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SUBMITTED VIA E-TARIFF FILING

July 2, 2015

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

Re: ***New York Power Authority***
Docket No. ER15-___-000

Dear Ms. Bose:

The New York Power Authority ("NYPA") hereby submits this request for: (i) acceptance pursuant to section 205 of the Federal Power Act ("FPA")[1] and Part 35 of the Federal Energy Regulatory Commission's ("Commission" or "FERC") regulations[2] of a transmission formula rate template and implementation protocols (together "Formula Rate") to determine NYPA's annual transmission revenue requirement ("ATRR") in order to recover NYPA's costs for transmission services provided under the New York Independent System Operator, Inc.'s ("NYISO") Open Access Transmission Tariff ("OATT"); (ii) authorization pursuant to section 219 of the FPA[3] and Order No. 679[4] to recover 100% of NYPA's prudently incurred costs associated with the development of the Marcy-South Series Compensation Project ("MSSC Project") in the event that the MSSC Project is abandoned for reasons outside NYPA's control ("Abandonment Incentive"); (iii) authorization to include a 50 basis point adder in NYPA's authorized return on equity ("ROE") for participation in the NYISO ("RTO Participation Adder");[5]

[1] 16 U.S.C. § 824d (2012).

[2] 18 C.F.R. pt. 35 (2015).

[3] 16 U.S.C. § 824s.

[4] *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 Fed. Reg. 43,294 (July 3, 2006), FERC Stats. & Regs. ¶ 31,222, at P 58 (2006), *order on reh'g*, Order No. 679-A, 72 Fed. Reg. 1,152 (Jan. 10, 2007), FERC Stats & Regs. ¶ 31,236, at P 49 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

and (iv) acceptance of amendments to Section 14 of Attachment H of the NYISO OATT to incorporate the NYPA Formula Rate and related tariff revisions.[6]

NYPA respectfully submits that its proposal, as demonstrated by this transmittal letter and the attached testimonies and exhibits, is just and reasonable, and should be accepted without suspension or hearing to become effective September 1, 2015. NYPA proposes to begin collecting a new formulaic ATRR of $192,388,117 effective September 1, 2015, subject to true-up in 2016 under the Formula Rate implementation protocols.

I. INTRODUCTION

NYPA is an integral transmission-owning contributor to the NYISO-controlled grid in New York State. NYPA owns, operates, and maintains over 1,400 circuit miles of high voltage transmission facilities, many of which 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 from NYISO customers primarily through the NYPA Transmission Adjustment Charge ("NTAC").[7]

Section 14.2.2.4.1 of the NYISO OATT currently allows NYPA to recover a stated ATRR of $175.5 million through the NTAC and other revenue streams. This black box settled value was the outcome of Docket No. ER12-2317-000, wherein NYPA requested the first increase in its ATRR since 1999. In that proceeding, NYPA indicated that its proposed rate increase was "the first in a probable series of proposed [revenue

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[5] Application of the RTO Participation Adder will be limited to the upper end of the zone of reasonableness. As described below, application of the RTO Participation Adder for the MSSC Project will be further limited to the extent capitalized costs exceed a fully-formed engineering assessment of project costs. With respect to future congestion-reducing projects awarded to NYPA through the competitive developer selection process administered by the NYISO under Attachment Y of its OATT, NYPA will request the use of ROE adders, if any, in a future filing under FPA sections 205 or 219, as applicable, and in a form that is consistent with any risk-sharing or performance-based commitments agreed to by the NY Transco, LLC with respect to such competitive projects as part of a Commission-approved settlement in Docket No. ER15-572-000.

[6] The tariff revisions proposed herein governing the collection of NYPA's revenue requirement will become part of the NYISO OATT. Accordingly, the NYISO is submitting this filing in FERC's e-Tariff system on NYPA's behalf solely in its role as the Tariff Administrator. However, the burden of demonstrating that the proposed tariff amendments are just and reasonable rests on NYPA, the sponsoring party. The NYISO takes no position on any substantive aspect of the filing at this time.

[7] *See Central Hudson Gas & Elec. Corp.*, 86 FERC ¶ 61,062, *order on reh'g*, 88 FERC ¶ 61,138 at pp. 61,403-404 (1999). As discussed in Section II.B., *infra,* NYPA recovers some of its transmission costs from customers directly interconnected with its facilities, customers with grandfathered transmission contracts with NYPA, sales of transmission congestion contracts and congestion rents. These revenues are subtracted from NYPA's ATRR for purposes of determining the NTAC charge. *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, version 4.0.0 (effective Feb. 18, 2013) (hereinafter, "NYISO OATT").

requirement] increases that will likely culminate in NYPA requesting, in some future filing, authorization to implement a formula rate in order to make annual updates to its transmission [revenue requirement]."[8] Mounting operation and maintenance expenses, capital improvements and life extension upgrades for aging facilities, and investments in new projects, including those identified through the NYISO's Order No. 1000 regional planning process, threaten to strain NYPA's finances if cost recovery lag is not adequately managed. For this reason, NYPA now seeks to convert its stated ATRR to a formulaic ATRR that updates on an annual basis.

The proposed Formula Rate is similar to other formula rates accepted by the Commission as just and reasonable. It will allow NYPA to recover an ATRR across a July to June period ("Rate Year") that uses the prior calendar year's historical cost of service as a proxy projection for the Rate Year revenue requirement. Calendar Year actual costs are determined the following year and any difference between transmission revenues received and actual costs during a Calendar Year are reflected as a True-Up Adjustment during the subsequent Rate Year. In this way, NYPA will never collect any more or less than its actual cost of service. The Formula Rate incorporates a base ROE of 8.85%, which is fully supported by a two-step discounted cash flow ("DCF") analysis, plus an adder for continued participation as a NYISO transmission owner. Stated values for depreciation and amortization rates are supported by depreciation studies and supporting testimony, and stated values for post-retirement benefits other than pensions ("PBOPs") are supported by an actuarial report. While NYPA, as a state instrumentality, is not required to file a FERC Form No. 1, the inputs to the Formula Rate will be sourced from or reconciled to independently-audited financial statements included in NYPA's publicly available Annual Report published each April.[9] Finally, like other modern rate formulas recently accepted by the Commission, the NYPA Formula Rate is capable of calculating one or more project-specific revenue requirements through the use of direct assignments and cost allocators in the event it is determined that the costs of any project or projects developed by NYPA should more appropriately be allocated to NYISO customers on some basis other than the load-ratio share allocation embodied in the NTAC mechanism.

In addition to seeking acceptance of the proposed Formula Rate, NYPA also requests Commission authorization under section 219 of the FPA and Order No. 679 to recover 100% of prudently incurred costs associated with the development of the MSSC Project in the event the project is abandoned for reasons outside NYPA's control. The

[8] *See* Exh. No. PA-1, Prepared Direct Testimony of Thomas A. Davis at 4, Docket No. ER12-2317-000 (July 27, 2012) (NYPA testimony in support of transmission revenue requirement application filed in 2012).

[9] The Commission has accepted formula rates filed by other non-jurisdictional entities that have used similar inputs to populate their formula rates. *See Southwest Power Pool, Inc.*, Omaha Public Power District ("OPPD") Transmittal Letter and Formula Rate Filing, Exh. No. OPP-1 at 8, Docket No. ER09-256-000 (Nov. 7, 2008) ("The Template is to be completed with actual test year data as reported in OPPD's audited financial statements. The financial information is as reported in OPPD's audited financial statements and summarized in OPPD's annual report."); *Southwest Power Pool, Inc.*, Letter Order, Docket No. ER09-256-000 (Jan. 27, 2009) (letter order accepting tariff revisions implementing OPPD formula rate).

MSSC Project is one of the Transmission Owner Transmission Solutions Projects ("TOTS Projects") of the New York Transmission Company, LLC ("NY Transco"), and is being co-developed by NYPA and the NY Transco. The TOTS Projects were identified by the New York Public Service Commission ("NYPSC") through recent proceedings initiated to resolve reliability concerns and address the possible retirement of the Indian Point Energy Center ("IPEC") nuclear facility. As found by FERC in its recent order on the NY Transco's rate application and incentive request in Docket No. ER15-572-000, the MSSC Project qualifies for Order No. 679's rebuttable presumption by virtue of its selection in the NYPSC proceedings. And, as will be demonstrated in the ensuing discussion and accompanying testimony, there is a nexus between the regulatory and financial risks that NYPA will face in developing the MSSC Project and NYPA's narrowly tailored request to mitigate those risks through the use of the Abandonment Incentive. Notably, NYPA is not requesting any ROE risk adders or other risk-mitigating incentives for the MSSC Project, and will limit the application of the RTO Participation Adder with respect to capitalized costs that exceed a fully-formed engineering assessment of project costs. Instead, NYPA seeks only to protect itself and its bondholders from shouldering the cost of the project in the event it is abandoned for reasons outside NYPA's control.

The request for acceptance of the Formula Rate and related NYISO tariff changes and the request for authorization to utilize the Abandonment Incentive for the MSSC Project are fully supported by the ensuing discussion and accompanying testimony and exhibits. With life extension expenditures and new construction on the horizon, now is the appropriate time for NYPA to modernize its transmission cost recovery mechanism by converting from a stated ATRR to a formulaic ATRR. It is also important for NYPA to secure a measure of risk protection through the use of the Abandonment Incentive before significant spending on the MSSC Project takes place. Accordingly, NYPA asks that the Commission accept for filing the Formula Rate and related tariff changes effective September 1, 2015 so that the NYISO may begin collecting the NTAC using the ATRR produced by the Formula Rate and 2014 Calendar Year inputs, and authorize use of the Abandonment Incentive for the MSSC Project to mitigate NYPA's abandonment risk as development of this important project gets underway.

II. BACKGROUND

A. Description of NYPA

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.[10] It is engaged in the generation, transmission, and sale of electric power and energy at wholesale and retail throughout

[10] 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).

New York, and is a founding member of the NYISO.[11] NYPA's bulk power transmission system encompasses approximately 1,400 circuit miles and consists of facilities ranging from 115 kilovolts ("kV") to 765 kV.[12] NYPA's facilities directly interconnect with the transmission systems of all of the State's investor-owned utilities.[13] NYPA's facilities also directly interconnect with adjoining control areas through interconnections to utility systems in Vermont, Ontario, and Québec.[14] 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.[15] NYPA's generation customers include a geographically diverse group of governmental entities (e.g., City of New York, Metropolitan Transportation Authority), municipal utilities (47 located throughout the state), rural electric cooperatives (4), and numerous end-use business customers.[16]

B. The NTAC Cost Recovery Mechanism

NYPA's agreement to join the NYISO was premised on NYPA's ability to recover its ATRR through the NYISO OATT structure.[17] NYPA has no distribution facilities and virtually all of NYPA's customers are connected to the transmission and distribution systems of other public utilities.[18] FERC has previously recognized that, unlike other transmission owners in New York, NYPA does not have a defined, integrated service area; instead, its "customers are located in the service areas of other transmission providers, and . . . pay for service based on the costs of the transmission providers where the loads are located."[19] These unique circumstances necessitate a usage-based charge to assess NYISO customers for the use of NYPA's transmission facilities to ensure that NYPA is able to recover its costs plus a fair return. Accordingly, NYPA, the NYISO, and the other transmission owners agreed to establish the NTAC to recover any shortfalls in NYPA's ATRR that are not recovered through other agreements under which NYPA directly bills its customers for transmission services.[20] The NTAC is a $/MWh charge that is applied at a uniform rate to

[11] Prepared Direct Testimony of Thomas A. Davis, Exh. No. PA-101 at 4 (hereinafter "T. Davis Testimony").

[12] *Id.* at 5.

[13] *Id.*

[14] *Id*.

[15] *Id*.

[16] T. Davis Testimony, Exh. No. PA-101 at 4-5.

