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Submitted Via eTariff Filing

December 31, 2019

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

Re: ***LS Power Grid New York Corporation I***
Docket No. ER20-____-000

Dear Ms. Bose:

Pursuant Sections 205 and 219 to Federal Power Act ("FPA"),[1] Part 35 of the regulations the Federal Energy Regulatory Commission ("Commission"),[2] the New York Independent System Operator ("NYISO"), as administrator of the NYISO Open Access Transmission Tariff ("OATT" or "Tariff"), submits via eTariff on behalf of LS Power Grid New York Corporation I ("LSPG-NY")[3] this request for: (i) acceptance of a transmission formula rate consisting of a company specific formula rate template ("Template") and protocols ("Protocols") (together, "Formula Rate") to determine and recover the costs of LSPG-NY's investment in transmission facilities located in the New York Independent System Operator ("NYISO") region, incorporated as NYISO OATT 6.10.6, Attachment 1 to Rate Schedule 10; and including (ii) authorization to establish certain rate incentives.

The Formula Rate will be applied initially to LSPG-NY's investment in transmission facilities for which LSPG-NY was selected as a developer through NYISO's Order No. 1000[4]

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1 16 U.S.C. §§ 824d, 824s (2012).

2 18 C.F.R. Part 35 (2015).

3 NYISO submits this filing on behalf of LSPG-NY solely in its role as administrator of the NYISO OATT. The burden of demonstrating that the proposed tariff amendments are just and reasonable rests with LSPG-NY, the sponsoring party. The NYISO takes no position on any substantive aspect of this filing at this time. Capitalized terms not otherwise defined herein shall have the meaning specified in the NYISO OATT.

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

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competitive process as set forth in Section 31.4 of Attachment Y of the NYISO OATT for the Public Policy Transmission Planning Process ("PPTPP"). LSPG-NY's joint proposal with the New York Power Authority ("NYPA") (together "Joint Developers") was selected from among seven proposals to develop and own new 345 kV transmission facilities to be constructed between the existing Marcy/Edic substations near Utica, New York and the existing New Scotland substation near Albany, New York (the "Project"). Generally, the Project facilities will consist of:

- replacement of two circuits of 230 kV transmission line with two circuits of 345 kV transmission line on existing structures, extending for approximately 13 miles from the Edic substation;

- removal of two existing single circuit 230 kV transmission lines, and replacement with two new 345 kV circuits predominately on double circuit towers, extending for approximately 55 miles;

- construction of a new 345 kV Princetown substation;

- removal of two existing single circuit 230 kV transmission lines, and replacement with two new single circuit 345 kV transmission lines between the new Princetown substation and Rotterdam substation, extending for approximately 5 miles; one of which will connect to the new Princetown substation and the other will loop in the Edic portion of the existing Edic to New Scotland 345 kV line;

- construction of a new 345/230/115 kV substation adjacent to the existing Rotterdam substation yard;

- construction of a new double circuit 345 kV transmission line between the new Princetown substation and the existing New Scotland substation, extending for approximately 20 miles, rebuild of an existing single circuit 345 kV transmission line on new steel monopoles starting at the new Princetown substation and extending approximately 6 miles southward in that same corridor, and partial removal and/or removal from service of the existing Rotterdam to New Scotland 115 kV line in a portion of that same corridor; and

- upgrades by others to the Marcy, Edic, Rotterdam and New Scotland substations.

A map identifying the general scope of Project facilities is provided in Exhibit LSPG-NY-201. The Project description is not exhaustive and additional related system upgrades may be identified in the Facilities Study Process. As part of the PPTPP that resulted in selection of the Project, the independent consultant retained by the NYISO estimated the Project to have a total construction cost of $750 million in 2018 dollars, including a 30% contingency. The

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reh'g and clarification, Order No. 1000-B, 141 FERC ¶61,044 (2012) ("Order No. 1000-B"), *aff'd sub nom., S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

Project has an anticipated in-service date of December 2023 for the full Project, although, as described below, the Project may go into service incrementally.

The Formula Rate Template includes provisions for inclusion of certain incentive rates in calculating the annual transmission revenue requirement ("ATRR"), subject to LSPG-NY's cost containment commitments. In Docket No. EL19-30-000 the Commission approved LSPG-NY's request for full recovery of prudently-incurred costs if the Project is abandoned for reasons beyond LSPG-NY's control.[5] The incentives requested beyond 100% abandonment recovery are narrowly tailored to the risks faced in the development and construction of the Project and will allow LSPG-NY to attract the capital necessary to move forward with the Project in the most efficient and cost-effective manner.

