductoring ("MSSC") project; (2) the Second Ramapo-to-Rock Tavern ("RRT") 345 kV line; (3) the UPNY/SENY Interface Upgrade Project; (4) the Second Oakdale-to-Fraser 345 kV line project; and (5) the Marcy-to-New Scotland 345 kV line project. To build these and other transmission assets in New York State, the NYTOs stated that they were planning to form the NY Transco to pursue the planning, development, construction, and ownership of new transmission projects.

Reliability Contingency Plan Proceeding

The NYPSC became increasingly concerned with the reliability impacts that could arise if IPEC retires at the end of 2015. As a result, in the Reliability Contingency Plan Proceeding, the NYPSC ordered Con Edison, with the assistance of NYPA, to develop a contingency plan in case IPEC is shut down at the end of its license term. Con Edison and NYPA responded on February 1, 2013, by submitting a proposal which, among other things, called for the construction of the RRT and MSSC projects as well as the Staten Island Unbottling ("SIU")

[35] *Id*. at p. 2.
[36] NYPA and LIPA have not received the necessary legislative permission to participate in NY Transco.

project. These are the Transmission Owner Transmission Solutions, or "TOTS Projects" referred to above. Con Edison and NYPA advised the NYPSC that these three projects would also be transferred to NY Transco. The NYPSC approved the TOTS Projects in an order issued on November 4, 2013 ("Reliability Contingency Plan Order"). The NYPSC relied on the NYISO's base case system analysis in its 2012 Reliability Needs Assessment and load flow sensitivities performed by Con Edison and NYPA, and by the NYPSC's independent consultant, The Brattle Group. The NYPSC took note of the NYISO's finding that "reliability violations would occur in 2016 if the Indian Point Plant were to be retired by the end of 2015."[37] The NYPSC explained that modeling sensitivities to NYISO's base case "showed a deficiency of approximately 1,000 MW" in southeastern New York, "making the total deficiency approximately 1,450 MW" if the 500 MW Danskammer generating facility is unavailable.[38] Brattle confirmed these estimates.[39]

The NYPSC determined that it could not rely on normal transmission planning to solve the problem because "NYISO's process currently assumes that IPEC will remain available, and therefore, it is not conducting the reliability contingency planning that we are conducting now."[40] If the NYPSC did not act, it found "there would unlikely be sufficient time to address the reliability needs."[41] The NYPSC, therefore, determined to proceed with the selection of projects proposed in its competitive process, and found that "[i]mplementing the three TOTS Projects is expected to contribute at least 600 MW toward the reliability relief which may be necessary if IPEC is shut down."[42] Moreover, the NYPSC found that even if IPEC is not shut down, the TOTS Projects "would still provide economic benefits by supplying lower cost energy from

[37] Reliability Contingency Plan Order at p. 18.
[38] *Id*. at p. 20.
[39] *Id*.
[40] *Id*. at p. 21.
[41] *Id*.
[42] *Id*. at p. 24.

upstate sources to downstate consumers" and the Staten Island unbottling project, in particular, "will also allow certain generators to run more, saving system resource costs."[43] Accordingly, the NYPSC found that the TOTS Projects will provide "net benefits for ratepayers . . . even if IPEC is not retired."[44] The NYPSC staff quantified the benefits from the TOTS Projects as follows:

> for the first 15 years of asset life, DPS Staff estimated net benefits to have a net present value (NPV) of approximately $260 million in 2016 dollars. For the full 40 years of rate recovery, the NPV of net benefits was estimated to be approximately $670 million. DPS Staff indicates that if IPEC were retired, the estimated net benefits of the TOTS projects are expected to be higher.[45]

The Reliability Contingency Plan Order contemplated construction of the TOTS Projects to "meet a firm in-service deadline of June 1, 2016,"[46] and directed Con Edison and NYSEG (which has been working to develop its portion of a TOTS Project)[47] to make a rate filing with FERC as soon as possible to further the development of the approved projects.[48] This Application is that filing.

AC Proceeding

The NYPSC continues to evaluate proposals for projects that will further relieve congested pathways and support the broader policy goals in the *Energy Blueprint*. The AC Proceeding began with a competitive solicitation for alternating current transmission projects to increase the UPNY/SENY interface transfer capability by 1,000 MW and also to increase the Central East interface transfer capability, as this Commission has observed.[49] As Messrs.

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[43] *Id*. at pp. 24-25.
[44] *Id*. at p. 25.
[45] *Id*. at p. 24.
[46] *Id*. at p. 21. The Order directed Con Edison and NYSEG "to use their best efforts to undertake and timely complete their projects. . . ." *Id*. at p. 47 (Ordering Paragraph 3).
[47] Since NYPA is not part of the NY Transco, only the portion of the MSSC project that is being developed by NYSEG is included as a NY Transco project in this filing.
[48] Reliability Contingency Plan Order at p. 48.
[49] *New York Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,152, at P 18 & n.32 (2014).

Haering and Allen explain, public reaction to the AC Proceeding transmission proposals was strongly negative in the middle Hudson Valley area based on concerns about right of way expansion. This opposition prompted the NYPSC to issue an order in February 2014 inviting alternative project proposals that could be constructed within existing utility rights of way. In August 2014, NYPSC advisory staff proposed a comparative review process to assess all proposals and to integrate the AC Proceeding with the NYISO's "Public Policy Transmission Planning Process." The NYPSC is expected to rule on the advisory staff proposal in 2015.

The NYTOs have two projects pending in the AC Proceeding on behalf of NY Transco.[50] These projects are a second Oakdale-to-Fraser 345 kV line and a new Edic-to-Pleasant Valley 345 kV line. These two projects are competing against projects submitted by three other transmission developers. Therefore, NY Transco's two AC Projects are pending before the NYPSC and are contingent upon selection and approval by the NYPSC and inclusion by the NYISO in its transmission plan for cost allocation purposes. NY Transco's TOTS and AC projects are described in greater detail below.

4. NYISO Studies Identifying Congestion and Reliability Concerns.

The congestion relief and other benefits expected to be achieved through NY Transco's projects have been confirmed through several studies performed by the NYISO, as discussed in the testimony of Messrs. Haering and Allen.

In 2012, NYISO conducted a "Reliability Needs Assessment" that identified the UPNY/SENY and Central East constraints as major choke points that drive energy costs higher and impede reliability by limiting access by consumers in southeastern New York to generating

[50] On October 1, 2013, the NYTOs submitted (1) Edic-Pleasant Valley 345 kV line, (2) Oakdale-Fraser 345 kV line, (3) MSSC, and (4) Ramapo – Rock Tavern to the NYPSC in the AC Proceeding. Subsequently, the MSSC and RRT project were approved by the NYPSC in the Generator Contingency Proceeding and were recently withdrawn from the AC Proceeding.

capacity located in western New York. Indeed, looking ahead to the potential retirement of IPEC, NYISO predicted that "reliability violations will occur in 2016 if the Indian Point Plant were to be retired by the end of 2015."[51] The NYPSC relied in part on this study in selecting the TOTS Projects, as discussed above.

NYISO also performed studies in 2011 and 2013 to document congestion costs and the constraints that cause them. The most recent one, the 2013 CARIS Report, examined congestion costs in 2012 and noted potential transmission solutions to relieve the UPNY/SENY and Central East constraints.[52] As Messrs. Haering and Allen explain, that report identified $765 million in statewide congestion costs for 2012 (much of which is attributable to UPNY/SENY and Central East).[53] This was a decrease from the $1.1 billion NYISO reported for 2010 in the 2011 CARIS Report, and is at least partially attributable to declining electricity prices as a result of falling natural gas prices, which are at inflation-adjusted lows.[54] The 2013 CARIS report also forecasted $1.4 billion per year in potential congestion cost savings on a ten-year net present value basis that could be achieved by relieving major constraints, as well as other benefits such as reduced load payments, reduced line losses, savings to capacity costs, and reduced emissions through the dispatch of more efficient generation, including renewable resources that will be able to locate upstate and deliver energy to downstate load centers.

NYISO built on these studies in 2014 with a further Reliability Needs Assessment, this time taking the three TOTS Projects into account because the NYPSC had approved them. NYISO found that the TOTS Projects will relieve transmission congestion on the UPNY/SENY

[51] New York System Operator 2012 Reliability Needs Assessment, Final Report, at p. 42 (Sept. 18, 2012) at: http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Planning_Studies/Reliability_Planning_Studies/Reliability_Assessment_Documents/2012_RNA_Final_Report_9-18-12_PDF.pdf.
[52] 2013 CARIS Report at pp. 15-16 (Exh. No. NYT-6).
[53] Testimony of Haering and Allen, Exh. No. NYT-4 at 7.
[54] *Id*.

interface by approximately 450 MW (without accounting for the effects that IPEC's retirement would have), stating:

> [A]nalysis [] showed that UPNY-SENY remains among the most constraining interfaces, consistent with the conclusion from the previous RNAs. This indicates that increasing the total resources downstream of UPNY-SENY or increasing the UPNY-SENY transfer limit will be among the most effective options to resolve the LOLE violations. . . . Increasing the limit on UPNY-SENY by 1,000 MW showed the most movement in [Statewide] LOLE and the individual Load Zone LOLE. Zonal LOLE went down for all Zones G-K.[55]

NY Transco's five transmission projects will contribute significantly to relieving chronically congested interfaces in New York as the NYPSC has already found with respect to the TOTS Projects. As such, the TOTS Projects are eligible for transmission rate incentives under the Commission's policies. The NYPSC's proceeding to consider the AC Projects is conducting a similar analysis, making these projects similarly eligible for incentives. Before explaining why in more detail, we first provide a more detailed description of each project.

III. DESCRIPTION OF PROJECTS

A. The Three TOTS Projects Are Designed to Address Historical Congestion and Future Reliability Concerns Stemming From the Potential Closing of Indian Point and Other Plants, and Were Approved by the NYPSC Through a Competitive Solicitation Prior to the Effective Date of the NYISO's Order No. 1000-Compliant Planning Process.

As more fully described in the testimony of Messrs. Haering and Allen, the three TOTS Projects are: (1) a second Ramapo to Rock Tavern 345 kV Line (the "RRT Project"), (2) transmission upgrades to Con Edison's interconnecting 345 kV transmission line with Cogeneration Technologies Linden Venture, L.P. ("Linden") to allow generating facilities located on Staten Island to export power into the rest of the New York power grid (the "Staten

[55] NYISO 2014 RNA at p. 31. NYISO's finding that the TOTS will contribute 450 MW of congestion relief differs from the NYPSC's finding that they will provide 600 MW of relief because NYISO did not consider the effects of IPEC's retirement in its assessment whereas the NYPSC did, as Messrs. Haering and Allen point out. Testimony of Haering and Allen, Exh. No. NYT-4 at 18.

Island Unbottling Project"), and (3) the addition of series compensation on the Fraser-to-Coopers Corners transmission line and the reconductoring of the 21.8-mile Fraser-to-Coopers Corners 345 kV transmission line (the "MSSC Project"). Additional details concerning the three TOTS Projects are as follows:

RRT Project. The RRT Project will add a second 345 kV transmission line from the Con Edison Ramapo 345 kV Substation to Central Hudson's Rock Tavern 345 kV Substation by constructing three upgrades. First, 11.8 miles of overhead 345 kV transmission line will be installed between the Sugarloaf Substation and the Rock Tavern Substation using the existing double circuit towers. Second, a 138 kV line between Ramapo and the Sugarloaf 138 kV Substation owned by Orange & Rockland Utilities, Inc. ("O&R") will be converted from its current operating voltage of 138 kV to 345 kV. Finally, a new 345 kV/138 kV step-down transformer and associated 345 kV switching equipment and ancillary facilities will be installed in the vicinity of the existing 138 kV Sugarloaf Substation. The current estimated cost of the project is $121 million.

The RRT project will increase import capability into southeastern New York, including New York City, during normal and emergency conditions. The project will be physically located in Orange and Rockland Counties in New York along the existing right-of-way of the existing Con Edison 345-kV line 77. The transmission terminals are located in NYISO Zone G.

The RRT Project has already received its NYPSC siting certificate as well as its Environmental Management and Construction Plan ("EM&CP") approval and is expected to be in service in the Summer of 2016. A system impact study for this project was completed and approved by the NYISO Operating Committee on August 16, 2012.