[17] *Id*. at 6.

[18] *Id*.

[19] *Central Hudson Gas & Elec. Corp*., 103 FERC ¶ 61,143 at P 30 (2003).

[20] *See Central Hudson Gas & Elec.*, 86 FERC ¶ 61,062 at pp. 61,212-213, *order on reh'g*, 88 FERC ¶ 61,138 at pp. 61,403-404. On January 27, 1999, FERC conditionally accepted the proposal made by NYPA and the other Transmission Owners to establish the NYISO in Docket No. ER97-1523-000. *See id*. In conjunction with that filing, the NYISO Transmission Owners filed a joint settlement agreement resolving all issues set for hearing in that docket. This settlement established the NTAC mechanism as a part of the NYISO OATT to ensure NYPA's recovery of its ATRR. *See New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,240 at P 4 (2012).

virtually all NYISO energy transactions.[21] The NTAC thus recognizes that NYPA's transmission system, which forms the backbone of the high voltage grid in the NYISO control area, benefits customers around the state.

The NTAC is set forth in Section 14.2.2 of Attachment H of the NYISO OATT.[22] NYPA calculates the NTAC by deducting from NYPA's revenue requirement, currently referred to as "RR," a number of directly-recovered revenue streams, such as revenues received directly from NYPA's interconnected customers and customers with grandfathered transmission contracts, the sale of transmission congestion contracts, and congestion rents.[23] That portion of NYPA's RR not recovered from those separate sources is recovered as a monthly surcharge assessed to all customers taking transmission service under the NYISO OATT. Section 14.2.2.4.1 of the NYISO OATT currently provides that NYPA's "Amended RR = $175.5 million." This stated revenue requirement was the product of a settlement in Docket No. ER12-2317-000 that was approved by the Commission in 2013.[24] Anticipating rising costs, NYPA predicted in that proceeding that its "proposed transmission RR increase [would be] the first in a probable series of proposed RR increases that will likely culminate in NYPA requesting, in some future filing, authorization to implement a formula rate in order to make annual updates to its transmission RR."[25]

C. NYPA Faces Rising Costs to Extend the Life of Its Transmission System.

As described in the attached testimony of NYPA Vice President Thomas A. Davis, a sizable amount of 230 kV and 345 kV transmission assets comprising NYPA's transmission system date from the 1950s and 1960s, contemporaneous with the construction of NYPA's hydroelectric projects at Niagara and St. Lawrence.[26] Historically, these facilities were built to deliver Niagara and St. Lawrence-FDR hydropower as well as purchased power from the Canadian utilities Hydro-Québec and Ontario Hydro, and these facilities continue to perform these functions in the NYISO marketplace.[27] Some of NYPA's facilities, such as the 230 kV transmission line from the St. Lawrence-FDR project to the Adirondack station, were built in the 1940s.[28] Additionally, the 765 kV Massena-Marcy line, which was completed in 1978 and contributes significant import capability and market integration with the Hydro-Québec system, is now over 30 years old and in need of life extension and modernization

[21] *See* NYISO OATT, Attachment H, §§ 14.2.2.1, 14.2.2.2.1.

[22] *See id*. § 14.2.2.

[23] *Id*. § 14.2.2.2.1.

[24] *See New York Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,017 (2013); *see also* T. Davis Testimony, Exh. No. PA-101 at 7.

[25] *See* Exh. No. PA-1, Prepared Direct Testimony of Thomas A. Davis at 4, Docket No. ER12-2317-000.

[26] T. Davis Testimony, Exh. No. PA-101 at 7.

[27] *Id*. at 7-8.

[28] *Id*. at 8.

efforts.[29] In the long run, to ensure the reliability of its transmission facilities, NYPA is projecting that over the 10-year period 2015-2024 transmission-related capital spending will be significant.[30] NYPA's "Strategic Vision 2014-2019" strongly emphasizes the need for NYPA to refurbish its existing infrastructure for future generations.[31] The existing ATRR of $175.5 million is not adequate to cover existing costs, and that deficiency will grow as new investments are made.[32]

D. NYPA's Role in Development of the MSSC Project

In November 2012, the NYPSC ordered Consolidated Edison Company of New York, Inc. ("Con Edison"), with the assistance of NYPA, to develop a plan to address the possible closure of the IPEC nuclear facility in the Lower Hudson Valley.[33] Con Edison and NYPA jointly submitted a proposal which called for the construction of the three TOTS Projects by the summer of 2016 ("Reliability Contingency Plan") to address reliability concerns that could arise if IPEC were to be taken out of service.[34]

On November 4, 2013, the NYPSC issued an Order Accepting IPEC Reliability Contingency Plans.[35] In this Order, the NYPSC (1) accepted the three TOTS Projects for inclusion in the portfolio for the Reliability Contingency Plan, (2) directed that the TOTS Projects should "move as promptly as possible to implementation," and (3) further directed Con Edison and the New York State Electric & Gas Corporation ("NYSEG"), in consultation with NYPA, to "proceed as quickly as possible with an application to [FERC] for approval for the cost allocation and cost recovery for the TOTS Projects."[36] The NYPSC noted that the TOTS Projects would result in "net benefits for ratepayers even if IPEC were to operate beyond December 2015,"[37] i.e., that the determination to

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[29] *Id*.

[30] *Id*.

[31] *See* New York Power Authority, *Strategic Vision 2014-2019* at 30-31, *available at* http://www.nypa.gov/PDFs/StraVis2014/C1B568998FA6919AE001FA29EBAAAD1F/STPLBK%209-236-13%5B1%5D.pdf.

[32] T. Davis Testimony, Exh. No. PA-101 at 8, 10.

[33] *See* Case 12-E-0503, *Proceeding on Motion of the Commission to Review Generation Retirement Contingency Plans*, Order Instituting Proceeding and Soliciting Indian Point Contingency Plan at 9 (Nov. 30, 2012) (hereinafter "Order Instituting Reliability Contingency Proceeding"), *available at HYPERLINK "http://documents.dps.ny.gov/public/common/viewdoc.aspx?docrefid=0fe5ea7e-68a6-42a0-85fb-/"* http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={0FE5EA7E-68A6-42A0-85FB-A68C812FAC88}.

[34] *See* Case 12-E-0503, *Proceeding on Motion of the Commission to Review Generation Retirement Contingency Plans*, Order Accepting IPEC Reliability Contingency Plans, Establishing Cost Allocation and Recovery, and Denying Requests for Rehearing at 8 (Nov. 4, 2013) (hereinafter "Order Accepting IPEC Reliability Contingency Plan"), *available at* http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={5AFE13E9-181F-40CF-A91C-5AEC0E066AC9}.

[35] *See id*.

[36] *Id.* at 46, 48.

[37] *Id*. at 22.

build was "without regrets." The NYPSC's order contemplated construction of the TOTS Projects to meet an in-service deadline of June 1, 2016.[38]

The MSSC Project is one of the three TOTS Projects included in the Reliability Contingency Plan adopted by the NYPSC. The MSSC Project, incorporating the Fraser Substation-to-Coopers Corners Substation re-conductoring, will add switchable series compensation at the Fraser Substation to increase power transfer by reducing series impedance over existing 345 kV lines.[39] Specifically, the MSSC Project will consist of the installation of three series capacitor banks near the Fraser Substation, replacement of the conductor on approximately 21.8 miles of NYSEG's Fraser-Coopers Corners 345 kV line, and relay protection and communication system upgrades to NYPA's Marcy and Blenheim-Gilboa Substations, as well as to other 345 kV substations in the surrounding region owned by National Grid, Orange & Rockland, Central Hudson, and Entergy.[40]

Part of the MSSC Project will be developed by NYSEG, through the NY Transco, while the remainder will be developed by NYPA.[41] NYPA will be responsible for installing two series capacitor ("SC") banks near the Fraser Substation: a 915 MVAR SC bank on NYPA's Marcy-Coopers Corners 345 kV line and a 315 MVAR SC bank on NYPA's EdicFraser 345 kV line.[42] NYPA will also be responsible for upgrading the relay protection and communication systems at the 345 kV substations. NYSEG will be responsible for installing one series capacitor bank, also near the Fraser Substation, and for re-conductoring its FraserCoopers Corners 345 kV line.[43]

The Final Report of the System Impact Study ("SIS") of the MSSC Project (Queue #380) has been completed, was approved by the NYISO's Transmission Planning Advisory Subcommittee, and received final approval by the NYISO Operating Committee on May 20, 2013.[44] The expected in-service date of the MSSC Project is June 2016.[45] After the MSSC Project is placed in service, operational control of the MSSC Project will be turned over to the NYISO.[46]

The MSSC Project will not only contribute to solving the reliability issues that will arise if the IPEC nuclear plant retires, but will also contribute substantially to relieving North-South transmission congestion by increasing thermal transfer limits

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[38] *Id*. at 25.

[39] *See* T. Davis Testimony, Exh. No. PA-101 at 27-28.

[40] *Id.*

[41] *Id*. at 27.

[42] *Id.*

[43] *Id.* at 28.

[44] T. Davis Testimony, Exh. No. PA-101 at 28. This approval predates the effective date of NYISO's Order No. 1000 Compliance Filing.

[45] *Id.*

[46] *Id*.

across the congested Total East and UPNY/SENY interfaces.[47] Specifically, the SIS demonstrated a 449 megawatt ("MW") increase across the Total East interface and a 287 MW increase across the UPNY/SENY interface.[48]

On December 4, 2014, the NY Transco and its investor-owned utility participants (the "NYTOs")[49] filed an application for approval of a transmission formula rate as well as transmission rate incentives and cost allocation procedures for the TOTS Projects and two other projects.[50] On April 2, 2015, the Commission partially granted this application in Docket No. ER15-572-000.[51] The Commission conditionally accepted the formula rate and authorized the use of several incentive-based rate treatments, including the use of the Abandonment Incentive, among other incentives, for the NY Transco's portion of the MSSC Project.

Although the initial vision for the NY Transco included NYPA, the New York State legislature did not pass legislation authorizing NYPA to participate in the NY Transco.[52] NYPA thus did not join NY Transco's formula rate filing and incentives request. As a result, only NYSEG's share of the MSSC Project investment is covered by that filing. Therefore, NYPA must recover the costs of its investment in the MSSC Project through its own Formula Rate, and must independently request the Abandonment Incentive through this Application.[53]

III. SUMMARY OF REQUESTED ACTIONS

A. Formula Rate

The proposed Formula Rate includes a formula rate template ("Template") and implementation protocols ("Protocols"), and is designed to be included in Section 14.2.2.4 of Attachment H of the NYISO OATT. NYPA requests that the Commission accept for filing, effective September 1, 2015, the Template and Protocols included in Appendix A, which is a clean version of the NYISO OATT with NYPA's proposed amendments. As discussed below, the Template will determine NYPA's ATRR. If it is subsequently determined, whether through a settlement by the NY Transco in Docket No. ER15-572-000 or through NYISO's Order No. 1000 regional planning process, that the costs of the MSSC Project or any other NYPA transmission project should be allocated

[47] *Id.* at 28-29.

[48] *Id.* at 28.

[49] The NYTOs include Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc./Orange & Rockland Utilities, Inc., Niagara Mohawk Power Corporation/National Grid, New York State Electric & Gas Corporation/Rochester Gas and Electric Corporation.

[50] *See* New York Transco, LLC, Application for Acceptance of Transmission Formula Rate and Approval of Transmission Rate Incentives and Cost Allocation Method, Docket No. ER15-572-000 (Dec. 4, 2014) (hereinafter "NY Transco Rate Filing"); T. Davis Testimony, Exh. No. PA-101 at 31.

[51] *See New York Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,004 (2015) (hereinafter "NY Transco Order").

[52] T. Davis Testimony, Exh. No. PA-101 at 32.

