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## **SUBMITTED VIA E-TARIFF FILING**

April 29, 2020

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

**Re: *New York Power Authority***  
**Docket No. ER20-\_\_\_\_-000**

Dear Secretary Bose:

The New York Power Authority (“NYPA”) hereby submits this request for acceptance pursuant to Section 205 of the Federal Power Act (“FPA”)<sup>1</sup> and Part 35 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) regulations, a new Attachment 2 (Section 6.10.8) to Rate Schedule 10 of the New York Independent System Operator, Inc. (“NYISO”) Open Access Transmission Tariff (“OATT”) for the establishment of a Regulated Transmission Facility Charge (“RTFC”) to permit NYPA’s recovery of its revenue requirement associated with the “AC Projects.”<sup>2</sup> The AC Projects are new transmission projects selected by the NYISO in 2019 to meet a Public Policy Transmission Need, and NYPA is a joint developer of Segment A of these projects with LSPG-NY.<sup>3</sup>

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<sup>1</sup> 16 U.S.C. § 824d (2018).

<sup>2</sup> NYISO submits this filing on behalf of NYPA solely in its role as administrator of the NYISO OATT. The burden of demonstrating that the proposed tariff amendments are just and reasonable rests with NYPA, the sponsoring party. The NYISO takes no position on any substantive aspect of this filing at this time and reserves the right to file comments or protest the filing. Capitalized terms not otherwise defined herein shall have the meaning specified in the NYISO OATT.

<sup>3</sup> The AC Projects were selected by the NYISO Board of Directors in response to the AC Transmission Public Policy Transmission Need, as identified in a decision and Public Policy Transmission Planning Report issued April 8, 2019. NYPA is a joint developer with LSPG-NY for the Segment A portion of the AC Transmission Public Policy Need (*i.e.*, the project NYPA is jointly developing with LSPG-NY was referred to as “Project T027” in the NYISO Board of Director’s decision and accompanying report).

As explained herein, the proposed Attachment 2 to Rate Schedule 10 of the NYISO OATT will activate the RTFC rate mechanism under the NYISO OATT to incorporate both the revenue requirement for NYPA's share of the AC Projects and the cost allocation that was determined for the AC Projects which was previously approved by the Commission and is set forth in Section 31.8.2 of Appendix E of Attachment Y to the NYISO OATT.

NYPA previously attained two authorizations from the Commission that are relevant here. First, under its transmission Formula Rate approved in 2017,<sup>4</sup> NYPA may include the costs of a new transmission facility, such as its portion of Segment A of the AC Projects, as a "project-specific" revenue requirement which may contribute to NYPA's total Annual Transmission Revenue Requirement ("ATRR"). The proposed Attachment 2 to Rate Schedule 10 of the NYISO OATT makes the appropriate cross-reference to the previously approved NYPA Formula Rate and implementation protocols. In accordance with the Formula Rate, NYPA will not recover costs for its portion of the AC Projects through the NYPA Transmission Adjustment Charge ("NTAC"), but instead these costs will be allocated to customers by the NYISO pursuant to the cost allocation methodology that was approved by the Commission for the AC Projects.<sup>5</sup>

Second, on November 21, 2019,<sup>6</sup> NYPA was awarded certain transmission incentives with respect to its portion of the AC Projects that may also be recovered through the Formula Rate. These incentives include Construction Work in Progress ("CWIP") for development and pre-commercial capital costs and a 50-basis point return on equity ("ROE") adder for the risks and challenges associated with building Segment A of the AC Projects.

NYPA respectfully submits that its proposed Attachment 2 to Rate Schedule 10 of the NYISO OATT, as demonstrated by this transmittal letter, is just and reasonable, and should be accepted without suspension or hearing. NYPA requests an effective date of July 1, 2020 for the proposed Attachment 2 to permit NYPA's recovery of cost for its portion of the AC Projects upon the start of the new Rate Year under NYPA's Formula Rate, which is also July 1, 2020. NYPA's Annual Update under its Formula Rate will include the applicable AC Project costs, namely inclusion of CWIP in rate base (the "CWIP Incentive") and provide supporting information.

NYPA further notes that the instant proposal would make no changes to NYPA's Formula Rate. All AC Project costs sought to be recovered by NYPA under its Formula

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LSPG-NY is the collective reference for LS Power Grid New York, LLC and LS Power Grid New York Corporation I.

<sup>4</sup> *New York Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,043 (2017).

<sup>5</sup> NYISO OATT, Att. Y, § 31.8.2.