LSPG-NY requests Commission approval of transmission incentive rate treatments of: (1) capitalization of certain costs that would not otherwise be capitalized and authorization to establish a regulatory asset for such costs; (2) use of a hypothetical capital structure consisting of 47% debt and 53% equity until the Project achieves commercial operation; (3) a 50 basis point adder to LSPG-NY's return on equity ("ROE") for participating in a Regional Transmission Organization ("RTO") as an independent transmission company ("ITC"), subject to the resulting ROE being within the zone of reasonableness; (4) a 50 basis point adder to LSPG-NY's ROE for the risks and challenges of the Project, subject to the resulting ROE being within the zone of reasonableness; and (5) if applicable upon Project in-service, a performance-based rate in the form of an ROE adjustment consistent with the 80/20 risk mitigation required as part of the Project proposal. Taken together with the other projected selected by the NYISO as a part of the PPTPP, the upgrades comprising the Project are expected to substantially increase the transfer capability over the Central East interface by 875 MW.[6] As discussed below, development of the Project, along with the selected Segment B proposal ("Selected Portfolio"), are projected to provide production cost savings, capacity procurement benefits, and avoided refurbishment costs in the range of $1.95 billion to $4.08 billion depending on future system conditions.[7]

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5 *LS Power Grid New York Corporation I, et. al,* 167 FERC ¶ 61,139 at P 11 (2019).

6 Exhibit LSPG-NY-109, NYISO AC Transmission Public Policy Transmission Planning Initial Report ("Initial Report") at 56, Table 3-8 shows an 875 MW increase to Central East for the selected portfolio of T027+T019. The Initial Report is an attachment to the April 8, 2019 Report attached as Exhibit LSPG-NY-109.

7 For production cost savings, capacity procurement benefits, and avoided refurbishment costs *see* Exhibit LSPG-NY-109, Initial Report at 71, Addendum p. 21, Addendum p. 24, and Initial Report at 51 respectively.

I. BACKGROUND

A. Description of LSPG-NY and Related Entities

1. LSPG-NY and Its Ownership Structure

LS Power Grid New York Corporation I is a transmission-only company whose business is to develop, own, and operate transmission facilities in the NYISO region, organized under the laws of the State of New York. LS Power Grid New York Corporation I is wholly owned by LS Power Grid New York Holdings, LLC, which is wholly owned by LSP Transmission Holdings, LLC. LSP Transmission Holdings, LLC is wholly owned by LSP Generation IV, LLC and all of the membership interests of LSP Generation IV, LLC are owned by LS Power Associates, L.P. ("LS Power"). LS Power Development, LLC is the general partner and manager of LS Power and the employer of the majority of the staff that perform duties on behalf of LS Power and those LS Power subsidiaries that are controlled by LS Power. An organizational chart identifying these relationships is provided in Exhibit LSPG-NY-101.

2. LS Power Transmission Affiliates of LSPG-NY

Through various subsidiaries, LS Power develops, owns, and operates electric transmission and independent power projects throughout the United States. LS Power subsidiaries have the following transmission projects in operation or advanced development: (1) the ON Line transmission project, a 231-mile, 500 kV transmission project in service in Nevada (co-owned with Nevada Power Company); (2) the Harry Allen to Eldorado 500 kV Transmission Project, which will connect with the southern terminus of the ON Line transmission project (selected through a competitive process by the California Independent System Operator); (3) an approximately 300 mile high-voltage transmission system in service in Texas; (4) the new Silver Run 230 kV substation in Delaware and a new 230 kV line connecting the Silver Run substation to an existing substation in New Jersey in advanced development (selected through a competitive process by PJM Interconnection, L.L.C.); and (5) Duff to Coleman 345 kV transmission line, located primarily in Indiana with a portion in Kentucky, which is in advanced development (selected through a competitive process by the Midcontinent Independent System Operator, Inc.).

B. The Project

The Project is the result of processes that began in 2012 with New York Governor Andrew M. Cuomo's January 2012 State of the State Address and culminated on April 8, 2019 with approval by the NYISO Board of Directors ("Board"). Selected pursuant to the PPTPP,[8] the history leading to the NYISO's designation of LSPG-NY and NYPA to develop and own the

[8] In addition to its Public Policy Transmission Planning Process, Attachment Y of the NYISO OATT reflects three other major components: (1) Local Transmission Planning Process ("LTPP"); (2) Reliability Planning Process ("RPP"); Congestion Assessment and Resource Integration Study ("CARIS"), which with the PPTPP form the NYISO Comprehensive System Planning Process ("CSPP").