[53] *Id*.

and recovered using some mechanism other than the NTAC, then Schedule H of the Template will directly assign or allocate costs, as appropriate, to separately determine a project-specific transmission revenue requirement for such project, with the balance of NYPA's ATRR being recovered through the NTAC.

NYPA has populated the Template with calendar year 2014 data from its Annual Report to produce a projected NTAC revenue requirement of $192,388,117.[54] NYPA asks that the Commission allow the NYISO to begin collecting NYPA's projected NTAC ATRR produced by the Template effective September 1, 2015 through the duration of a 10-month Initial Rate Period ending June 30, 2016, subject to true-up during the 2016-2017 Rate Year based on the outcome of the first the Annual Update Process defined in the Protocols. NYPA asks that the Commission accept its proposed Formula Rate and related changes to Section 14.2.2.4 of Attachment H of the NYISO OATT without modification or condition. Should the Commission direct any modifications or revisions to the Formula Rate in this proceeding that would alter NYPA's calculation of the projected ATRR for the 10-month Initial Rate Period, NYPA respectfully asks that the Commission allow such modifications to be carried forward with interest and reflected in the True-Up Adjustments corresponding to calendar years 2015 and 2016, as applicable, in lieu of customer-specific refunds.

B. Incentive Rate Treatments

NYPA requests that the Commission authorize an incentive-based rate treatment authorizing NYPA to recover, subject to a prudence determination in a subsequent FPA section 205 proceeding, 100% of prudently incurred costs in the event the MSSC Project must be abandoned for reasons outside of NYPA's control.

NYPA also requests the inclusion of a 50 basis point ROE adder for Regional Transmission Organization ("RTO") participation. NYPA's request for the RTO Participation Adder is limited in several dimensions. First, consistent with Commission precedent, NYPA's total ROE cannot exceed the top end of the zone of reasonableness. Because the base ROE of 8.85% requested by NYPA in this proceeding is 49 basis points below the 9.34% top end of the zone of reasonableness identified in the testimony of Mr. Richard L. Ansaldo,[55] NYPA's use of the RTO Participation Adder will be limited to 49 basis points from the outset. Second, for the MSSC Project, NYPA will limit application of the RTO Participation Adder with respect to capitalized costs that exceed a fully-formed engineering assessment of project costs to be performed at a future date and in a manner that is mutually acceptable to NYPA and the NYPSC. NYPA will recover the base ROE plus 49 basis points for costs that exceed the estimate by less than 10%, the base ROE plus 24.5 basis points for costs that exceed the estimate by 10% or more but less than 20%, and the base ROE plus 0 basis points for costs that exceed the estimate by

[54] *See* Exh. No. PA-102; *see also* Davis Testimony, Exh. No. PA-101 at 24. This ATRR does not reflect any costs related to the MSSC Project, which is not expected to go into service until 2016. *See* Davis Testimony, Exh. No. PA-101 at 38-39.

[55] Prepared Direct Testimony of Richard L. Ansaldo, Exh. No. PA-301 at 8 (hereinafter "Ansaldo Testimony").

20% or more. The determination of the total ROE for the MSSC Project will be transparently demonstrated in a worksheet accompanying the publication of the Formula Rate Annual Update.

Lastly, for any future congestion-reducing projects awarded to NYPA through the NYISO's competitive developer selection process administered under Attachment Y of the OATT, NYPA will seek ROE adders above the base ROE, if any, in a future filing under sections 205 or 219 of the FPA. Any request with respect to ROE adders for future competitive projects by NYPA will include the same risk-sharing or performance-based incentive components that are ultimately agreed to by the NY Transco in Docket No. ER15-572-000 with respect to future competitive projects.

These commitments demonstrate NYPA's belief that risk sharing between transmission developers and ratepayers is appropriate, and will further ensure that NYPA and the NY Transco will compete for future NYISO Order No. 1000 projects on a level playing field.

IV. THE PROPOSED FORMULA RATE IS JUST AND REASONABLE.

NYPA files the attached Formula Rate and requests that it be accepted for filing effective September 1, 2015. The Formula Rate will be included in a revised Section 14.2.2.4 of Attachment H, where it will replace the current stated revenue requirement used to determine the NTAC.[56]

A. NYPA's Request to Utilize a Formula Rate to Recover Its Annual Transmission Revenue Requirement Is Just and Reasonable.

1. A Formula Rate Will Allow NYPA to Mitigate Regulatory Lag During a Period of Rising Costs While Ensuring That Customers Pay No More Than NYPA's Cost of Service.

As discussed above, NYPA currently recovers its costs for the transmission services it provides to the State of New York through the NTAC, which is determined using a stated revenue requirement. NYPA seeks to convert its current stated revenue requirement of $175.5 million into a formula rate because NYPA anticipates the need for significant transmission life extension, upgrade, and maintenance projects on its existing transmission system that will require significant capital expenditures in the next decade. As explained in Mr. T. Davis's testimony, these projects are needed to modernize and extend the life of NYPA's aging infrastructure.[57] Despite their age, these facilities continue to perform vital transmission functions for New York electricity consumers.[58] Some of NYPA's facilities were built as long ago as the 1940s.[59] Additionally, the 765

[56] T. Davis Testimony, Exh. No. PA-101 at 11.

[57] *Id*. at 8.

[58] *See id*.

[59] *Id*.

kV Massena-Marcy line, which was completed in 1978 and contributes significant import capability and market integration with the Hydro-Québec system, is now over 35 years old and in need of life extension and modernization efforts.[60]

As stated by Mr. T. Davis, in December 2012, NYPA's Trustees approved a transmission life extension and modernization ("T-LEM") program, following a comprehensive analysis of NYPA's transmission system and facilities.[61] The assessment of critical areas included: assessing the overall condition of the equipment and other transmission assets; assessing risk of failure; providing recommendations for replacement; and prioritizing work and developing schedules for implementation and developing cost estimates for each task addressed.[62] The multi-year T-LEM program will allow NYPA's existing transmission system to maintain availability, increase reliability, and ensure regulatory compliance. The program consists of approximately 20 projects or major tasks to be completed over a period extending through the late-2020s.[63]

Because of these significant capital investments and expenses expected in the coming years, a stated revenue requirement can no longer be expected to keep pace with NYPA's increasing cost of service.[64] The Commission should accept as just and reasonable NYPA's application for a Formula Rate to determine and update its NTAC ATRR and any project-specific ATRRs on an annual basis. The Commission has sanctioned the use of formula rates, and has encouraged transmission owners in New York and elsewhere to transition from stated rates to formula rates.[65] Specifically, the Commission has observed that "formula rates can provide the certainty of recovery that is conducive to large transmission expansion programs" and the Commission "continue[s]

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[60] T. Davis Testimony, Exh. No. PA-101 at 8.

[61] *Id*.

[62] *Id*.

[63] *Id*. at 8-9.

[64] *See id*. at 10-11.

[65] *New York Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,372 at P 29 (2004) ("We 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 [NYISO Transmission Owners'] existing facilities and new transmission facilities would be a more reasonable rate design."), *reh'g denied*, 111 FERC ¶ 61,182 at P 24 (2005) ("We also add that the Commission would prefer to see a formula rate mechanism in place that would both avoid separate rates for certain transmission upgrade costs as well as avoid contested proceedings directed at determining appropriate overall cost recovery."); *Niagara Mohawk Power Corp*., 124 FERC ¶ 61,106 at P 33 (2008), *order on reh'g*, 126 FERC ¶ 61,173 (2009) ("The Commission has found that the use of formula rates encourages the construction and timely placement into service of needed transmission infrastructure and has approved the use of formula rates by a number of transmission-owning utilities.") (footnote omitted); *see also, 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"), *order on reh'g and clarification*, 115 FERC ¶ 61,156 (2006); *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) ("The parties may explore whether adopting formula rates for recovery of the costs of both the [Transmission Owners' ("TO")] existing transmission facilities and new transmission facilities would be best. Specifically, we note that other TOs that we have approved incentive rates for also have formula rates."), *order on reh'g*, 106 FERC ¶ 61,016 (2004).

to encourage public utilities to explore the benefits of filing transmission-related formula rates."[66] These benefits include substantial reductions in regulatory lag, which incentivizes transmission project enhancements to meet increasing demands on the power grid.[67] The Commission has also acknowledged that "having a formula cost recovery system in place should eliminate the need for frequent rate adjustment filings, ensure that rates reflect the actual cost of providing transmission service, and incent needed transmission investment."[68] Accordingly, "[t]he Commission has found that the use of formula rates encourages the construction and timely placement into service of needed transmission infrastructure and has approved the use of formula rates by a number of transmission-owning utilities."[69] As a result, transmission owners now regularly file forward-looking formula rates, and FERC often accepts them with no more than a nominal suspension.[70]

The Commission should accept NYPA's proposed Formula Rate as just and reasonable, because it will allow NYPA to effectively undertake the significant life extension actions necessary to ensure that New York's grid remains reliable, while eliminating the regulatory lag and inefficiencies associated with frequent rate filings to update a stated revenue requirement to reflect NYPA's true costs.

In order to implement its proposed Formula Rate to determine the NTAC, NYPA proposes to amend Section 14.2.2 of Attachment H. Specifically, NYPA proposes to replace the content of Section 14.2.2.4 of Attachment H (which contains the current stated NTAC revenue requirement) with the Formula Rate.[71] The Formula Rate Template, which would appear as amended Section 14.2.2.4.1, will be used to recover the NTAC ATRR and is capable of recovering a separate project-specific revenue requirement if it is determined that the costs of such projects should be allocated using some mechanism other than the NTAC. The Formula Rate Protocols would appear as a

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[66] Order No. 679 at P 386 (citations omitted).

[67] For instance, the Commission has recognized that formula rates can facilitate and incentivize upgrades by transmission owners as a part of regional transmission planning processes. *See, e.g.*, *Commonwealth Edison Co.*, 119 FERC ¶ 61,238 at P 75 (2007) (imposing nominal suspension because "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 [Regional Transmission Expansion Plan] upgrades"), *order on reh'g*, 122 FERC ¶ 61,037 (2008); *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219 at P 38 (same), *reh'g denied*, 121 FERC ¶ 61,009 (2007); *Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308 at P 51 (same).

[68] *Niagara Mohawk Power Corp.*, 124 FERC ¶ 61,106 at P 33.

[69] *Id.* (footnote omitted).

[70] *See*, *e.g.*, *Virginia Elec. & Power Co.*, 123 FERC ¶ 61,098 at P 28 (2008) (accepting forward-looking formula rate with no suspension); *Duquesne Light Co.*, 118 FERC ¶ 61,087 at P 3 (2007) (accepting forward-looking transmission formula rate filing to recover cost of transmission additions and upgrades with nominal suspension); *Xcel Energy Servs., Inc.*, 121 FERC ¶ 61,284 at P 69 (2007) (accepting forward-looking transmission formula rate with true-up mechanism with no suspension); *Michigan Elec. Transmission Co.*, 117 FERC ¶ 61,314 at P 17 (2006) (same), *order on reh'g*, 118 FERC ¶ 61,139 (2007); *International Transm. Co.*, 116 FERC ¶ 61,036 at P 19 (2006) (same); *see also Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308 at P 51 (accepting formula rate filing with only nominal suspension).

[71] T. Davis Testimony, Exh. No. PA-101 at 11.

new Section 14.2.2.4.2, and describe the customer review procedures pertaining to NYPA's Annual Update of the Template.

2. Other NYISO Transmission Owners Should Not Have the Ability to Unilaterally Veto NYPA Capital Investments Exceeding $5 Million Per Year.