Staten Island Unbottling Project. The Staten Island Unbottling ("SIU") Project is anticipated to occur in two phases. Phase 1 will mitigate a reliability issue within New York City by separating a common pipe double leg feeder into two separate feeders with independent positions at the Goethals and Linden Substations. Phase 2 increases transmission capacity by adding forced cooling to existing 345 kV transmission lines between the Goethals, Gowanus, and Farragut substations. The SIU project will add approximately 440 MW of transfer capability off of Staten Island using these transmission lines. The project will be located on Staten Island and Brooklyn, New York and Union County (Linden), New Jersey. The transmission facilities between Staten Island and Linden, New Jersey, cross the Arthur Kill Waterway, which is a 10-mile channel used by ocean-going ships to transport cargo to and from Port Newark. These projects are expected collectively to cost about $262 million.

MSCC Project. The MSSC project will add switchable series compensation at the Fraser Substation to increase power transfer by reducing series impedance over the existing 345 kV Marcy South lines. There are two components to this project. The first component will add 25% series compensation to the Fraser-Coopers Corners 345 kV line through the installation of capacitors. It also includes the re-conductor of approximately 21.8 miles of the Fraser-Coopers Corners 345 kV line owned by NYSEG using existing towers. The cost of the work for the first component is currently estimated to be $66 million. The second component of MSSC is the addition of series compensation on the Marcy-Coopers Corners 345 kV line and the Edic-to-Fraser 345 kV line. This equipment will be added at the Fraser Substation and it is to be developed by NYPA; the NYPA portion of the project is not part of this filing, and will not be a NY Transco developed project.

The MSSC project will increase thermal transfer limits across the Total East interface and the UPNY/SENY interface and will also provide a partial solution for system reliability if IPEC retires. The project has an NYISO queue position and the development of the System Impact Study is currently underway.

B. The Two AC Projects Are Also Designed to Address Historical Congestion Problems and Future Reliability Concerns Stemming From Resource Adequacy Needs Previously Highlighted By the Commission.

The NYTOs, on behalf of NY Transco, submitted two AC Projects in the NYPSC's AC Proceeding, which seeks to address the short-term and long-term reliability and congestion relief concerns stemming from the UPNY/SENY and Central East constraints. As more fully described by Messrs. Haering and Allen, NY Transco's two AC Projects are: (1) the 2nd Oakdale-to-Fraser 345 kV transmission line and (2) a new 345 kV Edic-to-Pleasant Valley transmission line. These projects are targeted to provide significant relief to the two major constrained transmission interfaces, UPNY/SENY and Central East.

2nd Oakdale-to-Fraser Line. The second Oakdale-to-Fraser 345 kV Line project will establish a second 345 kV line from the Oakdale 345 kV Substation to the Fraser 345 kV Substation. The project will increase the import capability into southeastern New York during normal and emergency conditions. The project will be located in Broome, Chenango and Delaware Counties in New York. Approximately 57 miles will parallel NYSEG's existing 345 kV Line 32 along the existing right-of-way. The transmission line terminals are located in NYISO Zones C and E. The estimated cost is $246 million.

Edic-to-Pleasant Valley Line. The Edic-to-Pleasant Valley 345 kV Line project as initially proposed is a new 345 kV transmission line that will connect National Grid's Edic Substation in Oneida County, New York to Con Edison's Pleasant Valley Substation in Dutchess County, New York, a total distance of approximately 153 miles. The project includes three new

substations: (i) Princetown Substation in the Town of Princetown; (ii) Knickerbocker Substation in the Town of Schodack; and (iii) Churchtown Substation in the Town of Claverack. In addition, approximately 75 miles of two existing 80 mile 230 kV transmission lines, the #30 Porter-Rotterdam line and the #31 Porter-Rotterdam line, will be removed to allow for the construction of the new 345 kV line on existing rights-of-way. The replacement of the 30 and 31 lines and the remaining five miles of each of these transmission lines will be rebuilt to address age-related condition issues. This project will provide over 1,000 MW of additional transfer capability across UPNY/SENY and a significant increase to the Central East interface transfer capability. The estimated cost is $1.022 billion.

IV. INCENTIVES REQUESTED

As stated by Mr. Nachmias and supported by the testimony of Ms. Ellen Lapson, Messrs. Haering and Allen, and Mr. Heintz, the Applicants respectfully request that the Commission exercise its authority under Sections 205 and 219 of the FPA to grant NY Transco the following rate incentives:

- Current recovery of 100% of CWIP for the two AC Projects;
- Regulatory asset treatment to allow for the collection of all project related costs (including NY Transco formation costs) that are not capitalized and included in CWIP (each regulatory asset to be recovered over a five-year period with carrying costs on the unamortized balance);
- A hypothetical capital structure of 60% equity and 40% debt during the construction phase but no longer than five years after the formation of NY Transco (after which NY Transco's revenue requirement will reflect the actual capital structure);
- Pre-authorization to recover 100% of costs prudently incurred in the development and construction of the projects if they are abandoned through no fault of the Applicants; and
- A 150 basis point adder to NY Transco's base ROE: 50 basis points as an incentive for the risks and challenges in constructing the projects; 50 basis points for forming a Transco that will be focused exclusively on constructing the projects described herein and

major additional transmission projects in the future; and 50 basis points for joining the NYISO and turning over operational control of NY Transco's projects to the NYISO.

The Applicants show below that NY Transco qualifies for each of these incentives, consistent with Sections 205 and 219, and the Commission's implementing regulations, precedents and policies.

A. Legal Standard.

Dissatisfied with the decline of the Nation's power grid, in 2005 Congress directed the Commission to adopt rules to provide incentives for public utilities to build transmission lines and thereby benefit consumers "by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion."[56] Congress directed that the rules "shall," among other things, "provide a return on equity that attracts new investment in transmission facilities (including related transmission technologies)."[57] Congress also required the Commission to "promote reliable and economically efficient transmission and generation by promoting capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy in interstate commerce, regardless of the ownership of the facilities."[58]

Other directives required the Commission to "encourage deployment of transmission technologies . . . to increase the capacity and efficiency of existing transmission facilities . . .," allow recovery of "all prudently incurred costs related to transmission infrastructure development pursuant to section 216" (dealing with National Interest Electric Transmission

[56] 16 U.S.C. § 824s(a). As the Commission explained, Section 219 was adopted to address "a national problem that requires a national solution" by stimulating greater "capital investment in energy infrastructure." *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006) ("Order No. 679"), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 9 (2006) ("Order No. 679-A"), *order on reh'g*, Order No. 679-B, 119 FERC ¶ 61,062 (2007) ("Order No. 679-B").
[57] 16 U.S.C. § 824s(b)(2).
[58] *Id*. § 824s(b)(1).

Corridors), and to "provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization" (*e.g.*, a regional transmission organization like NYISO).[59]

The Commission recognized that Section 219 "reflects Congress' determination that the Commission's traditional ratemaking policies may not be sufficient to encourage new transmission infrastructure."[60] Consequently, the Commission issued regulations offering a series of rate and non-rate incentives targeted specifically to new transmission investment based on the facts of each case.[61]

In Order No. 679, the Commission required that an applicant seeking incentive transmission rates demonstrate that the project for which it seeks incentives either promotes reliability or reduces the cost of delivered power by reducing transmission congestion.[62] The Commission established a rebuttable presumption that this requirement is met if: "(i) the transmission project results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission; or (ii) a project has received construction approval from an appropriate state commission or state siting authority."[63]

The Commission stated that an applicant seeking rate incentives must demonstrate a nexus between the package of incentives requested and the proposed investment.[64] The nexus test is met when an applicant demonstrates that incentives requested are "tailored to address the demonstrable risks or challenges faced by the applicant."[65] Applicants, however, need not

[59] *Id.* §§ 824s(b)(3),(b)(4) and (c).
[60] Order No. 679 at P 5.
[61] *Id.*
[62] Order No. 679 at P 37; Order No. 679-A at P 5.
[63] Order No. 679 at P 58; *see also Potomac-Appalachian Transmission Highline*, 122 FERC ¶ 61,188, at P 29 (2008) ("PATH").
[64] Order 679 at P 27; *see* Order No. 679-A at P 27 (clarifying that the nexus test applies to the package of incentives).
[65] Order No. 679-A at P 40. *See* 18 C.F.R. § 35.35(d) (2014).

satisfy a "but for" test by showing that a project will proceed only if it receives rate incentives,[66] nor are applicants required to support incentive requests with cost-benefit analyses in part because the Commission can take into account non-cost factors when it acts on incentive rate requests.[67]

The Commission subsequently provided guidance through the Incentives Policy Statement in which it "reframe[d] the nexus test to focus more directly on the requirements of Order No. 679."[68] The Commission stated that it will no longer evaluate requests in light of whether the applicant's projects are routine, but instead will consider "how the total package of incentives requested is tailored to address the demonstrable risks and challenges."[69]

Further, for requests seeking ROE incentives, the Commission stated that it "expects applicants to take all reasonable steps to mitigate the risks of a project, including requesting those incentives designed to reduce the risk of a project, before seeking an incentive return on equity (ROE) based on the project's risks and challenges . . . ."[70] These "risk reducing" incentives include recovery of 100% of CWIP, recovery of pre-commercial development costs not included in CWIP as a regulatory asset, a hypothetical capital structure, and recovery of prudently incurred costs if the project is abandoned through no fault of the applicant. The Commission stated that it expects applicants to explain how the total package of incentives is tailored to the risks and challenges of each project, and stated that if some incentives reduce the

[66] Order 679-A at P 26 ("The Commission therefore reaffirms its rejection of the 'but for' test as the appropriate test for applying section 219. It would erect a barrier that is nearly impossible to meet and is thereby fundamentally incompatible with Congressional intent in enacting section 219.").
[67] *Id*. at PP 35, 39.
[68] Incentives Policy Statement at P 1.
[69] *Id*. at P 10.
[70] *Id*. at P 1; *but see* Order No. 679-B at P 12. ("Though we encourage applicants to seek all required incentives in the same proceeding (whether in a request for declaratory order or a section 205 filing), we do not require it.").

risk of the project, the Commission will take that into account in evaluating any request for an ROE incentive.[71]

For example, the Commission stated that the CWIP incentive provides "up-front regulatory certainty, rate stability and improved cash flow, which in turn can result in higher credit ratings and lower capital costs."[72] The ability to use accelerated recovery of pre-commercial costs "can reduce interest expense, improve coverage ratios, and assist in the construction of transmission projects."[73] The Commission also stated that pre-authorization to recover prudently-incurred abandoned plant costs provides "companies with more certainty during the pre-construction and construction periods."[74]

The Commission also announced four new substantive requirements that applicants must address to support ROE incentives requests. First, the Commission stated that applicants must "demonstrate that the proposed project faces risks and challenges that are not either already accounted for in the applicant's base ROE or addressed through risk-reducing incentives."[75] The non-exhaustive list of the types of investments that fall into this category include "projects to relieve chronic or severe grid congestion that has had demonstrated cost impacts to consumers," "projects that unlock location constrained generation resources that previously had limited or no access to the wholesale electricity markets," and "projects that apply new technologies to facilitate more efficient and reliable usage and operation of existing or new facilities."[76]

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[71] Incentives Policy Statement at P 10. The Incentives Policy Statement did not state how the Commission will determine the effect that "risk-reducing" incentives have on the way it will "rebalance" investor and consumer interests to achieve Section 219's mandate to increase transmission investment. Order No. 679 at PP 21-29.
[72] Incentives Policy Statement at P 12.
[73] *Id*. at P 13.
[74] *Id*. at P 14.
[75] *Id*. at P 20. Order No. 697-A acknowledged (at P 15) the inherent difficulty in such a showing because "it may be difficult to meaningfully distinguish between an ROE that appropriately reflects a utility's risk and ability to attract capital and an 'incentive' ROE to attract new investment." The Commission stated that it would take into account financial and regulatory risks in resolving this difficulty.
[76] Incentives Policy Statement at P 21.

