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July 27, 2012

Via Electronic Filing

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

**Re: New York Power Authority  
Docket No. ER12-\_\_\_\_-000**

Dear Secretary Bose:

The New York Power Authority ("NYPA") hereby submits its application under Section 205 of the Federal Power Act ("FPA") to increase its annual revenue requirement used to develop the charges for transmission services provided by NYPA under the New York Independent System Operator, Inc.'s ("NYISO") Open Access Transmission Tariff ("OATT"). This application, which is the first update to NYPA's revenue requirement previously accepted by the Federal Energy Regulatory Commission ("FERC" or "Commission") in 1999, is made in accordance with the NYISO OATT. While NYPA is outside FERC's rate making jurisdiction, as a member transmission owner of the NYISO, NYPA is subject to FERC review with respect to changes to its transmission revenue requirement (or "RR") which is included as part of the NYISO OATT.<sup>1</sup> As supported by the attached testimonies and exhibits, NYPA respectfully submits that its proposal is just and reasonable, and should be accepted without suspension or hearing to become effective as of August 1, 2012. The estimated impact of the proposal would increase bills for the average residential customer by between 5 and 8 cents per month. Based on its status as a non-jurisdictional utility, NYPA respectfully requests that it be exempt from FERC's filing fees.<sup>2</sup>

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<sup>1</sup> As a political subdivision of a state, NYPA is exempt from Part II of the FPA ("Regulation of Electric Utility Companies Engaged in Interstate Commerce") in accordance with FPA Section 201(f). 16 U.S.C. § 824(f) (2012). Despite its filing here to comply with NYISO tariff requirements, NYPA does not waive its statutory exemption from FERC jurisdiction.

<sup>2</sup> See 18 C.F.R. § 381.108(a) (2012). This exemption request is discussed in more detail in the body of this filing.

## **I. BACKGROUND**

### **A. Description of NYPA**

NYPA is a corporate municipal instrumentality and a political subdivision of the State of New York (the “State”) and is a “state instrumentality” within the definition of § 201(f) of the FPA.<sup>3</sup> It is engaged in the generation, sale and transmission of electric power and energy in New York, and is a founding member of the NYISO. NYPA’s bulk power transmission system encompasses approximately 1,400 circuit miles, and consists of facilities ranging from 115 kV to 765 kV. NYPA’s facilities directly interconnect with the transmission systems of all of the State’s investor-owned utilities (“IOUs”) which include Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation d/b/a National Grid (“NMPC”), New York State Electric & Gas Corporation, Orange & Rockland Utilities, Inc., Rochester Gas & Electric Corporation, as well as to the Long Island Power Authority’s (“LIPA”) transmission system. Furthermore, NYPA’s facilities directly interconnect with adjoining control areas through interconnections to utility systems in Vermont, Ontario and Québec.

NYPA has no distribution facilities and virtually all of NYPA’s customers are connected to the transmission and distribution systems of other public utilities. As the Commission has recognized, NYPA, unlike other public utilities, does not have a defined, integrated service area; instead, “its customers are located in the service areas of other transmission providers, and . . . pay for transmission service based on the costs of the transmission providers where the loads are located.”<sup>4</sup> However, as the largest state-owned power organization in New York, NYPA has taken the responsibility for constructing, owning, and operating critical segments of transmission infrastructure throughout the State.

### **B. NYPA Transmission Adjustment Charge**

Recognizing that this infrastructure is crucial to the reliable and efficient operation of New York’s electric grid, and to the effective operation of the NYISO, NYPA, the NYISO, and the other New York Transmission Owners (“NYTOs”)<sup>5</sup> agreed to establish in the NYISO tariff a NYPA-exclusive charge, the NYPA Transmission Adjustment Charge (“NTAC”), to recover any shortfall in NYPA’s revenue requirement that is not recovered under other agreements under which NYPA directly bills its own customers

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<sup>3</sup> 16 U.S.C. § 824(f) (2012) (“No provision in this subchapter shall apply to, or be deemed to include...a State or any political subdivision of a State...or any agency, authority, or instrumentality of any one or more of the foregoing....”); *see also Village of Bergen v. FERC*, 33 F.3d 1385, 1389 (D.C. Cir. 1994).

<sup>4</sup> *Central Hudson Gas & Elec. Corp.*, 103 FERC ¶ 61,143, P 30 (2003).