In conjunction with its transition to a formulaic revenue requirement, NYPA proposes to amend the NYISO OATT to eliminate Section 14.2.2.2.3 of Attachment H of the NYISO OATT. That provision now provides, in relevant part:

> NYPA's recovery pursuant to NTAC initially is limited to expenses and return associated with its transmission system as that system exists at the time of FERC approval of the NTAC ("base period revenue requirement"). Additions to its system may be included in the computation of NTAC only if: a) upgrades or expansions do not exceed $5 million on an annual basis; or b) such upgrades or expansions have been unanimously approved by the Transmission Owners. Notwithstanding the above, NYPA may invest in transmission facilities in excess of $5 million annually without unanimous Transmission Owners' authorization outside the NTAC recovery mechanism. In that case, NYPA cannot recover any expenses or return associated with such additions under NTAC and any TCC or other revenues associated with such additions will not be considered NYPA transmission revenue for purposes of developing the NTAC nor be used as a credit in the allocation of NTAC to transmission system users.[72]

This provision was incorporated into the NYISO OATT at the time of NYISO's formation as an accommodation to the other transmission owners to whom NTAC charges are assessed. It pre-dates FERC's regional planning reforms under Order No. 890 and Order No. 1000, and is no longer a necessary or appropriate check on NYPA capital spending. Now, consistent with Attachment Y of the NYISO OATT, NYPA provides its transmission planning documents to the NYISO for inclusion and evaluation as part of the NYISO's Reliability Needs Assessment,[73] which allows the NYISO to determine if there are regional solutions to identified reliability needs.

The Formula Rate Protocols provide the transmission owners in New York and other interested parties with an additional check on NYPA's capital spending. As described below, the Protocols afford customers a discovery period and informal and

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[72] NYISO OATT, Attachment H, § 14.2.2.2.3. The life extension and modernization upgrades NYPA intends to construct in the coming decade are not "additions" to NYPA's existing system and in any event would not be subject to the existing approval requirements.

[73] *See* NYISO, Reliability Planning Process Manual § 5 (Dec. 2014), *available at* http://www.nyiso.com/public/webdocs/markets_operations/documents/Manuals_and_Guides/Manuals/Planning/rpp_mnl.pdf.

formal challenge rights with respect to each Annual Update of the Template.[74] Any NYISO customer or transmission owner that disputes the prudence of a NYPA capital expenditure may submit a formal challenge to the Commission under the Protocols and, if the challenge creates "serious doubt" as to the prudence of the expenditure, the burden would shift to NYPA to demonstrate prudence before the Commission.[75]

Lastly, the incumbent developer reforms implemented by the Commission in Order No. 1000 create a dynamic where affording other transmission owners veto authority on NYPA capital expenditures exceeding $5 million per year is inappropriate and unduly discriminatory. Indeed, the investor-owned utility transmission-owning members of the NYISO recently formed a transmission-only investment vehicle—the NY Transco—for the purpose of developing competitive transmission opportunities in New York.[76] The interest of the NYTOs is no longer simply to protect their customers from NYPA capital expenditures; instead, as equity investors in the NY Transco, the NYTOs now have a financial incentive to exercise their veto to limit spending by NYPA to create additional investment opportunities for themselves in the new competitive landscape for transmission development.

For these reasons, the Commission should accept as just and reasonable NYPA's proposal to eliminate Section 14.2.2.2.3 of the NYISO OATT and allow NYPA the opportunity to recover the cost of capital expenditures deemed necessary to maintain the reliability of its transmission system through the annual updating of the Formula Rate.

B. Formula Rate Design

NYPA's proposed Formula Rate reflects established cost-of-service principles for electric utilities and is consistent with Commission policy. The Formula Rate has two parts. The first part is the cost-of-service Template that underlies the ATRR calculation. The second part contains the Protocols, discussed *infra* Section IV.F.

The Template provides for the recovery of a return on rate base, depreciation and amortization expense, operation and maintenance ("O&M") expense, and administrative and general ("A&G") expense, less any revenue credits.[77] NYPA employs the Commission's accepted methods of calculating the cost of debt and equity in order to calculate the return on rate base. The values for PBOPs, the ROE, and depreciation rates are stated terms and may only be changed pursuant to an FPA section 205 or section 206 filing.[78]

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[74] *See* Prepared Direct Testimony of Alan C. Heintz, Exh. No. PA-201 at 12 (hereinafter "Heintz Testimony").

[75] *Kentucky Utils. Co*., 62 FERC ¶ 61,097 at p. 61,698 (1993).

[76] *New York Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,004.

[77] There is no expense category for taxes, because NYPA's income and properties it acquires for projects are exempt from taxation.

[78] T. Davis Testimony, Exh. No. PA-101 at 12.

NYPA's proposed Formula Rate computes NYPA's total ATRR. Schedule H of the Formula Rate is able to determine any project-specific revenue requirements in the event it is subsequently determined that the costs of a NYPA project should be more appropriately allocated and recovered through some mechanism other than the NTAC.[79] For example, if ongoing negotiations by the NY Transco and other parties in Docket No. ER15-572-000 culminate in a comprehensive settlement that includes a cost allocation for the TOTS Projects, including NYPA's share of the MSSC Project,[80] the Template would produce a distinct ATRR for the MSSC Project that would be excluded from the total ATRR to arrive at the NTAC ATRR. This feature could also be used if NYPA is directed to build an Order No. 1000 project by the NYISO for which there is a beneficiaries-pay cost allocation specified in the NYISO OATT or identified through the regional planning and developer selection process. In either case, the determination of a project-specific ATRR for the MSSC Project or future Order No. 1000 project will also accommodate the reduction or elimination of the RTO Participation Adder for these projects, as described above and in Section IV.D.1.c below. Unlike the formula rate recently considered by the Commission in the NY Transco proceeding,[81] this Formula Rate will pose no risk of double recovery, because all of NYPA's costs will be recovered through a single Formula Rate, and any costs that are assigned to specific projects will automatically be deducted from NYPA's calculation of the NTAC so that, in total, NYPA will recover no more than its just and reasonable cost of service.

To calculate the ATRR, NYPA will forecast the values that will populate the Template for each July - June Rate Year using prior year actual data from NYPA's Annual Report as a proxy for Rate Year costs.[82] During the subsequent Annual Update, NYPA will determine a true-up of the forecasted ATRR collected during the prior calendar year when the actual data become available from the independently-audited financial statements contained in NYPA's Annual Report. If there is any difference between the actual calendar year ATRR and the transmission revenues received by NYPA during the preceding calendar year, the difference, along with interest calculated in accordance with section 35.19a of the Commission's regulations, will be reflected as an adjustment to the forecasted ATRR during the following Rate Year.[83] This ensures that neither the customers nor the transmission owner are harmed if NYPA's revenues received during a calendar year differ from its actual cost of service.

[79] Heintz Testimony, Exh. No. PA-201 at 7.

[80] NYPA's share of the MSSC Project is an integral part of the TOTS Projects for which the NY Transco has sought cost recovery in Docket No. ER15-572-000. If a regional cost allocation is agreed upon or determined for the NY Transco's share of the TOTS Projects, it stands to reason that NYPA's costs associated with the MSSC Project should be recovered on an equivalent basis.

[81] *See* NY Transco Order at PP 146-47.

[82] *See* Heintz Testimony, Exh. No. PA-201 at 4-5.

[83] *Id*. at 5.

C. Source of Inputs to the Formula Rate Template

1. The Commission Allows Non-Jurisdictional Entities to Provide Alternative Cost Support.

Owing to its status as a non-jurisdictional utility under the FPA,[84] NYPA is not required to file FERC Form No. 1. Indeed, the Commission has recognized that NYPA is not subject to section 205 of the FPA, and is thus "not subject to the Commission's regulatory filing requirements."[85] Accordingly, in NYPA's most recent rate filing in 2012, the Commission waived the requirement that NYPA submit cost data using the section 35.13(h) cost of service statements, provided that a sufficient record was developed for the Commission to make its just and reasonable determination.[86]

In the context of formula rates, the Commission has taken a flexible approach with non-jurisdictional transmission owners that do not file FERC Form No. 1. For instance, the Commission accepted the Nebraska Public Power District's ("NPPD") formula rate, which derives its inputs from NPPD's actual data as recorded in accordance with FERC's Uniform System of Accounts ("USofA").[87] The Commission also accepted the Omaha Public Power District's ("OPPD") formula rate, which derives its inputs—like NYPA—from OPPD's audited financial statements, which are summarized in OPPD's annual report.[88] The Michigan Public Power Agency ("MPPA") also uses actual cost

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[84] *See* 16 U.S.C. § 824(f); *City of Vernon, Cal.*, Opinion No. 479, 111 FERC ¶ 61,092 at P 42, *order on reh'g*, 112 FERC ¶ 61,207, Opinion No. 479-A (2005), *order on reh'g*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006), *vacated and remanded on other grounds sub nom.*, *Transmission Agency of N. Cal.. v. FERC*, 495 F.3d 663 (D.C. Cir. 2007) ("*Vernon*"); *New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,240 at PP 28-30.

[85] *New York Indep. Sys. Operator*, 140 FERC ¶ 61,240 at P 36 ("[W]e grant NYPA's requested waiver of section 35.13 of the Commission's regulations. Because NYPA is not subject to section 205 of the FPA, it is not subject to the Commission's regulatory filing requirements."); *see also Vernon*, Opinion No. 479, 111 FERC ¶ 61,092 at P 44 & n.55 (excusing municipality from Commission's regulatory filing requirements, subject to caveat that "sufficient record [must be] developed upon which the Commission can evaluate the justness and reasonableness of the Participating Transmission Owner's TRR").

[86] *New York Indep. Sys. Operator, Inc*., 140 FERC ¶ 61,240 at P 36 (granting "NYPA's requested waiver of section 35.13 of the Commission's regulations" and finding that NYPA "is not subject to the Commission's regulatory filing requirements," but requiring NYPA to develop a sufficient record in order to permit the Commission to make its required just and reasonable determination).

[87] *See Southwest Power Pool, Inc.*, NPPD Transmittal Letter and Formula Rate Filing at 10, Exh. No. NPP-1 at 6, Docket No. ER09-255-000 (Nov. 7, 2008); *Southwest Power Pool, Inc.*, Letter Order, Docket No. ER09-255-000 (Jan. 27, 2009) (letter order accepting tariff revisions implementing NPPD formula rate); *see also* Southwest Power Pool Open Access Transmission Tariff, Attachment H, Annual Transmission Revenue Requirement for Network Integration Transmission Service § II.4.2.1, version 29.1.4 (effective June 1, 2015) ("For each year, NPPD will complete and make available for review, on its website, actual data as recorded in accordance with FERC's Uniform System of Accounts, including an affidavit of the Chief Financial Officer of NPPD attesting to the accuracy of the cost and revenue data set forth therein.").

[88] *See Southwest Power Pool, Inc.*, OPPD Transmittal Letter and Formula Rate Filing at 4, Exh. No. OPP-1 at 8, Exh. No. OPP-4 at 6, Docket No. ER09-256-000 (Nov. 7, 2008); *Southwest Power Pool, Inc.*, Letter Order, Docket No. ER09-256-000 (Jan. 27, 2009) (letter order accepting tariff revisions implementing OPPD formula rate).

data as reported in MPPA's Audited Financial Report to derive its ATRR (but uses the EIA Form 412 as the direct input into the template).[89] In each instance, the Commission waived the requirement that the non-jurisdictional entity comply with section 35.13 of the Commission's filing regulations, notwithstanding the fact that the proposed formula rate was not rooted in the FERC Form No. 1.

a. NYPA's Independently-Audited Financial Statements, in Conjunction with Extensive Workpapers Included in the Formula Rate, Provide Sufficient Detail and Transparency for Customers to Verify NYPA's Computation of the ATRR.