Second, the Commission stated that an applicant must "demonstrate that it is taking appropriate steps and using appropriate mechanisms to minimize its risks during project development."[77] In this regard, the Commission "encourages incentives applicants to participate in joint ownership arrangements and agrees with commenters to the NOI that such arrangements can be beneficial by diversifying financial risk across multiple owners and minimizing siting risks."[78]

Third, the Commission stated that applicants must demonstrate that "alternatives to the project have been, or will be, considered in either a relevant transmission planning process or another appropriate forum."[79] This requirement can be met through an Order No. 890 or Order No. 1000 compliant transmission planning process, or a proceeding where a state utility commission evaluated alternatives and determined that the proposed project is preferable to alternatives.[80]

Lastly, the Incentives Policy Statement expected applicants to "commit to limiting the application of the incentive ROE based on a project's risks and challenges to a cost estimate."[81] The Commission suggested a way to manage cost uncertainty is to use a dead-band limit on any ROE incentive adder, such as a percentage range above or below the cost estimate.[82]

B. The Projects Are Eligible for Incentives.

As explained below, NY Transco's projects fall squarely within the Incentives Policy Statement's interpretation of Order No. 679, and qualify for all of the incentives, including ROE adders for participation in NYISO, for the risks and challenges of the projects, and for forming a "Transco." NY Transco's projects will relieve the UPNY/SENY and Central East corridors,

[77] *Id*. at P 24.
[78] *Id*.
[79] *Id*. at P 25.
[80] *Id*. at P 26.
[81] *Id*. at P 28.
[82] *Id*. at P 30.

which the Commission has already found to have constraints that raise reliability and congestion concerns.[83] The NYPSC has concurred with the Commission's findings, as has the NYISO in the reports summarized above. The NYPSC's open and competitive proceedings to evaluate the TOTS Projects and the AC Projects confirm their eligibility for the rate incentives sought herein.

1. The TOTS Projects have been selected by the NYPSC through a fair, open and competitive solicitation proceeding.

The Commission established a rebuttable presumption that projects are eligible for rate incentives if they are selected through a fair and open regional planning process, or through a state siting process that takes into account reliability or congestion needs.[84] The Commission explained that it established this presumption because "[w]e do not wish to repeat the work of state siting authorities, regional planning processes, or the DOE in evaluating these issues."[85] The TOTS Projects are eligible for incentives under this standard.

As shown above, the UPNY/SENY, Central East and other major constraints have had demonstrated cost impacts on consumers for many years. NYISO recently found in the 2013 CARIS Report that eliminating congestion in the UPNY/SENY and Central East corridors will provide a ten-year present value benefit to consumers of about $1.4 billion in avoided congestion charges.[86] The same report estimated that consumers paid hundreds of millions of dollars in congestion charges in 2012 for service across these corridors.[87] Messrs. Haering and Allen explain that consumers to the southeast of the constraints are also expected to pay over $200 million in new capacity charges in 2014 alone that could be avoided if these constraints did not exist.[88]

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[83] *New York Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,152, at P 13.
[84] Order No. 679 at P 58; Order No. 679-A at P 49.
[85] Order No. 679-A at P 46.
[86] 2011 CARIS Report" at p. 42.
[87] Exh. No. NYT-6 at pp. 15-16.
[88] Testimony of Haering and Allen at 20.

The *Energy Blueprint* responded to these concerns by tasking the NYPSC to initiate proceedings to identify and select projects that will improve reliability, reduce energy costs, meet various policy goals (including development of more renewable energy), and support long-term economic growth.[89] The NYPSC explained that the TOTS Projects were proposed and selected as part of a statewide "competitive process,"[90] and that "the cost estimates provided by Con Edison, NYSEG, and NYPA for these projects were provided so that the projects could compete with the other projects . . . . As such, the TOTS projects were proposed in a competitive environment, which . . . should have induced Con Edison, NYSEG, and NYPA to propose the most competitive price possible."[91]

The NYPSC found that the TOTS Projects will provide net benefits both with and without IPEC in service,[92] and noted NYPSC staff's opinion that "it is in the public interest to pursue these projects, regardless of the contribution they make to the IPEC Reliability Contingency Plan."[93] In reaching its decision, the NYPSC determined that a critical reliability need exists because of potential generation retirements and other factors, and this need must be addressed by June 1, 2016.[94] More specifically, after IPEC's retirement the loss of load probability will be nearly five times the accepted standard of 0.1 days per year.[95] The NYISO cannot take this possibility into account in its transmission planning model in the absence of a notice that IPEC is retiring (or that its license has not been renewed), and the NYPSC found that, as a result, there will not be sufficient time to address reliability needs if IPEC retires.[96] Accordingly, the NYPSC found based on record evidence that the TOTS Projects will provide

[89] Nachmias Testimony at 14.
[90] Reliability Contingency Plan Order at 25.
[91] *Id.*
[92] Nachmias Testimony at 15 (citing Reliability Contingency Plan Order at 32).
[93] Reliability Contingency Plan Order at 22.
[94] Testimony of Haering and Allen at 15.
[95] *Id.*
[96] *Id.*

600 MW towards the reliability need created with the retirement of IPEC. Furthermore, setting IPEC retirement aside, these projects will provide increased transfer capability of approximately 450 MW across UPNY/SENY, which would provide an economic benefit by supplying lower-cost energy from upstate sources to downstate consumers.[97] For all of these reasons, the NYPSC's Reliability Contingency Plan Order creates a rebuttable presumption that the TOTS projects are eligible for rate incentives.

2. The AC Projects are undergoing a fair, open and competitive solicitation proceeding before the NYPSC to select projects to solve historical congestion and future reliability concerns and must be approved by the NYPSC and included in the NYISO Transmission Plan.

The NYPSC's "AC Proceeding" transmission plan solicited "written public Statements of Intent from developers and transmission owners proposing projects that will increase transfer capacity through the congested transmission corridor, which includes the Central East and UPNY/SENY interfaces as described above, and meet the objectives of the Energy Highway Blueprint."[98] The AC Order specified that benefits of upgrades to the transmission system will include "enhanced system reliability, flexibility, and efficiency, reduced environmental and health impacts, increased diversity in supply, and long-term benefits in terms of job growth, development of efficient new generating resources at lower cost in upstate areas, and mitigation of reliability problems that may arise with expected generator retirements."[99] On July 10, 2013, the NYPSC issued the Energy Highway AC Transmission Initiative Straw Proposal, in which NYPSC Staff articulated the state's public policy objectives by proposing that "the Commission

[97] Reliability Contingency Plan Order at 25.
[98] *Id.* at 13 (citing AC Order at 2).
[99] Nachmias Testimony at 14 (citing AC Order at 2).

find that the Public Service Law requires action to relieve the congestion identified in Case 12-T-0502 . . . ."[100]

If selected, the AC Projects will help to meet these needs. In particular, the 2nd Oakdale-to-Fraser 345 kV Line will increase the import capability into southeastern New York during both normal and emergency conditions,[101] and the Edic-to-Pleasant Valley 345 kV Line will add over 1,000 MW of transfer capability across UPNY/SENY and significantly increase the Central East interface transfer capability.[102] The NYPSC observed in its AC Proceeding that congestion relief in this corridor has the potential to provide numerous benefits, including "near-term benefits of enhanced system reliability, flexibility, and efficiency, reduced environmental and health impacts through reduced downstate emissions, and increased diversity in supply; as well as long-term benefits in terms of job growth, development of efficient new generating resources at lower cost in upstate areas, and mitigation of reliability problems that may arise with expected generator retirements."[103] Accordingly, to the extent they are selected by the NYPSC, the AC Projects qualify for a rebuttable presumption that they are entitled to incentives under Section 219 because they are being evaluated in a competitive state proceeding to identify solutions to chronic transmission congestion and other issues that have had demonstrated cost impacts on consumers.

[100] *Proceeding on Motion of the Commission to Examine Alternating Current Transmission Upgrades*, New York Public Service Commission, Case 12-T-0502, Energy Highway AC Transmission Initiative Straw Proposal (issued July 10, 2013) at 4.
[101] Testimony of Haering and Allen at 27.
[102] *Id.* at 28.
[103] NYPSC Case 12-T-0502 – Order establishing procedure for Joint Review Under Article VII of the Public Service Law and Approving Rule Changes (issued April 22, 2013) at pp. 1-2.

3. Regardless of the rebuttable presumption, the record shows that the TOTS and AC projects resolve historical congestion at major New York transmission interfaces and will support reliable transmission service in the future.

As we have explained, the UPNY/SENY and Central East corridors are among the most congested in the Mid-Atlantic region, which led DOE to include southeastern New York in its NEITC determinations.[104] NYISO has found that consumers in New York paid about $1.1 billion in energy congestion charges in 2010,[105] $760 million in 2012, and that relieving the constraints could provide a $1.4 billion 10-year NPV benefit.[106] The NYISO's 2014 RNA found that the "inclusion of the TOTS projects in the model [] resulted in increases to the Central East Group, Marcy South, and UPNY-SENY MARS interface transfer limits,"[107] and will increase UPNY/SENY transfer by approximately 450 MW (excluding the effect of the potential IPEC retirement).[108]

Moreover, the NYPSC determined that the retirement of the IPEC, in combination with other factors, would contribute to a potentially critical need by June 1, 2016, and that the retirement of IPEC will create an unacceptably high loss of load probability of 0.48 days per year.[109] The NYPSC initiated the AC Proceeding to seek proposals for transmission projects that would increase the transfer capacity through the congested transmission corridor of the Central East and UPNY/SENY interfaces. The NYPSC sought to upgrade the Central East and UPNY/SENY corridors by 1,000 MW, and the NY Transco's AC projects were proposed to

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[104] The DOE's determinations are available at: http://energy.gov/oe/downloads/2009-electric-transmission-congestion-study. DOE's 2014 draft study making the same determination is available at: http://www.energy.gov/oe/downloads/national-electric-transmission-congestion-study-draft-public-comment-august-2014.
[105] 2011 CARIS Report at p. 43.
[106] Testimony of Haering and Allen at 20.
[107] NYISO 2014 RNA at p. 29.
[108] *Id.* at p. 31. The NYPSC found that the TOTS projects will contribute 600 MW of congestion relief if IPEC retires. Reliability Contingency Plan Order at p. 32.
[109] Reliability Contingency Plan Order at pp. 3, 19.

provide that further congestion relief. As we explained above, the NYPSC order initiating the AC Proceeding determined that relieving the constraints will provide significant congestion, reliability and other benefits to the transmission grid. For all of these reasons, the record amply demonstrates that all of NY Transco's projects are eligible for incentives.

C. The Projects Satisfy the Nexus Test for Incentives.

NY Transco's incentives requests are tailored to address the demonstrable risks and challenges of the projects.[110] Accordingly, the Commission should grant NY Transco the incentives requested herein.

1. NY Transco's projects serve a combined purpose.

The Commission has held that an "applicant may demonstrate that several individual projects are appropriately considered as a single overall project based on their characteristics or combined purpose, and seek incentives for that single overall project."[111] NY Transco's projects serve such a "combined purpose" and the risks and challenges of these projects demonstrate that incentives are appropriate. Indeed, whether viewed individually or together, the projects are entitled to the incentives requested herein.

All five projects are designed to relieve the UPNY/SENY and Central East congestion that have resulted in higher energy and capacity prices in southeastern New York. Projects to reconductor and build new transmission lines at or near these constraints relieve them directly, while the Staten Island Unbottling Project does so indirectly by permitting generation on the island to participate in competitive wholesale power markets. All five projects have their genesis in the STARS Phase II Report and were included in proposals to the Governor in response to the

[110] 18 C.F.R. § 35.35(d) (2014).
[111] *Transource Missouri LLC*, 141 FERC ¶ 61,075, at P 23 (2012); *DATC Midwest Holdings, LLC*, 139 FERC ¶ 61,224, at P 43 (2012). *See PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,273, at P 45 (2010); *Pacificorp*, 125 FERC ¶ 61,076 (2008).

RFI, while three were submitted and selected as part of the Reliability Contingency Plan Proceeding and two are still being evaluated by the NYPSC in the AC Proceeding.[112]

Although the AC Projects remain pending before the NYPSC, that does not alter the nexus analysis. Even considering the projects individually, it is clear that they present a major undertaking with risks and challenges that justify all of the incentives requested herein.