Project demonstrates the manner in which state and federal jurisdictional processes can work together to enhance development of transmission infrastructure.

1. The New York Energy Highway

The New York Energy Highway initiative included several proposals to address many of the energy challenges facing the state of New York. Governor Cuomo appointed the New York Energy Highway Task Force ("Task Force"), and the Task Force issued a Request for Information for developers of all types of energy projects.[9] Over 85 entities submitted responses to the Request for Information, and after reviewing the submittals the Task Force published the New York Energy Highway Blue Print ("Blue Print") in October 2012.[10] The Blue Print recommended over a dozen actions for state agencies to advance a number of key energy goals. In response to these recommendations, in November 2012 the New York Public Service Commission ("NYPSC") started several proceedings, including the proceeding in Case 12-T-0502 to examine alternating current transmission upgrades.[11]

The Order Instituting Case 12-T-0502 requested interested transmission developers to file by January 25, 2013, Statements of Intent regarding alternating current ("AC") transmission upgrades. Six developers submitted Statements of Intent for multiple projects, including transmission and non-transmission alternatives. After review of the Statements of Intent, in April 2013 the NYPSC issued an Order Establishing Procedures for Joint Review Under Article VII of the Public Service Law and Approving Rule Changes which requested initial Part A Article VII applications from transmission developers by October 1, 2013.[12]

The April 2013 order also required the Department of Public Service staff to issue a straw proposal on the process including alternatives for risk sharing. A July 2013 straw proposal identified several risk-sharing methods, recommending a method whereby costs greater than the developer's estimated costs would be shared 80% to the account of ratepayers and 20% to the account of developers ("80/20 Cost Containment"). The recommendation also provided that cost savings be shared in the same 80/20 Cost Containment manner, with 20% of savings under the estimate to be included in ratebase, to align developer's incentives with ratepayers with respect to minimizing costs.

Before October 1, 2013, four developers, including LSPG-NY, submitted Part A applications, most of which identified multiple alternative transmission improvements.[13] These submittals received significant public comment, and as a result the NYPSC put the review

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9 Exhibit LSPG-NY-100, Direct Testimony and Exhibits of Lawrence Willick ("Willick Testimony"), at 10.

10 *Id.* at 9-10.

11 *Id*. at 10, fn 5.

12 *Id*. at 10-11, fn 7.

13 *Id*. at 11, fn 8

process on hold to consider how to allow for modifications to proposals.[14] After additional comment, in December 2014 the NYPSC issued an Order Establishing Modified Procedures for Comparative Evaluation requesting developers to modify proposals and submit additional information in January through March 2015.[15] This December 2014 order specifically requested developers to modify proposals to fit within existing rights-of-way. A comparative analysis of alternatives was conducted during 2015. This comparative analysis continued to examine non-transmission alternatives.

During the course of Case 12-T-0502, the NYISO was modifying its Open Access Transmission Tariff to meet the requirements of FERC Order No. 1000. On August 1, 2014, NYISO initiated the first step in its Order No. 1000 compliant PPTPP for the 2014-15 planning cycle, requesting stakeholders to submit proposed transmission needs driven by public policy requirements before September 30, 2014.[16] Several entities identified the needs identified in Case 12-T-0502 as a potential public policy transmission need. On October 3, 2014, consistent with its public policy transmission planning process, NYISO submitted the stakeholder comments to the NYPSC.[17] The NYPSC issued a notice pursuant to the New York State Administrative Procedure Act soliciting public comments on the proposed public policy transmission needs.