In light of the Commission's recognition that non-jurisdictional entities should be able to use alternative sources of information to populate their formula rate templates and the Commission's acceptance of templates that use a variety of different inputs, NYPA respectfully requests waiver of the requirements of section 35.13 of the Commission's regulations to the extent necessary to permit the population of the Formula Rate Template using cost data from NYPA's Annual Report that, in conjunction with detailed workpapers included in the Formula Rate, meets the substance of FERC Form No. 1. Specifically, NYPA will use information contained in its financial statements, which can be found in the Financial Report section of NYPA's Annual Report, which is published on NYPA's website each year in April and attached as Exhibit No. PA-105 to this Application.

The Financial Report section of the Annual Report compiles information contained in NYPA's books and records. The testimony of Mr. T. Davis provides an overview of the accounting procedures used by NYPA to record transmission investments and expenses. As a hydroelectric licensee under Part I of the FPA,[90] NYPA is required to maintain its books and records related to its hydroelectric plant, consistent with the USofA, and is subject to audit by FERC with respect to such books and records.[91] To avoid maintaining multiple sets of books and records, NYPA utilizes the

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[89] Michigan Public Power Agency, Informational Filing of Annual Rate Formula Update at 1, 3, Docket No. ER15-1090-000 (Feb. 23, 2015).

[90] *See, e.g.*, *New York Power Auth.*, 118 FERC ¶ 61,206 at p. 61,952, *reh'g denied*, 120 FERC ¶ 61,266 (2007) ("This license is issued to the New York Power Authority (Licensee) for a period of 50 years, effective September 1, 2007, to operate and maintain the Niagara Project No. 2216. This license is subject to the terms and conditions of the [FPA], which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.").

[91] *See* 18 C.F.R. pt. 101; *Trafalgar Power Inc.*, 87 FERC ¶ 61,207 at p. 61,798 (1999) ("[A]ll licensees are required to comply with the requirements of the Uniform System of Accounts to the extent necessary to carry out their responsibilities under Sections 4(b), 10(d) and 14 of the FPA ..... "); *Seneca Generation, LLC*, 145 FERC ¶ 61,096 at P 23 n.20 (2013) ("All hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 C.F.R. Part 101 to the extent necessary to carry out their responsibilities under Part I of the FPA. We further note that a licensee's status as a market-based rate seller under Part II of the FPA does not exempt it from these accounting responsibilities as a licensee under Part I of the FPA."); *see also* 16 U.S.C. § 797(b) ("The Commission is authorized and empowered..... [t]o determine the actual legitimate original cost of and the net investment in a licensed project, and . . . each licensee shall . . . file with the Commission in such detail as the Commission may

USofA for all utility property, including transmission and general plant and operations and maintenance for which NYPA will seek recovery in this Formula Rate.[92] Therefore, the information contained in NYPA's financial statements reconciles to information contained in conformance with FERC's numbered accounting system and, to the extent not already provided in workpapers included with the Formula Rate, such detailed records can be provided to interested parties upon request during the Formula Rate customer review process prescribed in the Protocols.

Mr. T. Davis provides additional details about the controls in place to ensure the accuracy of the information in the financial statements contained in the Annual Report. NYPA prepares its financial statements in conformity with generally accepted accounting principles ("GAAP"),[93] and complies with all applicable pronouncements of the Governmental Accounting Standards Board.[94] NYPA further maintains a layered system of controls to ensure the accuracy and integrity of NYPA's financial statements and the information contained in the Annual Report. First, NYPA employs internal controls to provide reasonable assurances "that transactions are executed in accordance with management's authorization, that financial statements are prepared in accordance with [GAAP]," and that NYPA's assets are safeguarded.[95] This system of controls is "documented, evaluated, and tested on an ongoing basis."[96] Second, NYPA retains an external auditor—KPMG, LLP—to independently audit NYPA's financial statements.[97] Lastly, NYPA's Board of Trustees adds a final layer of oversight. The Board's Audit Committee meets with NYPA's management, Senior Vice President of Internal Audit, and KPMG periodically during the year to discuss internal controls, accounting matters, financial statements, NYPA's internal auditing program, and the scope and results of KPMG's audit, as well as the results of periodic audits by the Office of the State Comptroller.[98]

Among other things, the financial statements contain NYPA's capital assets, aggregate operating expenses and values for more specific categories of expenses, such as O&M and depreciation, as well as operating revenues, such as transmission charges.[99]

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require, a statement . . . showing the actual legitimate original cost of construction of such project, addition, or betterment ..... The licensee shall grant to the Commission . . . at all reasonable times, free access to such project, addition, or betterment, . . . accounts, books, records, and all other papers and documents relating thereto.").

[92] T. Davis Testimony, Exh. No. PA-101 at 16-18.

[93] Exh. No. PA-105 (New York Power Authority, Annual Report 2014 at 20, 23 (2014), *available at* http://www.nypa.gov/NYPA-2014-AnnualReport.pdf (hereinafter "2014 Annual Report")); T. Davis Testimony, Exh. No. PA-101 at 13.

[94] 2014 Annual Report at 42.

[95] *Id*. at 20.

[96] *Id*.

[97] *Id*. at 21.

[98] 2014 Annual Report at 20.

[99] *See id*. at 37, 39, 51.

They further provide NYPA's long-term debt and NYPA's net position, which comprise NYPA's capital structure.[100]

NYPA proposes to use the information contained in the independently-audited financial statements in the Annual Report, as supplemented by Workpapers 1-27 in the Template, to transparently populate the cost of service schedules in its Template each year, just as a jurisdictional utility would use the FERC Form No. 1. As described in Mr. T. Davis's testimony, NYPA's plant in service, accumulated depreciation, depreciation expense, and capital structure can be verified and reconciled from NYPA's financial statements.[101] NYPA's O&M can be verified in the aggregate.[102] Generally speaking, the Template develops an ATRR on the Transmission Revenue Requirement Summary attachment by aggregating values from Schedules A-K. Workpapers 1 through 27 are used to input data from the financial statements and company records and translate it to useable form for Schedules A-K. This process is described in greater detail in Mr. T. Davis's testimony.

D. Other Formula Rate Components

1. Return on Equity

a. The Base ROE Proposed by NYPA Is Just and Reasonable and Within the Zone of Reasonableness Calculated Using the Commission's Two-Step DCF Methodology.

The Commission has held that, while non-jurisdictional public power entities do not raise equity capital through the issuance of stock, they nevertheless provide internal sources of funding for investment and such funding comes at a cost.[103] Consistent with this precedent, NYPA proposes to recover a base ROE of 8.85% based on the recommendation of Mr. Ansaldo. Mr. Ansaldo performed a two-step DCF analysis that

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[100] *See id*. at 29, 38-39, 53-54.

[101] T. Davis Testimony, Exh. No. PA-101 at 15.

[102] *Id*.

[103] *See, e.g.*, *AES Power Inc.*, 74 FERC ¶ 61,220 at p. 61,745 (1996) ("We find that it is reasonable for TVA to include a 10 percent margin in its rate. First, it is extremely unlikely that a business enterprise the size of TVA could rely solely on debt financing because lenders would be unwilling to make such loans or the cost would be prohibitive (reflecting the risk of 100 percent debt financing). TVA, like any other similar business, must provide internal funding for a portion of its expenses. The fact that the financing is funded internally rather than through the sale of common stock makes it no less of a cost."); *Midwest Indep. Transm. Sys. Operator, Inc*., 106 FERC ¶ 61,219 at P 31 (2004) ("Consistent with our policy outlined in Order No. 2000, we continue to encourage participation of all transmission owners in RTOs, including cooperatives and municipals. Their participation will enhance the reliability and economic benefit of RTOs and ensure appropriate RTO size and scope. It is unlikely that Wolverine or any other small transmission owner will participate in an RTO without proper and equitable compensation for their transmission facilities. We find that once Wolverine and MPPA become participating members of Midwest ISO by turning over control of their transmission facilities to Midwest ISO, they should receive the same 12.88 percent ROE afforded to other transmission owners in Midwest ISO.").

is consistent with the Commission's latest guidance in Opinion No. 531.[104] Mr. Ansaldo expanded the proxy group to include utilities rated more than one notch below NYPA's AA credit rating in order to achieve a group of sufficient size, but otherwise followed the two-step DCF analysis prescribed in Opinion No. 531.

Mr. Ansaldo identifies a range of reasonable returns of 7.19% to 9.34% and recommends a base ROE of 8.85% for NYPA that reflects an upward adjustment from the measure of central tendency based on a finding of anomalous economic conditions. Mr. Ansaldo relied on several of the factors considered "informative" by the Commission in finding anomalous economic conditions in Opinion No. 531, including an expected earnings analysis and state commission-approved ROEs.[105] Mr. Ansaldo found that both the expected earnings analysis and state commission-approved ROEs indicate that the anomalous economic conditions recognized by the Commission in Order No. 531 persist today.[106] Mr. Ansaldo also found that an ROE towards the upper end of the range is appropriate due to the very low interest rates—lower than those used to measure the market conditions in Opinion 531—that were used to measure the return in this filing.[107] Lastly, Mr. Ansaldo also recommends an ROE towards the upper end of the range, because it will be conducive to maintaining NYPA's AA/Aa1 bond rating.[108] The return on equity NYPA earned in 2014 was 9.4%, and NYPA has maintained a strong bond rating at this level of return.[109] Accordingly, an ROE of 9.34% (after the 49 of the 50 basis point RTO Participation Adder is applied to remain within the top end of the zone of reasonableness) on NYPA's transmission assets would provide a level of support for NYPA's high bond rating similar to that of other NYPA operations.[110] Mr. Ansaldo's testimony and exhibits can be found at Appendix E.

b. The RTO Participation Incentive Is Appropriate Because NYPA Is a Member of the NYISO, NYPA Has Turned over Operational Control over Its Transmission Assets to the NYISO, and the Resulting Total ROE Will Remain Within the Zone of Reasonableness.

Subject to the limitations described in Section IV.D.1.c *infra*, and consistent with section 219(c) of the FPA and Commission precedent, NYPA requests a 50 basis point adder to its base ROE for RTO participation.[111] The Commission determined in Order

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[104] *Coakley, Mass. Atty. Gen. v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234, *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014), *order on reh'g*, Opinion No. 531-B, 150 FERC ¶ 61,165 (2015).

[105] Opinion No. 531 at PP 146-48.

[106] Ansaldo Testimony, Exh. No. PA-301 at 10-11. [107]

Id. at 10.

[108] *Id*. at 8-9.

[109] *Id*. at 9.

[110] *Id*.

[111] *See* 16 U.S.C. § 824s(c).

No. 679 that it will approve ROE adders "for public utilities that join and/or continue to be a member of an [independent system operator], RTO, or other Commission-approved Transmission Organization."[112] The Commission has found that the incentive recognizes the benefits that flow from RTO/ISO membership, and that a "utility is presumed eligible for an RTO incentive 'if it can demonstrate that it has joined an RTO, ISO, or other Commission-approved Transmission Organization, and that its membership is on-going' and need not provide additional justification as to the necessity or benefits of the incentive."[113] Accordingly, the Commission has routinely approved the incentive for RTO participation as long as the resultant ROE after application of the RTO adder is within the ROE zone of reasonableness.[114] Consistent with this practice, the Commission recently approved the use of the adder by the NY Transco for the three TOTS Projects provided that the total ROE does not exceed the top end of the zone of reasonableness and the NY Transco joins the NYISO and turns over operational control of the projects to NYISO.[115] The Commission has also consistently granted this incentive to non-jurisdictional utilities.[116]

As described above, NYPA is a member of the NYISO and has turned over operational control of its transmission facilities to the NYISO. NYPA will likewise turn over operational control of the MSSC Project to the NYISO once it is placed in service. NYPA's requested total ROE of 9.34% includes 49 basis points of the 50 basis point RTO Participation Adder to stay within the top end of the zone of reasonableness determined using the Commission's two-step DCF analysis. The Commission should therefore find that it is just and reasonable.

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[112] Order No. 679 at P 326; Order No. 679-A at P 86; *see also 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.").