For example, Messrs. Haering and Allen document the construction risks and challenges that the NYTOs and NY Transco face in constructing the projects individually and in coordinating the entire package of projects. To name a few, the permit to construct the Ramapo-Rock Tavern project can bring construction to a standstill on a moment's notice if important cultural resources are discovered, or construction work with bulldozers becomes too noisy,[113] the Fraser-Coopers Corners project will traverse the Catskills State Park,[114] and the Staten Island Unbottling Project is in litigation before the Commission over a transmission access dispute.[115] Planning for completion of the TOTS Projects by June 2016 complicates the task.[116] Similar difficulties await the AC Projects,[117] which face organized opposition and a directive that construction of upgrades must not encroach beyond existing rights-of-way,[118] and which face additional risks as to scope and selection by the NYPSC.[119] Thus, while the Commission should view NY Transco's projects as a package to provide an integrated solution to the congested UPNY/SENY and Central East corridors, the projects merit the requested incentives even when considered project-by-project.

[112] Because the RRT and MSSC projects were selected by the NYPSC in its Reliability Contingency Plan Proceeding, they have been withdrawn from the AC Proceeding.
[113] Haering and Allen Testimony at 22–23.
[114] *Id*. at 23.
[115] *Id*. at 24.
[116] *Id*. at 25.
[117] *Id*. at 31-32.
[118] *Id*. at 30-31.
[119] *Id*. at 31.

2. NY Transco will construct projects that address statewide needs.

The Commission underscored the particular risks and challenges faced by transmission developers like NY Transco by recognizing that "in many instances, new transmission projects will not be financed and constructed in the traditional manner."[120] And, given competitive wholesale power markets and the accompanying need for large new fossil generating stations and remotely-sited renewable energy projects, the Commission acknowledged the need for new high voltage lines that "no single utility will be 'obligated' to build . . . ."[121]

NY Transco's projects are precisely the sort the Commission had in mind because they are ones that "no single utility [is] obligated to build," yet are needed to address congestion, reliability and other public policy needs that affect New York's electric consumers. Building the projects described herein to address congestion and reliability issues is by definition an effort that "exceed[s] the normal risks undertaken by a utility," especially when it involves constructing transmission lines in one utility service area when much of the benefit goes to customers in another. As we discussed above, these risks and challenges explain why no major new 345 kV lines have been built in New York in over 30 years in the constrained areas, even though the power grid has become increasingly stressed.

3. Permitting and construction risks and challenges remain.

Since the TOTS Projects must be placed into service in less than two years to meet the State's service reliability goals, construction will present unique sequencing and coordination challenges. As Messrs. Haering and Allen explain, placing the three TOTS Projects into service by the Summer of 2016 in different parts of the State presents significant project management

[120] Order No. 679 at P 25.
[121] *Id*. On rehearing, the Commission held out this example as one that it "emphasized" would meet the nexus test. Order No. 679-A at P 22.

risks and challenges.[122] Conditions included in permits may require construction to be suspended pending further approval if the work gets too loud.[123] Even getting started on construction may be challenging when it requires access to the electrical facilities of an uncooperative third party.[124] Landowner opposition can force projects to be reconfigured in ways that increase costs through more expensive (albeit more efficient) designs or schedule delays.[125] Managing equipment and facilities delivery schedules, shortages of skilled workers and engineers (and the need to pay overtime), the logistics of managing multiple complicated projects simultaneously in different parts of the state, the cost and difficulty of building in heavily populated areas, and any potential difficulties with coordinating work crews, all contribute to substantial project completion risks. NY Transco faces all of these risks and challenges with the TOTS and AC projects even though the NYTOs are currently developing the projects on NY Transco's behalf. As Mr. Nachmias explains, "NY Transco will be involved in coordinating project development for these projects during 2015 and will acquire the projects from the NYTOs subject to any project risks that exist at the time of transfer."[126]

4. Financing Risks.

NY Transco faces a significant challenge to raise hundreds of millions of dollars in credit markets in a short amount of time. It will function as a stand-alone entity that must secure financing despite having no operating history, revenues or cash-flows, and on the understanding that it may have negative cash flows, as we explain in more detail below where we support NY Transco's ROE adders. When combined with project completion risks, cost recovery risks, and

[122] Testimony of Haering and Allen at 21.
[123] *Id.* at 22.
[124] As noted, Con Edison's access to the Linden Substation to proceed with the Staten Island Unbottling Project has been sidetracked through an access dispute pending before the Commission in Docket No. TX14-1.
[125] Testimony of Haering and Allen at 30.
[126] Testimony of Nachmias at 9.

regulatory risks, NY Transco will be challenged to achieve an investment-grade credit rating.[127] Without incentives that materially improve NY Transco's operating cash-flow during its initial years of operation, its borrowing costs are likely to be higher, and without appropriate regulatory support, it may be forced to accept unfavorable terms from the credit markets.[128] As Ms. Lapson explains, lenders will be keenly aware of these risks and factor them into their credit determinations.[129]

D. ROE Incentives.

As explained below, the risks and challenges of NY Transco's projects also justify a 50 basis point ROE risk adder in addition to the 50 basis point adder for RTO membership, and the 50 basis point adder for forming NY Transco. As directed by the Incentives Policy Statement, we first describe the "risk reducing" incentives that NY Transco is requesting, and then explain why those incentives and other steps to manage costs and risks do not fully eliminate the risks and challenges of the projects.

a. Risk-reducing incentives: CWIP, pre-construction development costs, hypothetical capital structure and abandonment.

The NY Transco requests that the Commission approve the following risk mitigation transmission incentives: (1) recovery of 100% CWIP (AC Projects only); (2) regulatory asset accounting treatment that will allow for the recovery of all prudently incurred costs that are not capitalized and included in CWIP; (3) a hypothetical 60/40 capital structure during the construction phase of the projects; and (4) recovery of abandoned plant costs. Each of these incentives is tailored to address risks and challenges of the projects.

[127] Lapson Testimony at 11.
[128] *Id*. at 11-12.
[129] *Id.* at 37.

First, NY Transco requests that the Commission permit it to recover 50% of CWIP, in addition to the 50% of CWIP included in its formula rate, for a total CWIP recovery of 100% for the two AC Projects. As explained in the testimony of Mr. Stuart Nachmias, the NY Transco is a startup company and cash flow during the project development and regulatory approval process will present a large financial hurdle.[130] Ms. Ellen Lapson explains that during the critical three years from 2016 to 2018, which is the period before the AC Projects will be ready for service, 100% cash return on CWIP is forecasted to comprise on average 50-55% of NY Transco's operating revenues and over 60% of cash flow from operations.[131] If only 50% cash return on CWIP were authorized for the AC Projects, NY Transco's operating revenues for these three years would be reduced to approximately 27% and cash flow from operations would be 30% lower than the cash flow with 100% cash return on CWIP.[132] Ms. Lapson further explains how such cash flow constraints will impair NY Transco's credit rating and ability to raise capital.[133] Allowing recovery of 100% of CWIP will provide certainty, rate stability, and improved cash flow, which may result in higher credit ratings and lower capital costs.[134] It will also allow the NY Transco to expeditiously recover construction costs during construction, rather than waiting until the new projects enter service.[135]

Second, NY Transco has requested regulatory asset accounting treatment that will allow for the recovery of all prudently incurred costs that are not capitalized and included in CWIP, including permitting, consulting and legal costs related to the projects and forming NY Transco. The Commission explained in the Incentives Policy Statement that it "has also made deferred

[130] Nachmias Testimony at 25.
[131] Lapson Testimony at 12.
[132] *Id.* at 12-13.
[133] *Id.* at 27.
[134] *Id.* at 16.
[135] *Id.* at 18.

cost recovery [of development costs] available to applicants to address cost recovery restrictions at the state level and to provide greater flexibility for applicants to recover costs, recognizing that deferred cost recovery is intended to '…increase the certainty of cost recovery to encourage more transmission investment."[136]

Third, NY Transco proposes a hypothetical capital structure of 60% equity and 40% debt for each of the Projects until the earlier of January 1, 2021, or the completion of construction of the five projects. Upon the earlier of these dates, the actual average capital structure will be used. As Ms. Ellen Lapson explains, this hypothetical capital structure should help NY Transco to achieve reasonable costs of capital, which will inure to the benefit of NYISO customers who pay the cost of service in their utility rates.[137]

Finally, NY Transco has requested recovery of 100% of prudently incurred abandoned plant costs if the abandonment occurs for reasons beyond its control. The Commission has recognized that "this incentive reduces the regulatory risk of non-recovery of prudently incurred costs."[138] As Ms. Lapson explains in her testimony, many risks to a project may arise after the developer has already expended a large amount of money.[139] For instance, the developer may not be able to obtain state siting approval or other necessary regulatory approvals.[140] Given the number and scale of projects proposed by NY Transco, recovery of abandonment costs is necessary to address the magnitude of the risk.

b. The risk-reducing incentives do not fully mitigate NY Transco's risks.

The risk-reducing incentives requested by NY Transco do not fully mitigate the risks and challenges of the projects. NY Transco will operate as a stand-alone company, with no pre-

[136] Incentives Policy Statement at P 13.
[137] Lapson Testimony at 23.
[138] Incentives Policy Statement at P 14.
[139] Lapson Testimony at 36-37.
[140] *Id.*

existing revenues or cash flow, weak operating cash flow measures during its first four-to-five years of operations, high capital expenditure obligations, complex project management (completion of multiple projects at the same time), and regulatory risks.

NY Transco's five projects will require investments of approximately $1.7 billion (in nominal dollars), but Ms. Lapson shows that NY Transco's internal cash flow between 2016 and 2018 will cover only a fraction of its aggregate capital expenditures. Specifically, capital expenditures are projected to be six times greater than operating cash flow and the net deficiency will be approximately $1.5 billion over this period.[141] With all of the requested incentives—including 150 basis points in total ROE adders—NY Transco's cash deficiency improves only slightly to a negative $1.4 billion.[142] As Ms. Lapson explains, improving NY Transco's cash flows during the construction phase is necessary to improve its credit quality and lower borrowing costs, which ultimately provides a benefit to consumers through rates that are lower than they otherwise would be.[143] However, neither CWIP, nor amortization and recovery of pre-construction development costs, fully mitigate NY Transco's risks because it will remain cash-negative during its initial years of operation.[144]

With respect to the TOTS Project, 100% CWIP will not offset the risks faced by those projects. For NY Transco to utilize CWIP for the TOTS Projects, they have to be transferred by the NYTOs to NY Transco, the NYISO billing system has to be modified to bill the revenue requirement for these projects and NY Transco's owners need to be certain that all of the various regulatory approvals associated with transferring their assets to NY Transco have been

[141] *Id.* at 32.
[142] *Id.* at 33.
[143] *Id.* at 18.
[144] *Id.* at 17.

cleared.[145] It is likely that all of these hurdles will not be met until the end of 2015. Given the expected in-service date of June 2016, recovery of 100% CWIP would not be in place long enough to provide meaningful cash flow to mitigate the risks of the TOTS Projects.

Moreover, NY Transco's credit metrics and financing costs could fare worse than Ms. Lapson projects. She testifies that debt issuance "could be problematic if there are capital market disruptions or if NY Transco encounters any difficulties in executing its construction plan."[146] As discussed earlier, "difficulty in executing its construction plan" essentially means that NY Transco bears the risk that the projects (i) are to be constructed on an accelerated schedule, (ii) have not been fully permitted, and (iii) face unknown surprises during the construction process. As discussed earlier, Messrs. Haering and Allen explain that NY Transco's projects face project completion and disruption risks through conditions imposed by regulatory agencies.[147] Regulatory proceedings—such as NYPSC's AC Proceeding and litigation with Linden over interconnection issues before this Commission—could affect the scope, configuration, cost and timing of project completion. Ms. Lapson states that "credit rating agencies' criteria are concerned with completion risk when companies have heavy commitments to multi-year capital expenditure projects."[148] Thus, cost overrun and project completion risks pose significant future cash flow concerns that impact NY Transco's attractiveness as an investment, as Ms. Lapson explains. These risks have a direct impact on credit metrics and the cost of capital, which justifies an incentive ROE as Ms. Lapson and Messrs. William Avera and Adrian McKenzie explain.