<sup>5</sup> Besides NYPA, the NYTOs include the above-mentioned IOUs and LIPA.

for transmission services.<sup>6</sup> On January 27, 1999, FERC conditionally accepted the proposal made by NYPA and the other NYTOs to establish the NYISO in Docket No. ER97-1523-000.<sup>7</sup> In conjunction with that filing, on November 17, 1999, the NYTOs filed a joint settlement agreement resolving all issues set for hearing in that docket (the “NYISO Settlement”). The NYISO Settlement established the NTAC mechanism as a part of the NYISO OATT to ensure NYPA’s recovery of its transmission RR. NYPA’s RR is a component of the NTAC formula.

As codified in Attachment H to the NYISO OATT, NYPA calculates the NTAC by deducting from its Commission-approved RR a number of directly-recovered revenue streams, such as revenues from transmission services, the sale of transmission congestion contracts, and congestion rents.<sup>8</sup> That portion of its RR not recovered from those separate sources is recovered as a monthly surcharge assessed to all customers taking transmission service under the NYISO OATT. The NTAC thus ensures that NYPA is able to recover its Commission-approved RR by allocating the cost of any unrecovered revenue requirement to transmission customers throughout the state, who benefit from the inclusion of NYPA’s transmission facilities in the NYISO control area. The NTAC is necessary for NYPA to collect its RR because NYPA is limited in its collections from its other revenue streams.

## **II. DESCRIPTION OF FILING**

### **A. Introduction**

In 1999, FERC authorized the use of the Authority’s current revenue requirement as part of the formation of the NYISO, which has remained unchanged since that time.<sup>9</sup> That revenue requirement was based on 1996 transmission costs. Today, NYPA proposes a revised RR of \$183,096,025 based on projected calendar year 2012 costs, an increase of approximately \$17.6 million over the current RR of \$165,449,297, or a 10.7% increase. This proposed transmission RR increase is NYPA’s first such request since the commencement of NYISO operations almost thirteen years ago.

Under the NYISO OATT, NYPA is permitted to revise its revenue requirement from time to time, subject to acceptance by the Commission. NYPA has agreed to “FERC review and approval [of its transmission RR] on the same basis and subject to

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<sup>6</sup> See *Central Hudson Gas & Elec. Corp., et al.*, 86 FERC ¶ 61,062 at 61,212, *order on reh’g*, 88 FERC ¶ 61,138 at 61,403-04 (1999).

<sup>7</sup> *Id.*

<sup>8</sup> NYISO OATT, Attachment H, Section 14.2.2.2.1.

<sup>9</sup> *Central Hudson Gas & Elec. Corp., et al.*, 86 FERC at 61,212-213.

the same standards as the Revenue Requirements of the Investor-Owned Transmission Owners” in New York.<sup>10</sup>

Although NYPA accepts FERC review pursuant to the FPA Section 205 “just and reasonable” standard, NYPA requests exemption from the Commission’s regulatory filing requirements under 18 C.F.R. § 35.13 (2012) (“Section 35.13”). This request is based on the manner in which FERC applied the just and reasonable standard of review to numerous California municipal utilities which, like NYPA, recover their transmission revenue requirement through FERC-jurisdictional rates. Just as NYPA ensures recovery of its RR through the application of the NTAC, a FERC-approved NYISO OATT charge, the California municipals are able to recover their transmission revenue requirements through their inclusion in the FERC-approved tariff charges of the California Independent System Operator.<sup>11</sup> Such entities have met the FPA just and reasonable standard without being required to submit detailed cost information in compliance with the requirements that apply to regulated utilities under Section 35.13.<sup>12</sup> Due to its status as a non-jurisdictional utility under the FPA,<sup>13</sup> NYPA has never been required to file an annual FERC Form 1 report, and thus has never been obligated to assemble its cost data in a manner that would lend itself to meeting the Section 35.13 requirements. For these reasons, NYPA respectfully requests waiver of Section 35.13.

Nonetheless, NYPA has included cost support data to meet the substance of Section 35.13, and has included both 2012 projected and 2011 actual data. NYPA believes this information will provide the Commission and interested parties with sufficient information concerning NYPA’s costs to justify its instant proposal. Accordingly, NYPA now seeks Commission acceptance of its revised transmission RR.