[113] NY Transco Order at P 90 (quoting Order No. 679 at P 327); *see also Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,004 at PP 41-44 (2015); *Pac. Gas & Elec. Co.*, 141 FERC ¶ 61,168 at P 25 (2012) (determining that granting incentive ROE for "participation in the CAISO is consistent with the stated purpose of FPA section 219 . . . and is intended to encourage [transmission owner's] continued involvement in the CAISO," despite arguments that such incentive is no longer necessary) (footnotes omitted); *Niagara Mohawk Power Corp.*, 124 FERC ¶ 61,106 at P 35 (2008) (We will grant up to 50 basis points of incentive ROE for Niagara Mohawk's continued participation in NYISO ..... Our decision to grant Niagara Mohawk an incentive for participation in the NYISO is consistent with the stated purpose of section 219 of the FPA—that the incentive applies to all utilities joining the transmission organization—and is intended to encourage Niagara Mohawk's continued involvement with NYISO.") (footnotes omitted).

[114] *See id.*; *see also* NY Transco Order at P 91. [115]

NY Transco Order at P 88.

[116] *See, e.g., Midcontinent Indep. Sys. Operator, Inc*., 151 FERC ¶ 61,166 (2015); *Midcontinent Indep. Sys. Operator, Inc*., 151 FERC ¶ 61,137 (2015); *Midcontinent Indep. Sys. Operator, Inc*., 151 FERC ¶ 61,050 (2015) (RTO adder granted to four municipal utility entities); *Valley Elec. Ass'n, Inc.*, 141 FERC ¶ 61,238 (2012) (RTO adder granted to an electric cooperative in the California ISO).

c. Performance-Based ROE for Certain New Construction

NYPA believes that in order to best serve the interests of New York consumers, the risks associated with new transmission development should be equitably shared between the developer and the ratepayer. Consistent with this philosophy, NYPA will make the following commitments.

First, with respect to the MSSC Project, application of the RTO Participation Adder will be performance-based. As a pre-Order No. 1000 project competitively awarded by the NYPSC, NYPA believes it is appropriate to share the risk of cost overruns with NYISO ratepayers. Accordingly, at a future date that is mutually acceptable to NYPA and NYPSC, NYPA project managers and engineers will perform a fully-formed engineering assessment of project costs. NYPA will earn a return of its base ROE plus the RTO Participation Adder of 9.34% for capitalized project costs so long as the costs stay below a 10% deadband. For costs that exceed the estimate by 10% or more, NYPA will earn one half of the RTO Participation Adder (24.5 basis points). NYPA will forego entirely the RTO Participation Adder and earn the base ROE of 8.85% for capitalized project costs that exceed the estimate by 20% or more. The Formula Rate is designed to produce a project-specific ATRR that, if necessary, reflects a project-specific ROE for MSSC that is below the 9.34% total ROE that applies to NYPA's existing assets. A worksheet appended to the Formula Rate Template would be used to transparently determine the total ROE for the MSSC Project in the event of cost overruns.

Second, with respect to future congestion-reducing projects that are competitively awarded to NYPA through Attachment Y of the OATT, NYPA will seek incentives in excess of the base ROE of 8.85% in a future filing under FPA sections 205 or 219, as appropriate. Any such request would conform to commitments on risk-sharing or performance-based incentives that may be stipulated for the NY Transco in a settlement agreement approved by the Commission in Docket No. ER15-572-000 with respect to future competitive projects.

NYPA believes these commitments appropriately allocate risks among NYPA and NYISO ratepayers with respect to the development of the MSSC Project and future competitively-awarded congestion-reducing projects and will, at least with respect to the NY Transco, ensure that competition for such future projects is on a level playing field. NYPA would hope other competitors in the NYISO's competitive developer solicitations would similarly offer appropriate risk-sharing commitments in competitive bids for congestion-reducing projects by limiting the application of ROE incentives to performance-based adders.

2. Capital Structure

As explained in Mr. Ansaldo's testimony, NYPA proposes to use its actual capital structure, which is comprised of long-term debt and its net position, as updated each year in NYPA's financial statements, capped at a maximum of 60% equity.[117] NYPA does

[117] Ansaldo Testimony, Exh. No. PA-301 at 13.

not have traditional common stock and thus its "equity" is retained income listed on its financial statements as its "net position."[118] NYPA's net position is equivalent to a private entity's retained earnings.[119]

As populated with 2014 calendar year data, NYPA's Template produces a capital structure of 23.6% debt and 76.4% equity based on its ratio of long-term debt to net position.[120] NYPA's long-term capitalization target, which it intends to achieve through the issuance of long-term debt to finance capital expansion, is 65% equity.[121] However, NYPA is proposing to voluntarily cap the equity component of its capital structure at 60% to minimize rate impacts to NYISO customers during a period of anticipated capital spending over the coming years. The Commission should accept as just and reasonable NYPA's proposal to cap the equity component of its capital structure at 60% equity, because it is slightly lower than NYPA's long-term capitalization goal and will help reduce rate impacts to consumers as NYPA modernizes its transmission infrastructure in the coming years.[122]

As Mr. Ansaldo describes, imposing a lower cap on NYPA's equity capitalization would be inconsistent with NYPA's strong credit rating of AA/Aa1 and resulting low cost of debt.[123] NYPA's high bond rating primarily results from NYPA's conservative use of debt financing (low leverage).[124] However, if a more leveraged financial structure is imputed to NYPA, then one cannot assume the historical or prospective financing rates of an AA/Aa1 rated entity. NYPA's cost of debt under such a structure would therefore need to increase, raising the overall cost of capital produced by the Template. Furthermore, as Mr. Ansaldo notes, capping NYPA's equity capitalization at less than 60% would also warrant reexamination of NYPA's conservative ROE request because, as discussed below, the proxy group used to perform the DCF analysis utilized to calculate NYPA's proposed ROE included only those utilities with the highest credit ratings.[125] If a capital structure is imputed to NYPA that is similar to that of utilities with lower credit ratings, such lower-rated utilities should arguably also be included in the proxy group for the purposes of the DCF analysis.[126]

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[118] *Id*. at 3; *see also* T. Davis Testimony, Exh. No. PA-101 at 17. [119]

Ansaldo Testimony, Exh. No. PA-301 at 3.

[120] *Id*. at 12.

[121] *Id*. at 14.

[122] The Commission has accepted voluntary proposals by an entity to cap the equity component of its capital structure. *See Transource Wis., LLC*, 149 FERC ¶ 61,180 at P 34 (2014) ("We also grant Transource Wisconsin's proposal to cap the equity component of its capital structure at 55 percent. We note that the Commission traditionally does not require applicants to cap the capital structures used for ratemaking at a particular numerical value. Here, however, Transource Wisconsin has voluntarily proposed to cap the equity component of its capital structure, and we accept this voluntary cap.").

[123] Ansaldo Testimony, Exh. No. PA-301 at 13-14.

[124] *Id*. at 14.

[125] *Id*.

[126] *Id*.

Mr. Ansaldo's testimony demonstrates that NYPA's high bond rating does not come at an increased cost for ratepayers than a lower bond rating, due to the fact that NYPA does not pay income taxes and therefore does not collect an income tax allowance through the Template.[127] Mr. Ansaldo also demonstrates that NYPA's overall rate of return is already about 25% less than a typical investor-owned utility's pre-tax overall return because NYPA does not require an allowance for income taxes.[128] Thus, there is no strong reason to depart from the Commission's strong preference to use an entity's actual capital structure,[129] and NYPA should be permitted to use its actual capital structure capped at 60% equity.

3. Depreciation Rates

NYPA proposes to adopt stated depreciation rates for transmission and general plant using two depreciation studies of NYPA's Transmission Assets dated September 30, 1996 ("1996 Depreciation Study") and August 13, 1982 ("1982 Depreciation Study"). The depreciation rates for transmission plant are based on the 1996 Depreciation Study, while the depreciation rates for general plant are based on the 1982 Depreciation Study.[130] The testimony of Mr. Austin O. Davis corroborates the methodology used in preparing the 1982 Depreciation Study, as well as the methodology utilized by Mr. Julius Breitling, P.E. in preparing the 1996 Depreciation Study.[131] As Mr. A. Davis explains, the depreciation rates proposed for NYPA are based on average service life, mortality dispersion (Iowa Curve), and net salvage (gross salvage less cost of removal).[132] A percent is developed for each account or subaccount based on service lives and net salvage percentages estimated for transmission and general plant currently included in NYPA rates. A. Davis's testimony and exhibits, including the 1996 Depreciation Study and the 1982 Depreciation Study, are attached to this Application as Appendix F.

4. Post-Retirement Benefits Other Than Pensions

The Template includes a stated PBOP expense, consistent with Commission policy.[133] As explained in the testimony of Mr. T. Davis, the 2014 Annual Report shows

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[127] *Id*. at 15.

[128] Ansaldo Testimony, Exh. No. PA-301 at 15.

[129] *See, e.g.*, *Virginia Elec. & Power Co.*, 123 FERC ¶ 61,098 at P 73 ("The Commission has a strong preference for using the actual capital structure of the company in developing its rate of return, unless there is an overriding reason not to do so."); *ITC Holdings Corp.*, 121 FERC ¶ 61,229 at P 49 (2007) ("Use of the transmission-owning operating company's actual capital structure . . . reflects the Commission's preference to use a utility's own capital structure if the utility issues its own debt without guarantees, has its own bond rating, and has a capital structure within the range of capital structures approved by the Commission.").

[130] Prepared Direct Testimony of Austin O. Davis, Exh. No. PA-401 at 3.

[131] *Id*. at 2-3.

[132] *Id*. at 4-5.

[133] This treatment is consistent with the treatment approved in *Trans-Allegheny Interstate Line Co*., 124 FERC ¶ 61,075 (2008). *See Trans-Allegheny Interstate Line Co.*, 121 FERC ¶ 61,009 at PP 18-19 (2007) (accepting revision to tariff sheet providing stated value for PBOPs).

a PBOP expense of approximately $38 million.[134] The source of this value is an actuarial report produced by Buck Consultants, LLC which is attached to the testimony of Mr. T. Davis.[135] Mr. T. Davis describes the components of the PBOP expense identified in the actuarial report, and explains how it is allocated and assigned to NYPA's transmission function.[136] NYPA's 2014 PBOP expense will remain fixed unless changed pursuant to sections 205 or 206 of the FPA.[137]

E. Determination of a Projected ATRR for the Initial Rate Period

The Protocols provide for a July through June Rate Year. Because NYPA is seeking a September 1, 2015 effective date for its Formula Rate, it has included with this Application a populated Template to produce an initial ATRR that the NYISO will collect through June 30, 2016 subject to true-up. The Initial Rate Period is defined in the Protocols as the "initial period, from the date the rates are first made effective by the Commission thru June 30, 2016."[138] Thus, if the Commission grants NYPA's request for an effective date of September 1, 2015, the Initial Rate Period will run from September 1, 2015 through June 30, 2016.

Using inputs from NYPA's financial statements contained in the 2014 Annual Report, NYPA's ATRR for the Initial Rate Period will be $192,388,117.[139] The Template produces a 12-month ATRR that will be used by NYISO to calculate the NTAC $/MWh charge assessed to energy withdrawals during the 10-month Initial Rate Period. The first True-Up Adjustment in July 2016 will compare NYPA's transmission revenues received from September 1 through December 31, 2015 against 4/12 of the actual calendar year 2015 ATRR, and any difference will be refunded or surcharged at the FERC interest rate. In this way, customers will pay an NTAC based on the current stated ATRR through August 31, 2015, and the application of the Formula Rate ATRR will be limited in 2015 to the last four calendar months of the year. Pro-rating the actual 2015 ATRR during the 2016 Annual Update's determination of the calendar year 2015 True-up Adjustment will ensure that customers are not over-charged during 2015 as a result of the mid-year transition from a stated ATRR to a formulaic ATRR.