[145] The NYISO has advised the Applicants that the required modifications to its Billing and Settlement System are scheduled for implementation in the third quarter of 2015.
[146] Lapson Testimony at 52.
[147] Testimony of Haering and Allen at 21- 24.
[148] Lapson Testimony at p. 43.

Project completion risk is further amplified by circumstances that are specific to NY Transco's projects. The projects must be coordinated simultaneously in different parts of the State where conditions include construction near and around major waterways (the Hudson River and the Arthur Kill Waterway adjacent to Staten Island, for example) and in heavily urban areas. To address concerns raised by local land owners, the NYPSC required new proposals in the AC Proceeding to limit construction to existing rights of way as much as possible.[149] And, the Staten Island Unbottling Project will require consents and cooperation with Linden in New Jersey, as well as coordination with PJM Interconnection, L.L.C.

Recovery of pre-construction development costs helps to offset project risks, but only to a point as pre-construction expenditures have been limited. The lion's share of the costs will not be incurred until the construction phase, when cost under-recovery risks are magnified. Thus, accelerated recovery of these costs does not materially improve cash flow for NY Transco.[150]

NY Transco also proposes a hypothetical capital structure during the construction phase of the projects to offset the risks.[151] In Order No. 679, the Commission found that a hypothetical capital structure "can be an effective tool available to public utilities to foster transmission investment in appropriate circumstances."[152] Ms. Lapson testifies that NY Transco's requested 60% equity/40% debt hypothetical capital structure "would enhance the likelihood that the Company would achieve its target investment-grade credit ratings at the outset, materially aiding the Company to finance its up-front capital expenditure commitments at favorable cost of capital and under the most flexible terms."[153] It would lead to an estimated $168 million in debt

[149] Testimony of Haering and Allen at 30.
[150] Lapson Testimony at 17.
[151] Nachmias Testimony at 7.
[152] Order No. 679 at P 131.
[153] Lapson Testimony at 24.

reduction (and an annual savings of approximately $7 million) compared to a more typical 50/50 capital structure.[154]

The hypothetical capital structure, however, does not fully offset project risks and challenges. While tending to lower debt costs somewhat, it does not address the cash flow shortfalls that NY Transco faces and thus does not fully offset its risks and challenges, as Ms. Lapson explains. Partial mitigation occurs only in conjunction with the other incentives, including the ROE adders.[155]

Finally, the opportunity to recover prudently-incurred out of pocket costs in the event of project abandonment provides helpful reassurance, but "by no means" does it eliminate project development risks.[156] Lenders recognize that "actual recovery will not yet [have] been awarded by the Commission."[157] Disputes may arise as to the permissible amount of recovery, costs may be disallowed through the ensuing regulatory and court process, and future earnings that investors may have been counting on will not be realized. Abandonment protection does not offset these risks.[158]

c. The ROE risk adder satisfies the Incentives Policy Statement.

1. The Applicants have taken measures to mitigate NY Transco's risks.

NY Transco has taken additional steps to mitigate the risks and challenges of the projects by requesting the risk reducing incentives discussed above. In addition, the formation of NY Transco is itself a risk-reducing measure specifically identified in the Incentives Policy Statement because it spreads project risks across multiple owners. Further, as Messrs. Haering

[154] *Id*. at 18.
[155] *Id*. at 63.
[156] *Id*. at 22.
[157] *Id*.
[158] For example, the Commission rejected an abandoned plant cost recovery filing by Potomac-Appalachian Transmission Highline, LLC following cancellation of its high voltage transmission line and set the cost recovery question for hearing on the prudence issue. *PJM Interconnection, L.L.C.*, 141 FERC ¶ 61,177 (2012).

and Allen explain, NY Transco will use "best practices" in project management and procurement to mitigate risks and costs.[159] Indeed, as explained, NY Transco has every incentive to do so because of the cost-overrun risk that it bears through the cost-sharing proposal that NY Transco is making in this filing, as discussed below.

2. NY Transco's risks or challenges in completing the Projects are not compensated in the base ROE.[160]

Not only are NY Transco's risks or challenges not fully offset by the "risk reducing" incentives that it is requesting, they are not covered by the base return on equity that it is supporting elsewhere in this filing.

At the outset, it bears noting that in Opinion No. 531, the Commission found that anomalous current conditions in credit markets required an upward adjustment to set the base ROE for the affected utilities at the midpoint of the upper half of the zone of reasonableness.[161] These anomalous conditions continue to the present time.[162] Moreover, even with such an adjustment to the base ROE, Opinion No. 531 recognized that the New England transmission owners were still entitled to retain ROE incentives that they previously received, provided the transmission owners' total ROE remained within the range of reasonableness.[163] This was a critical assurance to investors and lenders that have relied on Commission orders granting incentives.

It also bears recalling that Section 219 was passed "against the backdrop of a long decline in transmission investment" and that "[i]f Congress had deemed our existing practices sufficient

[159] Testimony of Haering and Allen at 36.
[160] In Order No. 679, the Commission explicitly stated that utilities requesting incentives do not have to provide a cost-benefit analysis, and the Commission has held that incentive recipients do not have to pass a cost-benefit analysis for their incentives on an ongoing basis. Order No. 679 at P 65.
[161] *Martha Coakley, Mass. Attorney Gen., et al v. Bangor Hydro-Elec. Co., et al*., Opinion No. 531, 147 FERC ¶ 61,234 (2014) ("Opinion No. 531").
[162] Lapson Testimony at 53.
[163] Opinion No. 531 at P 165.

to reverse this trend, there would have been little need to enact section 219."[164] Thus, the Commission reasoned, "with Congress' direction in section 219, we are obligated to establish ROEs for public utilities that both reflect the financial and regulatory risks attendant to a particular project and that are sufficient *to actively promote capital investment*."[165]

The Commission identified several examples when higher return on equity incentives are appropriate, including "where the risks of a particular project exceed the normal risks undertaken by a utility (and hence are not reflected in a traditional discounted cash flow (DCF) analysis) and where necessary to encourage creation of a Transco or participation in a Transmission Organization."[166] As explained above, none of the Applicants has a franchised service obligation to build any of the projects; rather, the projects satisfy statewide needs that transcend individual utility service area obligations. Ms. Lapson's testimony states that NY Transco will experience negative cash flows in its early years of about $1.5 billion. Even with the incentives requested herein, its cash flows will still be a negative $1.4 billion. These negative cash flows and adverse impacts on its credit metrics are not captured by the Commission's traditional DCF analysis, which examines *operating* public utilities that have *current* revenues and *current* cash flows. These facts demonstrate circumstances "where the risks of a particular project exceed the normal risks undertaken by a utility."

Further, the Commission's Incentives Policy Statement stated that ROE adders are particularly appropriate for "projects to relieve chronic or severe grid congestion that has had demonstrated cost impacts to consumers" and "projects that unlock location constrained generation resources that previously had limited or no access to the wholesale electricity

[164] Order No. 679-A at P 14.
[165] *Id*. at P 15 (emphasis added).
[166] Order No. 679 at P 27.

markets. . . ."[167] The Commission itself has found that UPNY/SENY and Central East constraints "have been overloaded since 2008" and raise "long-term reliability concerns."[168] NY Transco's projects are intended to relieve these constraints and unbottle generation on Staten Island, and thereby provide the precise benefits that the Commission has said justify an ROE adder. Therefore, this case will be viewed as an important indication of the Commission's continued support for ROE incentives.

Messrs. Avera and McKenzie and Ms. Lapson show that NY Transco's base ROE is insufficient "to actively promote capital investment" in a new business devoted to taking on the risks and challenges of developing and constructing new high voltage transmission projects to resolve critical bottlenecks and support state policy goals to integrate renewable generation and support long-term economic growth. Absent all of the incentives that NY Transco is requesting, Ms. Lapson demonstrates that NY Transco may be barely investment grade. By definition, this means that a lower authorized return on equity that reflects only the base ROE will be insufficient to promote capital investment and will not comply with FPA Section 219.

Accordingly, the Commission should grant NY Transco's requested ROE incentive in recognition that it: (1) reflects a business model designed to accomplish transmission projects that are beyond the normal risks of any of the NYTOs individually, (2) that it is justified because it will relieve transmission bottlenecks that the Commission has found to be especially troublesome, and (3) is necessary as a partial offset to the severe cash flow deficiency that NY Transco will experience in shouldering the commitment to meet statewide transmission needs.

[167] Incentives Policy Statement at P 21.
[168] *New York Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,152 at P 13 (2014).

3. The Applicants are committed to sharing the risk of cost increases.

The Incentives Policy Statement states that "the Commission expects 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."[169] Mr. Nachmias explains that NY Transco is complying with the Commission's policy by proposing a risk sharing mechanism whereby the entire 150 basis point ROE adders will not be recovered for costs that exceed the cost estimates at the time the projects have all governmental approvals to move forward to construction and have completed engineering design. It is essential to use estimates determined after receipt of all regulatory approvals because costs may increase during the development phase as the result of local, state, and federal governmental requirements. In addition, under this proposal any benefit of coming in under budget will flow entirely to customers.

4. The total package of incentives is narrowly tailored to address the risks and challenges of the Projects.

The Applicants recognize that under the Commission's policies, the incentive ROE adders together with the base ROE are capped in total by the upper end of the zone of reasonableness.[170]

For the foregoing reasons, NY Transco's incentives requests are tailored to the risks and challenges of the projects and the total package of incentives is appropriate. Absent all of the requested incentives, NY Transco's negative cash flows in its initial years will be inconsistent with an investment-grade credit rating, thereby increasing financing costs, and ultimately leading to higher costs for consumers. As explained by Ms. Lapson, the requested incentives are likely

[169] Incentives Policy Statement at P 28.
[170] Order No. 679-B at P 10.

to contribute to investment-grade ratings that will enable NY Transco to issue long-term debt and obtain committed credit facilities for construction funding on reasonable terms.[171]

d. NY Transco qualifies for the ROE incentive available to "Transcos."

NY Transco is also eligible for a 50 basis point ROE adder because it is a "Transco" that is exclusively focused on new transmission investment both in the near terms and the decades ahead.[172] The Commission's regulations contemplate "[a] return on equity that both encourages Transco formation and is sufficient to attract investment . . . ."[173] The regulations define a "Transco" as "a stand-alone transmission company that has been approved by the Commission and that sells transmission service at wholesale and/or on an unbundled retail basis, regardless of whether it is affiliated with another public utility."[174] Such Transcos warrant additional incentives, the Commission explained, based on the "proven and encouraging track record of Transco investment" in transmission facilities.[175] The Commission rejected arguments to "limit an applicant's ability to seek incentive-based rate treatments based on corporate structure or ownership,"[176] but said "we expect that the incentive ROE will be used for additional capital spending, and thereby provide consumer benefits, as demonstrated by the negative cash flow profiles of Transcos and their future capital spending plans."[177]

NY Transco fits squarely in the Commission's "Transco" mold. Here, as we have explained, New York has a long history of under-investment in high voltage transmission lines. Forming NY Transco is a key step in reversing the trend. NY Transco's estimated expenditures of $1.7 billion for new transmission lines represents a major new investment in New York's

[171] Lapson Testimony at 13.
[172] 18 C.F.R. § 35.35(d)(2).
[173] *Id.* The Incentives Policy Statement did not address the Transco incentives.
[174] 18 C.F.R. § 35.35(b)(1).
[175] Order No. 679 at P 222.
[176] Order No. 679-A at P 76.
[177] *Id*. at P 78.

transmission infrastructure. Mr. Nachmias further explains that NY Transco's business model is to continue to build transmission beyond its initial group of projects. In fact, in response to the Governor's RFI that preceded the *Energy Blueprint*, the NYTOs proposed 18 new high voltage projects to meet the State's long-term needs. NY Transco's business plan is to continuously reinvest its available cash flows into transmission development, just like the other companies that the Commission held out as examples of Transcos that should receive ROE adders.[178]

e. RTO/ISO Adder.