## **B. Revenue Requirement**

NYPA’s proposal is to recover the costs of operating, maintaining and financing its current transmission system. Thus, the revenue request pertains to costs necessary to maintain and repair “in-kind” facilities. NYPA does not seek to upgrade or expand the capability of its transmission system through this filing.

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<sup>10</sup> NYISO OATT, Attachment H, Section 14.2.2.2.3.

<sup>11</sup> *City of Vernon, Calif.*, Opinion No. 479, 111 FERC ¶ 61,092, *order on reh’g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh’g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006), *remanded on other grounds sub nom. Transmission Agency of No. Calif. v. FERC*, 495 F.3d 663 (DC Cir. 2007) (“*Vernon*”); *City of Azusa, Calif.*, 138 FERC ¶ 61,049 (2012) (“*Azusa*”); *City of Pasadena, Calif.*, 137 FERC ¶ 61,045 (2011) (“*Pasadena*”); *City of Riverside, Calif.*, 136 FERC ¶ 61,137 (2011) (“*Riverside*”).

<sup>12</sup> See, e.g., *Vernon*, Opinion No. 479, 111 FERC ¶ at P 44 & n.55, Opinion No. 479-A, 112 FERC at P 15; see also *Azusa*; *Pasadena*; *Riverside*, n.11, *supra*.

<sup>13</sup> See 16 U.S.C. § 824(f).

## 1. *Cost of Service*

As supported by the enclosed testimony and exhibits of Thomas A. Davis, NYPA's proposed revenue requirement reflects established cost-of-service principles for electric utilities and is consistent with Commission policy. Mr. Davis uses 2012 projected test year data and 2011 historic year data to support NYPA's proposal, and presents detailed cost information indicating the changes in NYPA's expenses for Operation & Maintenance ("O&M"), Administrative & General ("A&G") and Depreciation and Amortization related to its transmission plant. In addition, Mr. Davis provides numerous data to develop NYPA's transmission rate base. To calculate return on rate base, Mr. Davis employs the Commission's accepted methods of calculating the cost of debt and equity. Those determinations are supported by the testimony of Richard L. Ansaldo which is described below.

Mr. Davis also presents the estimated bill impacts of the NYPA proposal on residential, commercial and industrial customers. His analysis indicates that the average residential customer in each utility service territory would pay an additional 5 to 8 cents per month as a result of the proposed RR increase, which is about a one-tenth of 1% increase.

## 2. *Return On Equity*

NYPA's proposed return on equity ("ROE") and cost of debt are based on the analysis and conclusions of Richard L. Ansaldo, as reflected in his enclosed testimony and exhibits. Mr. Ansaldo concludes that a base ROE of 9.25% is appropriate. He states that the proposed ROE is consistent with maintaining NYPA's financial integrity and bond rating, yet lower than returns generally allowed by other regulatory bodies and FERC. The Commission has recognized that government-owned transmission systems have a similar investment risk as one owned by an IOU, and thus a government-owned utility's ROE may be set by reference to similarly-rated entities.<sup>14</sup> Mr. Ansaldo's national proxy group analysis shows an ROE range between 7.16% and 10.37%, with an average of high and low medians of 9.24%, and also presents comparative proxy groups that produce similar results. Consistent with Commission policy, Mr. Ansaldo recommends including a 50 basis point adder to the base ROE reflecting NYPA's ongoing participation in the NYISO.<sup>15</sup> Thus, Mr. Ansaldo recommends that NYPA's final ROE should be set at 9.75%.

## **C. Revisions to NYISO Tariff**

Pursuant to the NYISO's electronic tariff filing practices and related FERC rules, NYPA has coordinated with the NYISO regarding the instant filing. Accordingly, this

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<sup>14</sup> See *Vernon*, 111 FERC ¶ 61,092 at PP 84-103.

<sup>15</sup> See, e.g., *Niagara Mohawk Power Corp.*, 124 FERC ¶ 61,106, P 35 (2008), *order on reh'g*, 126 FERC ¶ 61,173 (2009); *Pepco Holdings, Inc.*, 121 FERC ¶ 61,160, PP 15-16 (2007).

filing includes, both in clean and black-lined versions, Section 14.2 of Attachment H of NYISO OATT which contains the changes consistent with NYPA's rate proposal. This OATT section includes a number of ministerial subsection renumbering changes that the NYISO has advised NYPA to make in this filing. NYPA understands that the NYISO will intervene to support the ministerial changes.