<sup>6</sup> *New York Power Auth.*, 169 FERC ¶ 61,125 (2019) ("NYPA Incentive Order").

Rate will be subject to the scrutiny afforded to interested parties during the Annual Process under NYPA's Formula Rate implementation protocols.

## **I. BACKGROUND ON NYPA AND ITS FORMULA RATE**

NYPA is a corporate municipal instrumentality and a political subdivision of the State of New York, organized under the laws of New York, and operates pursuant to Title 1 of Article 5 of the New York Public Authorities Law. NYPA is a "state instrumentality" within the definition of section 201(f) of the FPA and therefore is exempt from the requirements of Part II of the FPA.<sup>7</sup> It is engaged in the generation, transmission, and sale of electricity at wholesale and retail throughout New York, and is a founding member of the NYISO. As the largest state-owned power organization in New York, NYPA has taken responsibility for constructing, owning, and operating critical segments of transmission infrastructure throughout the State. NYPA's customers are a geographically diverse group that includes large governmental entities (e.g., City of New York, Metropolitan Transportation Authority), municipal utilities (47 located throughout the state), rural electric cooperatives (four), and numerous end-use business customers.

NYPA's bulk power transmission system encompasses approximately 1,400 circuit miles and consists of facilities ranging from 115 kilovolts ("kV") to 765 kV. Many of these facilities comprise backbone paths necessary for critical North-South energy transfers to downstate load. Lacking distribution facilities or a defined geographical service territory of its own, NYPA has, since the inception of the NYISO, recovered its cost of owning and maintaining its transmission facilities primarily through the NTAC, a charge assessed to virtually all loads in the NYISO on a load-ratio share basis.<sup>8</sup>

On January 29, 2016, NYPA filed an application under Section 205 of the FPA to incorporate changes to the NYISO OATT to convert its stated transmission revenue requirement into a transmission formula rate, and also requested the acceptance of Rate Schedule 15 of the NYISO OATT for the recovery of the costs of a new project not part of the NYPA Backbone System, the Marcy South Series Compensation ("MSSC") Project. By order issued March 31, 2016, the Commission accepted Rate Schedule 15 thus enabling NYPA to collect a facility charge for the MSSC—the MSSCFC—which in effect permitted NYPA to collect a MSSC Project ATRR, and set the remainder of NYPA's Formula Rate proposal for hearing and settlement procedures.<sup>9</sup> After negotiations with interested parties, an uncontested settlement was filed on September 30,

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<sup>7</sup> 16 U.S.C. § 824(f) ("No provision in this subchapter shall apply to, or be deemed to include . . . a State or any political subdivision of a State . . . or any agency, authority, or instrumentality of any one or more of the foregoing....."); see also *Village of Bergen v. FERC*, 33 F.3d 1385, 1389 (D.C. Cir. 1994).

<sup>8</sup> See *Central Hudson Gas & Elec. Corp.*, 86 FERC ¶ 61,062 at p. 61,212, order on reh'g, 88 FERC ¶ 61,138 at pp. 61,403-04 (1999). The NTAC formula appears at Section 14.2.2.2.1 of the NYISO OATT. See NTAC Formula, NYISO Open Access Transmission Tariff, Attachment H, Annual Transmission Revenue Requirement for Point-to-Point Transmission Service and Network Integration Transmission Service § 14.2.2.2.

<sup>9</sup> *New York Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,268 (2016).

2016, which the Commission accepted on January 19, 2017.<sup>10</sup> The settlement Formula Rate Template determines for NYPA its NTAC ATRR, its MSSC ATRR, as well as specific ATRRs for potential transmission projects that are developed in the future.<sup>11</sup>

## **II. AC PROJECT DEVELOPMENT AND NYPA INCENTIVE RATE ORDER**

As the Commission is well aware, NYPA is a joint developer (together, with LSPGNY) of Segment A of the AC Projects. Under the NYISO's Public Policy Transmission Planning Process, NYISO's Board of Directors selected the AC Projects as the more efficient or cost-effective transmission solution to address the "AC Transmission Public Policy Transmission Need."<sup>12</sup> On April 8, 2019, the NYISO selected LSPG-NY and NYPA to build Segment A of the AC Projects.<sup>13</sup>

As a result of receiving the NYISO Board of Directors' decision, on August 12, 2019, NYPA petitioned, pursuant to section 219 of the FPA,<sup>14</sup> Order No. 679,<sup>15</sup> and the Commission's 2012 policy statement on transmission incentives,<sup>16</sup> for a declaratory order requesting incentive rate treatment for its portion of the investment in the AC Projects.<sup>17</sup>

On November 19, 2019, the Commission granted the incentives NYPA requested including as relevant here, the "CWIP Incentive" and the "ROE Risk Adder." The CWIP Incentive permits NYPA to include in rate base costs prudently incurred during the

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<sup>10</sup> *Supra*, note 4.