Consistent with Section 219(c) and long-standing precedent, the Applicants respectfully request that the Commission grant NY Transco an incentive ROE adder of 50 basis points to reflect its membership and participation in the NYISO, which will have functional and operational control over all of NY Transco's projects.[179] As Mr. Nachmias has pointed out, it should be noted that this incentive is being requested for the NY Transco and not the NYTOs. Accordingly, NY Transco is entitled to this incentive.[180]

E. Alternatively, New York Transco's Request for Incentives Meets the Requirements for Incentives Under Section 205.

As discussed above, the Commission has ample authority to grant transmission rate incentives outside of Section 219. Thus, the Commission may also rely on its inherent powers under Section 205 to grant the requested incentives.

It is well-settled that Section 205 of the Federal Power Act gives the Commission the authority to grant the transmission rate incentives requested herein.[181] Indeed, the courts have

[178] Order 679 at P 226.
[179] 18 C.F.R. § 35.35(e).
[180] 16 U.S.C. § 824s(c); *see Ass'n of Businesses Advocating Tariff Equity Coal. of MISO Transmission Customers v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049, at P 200 (2014) ("The Commission stated in Order No. 679 that entities that have already joined, and that remain members of, an RTO, ISO, or other Commission-approved transmission organization, are eligible to receive this incentive.").
[181] *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.*

recognized that a primary purpose of the FPA is to encourage plentiful supplies of energy at reasonable prices, through, among other means, the development of needed infrastructure.[182] This means that the Commission has significant discretion within its ratemaking authority to consider both cost-related factors and policy-related factors when setting rates (*e.g.*, the need for new transmission investment to meet policy goals).[183]

In *Maine Public Utilities Commission v. FERC,* for example, the court 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."[184] 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.[185]

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

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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).

[182] *See*, *e.g*., *CPUC v. FERC*, 367 F.3d at 929 (citing *NAACP v. FPC*, 425 U.S. 662, 670 (1976)).

[183] *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); X*cel 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).

[184] 454 F.3d 278, 287 (D.C. Cir. 2006) ("*MPUC v. FERC*"); *see also Permian Basin Area Rate Cases*, 390 U.S. 747 (1968); *see* Order 679-A at n.37 ("We 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).

[185] *MPUC v. FERC*, 454 F.3d at 287-89.

energy to the grid. Further . . . [it has] considered whether the proposed project helps to access renewable energy to meet state RPS requirements."[186] NY Transco's projects meet all of these objectives, as we explained above.

F. Technology Statement

Order No. 679 requires applicants for incentive rates to submit a technology statement discussing whether advanced technologies will be used in conjunction with specific projects. Section 1223 of the Energy Policy Act of 2005 defined the term "advanced transmission technologies" as "technology that increases the capacity, efficiency, or reliability of an existing or new transmission facility . . . ."[187]

As explained in the testimony of Messrs. Haering and Allen, NY Transco's projects have been designed to increase the capability of its facilities so as to reduce the need to use additional rights of way. Examples of technological innovations to achieve this goal include:

- Reconfiguration and more efficient use of existing assets to minimize real estate needs and mitigate environmental and visual impacts;
- Incorporating innovative compact structure designs to maximize use of existing rights of way corridors and mitigate visual impacts;
- Innovative construction techniques such as live-line construction and use of low impact vehicles will be assessed on some projects to minimize impacts to the environment and system reliability;
- Adoption of the latest microprocessor-based system protection technology to provide the best fault clearing capabilities and system monitoring data; and
- Adoption of the latest technology in digital fault recorders and sequence of event recorders which will provide the best capabilities to assess system disturbances.

[186] *S. Cal. Edison Co.*, 133 FERC ¶ 61,107 at P 60 (2010).
[187] 42 U.S.C. § 16422(a).

V. THE FORMULA RATE AND PROTOCOLS ARE JUST AND REASONABLE

The Commission has determined that formula rates are an appropriate means for determining just and reasonable rates,[188] and has encouraged transmission owners in New York and elsewhere to move from stated rates to formula rates.[189] Part of the reason is that forward-looking formula transmission rates substantially reduce the regulatory lag in recovering utility costs, especially the costs of constructing new transmission projects to meet increasing demands on the power grid.[190] Thus, it is now common for transmission owners to file formula rates, and for the Commission to accept them with no more than nominal suspensions.[191]

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[188] *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,323, at P 12 (2006) ("[h]ere, the resulting rates, whether higher or lower than existing rates, will be determined pursuant to the Midwest ISO TEMT Attachment O formula rate, which the Commission has approved as appropriate for determining license plate zonal transmission rates under the Midwest ISO TEMT").

[189] *New York Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,372, at P 29 (2004) ("[w]e support NYISO's plan to develop a full cost allocation methodology and also encourage the parties to explore whether adopting formula rates for recovery of the costs of both the NYTOs' existing facilities and new transmission facilities would be a more reasonable rate design"), *reh'g denied*, 111 FERC ¶ 61,182 (2005); *see also* Order No. 679 at P 386 ("we continue to encourage public utilities to explore the benefits of filing transmission-related formula rates"). *See, e.g.*, *Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308, at P 51 (2005) ("the Commission has, in fact, urged transmission owners to move from stated rates to formula rates"); *Southwest Power Pool, Inc.*, 111 FERC ¶ 61,118, at P 32 (2005) (encouraging "utilities to consider adopting formula rates to facilitate" recovery of costs for new transmission upgrades), *order on reh'g*, 112 FERC ¶ 61,319 (2005); *Allegheny*, 106 FERC ¶ 61,003, at P 32 (2004) ("[t]he parties may explore whether adopting formula rates for recovery of the costs of both the TOs' existing transmission facilities and new transmission facilities would be best"), *order on reh'g*, 106 FERC ¶ 61,016 (2004).

[190] For example, the Commission has recognized that use of formula rates encourages transmission owners to begin upgrades quickly when they are required under regional transmission planning processes. *See, e.g.*, *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 75 (2007) ("the Commission has, in fact, urged transmission owners to move from stated rates to formula rates, and . . . customers would also benefit from the incentive provided by these rate changes to [the transmission owner] to commence construction of RTEP upgrades"); *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, at P 38 (same), *reh'g denied*, 121 FERC ¶ 61,009 (2007) ("*TrAILCo*"); *Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308, at P 51 (2005) (same), *reh'g denied*, 115 FERC ¶ 61,156 (2006) ("*Allegheny*").

[191] *See, e.g., VEPCo*, 123 FERC ¶ 61,098 (2008) (accepting forward-looking formula rate with no suspension); *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007) (accepting transmission formula rate filing with forward-looking transmission capital additions with one-day suspension) ("*Duquesne*"); *see also Xcel Energy Servs., Inc.*, 121 FERC ¶ 61,284 (2007) ("*Xcel*") (accepting transmission formula rate using projected test year with no suspension); *Michigan Elec. Transmission Co.*, 117 FERC ¶ 61,314 (2006) (same); *Int'l Transmission Co.*, 116 FERC ¶ 61,036 (2006) (same).

NY Transco files the attached Formula Rate and requests that it be accepted for filing effective 120 days from the date of this filing on April 3, 2015.[192] This Formula Rate will be used by NY Transco to determine revenue requirements for its initial five projects and any subsequent NY Transco transmission investments that are subject to Attachment DD.

A. The Proposed Formula Rate.

As Mr. Heintz explains in his testimony, the proposed formula is very similar to the formula rates approved by the Commission in *Transource Missouri, LLC*,[193] and *Tallgrass* Transmission, *LLC*.[194] It is also consistent with recent FERC Staff guidance on formula rate protocols.[195]

The Formula Rate has two components. The first component is the cost of service formula rate that underlies the Annual Transmission Revenue Requirement ("ATRR") determination.[196] The second component is the Formula Rate Implementation Protocols, discussed in Section V.B below.

To calculate the ATRR, by September 30 of each year, NY Transco will forecast the values that will populate the formula rate template ("Template") for each calendar year ("Rate Year"), and calculate a true-up of the forecasted values after the actual data become available on the FERC Form No. 1 the year after the Rate Year.[197] Any differences between the forecasted ATRR and the actual ATRR for the previous Rate Year will be reflected in an appropriate adjustment to the following year's ATRR. Thus, for example, NY Transco would determine by

[192] The Formula Rate, including the Implementation Protocols, are attached hereto as Appendices A and B, respectively. The Formula Rate and Implementation Protocols are also attached to the testimony of Alan C. Heintz as Exhibit No. NYT-43.
[193] *Transource Missouri, LLC*, 143 FERC ¶ 61,104 (2013).
[194] *Tallgrass Transmission, LLC*, 132 FERC ¶ 61,114 (2010). The formula rates for Tallgrass Transmission, LLC and Prairie Wind Transmission, LLC were agreed to as part of a settlement, which was accepted by the Commission by Letter Order on August 9, 2010.
[195] FERC Staff's Guidance on Formula Rate Updates (issued July 17, 2014).
[196] Testimony of Mr. Heintz, Exhibit No. NYT-41 at 7.
[197] *Id.* at 5.

September 30, if the actual ATRR for the prior year differed from the forecasted ATRR. If so, the difference, along with interest calculated in accordance with Section 35.19a of the Commission's regulations,[198] will be reflected as an adjustment to the forecasted ATRR for the next year. This ensures that neither the customers nor the transmission owner are harmed if the forecasted ATRR differs from the actual ATRR.[199]

The Template provides for the recovery of a return on rate base, taxes other than income taxes, depreciation expense, and other operation and maintenance ("O&M") expenses, less revenue credits.[200] For transmission and general plant balances, the Template uses the average of 13 monthly balances, whereas for accumulated deferred income taxes, land held for future use, materials and supplies and prepayments, the Template uses the average of beginning and end of year balances.[201] The values for Post-Employment Benefits other than Pensions ("PBOP"), ROE and depreciation rates may only be changed pursuant to an FPA Section 205 or Section 206 filing. After the earlier of January 1, 2021, or the completion of construction, the initial hypothetical capital structure will change to use actual values, as reflected in the FERC Form No. 1 reports filed by NY Transco.[202]

B. Formula Rate Protocols.

Mr. Heintz describes the protocols for populating and updating the Formula Rate template in his testimony. These protocols are based on the implementation protocols previously approved by the Commission.[203] They will provide NY Transco's customers with procedural safeguards and sufficient information to facilitate the annual review of the inputs to the formula.

[198] 18 C.F.R. § 35.19a.
[199] Testimony of Mr. Heintz at 4.
[200] *Id.* at 7-11.
[201] *Id*. at 4, 11.
[202] *Id*. at 15.
[203] *See, e.g., Commonwealth Edison Co.*, 122 FERC ¶ 61,030 (2008).

The protocols govern the specific procedures for notice, requests for information, and review and challenges to the annual update ("Annual Update").[204] The protocols provide for a January to December rate year. NY Transco will project the formula inputs and resulting ATRR for the next calendar year, and post the following year's ATRR no later than September 30 on the NYISO website.[205] After the initial Rate Year in which customers are assessed charges through the NYISO Tariff, NY Transco will also determine the true-up amount by comparing the prior year's actual ATRR using data from the NY Transco FERC Form No. 1 against the revenue collected under the Formula Rate during the preceding year. No later than September 30 ("Publication Date"), NY Transco shall calculate its ATRR from the preceding Rate Year and the true-up adjustment, with interest, to be applied during the subsequent Rate Year. The Protocols allow interested parties 150 calendar days from the Publication Date to review and, if deemed necessary, to submit preliminary written challenges to specific inputs ("Review Period").[206] Interested parties have 120 calendar days from the Publication Date to serve reasonable information requests on NY Transco, and NY Transco will make reasonable efforts to respond to such requests within 15 business days.[207] If NY Transco and any interested party have not resolved any preliminary challenge to the Annual Update within 60 calendar days after the end of the Review Period (unless such period is extended with the written consent of NY Transco to continue efforts to resolve the preliminary challenge), the interested party may, within 30 calendar days thereafter, file a formal challenge with the Commission.[208] Parties also retain their rights under Section 205 and Section 206 of the FPA, without regard to the Protocols'

[204] However, consistent with Commission precedent, the proposed Protocols do not limit a customer's or the Commission's rights with respect to the inputs into the formula rate in accordance with Section 206 of the FPA. *See, e.g., Tampa Elec. Co.*, 133 FERC ¶ 61,023 at P 61 (2010); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 at P 113 (2009).
[205] Testimony of Mr. Heintz at 5.
[206] *Id.* at 17.
[207] *Id.*
[208] *Id.*

review process.[209] As described in the proposed protocols, NY Transco will also provide its annual true-ups and rate restatements to the Commission for informational purposes.[210]