#### **D. Proposed Effective Date; Refunds**

NYPA respectfully requests that the Commission waive its notice requirements<sup>16</sup> to permit this proposal to be accepted for filing and become effective as of August 1, 2012. This will permit NYPA to implement recovery of its increased costs as soon as possible. FERC has consistently granted municipal utilities a waiver of its notice requirements to make effective requested revisions to tariff rates, subject to FERC's decisional processes.<sup>17</sup>

As a municipal utility, NYPA notes that it is not subject to Commission orders directing the payment of refunds or suspending proposed rates.<sup>18</sup> Nonetheless, NYPA submits that it will make appropriate refunds to customers for any NTAC collections based on an RR that exceeds what FERC ultimately accepts as just and reasonable. FERC has previously approved NYPA's proposed refunds related to prior NTAC over collections.<sup>19</sup>

#### **E. Exemption from Filing Fees**

NYPA respectfully requests exemption from FERC's filing fees. As a municipal utility organized under the laws of the State, NYPA is exempt from any filing fee that would otherwise apply to this filing.<sup>20</sup> The Commission has consistently followed this practice for municipal utilities that have filed rate proposals<sup>21</sup> and has applied this exemption to NYPA in a prior transmission filing.<sup>22</sup>

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<sup>16</sup> 18 C.F.R. § 35.3 (2012).

<sup>17</sup> *E.g., Azusa*, 138 FERC ¶ 61,049 (2012); *Pasadena*, 137 FERC ¶ 61,045 (2011); *Riverside*, 136 FERC ¶ 61,137 (2011).

<sup>18</sup> *Transmission Agency of No. Calif. v. FERC*, 495 F.3d 663, 673-74 (DC Cir. 2007); *Azusa*, 138 FERC at PP 18-20; *Pasadena*, 137 FERC at PP 18-20.

<sup>19</sup> *Central Hudson Gas & Electric Corp., et al.*, 101 FERC ¶ 61,136 (2002) (approving NYPA's proposed NTAC refunds arising from corrections to billing determinants).

<sup>20</sup> 18 C.F.R. § 381.108(a) (2012).

<sup>21</sup> *E.g., Pasadena*, 137 FERC ¶ 61,045 (2011); *Riverside*, 136 FERC ¶ 61,137 (2011); *City of Vernon*, 124 FERC ¶ 61,005 (2008).

<sup>22</sup> *New York Power Authority*, 82 FERC ¶ 61,078, *reh'g denied*, 83 FERC ¶ 61,137 (1998).

## **F. Filing Documents**

NYPA's filing is supported by the following documents included herein:

1. Exhibits PA-1 through PA-15, which include:
  - a. Prepared Direct Testimony of Thomas A. Davis (Exhibit PA-1) and supporting exhibits (Exhibits PA-2 through PA-7 and PA-13 through PA-15);
  - b. Prepared Direct Testimony of Richard L. Ansaldo (Exhibit PA-8) and supporting exhibits (Exhibits PA-9 through PA-12);
2. Attachment A: Revised sheets to the tariff (Clean version); and
3. Attachment B: Revised sheets to the tariff (Black-lined version).

## **III. PUBLIC OUTREACH**

NYPA is not subject to any binding agreements to engage in outreach to its customers or other market participants for proposed transmission RR increases. Nonetheless, NYPA has reached out to its industrial, governmental, municipal and electric cooperative system customers or their representatives in advance of this filing to provide them with information about NYPA's proposal including the estimated bill impacts. NYPA has provided similar information to the other NYTOs, as their customers will also be affected by the proposed RR increase.

## **IV. CORRESPONDENCE**

NYPA requests that all communications and correspondence regarding this matter be directed to the following persons, and respectfully requests waiver of the Commission's regulations to permit three persons to be included on the official service list for this proceeding:

Thomas A. Davis  
Vice President  
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## V. SERVICE

Consistent with the NYISO's practice of serving transmission customers with rate schedule changes, NYPA has coordinated with the NYISO to electronically serve a copy of this filing on all market participants in the NYISO, and NYPA has also served a copy of this filing on the New York Public Service Commission.

## VI. CONCLUSION

For reasons stated herein, NYPA respectfully requests that the Commission accept for filing and approve NYPA's revised transmission RR without suspension, condition or modification. NYPA also respectfully requests that the Commission grant any necessary waivers as discussed herein.

Respectfully submitted,

/s/ Gary D. Levenson

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