NYPA further proposes that any changes to NYPA's Formula Rate resulting from settlement or litigation of this proceeding be incorporated, with FERC interest, into the next True-Up Adjustment in lieu of customer-specific refunds. Allowing refunds resulting from settlement or litigation to pass through the natural True-Up mechanism of the Formula Rate will ease NYISO's administrative burden, particularly in light of the

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[134] T. Davis Testimony, Exh. No. PA-101 at 19; 2014 Annual Report at 65.

[135] T. Davis Testimony, Exh. No. PA-101 at 19.

[136] *Id.* at 19-20.

[137] *Id.* at 12.

[138] App'x A, Clean Version of NYISO OATT, at § 14.2.2.4.2.1(b)(xiii) (hereinafter "App'x A").

[139] NYPA will not recover any revenue for the MSSC Project in the Initial Rate Period because the MSSC Project is anticipated to be placed in service during Calendar Year 2016.

already complex NTAC charge which is assessed to all energy withdrawals state-wide and would be difficult to adjust on a customer or transaction-specific basis.

F. Formula Rate Implementation Protocols

Mr. Alan C. Heintz describes the Protocols for populating and updating the Template in his testimony. NYPA proposes to add the Protocols to a new Section 14.2.2.4.2 of Attachment H to the NYISO OATT.[140] The Protocols prescribe NYPA's Annual Update Process, which refreshes the calculation of NYPA's NTAC and projectspecific revenue requirements. The Protocols also govern the specific procedures for notice, requests for information, and review and challenges to the Annual Update.[141] The Protocols provide for a July 1st to June 30th rate year; as discussed above, however, the Initial Rate Period will only run from September 1, 2015 to June 30, 2016. After the Initial Rate Period, NYPA will determine a true-up amount by comparing the prior calendar year's actual ATRR—using data from NYPA's independently-audited financial statements contained in NYPA's Annual Report—against transmission revenues received by NYPA during the preceding calendar year.[142] Any true-up amounts will be calculated with interest in accordance with 18 C.F.R. § 35.19a.[143]

The Protocols provide for customer review procedures that are consistent with the Commission's recent pronouncements on (i) scope of participation in the information exchange process; (ii) the transparency of the information exchange; and (iii) the ability of interested parties to challenge NYPA's implementation of the Formula Rate as a result of the information exchange.[144] Following the July 1 publication of the Annual Update, including True-Up Adjustment of the prior calendar year's rates based on actual data from NYPA's Financial Report, NYPA will hold a customer meeting between 15 and 60 days later.[145] Customers will have a 150-day discovery period during which to submit information requests, and a 180-day review period to submit preliminary challenges.[146] Customers have 60 days after the close of the review period or 30 days after NYPA makes its informational filing, whichever is later, to submit formal challenges to the Commission.[147] Any changes to the True-Up Adjustment resulting from the customer review period will be reflected, with interest, in the following year's True-Up Adjustment. Parties at all times retain their rights under sections 205 and 206 of the FPA, without regard to the Protocols' review process.

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[140] *See* Heintz Testimony, Exh. No. PA-201 at 4.

[141] However, consistent with Commission precedent, the proposed Protocols do not limit a customer's or the Commission's rights under 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), *order on clarification*, 130 FERC ¶ 61,044 (2010).

[142] *See* Heintz Testimony, Exh. No. PA-201 at 6.

[143] *See id.*

[144] *See, e.g.*, *Empire Elec. Dist. Elec. Co.*, 150 FERC ¶ 61,200 (2015). [145]

See App'x A at § 14.2.2.4.2.1(a), (b)(xvi).

[146] *See id*. § 14.2.2.4.2.3.

[147] *See id*. § 14.2.2.4.2.3(b)(iv).

V. THE REQUESTED ABANDONMENT INCENTIVE IS JUST AND REASONABLE AND CONSISTENT WITH THE REQUIREMENTS OF FPA SECTION 219.

NYPA seeks authorization to use one risk-mitigating incentive for the MSSC Project: the Abandonment Incentive. NYPA is eligible for this incentive under section 219 of the FPA because the MSSC Project will help ensure reliability and will reduce the cost of power to customers by reducing transmission congestion. This incentive is appropriate under section 219 of the FPA, Order No. 679, and the Commission's 2012 Policy Statement,[148] because there is a nexus between the MSSC Project and the Abandonment Incentive, which is tailored to reduce the financial and regulatory risks associated with the MSSC Project. As already discussed above, NYPA also seeks authorization to use a 50 basis point RTO Participation Adder incentive for all transmission investments that have been turned over to the operational control of the NYISO, including its investment in the MSSC Project (subject to the performance-based ROE provisions discussed in section IV.D.1.c, *supra*).

A. The MSSC Project Is Eligible for an Incentive-Based Rate Treatment Because It Promotes Reliability and Reduces the Cost of Delivered Power by Reducing Transmission Congestion, and Qualifies for the Rebuttable Presumption Established Under Order No. 679.

To be eligible for transmission rate incentives, a public utility must first demonstrate that the proposed transmission project will either promote reliability or reduce the cost of delivered power by reducing transmission congestion.[149] In Order No. 679, the Commission established a rebuttable presumption that this requirement is met if: (1) the transmission project results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion; or (2) the transmission project has received construction approval from an appropriate state commission or state siting authority.[150] Additionally, the Commission requires "each applicant seeking to invoke the rebuttable presumption to explain in its filing how the applicable process (regional planning or state approval) in fact considered whether the project ensures reliability or reduce congestion."[151] The purpose of this rebuttable presumption is to avoid "duplication in determining whether a project maintains reliability or reduces congestion. [The Commission does] not wish to repeat the work of state siting authorities [or] regional planning processes . . . in evaluating these issues."[152] If an applicant does not qualify for the rebuttable presumption, it "may nonetheless demonstrate that [its]

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[148] *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) ("2012 Policy Statement").

[149] Order No. 679 at P 37.

[150] *Id.* at P 58; Order No. 679-A at PP 41, 49. [151]

Order No. 679-A at P 49.

[152] *Id.* at P 46.

project is needed to maintain reliability or reduce congestion by presenting [the Commission] a factual record that would support such findings."[153]

The MSSC Project qualifies for the rebuttable presumption under Order No. 679 because it has received approval from an appropriate state commission that evaluated the MSSC Project for both reliability and congestion benefits. The MSSC Project was selected by the NYPSC, after a competitive process, *precisely because* of its potential reliability benefits and ability to decrease the cost of power by reducing transmission congestion. Indeed, in its NY Transco Order, the Commission recognized that the three TOTS Projects, including the MSSC Project, qualified for the rebuttable presumption established in Order No. 679, because "the TOTS Projects have received construction approval from an appropriate state commission or state siting authority that considered whether the projects ensured reliability or reduced congestion."[154]

Specifically, as noted above, in November 2012, the NYPSC initiated the Reliability Contingency Proceeding in Case 12-E-0503. In that proceeding, the NYPSC ordered Con Edison, with the assistance of NYPA, to develop a Reliability Contingency Plan to address the possible closure of the IPEC nuclear facility.[155] Con Edison and NYPA submitted a proposal which called for construction by Summer 2016 of the three TOTS Projects, including NYPA's MSSC Project,[156] and requested authorization for NYPA to issue a Request for Proposals ("RFP") for reliability solutions. In response, the NYPSC authorized the competitive RFP process and approved of preliminary planning for the TOTS Projects.[157]

On November 4, 2013, the NYPSC issued an Order Accepting IPEC Reliability Contingency Plans.[158] In this Order, the NYPSC (1) accepted the three TOTS Projects for inclusion in the portfolio for the Reliability Contingency Plan, (2) directed the TOTS Projects should "move as promptly as possible to implementation," and (3) further directed the sponsors of the TOTS Projects to "proceed as quickly as possible with an application to [FERC] for approval for the cost allocation and cost recovery for the TOTS Projects."[159] The NYPSC's order stated that it expected that Con Edison, NYSEG, and NYPA would "proceed with the necessary permitting and approvals to achieve the June 1, 2016 in-service date for each project."[160]

The NYPSC selected the three TOTS Projects based on expectations that (1) the projects would contribute at least 600 MW toward the reliability relief if IPEC ceased

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[153] Order No. 679 at P 57.

[154] *See* NY Transco Order at P 34 (citing Order Accepting IPEC Reliability Contingency Plan at 7, 25). [155]

Order Instituting Reliability Contingency Proceeding at 9.

[156] *See* Order Accepting IPEC Reliability Contingency Plan at 8. [157]

Id. at 4.

[158] *See generally id*.

[159] *Id.* at 46-48.

[160] *Id*. at 25.

operations, (2) "[t]he reliability benefits of the Ramapo/Rock Tavern line and the Marcy/Fraser project would be created in greater or lesser measure whether or not IPEC retires," and (3) "even if IPEC does not retire, and the TOTS are not required to avoid reliability violations, the increased transfer capability from these projects would still provide economic benefits by supplying lower cost energy from upstate sources to downstate consumers."[161] Specifically, even if IPEC did not retire, New York Department of Public Service ("DPS") staff had estimated that the net present value of the net benefits provided by the TOTS Projects for the first 15 years of operation would be $260 million in 2016 dollars and that over a transmission lifecycle of approximately 40 years the estimated net benefit would be $670 million.[162] If IPEC were retired, these net benefits would be even greater.[163]

The MSSC Project should qualify for the rebuttable presumption because the NYPSC has already approved the project in a proceeding that was focused on finding solutions to a reliability threat created by the potential retirement of the IPEC nuclear facility. In addition to the reliability benefits of the MSSC Project, the NYPSC also relied on the congestion-reduction benefits of the project and authorized the MSSC Project based on its understanding that the project would provide ratepayers with millions of dollars in congestion-related savings and net benefits, even if the IPEC remains in service. As recognized in Order No. 679, there is no need for the Commission to repeat the work of the NYPSC, which has already approved of the MSSC Project precisely because of its significant reliability and congestion-reduction benefits for New York. Consistent with the Commission's NY Transco Order finding that the TOTS Projects qualify for the rebuttable presumption,[164] the Commission should find that NYPA's portion of the MSSC Project also qualifies for this rebuttable presumption since it was approved by the NYPSC as a vital component of the TOTS Projects.

B. There Is a Nexus Between the Requested Abandonment Incentive and the Risks and Challenges That Will Be Faced by NYPA in Developing the MSSC Project.

An applicant seeking an incentive rate treatment under Order No. 679 must demonstrate that the incentive requested is "rationally tailored to the risks and challenges faced in constructing new transmission[]" and must "demonstrate that there is a nexus between the incentive sought and the investment being made."[165] In applying the nexus test, "the Commission will examine the total package of incentives being sought, the inter-relationship between any incentives, and how any requested incentives address the

[161] Order Accepting IPEC Reliability Contingency Plan at 24.

[162] *Id.* The net benefits of the TOTS were calculated as the difference between resource cost savings and the total revenue requirements associated with the projects. *Id.* at 23.

[163] *Id.* at 24. DPS Staff also "concluded that, even if IPEC is not retired, the benefits of each TOTS project would be greater than its costs individually." *Id*.

[164] NY Transco Order at P 34.

[165] Order No. 679 at P 26.

risks and challenges faced by the project."[166] Additionally, in its 2012 Policy Statement, the Commission directed "incentives applicants to first examine the use of risk-reducing incentives before seeking an incentive ROE based on a project's risks and challenges."[167]

NYPA is only seeking one incentive rate treatment to recover 100% of prudently incurred costs in the event that the MSSC Project is abandoned for reasons outside NYPA's control. Consistent with the Commission's directive in the 2012 Policy Statement, NYPA is seeking to use a risk-reducing incentive rather than seeking any incentive ROE adders to mitigate the risks of the MSSC Project.