C. Base Return on Equity.

NY Transco's Formula Rate includes a base ROE value of 10.60%.[211] The base ROE is supported by the analysis and testimony of Dr. William E. Avera and Mr. Adrien M. McKenzie. As explained by Dr. Avera and Mr. McKenzie, the requested base ROE of 10.60% is well within the zone of reasonableness of 6.25% and 11.63% or 6.45% and 13.59% established by the Commission's two-step DCF methodology applied using IBES and Value Line growth rates, respectively.[212]

Messrs. Avera and McKenzie generally describe the risks faced by a start-up transmission-focused entity like NY Transco and explain the critical role both the base and the overall ROE will have in determining access to investment capital given that investors will only invest in opportunities that receive a return that is sufficient to compensate for the associated risks. As explained by Messrs. Avera and McKenzie, establishing an ROE that is sufficient to attract the necessary capital is critically important for NY Transco.[213]

Messrs. Avera's and McKenzie's analysis of the appropriate base ROE for NY Transco is based on the Commission's two-step DCF methodology. Messrs. Avera and McKenzie utilized a national proxy group composed of 30 risk comparable electric utilities ("National Group").[214] In their testimony, Messrs. Avera and McKenzie explain the development and selection of the National Group, the Commission's current two-step DCF approach for determining electric

[209] *Id.*
[210] Such informational filings are not considered to be Section 205 filings. *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 146 (2008) ("*PATH*") ("there is no need . . . to file the formula under section 205 on an annual basis").
[211] Project-specific ROE incentives, if approved, are applied on Attachment 4 of the Template.
[212] Testimony of Messrs. Avera and McKenzie, Exhibit No. NYT-24 at 10-11.
[213] *Id.* at 9-10.
[214] *Id.* at 3.

utility ROEs, and their evaluation of the DCF results. Messrs. Avera and McKenzie find that the median values for the National Group using the two-step DCF methodology are 8.78% and 8.82% based on the IBES and Value Line growth rates, respectively, and the corresponding midpoints are 8.94% and 10.02%. That being said, consistent with the Commission's recent decision in Opinion No. 531, Messrs. Avera and McKenzie recommend a base ROE value of 10.60% because there is clear evidence that the median or midpoint cost of equity estimates produced by the two-step DCF model fall far below investors' expectations as a result of anomalous market conditions.[215]

Overall, a number of factors support the conclusion that a 10.60% base ROE is just and reasonable. First, the proposed base ROE of 10.60% is well within the zone of reasonableness determined by applying the two-step DCF method to the National Group, as undertaken in Messrs. Avera and McKenzie's analysis. As noted, Opinion No. 531 recognized that the results of the Commission's two-step DCF method are impacted by current anomalous capital market conditions. Therefore, the Commission has set a base ROE within the upper half of the zone of reasonableness, consistent with the results of alternative benchmarks and the need to establish a just and reasonable ROE that satisfies the *Hope* and *Bluefield* standards. Messrs. Avera and McKenzie provide testimony on why a base ROE in the upper half of the zone of reasonableness is required in evaluating a just and reasonable ROE for NY Transco.

As explained by Dr. Avera and Mr. McKenzie, to be consistent with sound regulatory economics and the standards set forth by the Supreme Court in *Hope* and *Bluefield*, a utility's allowed ROE should be sufficient to: (1) fairly compensate investors for capital invested in the utility; (2) enable the utility to offer a return adequate to attract new capital on reasonable terms; and (3) maintain the utility's financial integrity. As the Commission recently reaffirmed in

[215] *Id.* at 15.

Opinion No. 531, "[t]he Commission's ultimate task is to ensure that the resulting ROE satisfies the requirements of *Hope* and *Bluefield*."[216] The Commission also recognized in Opinion No. 531 that a mechanical application of its DCF methodology will not automatically satisfy the standards set by the Supreme Court.

To support their expert view that use of a base ROE value of 10.60% is just and reasonable, Messrs. Avera and McKenzie also evaluated a fair and reasonable point estimate ROE by reference to the alternative capital market estimates considered in Opinion No. 531, which include: (1) a risk premium approach using FERC ROEs for electric utilities; (2) the Capital Asset Pricing Model ("CAPM"); and (3) an expected earning approach.[217] The overall average of the median ROEs resulting from these alternative benchmarks equals 10.61%, which supports Messrs. Avera's and McKenzie's conclusion that a 10.60% base ROE is just and reasonable.

In addition, Messrs. Avera and McKenzie compared their recommendation for a base ROE value of 10.60% to other ROE benchmarks, including: (1) a risk premium approach using ROEs approved by state regulators; (2) using an *empirical* form of the CAPM ("ECAPM"); (3) comparing ROEs approved by the Commission for natural gas pipelines; (4) incorporating projected bond yields into the consideration of the risk premium CAPM and ECAPM methods; and (5) a DCF analysis based on a select group of low risk non-utility firms.[218] The average of the median values resulting from these analyses is 11.16%, which further supports Messrs. Avera's and McKenzie's conclusion that a base ROE of 10.60% is just and reasonable.

Applicants urge the Commission to consider the appropriateness of using a point estimate from the upper half of the zone of reasonableness to set the base ROE in this particular factual

[216] *Coakley, et al. v. Bangor Hydro-Elec. Co., et al.*, Opinion No. 531, 147 FERC ¶ 61,234, at P 144 (2014).
[217] Testimony of Messrs. Avera and McKenzie, Exhibit No. NYT-24 at 3.
[218] *Id.*

circumstance, where: (1) NY Transco is a new entrant into the transmission development market, with no existing assets or rate; (2) this Formula Rate will be applied exclusively to investments in new transmission infrastructure projects; (3) the Projects have been considered and approved in the regional planning process for region-wide cost allocation,[219] and any additional projects NY Transco may undertake in the future will be regional projects; and (4) the alternative methodologies to estimate investors requirements in the capital markets and other ROE benchmarks support a 10.60% base ROE.

In Order No. 1000, the Commission sought to enable and encourage market entry and increased competition in the development of transmission infrastructure. Mechanically setting a base ROE at the median or midpoint of the DCF range of reasonableness, without consideration of NY Transco's particular circumstances or the implications of current anomalous capital market conditions, would discourage such new entry and reduce competition for new transmission development projects. Thus, the just and reasonable ROE in this circumstance requires thoughtful policy consideration by the Commission consistent with its actions in Opinion No. 531, not rote application of its past practice during very different economic conditions. The requested base ROE is also similar to the base ROE accepted for other new transmission developers during the period in which anomalous market conditions have existed.[220] Finally, the proposed 10.60% base ROE is based on the return needed to attract new capital to new transmission investment projects.

For all of these reasons, the Commission should accept the proposed base ROE of 10.60% for NY Transco's Formula Rate.

[219] The two AC Projects remain pending before the NYPSC.
[220] *See, e.g., Transource Missouri, LLC*, 141 FERC ¶ 61,075 (2012).

D. Accounting Treatment: Regulatory Assets and PBOPs

Mr. Heintz provides an overview of certain accounting matters related to NY Transco and any projects it develops. Mr. Heintz describes the accounting that will be used for NY Transco, particularly the accounting treatment related to the requested Regulatory Asset Incentive and with respect to PBOPs.

A regulatory asset will be created for each project as well as NY Transco's formation costs that will include all expenses incurred but not included in CWIP, including permitting, consulting and legal costs.[221] The Commission has approved such accounting treatment in *Potomac-Appalachian Transmission Highline, L.L.C.* which, like NY Transco, involved a stand-alone transmission company building its first transmission line.[222] Once NY Transco begins to charge customers, ongoing expenses will be recovered under its formula rate, rather than being booked to the regulatory asset, and the regulatory assets will be amortized over five years, consistent with Commission precedent. Once the regulatory asset is included in rate base as part of the revenue requirement, NY Transco will earn a return on the unamortized balance of the regulatory asset.

As also explained in Mr. Heintz's testimony, the PBOP rate for NY Transco's employees is initially set at zero. The reason is that all of NY Transco's services will initially be provided by the owners of NY Transco (and their affiliates or subsidiaries). NY Transco will make a Section 205 filing to set a new rate for PBOPs based on an actuarial study when it has employees. This proposal is consistent with the accounting treatment approved by the

[221] Testimony of Mr. Heintz at 10.
[222] *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 at P 52 (2008), *aff'd in relevant part on reh'g*, 133 FERC ¶ 61,152 (2010). *See also Transource Missouri, LLC*, 141 FERC ¶ 61,075 at PP 56-59 (2012).

Commission in *Trans-Allegheny Interstate Line Company*.[223] Approval of the requested treatment is equally appropriate here.

E. Filing Requirements for 100% CWIP Recovery.

NY Transco is requesting 100% CWIP for its two AC Projects only. Mr. Heintz explains that Section 7 of the protocols requires that NY Transco follow the procedures required by FERC for inclusion of CWIP in rate base.[224] Section 7 of the protocols shows that NY Transco has adopted procedures to ensure that NY Transco does not recover both an Allowances for Funds Used During Construction and CWIP for incentive projects like the five projects presented in this filing. NY Transco notes the Commission has recognized that Statement BM was designed primarily for CWIP associated with new generation projects in mind,[225] and has waived the requirement to submit Statement BM in cases involving formula transmission rates.[226] The Commission has, therefore, concluded that key elements of its CWIP reporting regulations are simply inapplicable to transmission rates.[227]

VI. COST ALLOCATION PROPOSAL

The Applicants propose to use an adjusted load ratio share approach to allocate the costs of NY Transco's first five projects to transmission districts across the State. This method takes into account the statewide distribution of benefits to each transmitting utility's transmission district and results in the following cost allocation percentages:

- Con Edison/O&R Transmission District – 41.7%
- New York Power Authority ("NYPA") – 16.9%
- Long Island Power Authority ("LIPA") Transmission District – 16.7%

[223] *Trans-Allegheny Interstate Line Co.*, 124 FERC ¶ 61,075 (2008).
[224] Testimony of Mr. Heintz at 16.
[225] *Mid-Tex Electric Coop. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985).
[226] *ComEd I*, 119 FERC ¶ 61,238, at PP 92, 94 (2007).
[227] Order No. 679 at P 119.

- National Grid Transmission District – 10.4%
- NYSEG/RG&E Transmission District – 8.9%
- Central Hudson Transmission District – 5.4%

These allocation percentages result in approximately 75% of the costs of NY Transco's five initial projects being allocated to transmission districts southeast of the UPNY/SENY constraint, and approximately 25% of the costs being allocated to upstate transmission districts. As explained by Ms. Marie Berninger, Mr. Bert Franey and Mr. Raymond Kinney ("Cost Allocation Panel"), this cost allocation is a departure from the default load ratio share method that normally would allocate 60% of the costs of selected projects to downstate transmission districts with 40% allocated to those located upstate. The differences between a strict load ratio share allocation and the NY Transco Cost Allocation Method are explained by the significant economic and reliability benefits that accrue to downstate loads as discussed in the testimony.

As the Commission knows, solving cost allocation is a key ingredient to removing impediments to modernizing the transmission grid and has been a significant impediment to building new transmission lines in New York. The Commission, therefore, encourages market participants to achieve as much consensus as possible on this issue.[228] In Order No. 890, the Commission explained the key factors that it will take into account when evaluating a cost allocation plan:

> First, we consider whether a cost allocation proposal fairly assigns costs among participants, including those who cause them to be incurred and those who otherwise benefit from them. Second, we consider whether a cost allocation proposal provides adequate incentives to construct new transmission. Third, we

[228] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011) ("Order No. 1000"), *order on reh'g and clarification*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012).

> consider whether the proposal is generally supported by state authorities and participants across the region.[229]

The Commission explained that evaluation of these three "interrelated" factors is "particularly important as applied to the economic upgrades discussed above – *e.g.*, upgrades to reduce congestion or enable groups of customers to access new generation."[230]

The Commission's three cost allocation criteria are particularly probative of the Applicants' cost allocation proposal for NY Transco's initial five transmission projects, which are being constructed most fundamentally to provide relief to critical transmission bottlenecks in New York, as we have explained.