On December 17, 2015, based on the record in Case 12-T-0502 including the detailed comparative analysis, and based on the comments related to public policy transmission needs, the NYPSC issued the Order Finding Transmission Needs Driven by Public Policy Requirements.[18] The December 2015 Order initiated the NYISO Public Policy Planning Process for AC Transmission Upgrades and defined several key considerations for the NYISO solicitation. Among the benefits of the proposed upgrades recognized in the December 2015 Order were: "1) enhancing system reliability, flexibility, and efficiency; 2) reducing environmental and health impacts; 3) increasing diversity in supply; 4) promoting job growth and the development of new efficient generation resources upstate; and, 5) mitigating reliability problems that may arise with expected generator retirements."[19] The December 2015 Order directed NYISO to conduct solicitations for upgrades designed to provide a minimum of 350 MW of Central East transfer capacity ("Segment A") and upgrades designed to provide a minimum of 900 MW of UPNY/SENY transfer capacity ("Segment B").[20] The NYPSC distinguished the transmission needs based on each affected interface (*i.e.*, Central East and UPNY/SENY) for solicitation purposes, but noted that the transmission need "is for the entire

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14 *Id*. at 12, fn 11.

15 *Id*. at 12.

16 *Id*. at 13, fn 15.

17 *Id*. at 13, fn 16.

18 *See* Exhibit LSPG-NY-103, the "December 2015 Order".

19 Willick Testimony at 14, fn 17.

20 *Id*. at 14.

portfolio."[21] The December 2015 Order identified other requirements and evaluation criteria such as upgrades to existing infrastructure, minimizing acquisition of new non-utility rights-of-way, and required developers to submit proposals that included 80/20 Cost Containment.[22]

2. LSPG-NY's Participation in the New York Energy Highway

LSPG-NY actively participated throughout the New York Energy Highway process. LSPG-NY submitted a response to the April 2012 Task Force Request for Information, submitted a Statement of Intent in Case 12-T-0502 on January 2013, Part A Applications under Article VII in Case 12-T-0502 *et. al*. by October 1, 2013 and submitted revised proposals within existing rights-of-way and additional information in January 2015.[23] LSPG-NY also actively provided comments on the proposed process throughout Case 12-T-0502 and submitted comments in response to the request for stakeholders to identify public policy transmission needs.[24]

3. NYISO's Competitive Process

Upon the NYPSC's issuance of the December 2015 Order, NYISO began its PPTPP under Section 31.4 of Attachment Y of the OATT. The NYISO established power flow study cases and reviewed the sufficiency and evaluation criteria at a February 2016 Electric System Planning Working Group/Transmission Planning Advisory Subcommittee meeting and made the study cases available to interested developers.[25]

On February 29, 2016 NYISO issued the AC Transmission Public Policy Transmission Needs Project Solicitation.[26] The Solicitation identified the needs, defined proposal submission requirements, set forth sufficiency criteria as well as evaluation criteria, all in accordance with the December 2015 NYPSC Order. Proposals were required to be submitted on or prior to April 29, 2016. Consistent with NYISO planning procedures, the NYISO process accepted and reviewed both transmission and non-transmission alternatives.

The Joint Developers submitted six proposals into the NYISO Solicitation, four Segment A proposals and two Segment B proposals.[27] NYISO identified that 16 project proposals were received, including transmission and non-transmission alternatives.[28] All proposals were reviewed against the minimum criteria. NYISO determined that 13 proposals were viable and

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21 *See* Exhibit LSPG-NY-103 at Appendix A, p. 2 "Notes".

22 Willick Testimony at 14.

23 *Id*. at 15.

24 *Id*.

25 *Id*. at 16, fn 22.

26 Exhibit No. LSPG-NY-104.

27 Willick Testimony at 16.

28 *Id*.

sufficient, including all six of the Joint Developer's proposals, and in October 2016 filed the Viability and Sufficiency Assessment at the NYPSC for consideration.[29] NYISO identified that all viable and sufficient proposals complied with the 80/20 Cost Containment requirement.

On January 24, 2017, the NYPSC issued an order confirming the AC Transmission Public Policy Transmission Need.[30] In the January 2017 Order the NYPSC found

> The Commission agrees that persistent congestion on the Central East and UPNY/SENY interfaces continues to contribute to higher energy costs for downstate customers and to limit the accessibility of renewable resources located upstate. As discussed by several commenters, the recently adopted Clean Energy Standard (CES), which will require 50% of the state's load to be served by renewable resources by 2030, further heightens the public policy need for transmission constraint relief and cross-state power flows. The CES will undoubtedly require significant increases in renewable generation capacity with the majority of that additional capacity likely to be located in the northern and western regions of the state. The increased transmission capacity will allow these resources to deliver their energy to downstate load centers and avoid being curtailed.
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> The Commission agrees that new 345 kV electric transmission upgrades should be fully evaluated by the NYISO for purposes of addressing the persistent congestion across the Central East and UPNY/SENY portions of the transmission system. The additional transmission capacity to move power from upstate to downstate New York should provide various economic and public policy benefits.[31]

NYISO presented the results of its detailed evaluation of proposals beginning in March 2018, leading up to the NYISO Board's Decision on April 8, 2019. NYISO posted initial results, including independent cost estimates, on March 30, 2018.[32] NYISO reviewed this information and responded to initial comments in two meetings with all developers in April 2018. The schedule and results, including responses to comments, were presented to the NYISO's Electric System Planning Working Group (ESPWG) and Transmission Planning Advisory Subcommittee

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29 *Id*. at 16-17, *citing* Exhibit No. LSPG-NY-105.