<sup>11</sup> NYISO OATT, Att. H, § 14.2.3.1 (NYPA Formula Rate Template). *See also New York Indep. Sys. Operator, Inc., New York Power Auth.*, NYPA Offer of Settlement § 3.10 ("NYPA Recovery of Costs for Non-NTAC Capital Expenditures"), Docket No. ER16-835-000 (filed Sept. 30, 2016).

<sup>12</sup> NYPA Incentive Order, 169 FERC ¶ 61,125 at P 5. The AC Transmission Public Policy Transmission Need was identified by the New York Public Service Commission ("New York Commission") in 2015 when it found that there is a transmission need driven by public policy requirements for new 345 kV alternating current transmission facilities to cross the Central East and Upstate New York/Southeast New York (UPNY/SENY) interfaces to provide additional transmission capacity to move power from upstate to downstate New York. *Id.* at P 4.

<sup>13</sup> *Id.* at P 5. As background, Segment B of the AC Projects is to be developed by Niagara Mohawk Power Corporation d/b/a National Grid and the NY Transco, but Segment B is not relevant to the instant application. The anticipated in-service date for the AC Projects is December 2023. *Id.*

<sup>14</sup> 16 U.S.C. § 824s (2018).

<sup>15</sup> *Promoting Transm. Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

<sup>16</sup> *Promoting Transm. Investment through Pricing Reform*, 141 FERC ¶ 61,129 (2012).

<sup>17</sup> *New York Power Auth.*, Petition for Declaratory Order of New York Power Authority Requesting Incentive Rate Treatments at 1, Docket No. EL19-88-000 (filed August 12, 2019) ("NYPA Petition for Declaratory Order").

development and construction phase of Segment A.<sup>18</sup> The ROE Risk Adder permits the inclusion of additional 50 basis points for cost recovery of NYPA's portion of the AC Projects to help mitigate the risks and challenges of building a project of the size and complexity of Segment A.<sup>19</sup> Based on these incentive rate authorizations, NYPA's Formula Rate may recover its portion of the costs of the AC Projects.

In January 2020, NYPA cemented its status as a project developer of Segment A by becoming a signatory to the three-party Development Agreement between the NYISO, LS Power Grid New York Corporation I and NYPA, which addresses the construction and development of Segment A. Filed by the NYISO on March 4, 2020, the Commission accepted this Development Agreement on April 16, 2020.<sup>20</sup>

Finally, NYPA notes that this Section 205 filing, which is only limited to the proposed addition of Attachment 2 to Rate Schedule 10 of the NYISO OATT to establish the RTFC for NYPA's portion of the AC Projects, does not attempt to incorporate any cost containment provisions into its Formula Rate. As the Commission noted in the NYPA Incentive Order, its grant of the ROE Risk Adder was conditioned upon the acceptance by the Commission of a future FPA Section 205 filing by NYPA to adopt the risk-sharing proposal advanced by LSPG-NY in its formula rate application.<sup>21</sup> LSPG-NY filed for its cost recovery related to the AC Projects on December 31, 2019 in Docket No. ER20-716-000, including cost containment, and its application is still pending before the Commission as of the date of this filing. Therefore, after that proceeding is concluded, NYPA will, consistent with its earlier commitments,<sup>22</sup> make a separate Section 205 filing to modify its Formula Rate to incorporate the same risk-sharing mechanism the Commission accepts for LSPG-NY's portion of the AC Projects.

### **III. ATTACHMENT 2 OF RATE SCHEDULE 10 OF NYISO OATT**

The proposed Attachment 2 to Rate Schedule 10 of the NYISO OATT, which is included in Appendix A to this filing, leverages the *pro forma* Rate Schedule 10 of the NYISO OATT to establish the RTFC applicable to NYPA's portion of Segment A of the AC Projects.

Section 6.10.8.1 identifies NYPA as a "Project Developer" for a specific project, in this case its portion of Segment A of the AC Projects. Section 6.10.8.2 addresses NYPA's revenue requirement by making the appropriate cross-reference to NYPA's Formula Rate Template in Section 14.2.3 of Attachment H to the NYISO OATT. Finally, Section 6.10.8.3

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<sup>18</sup> NYPA Incentive Order at PP 24-26.

<sup>19</sup> *Id.* at PP 27-42.