First, the allocation plan assigns cost responsibility fairly by allocating cost responsibility in a manner that is "roughly commensurate" with the benefits.[231] The statewide benefits of NY Transco's projects include reliability, congestion, and a variety of public policy benefits including economic development, job creation, increased local tax revenues, renewable energy and environmental benefits as explained in great detail by the Cost Allocation Panel in Exhibit No. NYT-37. Evaluation of benefits that derive from the basket of projects that NY Transco proposes to build is consistent with the Commission's guidance in Order No. 1000 that transmission providers can propose cost allocation methods that apply to entire groups or categories of transmission projects without requiring precise cost-benefit assessments for each project:

> . . . we reiterate that the public utility transmission providers in a transmission planning region may propose a cost allocation method or methods that consider the benefits and costs of a group of new transmission facilities, although they are not required to do so. To the extent they propose a cost allocation method or methods that considers the benefits and costs of a group of new transmission

[229] Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 559 (2007).
[230] *Id*. at P 561.
[231] Order No. 1000 at P 612; *Illinois Commerce Comm'n v. FERC*, 576 F.3d 470 (7th Cir. 2009).

> facilities, and adequately support their proposal, Cost Allocation Principle 2 would not require a showing that every individual transmission facility in the group of transmission facilities provides benefits to every beneficiary allocated a share of costs of that group of transmission facilities. However, it is required that the aggregate cost of these transmission facilities be allocated roughly commensurate with aggregate benefits.[232]

NY Transco's initial group of five transmission projects fits this aggregate cost allocation approach.

Second, the cost allocation proposal is essential to support construction of NY Transco's basket of projects that generally meet public policy benefits, consistent with Order No. 1000. As we have explained, the NYISO's pre-existing planning processes failed to produce transmission solutions to New York's constrained transmission highways. The prospect of generation retirements have made the situation critical, prompting the Governor to intercede through his *Energy Blueprint*, which led the NYPSC to take an active and forceful role in transmission planning to relieve congestion and meet the enumerated public policy benefits.

Now, through the formation of NY Transco, the NYTOs have agreed upon a path forward that will enable the development of transmission projects for the betterment of all New Yorkers as Mr. Nachmias explains. A key element of that forward-looking path is the cost allocation method proposed herein. Changing the cost allocation method risks the consensus and could reopen the cost allocation debate. That, in turn, could upset the balance of considerations and incentives that make it possible for NY Transco to proceed with its projects.

Third, this proposed cost allocation has support. The NY Tranco owners are affiliated with the investor-owned utilities in New York that provide delivery service to more than 85% of the customers in the State. Therefore, the NY Transco owners have a vested interest in ensuring

[232] Order No. 1000 at P 641.

that the costs of any bulk power system project are allocated reasonably in proportion to the benefits received by the customers of the load serving entities in New York State.

Further, the NYPSC concurred with the NYTOs' cost allocation proposal when it endorsed the three TOTS projects, and found that upstate customers will also benefit:

> [W]e agree with the NYTOs that these solutions should also provide some reliability benefits statewide. Based on these factors, we find the proposed allocation of costs and benefits to be reasonable, and support the use of the proposed NY Transco cost allocation methodology.[233]

For this reason the NYPSC instructed Con Edison, NYPA, and NYSEG to make a rate filing with the Commission as soon as possible to further the development of the approved projects. The Applicants' filing presented herein complies with the NYPSC's directive and reflects general support for the proposal, including the endorsement of the NYPSC.

For all of these reasons, the cost allocation method presented herein and supported in the attached testimony meets the Commission's cost allocation standards by allocating costs roughly commensurate with the benefits to be received by those paying the rate and has the general support of the NYPSC and the majority of customers who will bear the costs.

VII. REQUEST FOR WAIVERS

Consistent with the Commission's precedent in formula rate proceedings, NY Transco respectfully requests waiver of any requirement to submit additional cost-of-service statements.[234] Except with regard to Statement BM, NY Transco requests waiver of the following sections of the Commission's regulations: Sections 35.13(d)(1)-(2) (Period I and II data for Statements AA through BL), Section 35.13(d)(5) (workpapers related to Period I and II

[233] Reliability Contingency Plan Order at pp. 32-33.

[234] *Oklahoma Gas & Elec. Co.*, 122 FERC ¶ 61,071, at P 41 (2008) (granting waiver of sections 35.13(d)(1)-(2), 35.13(d)(5), and 35.13(h)); *AEP*, 120 FERC ¶ 61,205, at P 41 (2007) (granting waiver of Period I and II data); *ComEd I*, 119 FERC ¶ 61,238, at PP 92-94 (2007) (granting waiver of Period I and II data and cost-of-service statements); *Duquesne*, 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*, 111 FERC ¶ 61,308, at PP 55-56 (2005) (granting waiver of Period I and II data).

data), and Section 35.13(h) (cost-of-service statements).[235] Good cause exists to grant these waivers. Detailed statements of NY Transco's cost of service are not needed because the proposed rates are formulary and will be based on actual costs as reflected in NY Transco's audited FERC Form 1 filings.

In the event that the Commission determines that other waivers are required in connection with this filing, NY Transco requests the Commission to grant such waivers given the Commission's encouragement of formula rates for transmission service within NYISO and elsewhere and the benefits of updating costs and rates under the proposed formula rate approach.

[235] *See* 18 C.F.R. §§ 35.13(d)(1)-(2), (d)(5), and (h).

VIII. CORRESPONDENCE AND COMMUNICATIONS

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IX. LIST OF APPENDICES AND EXHIBITS

In addition to this Transmittal Letter, this filing consists of the following materials:

- Appendix A: New Section 36 to NYISO OATT (clean version) providing new Attachment DD and revised Section 6 of the NYISO OATT (clean version) with new Schedule 13;

- Appendix B: New Section 36 to NYISO OATT (redlined version) providing new Attachment DD and revised Section 6 of the NYISO OATT (redlined version) with new Schedule 13;

- Appendix C: Direct Testimony of Stuart Nachmias (Exhibit Nos. NYT-1 through NYT-3);

- Appendix D: Direct Testimony of Paul E. Haering and Richard W. Allen (Exhibit Nos. NYT-4 through NYT-17);

- Appendix E: Direct Testimony of Ellen Lapson (Exhibit Nos. NYT-18 through NYT-23);
- Appendix F: Direct Testimony of William E. Avera and Adrian M. McKenzie (Exhibit Nos. NYT-24 through NYT-36);
- Appendix G: Direct Testimony of Marie Berninger, Raymond Kinney and Bart Franey (Exhibit Nos. NYT-37 through NYT-40); and
- Appendix H: Direct Testimony of Alan C. Heintz (Exhibit Nos. NYT-41 through NYT-43);
- Appendix I: Form of Protective Order

X. EFFECTIVE DATE

The Applicants request that the revised tariff sheets become **effective on April 3, 2015**, 120 days from filing without suspension or hearing.[236] Alternatively, the Applicants respectfully request the Commission to accept its filing with no more than a nominal suspension, in which case they request the Commission to limit any issues set for hearing consistent with the Commission's practice in the numerous formula rate proceedings cited above. In addition, NY Transco respectfully requests the Commission to **issue an order on its filing by March 31, 2015**, to provide necessary certainty concerning cost recovery for NY Transco's transmission projects.

Several factors support the Applicants' requested effective date. NY Transco's proposal is consistent with the Commission's policy of encouraging transmission owners to adopt formula rates, in particular within NYISO.[237] In the testimony appended to this application, witness Alan C. Heintz fully explains and support the methodology of NY Transco's rate formula. To

[236] *VEPCo*, 123 FERC ¶ 61,098, at P 46 (2008).
[237] *New York Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,372, at P 29 (2004) ("[w]e support NYISO's plan to develop a full cost allocation methodology and also encourage the parties to explore whether adopting formula rates for recovery of the costs of both the NYTOs' existing facilities and new transmission facilities would be a more reasonable rate design"), *reh'g denied*, 111 FERC ¶ 61,182 (2005).

facilitate the Commission's review of its proposal, NY Transco has modeled its formula on other rate formulas approved by the Commission.[238]

NY Transco requests the Commission to approve its proposed formula rate without a hearing, or alternatively, limit the issues set for hearing to address specific areas of particular concern. In formula rate cases filed by other transmission owners, where the case has been set for hearing, the Commission has routinely allowed the rates to take effect without suspension, or subject only to a nominal suspension period. [239]

Moreover, the Annual Update and true-up provisions of the formula rate support no suspension, or at a minimum, a nominal suspension period. The Annual Update process provides customers with detailed information to support the annual rate restatements of projected rates, and the true-up process provides for credits or surcharges to reconcile the rates collected to the prior rate year's actual revenue requirement, including the time value of money. Interested parties also have extensive review and discovery rights concerning the final, trued-up rates. These procedures protect customers and ensure that final rates for transmission services track NY Transco's actual cost of service. An April 3, 2015 effective date and nominal suspension period will ensure that the procedures set forth in the Implementation Protocols will be available beginning with the January 1, 2016, annual rate restatement to be implemented through a completed formula rate template to be provided to stakeholders by September 30, 2015. These procedures are designed for the benefit of NY Transco's customers and other interested parties, and a five-month suspension period may limit or deny these parties' access to these procedures.

[238] *See, e.g.*, *VEPCo*, 123 FERC ¶ 61,098 (2008); *PATH*, 122 FERC ¶ 61,188 (2008).

[239] The Commission has stated that "shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances exist here where the Commission has, in fact, urged transmission owners to move from stated rates to formula rates, and where customers would also benefit from the incentive provided by these rate changes to [the transmission owner] to commence construction of RTEP upgrades." *ComEd I*, 119 FERC ¶ 61,238 at P 75 (2007); *TrAILCo*, 119 FERC ¶ 61,219, at P 38 (2007); *Allegheny*, 111 FERC ¶ 61,308, at P 51 (2005). *See also Duquesne*, 118 FERC ¶ 61,087, at P 69 (2007) (suspending proposed formula rates for a nominal period and citing *Allegheny*).

Finally, a nominal suspension period is warranted by equitable principles. The Applicants are pursuing the development and construction of NY Transco's five initial transmission projects, which are estimated to cost approximately $1.7 billion. A lengthy suspension period will delay NY Transco's ability to begin to recover some of these investments, and undercut the limited benefit of the risk-reducing incentives that it has requested. Conversely, a nominal suspension period will enable NY Transco to begin to recover its actual cost of service in a timely manner, help to partially offset project risks, and provide essential certainty as NY Transco pursues the development of essential transmission expansions that will provide long-term benefits to New York's consumers.

XI. REQUEST FOR CONFIDENTIAL TREATMENT

Applicants request privileged and confidential treatment of one item in the testimony of Messrs. Haering and Allen at page 32 of Exhibit No. NYT-4, and for the entirely of Exhibit Nos. NYT-11 to NYT-13 and NYT-16 to NYT-17 included at Appendix D. These materials contain critical energy infrastructure information ("CEII") and that is commercially sensitive and not publicly available. Applicants are submitting a non-public version of Appendix D that is marked "**Contains Critical Energy Infrastructure Information – Do Not Release Pursuant to 18 C.F.R. § 388.112**" and ask that this confidential copy be placed in the Commission's non-public files and maintained as non-public. Applicants also are submitting a public version of Appendix D with the CEII material redacted or removed. Any questions concerning this request for confidential treatment should be directed to counsel. A proposed protective order, which includes a restriction of the ability of competitive duty personnel to view the confidential material, should it be needed, is provided in Appendix J submitted herewith.

XII. CONCLUSION

For the foregoing reasons, the Applicants respectfully request the Commission to: (1) grant the rate and non-rate incentives for NY Transco and its five initial transmission projects described herein, including the 150 basis point ROE adders for project risks and challenges, membership in NYISO and for being a "Transco," (2) accept NY Transco's initial transmission formula rate and protocols without hearing or suspension, including its requested base ROE of 10.6 percent, effective on April 3, 2015, (3) accept the Applicants' cost allocation proposal for NY Transco's initial five transmission projects without suspension or hearing to be effective on April 3, 2015, (4) grant the Applicants' request for confidential treatment of certain project-specific critical energy infrastructure information and information that is commercially sensitive and not publicly available, and (5) grant the requests for waivers and other relief requested herein.

Respectfully submitted,

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