The Abandonment Incentive helps to remove disincentives to undertaking the MSSC Project by eliminating the risk that lenders and NYPA may have to bear significant costs incurred if the project is cancelled for reasons outside NYPA's control. The Commission has stated that allowing an applicant to recover 100% of prudently incurred abandoned plant costs where a project is cancelled for reasons outside the applicant's control is "an effective means to encourage transmission development by reducing the risk of non-recovery of costs."[168] The Commission has thus determined that 100% abandoned plant cost recovery is appropriate, for instance, when a project developer fails to obtain requisite regulatory approvals or obtain necessary rights-of-way.[169]

As discussed in detail in Mr. T. Davis's testimony, the MSSC Project faces a number of risks that could lead to eventual abandonment.[170] In particular, there will be a number of environmental, regulatory, and siting risks. In order to complete the MSSC Project, NYPA must successfully secure numerous regulatory permits and approvals, and must achieve compliance with the conditions imposed in them. First, NYPA is required to obtain regulatory approvals from the NYPSC under Article VII of the New York State Public Service Law. Although NYPA has received its certificate of environmental compatibility under Article VII, Mr. T. Davis explains that NYPA still has the related obligation to obtain approvals for its plans for environmental management of the construction phase, including a stormwater pollution prevention plan, a noise study and traffic plan.[171] Failure to get these approvals or related compliance issues could delay the start of construction and potentially jeopardize the MSSC Project's slated in-service date of June 1, 2016.[172]

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[166] Order No. 679-A at P 21; 2012 Policy Statement at P 10 ("[T]he Commission will continue to require applicants seeking incentives to demonstrate how the total package of incentives requested is tailored to address demonstrable risks and challenges.").

[167] 2012 Policy Statement at P 11.

[168] Order No. 679 at P 163; *see also* NY Transco Order at P 86 (same).

[169] *See* Order No. 679 at P 165; *Southern Cal. Edison Co.*, 129 FERC ¶ 61,246 at P 68 (2009), *order denying clarification*, 133 FERC ¶ 61,254 (2010), *reh'g denied*, 134 FERC ¶ 61,200 (2011); *Pioneer Transmission*, 126 FERC ¶ 61,281 at PP 56, 69, 75.

[170] *See* T. Davis Testimony, Exh. No. PA-101 at 34-37. [171]

Id. at 34.

[172] *Id*. at 35.

Second, NYPA must receive approval of its application before the New York State Department of Environmental Conservation ("DEC") for a State Pollutant Discharge Elimination System Permit ("SPDES Permit"), which is required to begin construction.[173] The SPDES Permit is also subject to the approval of the New York City Department of Environmental Protection, in addition to the DEC.[174] In the SPDES Permit, the DEC may impose environmental and stormwater conditions that NYPA must comply with to construct the MSSC Project.[175] Failure to obtain the necessary permits and approvals or inability to comply with the conditions imposed in them could lead to cancellation of the MSSC Project.

Additionally, the accelerated time frame for completion of the MSSC Project by June 2016 may create further complications. The construction of the MSSC Project must comply with a highly complicated outage schedule imposed by the NYISO. There is thus a risk that if construction of the MSSC Project is delayed—due to regulatory approvals or for any other reason—then this complicated outage schedule will be disrupted and lead to even further delay.

Furthermore, as noted previously, the MSSC Project is a joint effort between NYPA and NYSEG, with NYSEG responsible for re-conductoring the 21.8-mile transmission line from Fraser Substation to Coopers Corners Substation and for installing one of the series capacitor banks. The full benefits of the MSSC Project are only realized if both components of the work are completed: NYPA's series compensation improvements and NYSEG's re-conductoring and series compensation improvements.[176] Like NYPA, NYSEG faces numerous local, state, and federal requirements that NYSEG must comply with before the MSSC Project can be completed. These are described in detail in Mr. T. Davis's prepared testimony.[177] Each of NYSEG's required permits and approvals—and any conditions imposed in them—presents risk to the project schedule and costs and to NYSEG's successful completion of its portion of the MSSC Project.

If NYSEG was forced to abandon its part of the MSSC Project, NYPA's share of the investment would be adversely impacted as the beneficial aspects of the series compensators would be compromised.[178] NYPA could still physically place its portion of the project in service, but without NYSEG's component NYPA's portion of the project would not be capable of providing the full reliability and congestion benefits anticipated to result from the MSSC Project.[179] As a result, if NYSEG abandons its portion of the MSSC Project, NYPA could be exposed to the risk that certain parties may argue that

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[173] *Id*.

[174] *Id*.

[175] *Id*.

[176] Davis Testimony at 35.

[177] *Id.* at 35-38

[178] *Id*. at 37.

[179] *Id*.

NYPA's subsequent investment in the MSSC Project was not prudent and is not used and useful in the provision of transmission service by NYISO. This risk could lead to abandonment of NYPA's portion of the MSSC Project. Through no fault of its own, NYPA may have spent considerable permitting, engineering, and construction costs that it should be allowed to recoup.

In light of the significant risks faced by NYSEG and the NY Transco, the Commission recently granted the Abandonment Incentive to the NY Transco for recovery of 100% of prudently incurred costs for the TOTS Projects, including the MSSC Project, finding that "[a]pplicants have demonstrated, we find that approval of the abandonment incentive will both attract financing for the projects and protect NY Transco from further losses if any of the projects is cancelled for reasons outside NY Transco's control."[180] The Commission has thus determined that there is a nexus between the risks of the NYSEG/NY Transco component of the MSSC Project and the Abandonment Incentive.[181] NYPA's component of the project faces many of the same risks faced by NYSEG and the NY Transco and the ultimate success and fate of NYPA's portion of the project is tied to the successful completion of the NY Transco's share of the project. In light of these risks, it is just and reasonable to grant NYPA's request for the Abandonment Incentive.[182] The Commission, therefore, should grant the Abandonment Incentive for the MSSC Project in order to reduce the risk associated with the potential cancellation of the project for reasons outside of NYPA's control.

VI. PROPOSED EFFECTIVE DATE OF THE FORMULA RATE

NYPA requests that the Commission accept the Formula Rate effective 60 days after this filing, by September 1, 2015, without suspension or hearing. Alternatively, NYPA requests that the Commission limit the issues set for hearing and impose a nominal suspension period.

The Commission should accept NYPA's Formula Rate without suspension, because the Commission has found that, as a non-jurisdictional utility, "NYPA is not subject to Commission-imposed rate suspension and refund obligations under section 205

[180] *See* NY Transco Order at P 86.

[181] *See id*. at P 85.

[182] It is worth noting that, although NYPA faces many of the same risks as the NY Transco with respect to the MSSC Project, NYPA is seeking only the Abandonment Incentive to mitigate these risks, while the NY Transco sought a broader package of incentives with respect to the MSSC Project. After considering the nexus between various incentives and the MSSC Project, the Commission authorized the NY Transco to utilize the Abandonment Incentive, as well as a risk-reducing incentive to establish a regulatory asset that would allow for the deferral and subsequent recovery of all prudently incurred pre-commercial costs not capitalized as part of the cost of construction, including pre-commercial costs of permitting, and consulting and legal costs related to the projects. *See* NY Transco Order at PP 76, 85. Because the Commission found that this broader package of incentives met the nexus test, because it was narrowly tailored to address the demonstrable risks of the MSSC Project, it should also find that NYPA's more limited request for incentives meets the nexus test, because it is *even more* narrowly tailored to address virtually equivalent risks.

of the FPA."[183] Furthermore, a suspension period would be unnecessary in these circumstances, because any potential over-collection will be compensated for when NYPA's completes its annual true-up of its ATRR.[184] As discussed above, FERC frequently accepts forward-looking formula rates with no more than a nominal suspension—especially when there is a true-up mechanism in place.[185] Additionally, although NYPA is not subject to Commission order directing payment of refunds, NYPA will agree to make all appropriate refunds to customers for any collections based on an ATRR that exceeds what FERC ultimately accepts as just and reasonable. In lieu of customer-specific refunds, NYPA asks that, for ease of NYISO billing administration, any refunds be accomplished, with interest, through the annual True-Up mechanism built into the Formula Rate.[186]

VII. CONTENTS OF THE FILING

In addition to this Application, which provides a detailed description of the approvals requested and the bases for those requests, this filing contains the following components:

Appendix A:	Clean Version of NYISO OATT;
Appendix B:	Redline Version of NYISO OATT;
Appendix C:	Direct Testimony of Thomas A. Davis (Exhibit Nos. PA-101-109);
Appendix D:	Direct Testimony of Alan C. Heintz (Exhibit Nos. PA-201-203);
Appendix E:	Direct Testimony of Richard L. Ansaldo (Exhibit Nos. PA-301-308);
Appendix F:	Direct Testimony of Austin O. Davis (Exhibit Nos. PA-401-403).

[183] *New York Indep. Sys. Operator*, 140 FERC ¶ 61,240 at PP 29, 31 ("In *TANC*, the court ruled that the Commission had no authority to order Vernon to pay refunds under section 205 of the FPA. The court held that the structure of the FPA clearly reflects Congress's intent to exempt governmental entities and non-public utilities from the Commission's refund authority under section 205 of the FPA over wholesale electric energy sales."); *see also Transmission Agency of N. Cal. v. FERC*, 495 F.3d at 673-74; *City of Azusa, Cal.*, 138 FERC ¶ 61,049 at P 20 (2012) (municipality not subject to Commission-imposed rate suspension and refund obligations under FPA section 205); *City of Pasadena, Cal.*, 137 FERC ¶ 61,045 at P 20 (2011) (same).

[184] *See* Heintz Testimony, Exh. No. PA-201 at 5. [185]

See supra note 70.

[186] Notwithstanding its commitments made here in the instant Formula Rate filing, NYPA, as a municipal entity, does not waive its non-jurisdictional status under Part II of the FPA. 16 U.S.C. § 824(f); *see also supra* note 10.

VIII. ADVANCED TECHNOLOGY STATEMENT

Order No. 679 requires the submission of a technology statement that describes the advanced technologies considered and an explanation if advanced technologies are not to be employed. NYPA does not specifically seek an advanced technology incentive; however, NYPA will utilize advanced technologies in the development of the MSSC Project. For example, the series capacitors that will be installed at NYPA's Fraser Substation will utilize newly developed technology in the components that are used to bypass the series capacitor, namely the CapThor fast bypass device. The CapThor not only protects the series capacitor it also provides improved operability, allowing for the capacitor to be bypassed in less than five milliseconds if certain system conditions arise. This is the fourth commercial SC project using CapThor technology in North America and the second in the United States. In all cases, NYPA will emphasize good utility practice and efficient engineering design and construction practices when developing the MSSC Project.

IX. REQUESTED WAIVERS

Based on its status as a non-jurisdictional utility, NYPA respectfully requests that it be exempt from compliance with any requirements of section 35.13 of the Commission's regulations not otherwise satisfied by this filing.[187] In the event any additional waivers are required in connection with this filing, NYPA respectfully requests that the Commission grant such waivers.

X. CORRESPONDENCE AND COMMUNICATIONS

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

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[187] *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."); *New York Indep. Sys. Operator*, 140 FERC ¶ 61,240 at PP 36-37 (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); *Vernon*, Opinion No. 479, 111 FERC ¶ 61,092 at P 44 ("Vernon in and of itself is not subject to section 205. It is for this reason we affirm the judge's excusing Vernon from the Commission's regulatory filing requirements.").

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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.[188]

XI. CONCLUSION

For the reasons set forth above, NYPA requests that the Commission accept for filing the Formula Rate filed herewith effective September 1, 2015. NYPA also requests that the Commission grant the requested authorizations for NYPA to utilize the Abandonment Incentive and RTO Participation Adder as requested herein.

Respectfully submitted,

/s/ *Gary D. Bachman*

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Attachments: Appendices A-F

[188] 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.