<sup>20</sup> *New York Indep. Sys. Operator, Inc.*, Office of Energy Market Regulation Letter Order Accepting Development Agreement, Docket No. ER20-1156-000 (issued Apr. 16, 2020).

<sup>21</sup> *See* NYPA Incentive Order at PP 37, 41-42.

<sup>22</sup> NYPA Petition for Declaratory Order at 46-47.

addresses cost allocation by providing a cross-reference to Section 31.8.2 of Appendix E of Attachment Y of the NYISO OATT. This tariff section contains the cost allocation methodology approved by the Commission for the AC Projects.

#### **IV. PROPOSED EFFECTIVE DATE**

NYPA requests that the Commission accept the proposed Attachment 2 to Rate Schedule 10 of the NYISO OATT effective on July 1, 2020, without suspension or hearing. As noted earlier, July 1, 2020 is the start of NYPA's new Rate Year under its Formula Rate. Given that NYPA has incurred costs related to its portion of the AC Projects, and the transmission incentive rate authorizations that NYPA has already received from the Commission, it is appropriate for proposed Attachment 2 to Rate Schedule 10 of the NYISO OATT to be allowed to go into effect as requested.

The NYISO's customers are appropriately protected by the Commission-authorized cost allocation provisions included in proposed Attachment 2 to Rate Schedule 10 of the NYISO OATT. In addition, interested parties under NYPA's Formula Rate are afforded protections against any potential overcharges related to NYPA's portion of the AC Projects because such costs are subject to review in accordance with NYPA's Protocols under its Formula Rate.

#### **V. REQUESTED WAIVERS**

Based on its status as a non-jurisdictional utility, NYPA respectfully requests that it be exempt from FERC's filing fees under Section 381.108 of the Commission's regulations and from compliance with any requirements of Section 35.13 of those regulations not otherwise satisfied by this filing.<sup>23</sup> In the event any additional waivers are required in connection with this filing, NYPA respectfully requests that the Commission grant such waivers.

#### **VI. CORRESPONDENCE AND COMMUNICATIONS**

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

Vincent Zuccarelli\*  
Manager, Transmission Revenue  
New York Power Authority  
123 Main Street

Gary D. Levenson, Esq.\*  
Andrew Neuman, Esq.\*  
New York Power Authority  
123 Main Street

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<sup>23</sup> See 18 C.F.R. § 381.108 ("States, municipalities and anyone who is engaged in the official business of the Federal Government are exempt from the fees required by this part and may file a petition for exemption in lieu of the applicable fee."); NYPA Incentive Order at P 49 (waiving filing fees for NYPA as requested due to its status as a municipal utility organized under the laws of New York State); *New York Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,268 at PP 69-70 (2016) (granting NYPA's requested waiver of section 35.13 of the Commission's regulations because NYPA is not subject to the Commission's regulatory filing requirements, and granting NYPA's requested exemption from the filing fee); *New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,240 at PP 36-37 (2012) (same).

White Plains, NY 10601  
Telephone: (914) 287-3302  
Vincent.Zuccarelli@nypa.gov

Gary D. Bachman  
Van F. Smith\*  
Van Ness Feldman, LLP  
1050 Thomas Jefferson Street, NW  
Seventh Floor  
Washington, DC 20007  
Telephone: (202) 298-1800  
Facsimile: (202) 338-2361  
gdb@vnf.com  
vfs@vnf.com

White Plains, NY 10601  
Telephone:  
(914) 390-8030 (Mr. Levenson)  
(914) 390-8028 (Mr. Neuman)  
(914) 390-8040 (Fax)  
Gary.Levenson@nypa.gov  
Andrew.Neuman@nypa.gov

NYPA respectfully requests that the individuals identified above with an asterisk be placed on the Commission's official service list in this proceeding and be designated for service pursuant to Rule 2010.<sup>24</sup>

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

## **VII. CONCLUSION**

For the reasons set forth above, NYPA requests that the Commission accept for filing, effective July 1, 2020 the proposed Attachment 2 of Rate Schedule 10 of the NYISO OATT filed herewith.

Respectfully submitted,

/s/Gary D. Levenson  
Gary D. Levenson  
Principal Attorney  
New York Power Authority  
123 Main Street  
White Plains, NY 10601  
(914) 390-8030  
Gary.Levenson@nypa.gov

Attachment: Appendix A

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<sup>24</sup> 18 C.F.R. § 385.2010. To the extent necessary, NYPA requests waiver of Rule 2010(k) so as to allow the individuals indicated above to be placed on the official service list.