30 Exhibit No. LSPG-NY-106.

31 LSPG-NY-106 at 18-19.

32 Willick Testimony at 18, fn 25.

(TPAS) over eight meetings from April 2018 to March 2019.[33] The draft NYISO Public Policy Transmission Planning Report, including recommendations and incorporation of responses to stakeholder comments were presented in June 2018 to the Business Issue Committee and Management Committee for advisory votes,[34] and to the Operating Committee for information only. The NYISO Board considered and reviewed the Draft Report from July 2018 to December 2018. On December 27, 2018, NYISO posted the AC Transmission Public Policy Transmission Planning Report Addendum ("Report Addendum"). The Report Addendum, which included additional information and analysis requested by the NYISO Board, was the subject of additional stakeholder review and comment, and the Board made its final decision on April 8, 2019. The NYISO Board decision selected the joint proposal for the Project as the proposal for addressing the "Segment A" portion of the identified AC Transmission Public Policy Transmission Need.[35]

C. Benefits of the Project

The Project provides many benefits including congestion relief, improved system resilience, replacement of aging infrastructure, and emissions reduction by enabling new renewable generation. More broadly, the NYPSC Order Finding Transmission Needs Driven by Public Policy Requirements states

> [Department of Public Service] Trial Staff asserts that its analysis demonstrates that the identified portfolio of projects will reduce transmission congestion so that large amounts of power can be transmitted to regions of New York where it is most needed; reduce production costs through congestion relief; reduce capacity resource costs; improve market competition and liquidity; enhance system reliability, flexibility, and efficiency; improve preparedness for and mitigation of impacts of generator retirements; enhance resiliency/storm hardening; avoid refurbishment costs of aging transmission; take better advantage of existing fuel diversity; increase diversity in supply, including additional renewable resources; promote job growth and the development of new efficient generation resources Upstate; reduce environmental and health impacts through reductions in less efficient electric generation; reduce costs of meeting renewable resource standards; increase tax receipts from increased infrastructure investment; enhance planning and operational flexibility; obtain synergies with

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33 *Id*. at 18.

34 On June 20, 2018, the Business Issues Committee voted with 76.33% affirmative votes to recommend that the Management Committee recommend approval of the Draft Public Policy Transmission Planning Report by the NYISO Board of Directors. On June 26, 2018, the Management Committee voted with 80.00% affirmative votes to recommend approval of the Draft Public Policy Transmission Planning Report by the NYISO Board of Directors.

35 *See* Exhibit LSPG-NY-107, which includes the final Report Addendum.

other future transmission projects; and relieve gas transportation constraints.[36]

1. Congestion Relief

Congestion within New York State, particularly on Central East, is well documented. It has been studied and identified in multiple areas of New York State transmission planning and operating history. The specific congestion reduction of the Project has been studied and quantified in the Public Policy Transmission Process that resulted in the selection of the Project.

The NYISO conducts economic planning over a biennial cycle in its Congestion Assessment and Resource Integration Study ("CARIS") process. Over the past several cycles the primary congestion in the CARIS process has been identified to be located on the Central East interface.[37] The most recent CARIS cycle, 2017, identifies Central East as the top congested flowgate. That CARIS report identifies the historic Demand$ Congestion[38] on Central East as being over $4 billion in the 5 year period from 2012 to 2016, representing 64% of the total Demand Congestion in the state.[39] In addition to studying Central East alone, the 2017 CARIS report studied Central East+UPNY/SENY. Significant Central East congestion has also been in reports provided by the Market Monitoring Unit ("MMU"). In the most recent NYISO State of the Market Report, the 2018 State of the Market Report, issued May 2019, the MMU found, "Similar to prior years, the largest share of congestion values accrued on the Central-East interface, which accounted for 32 percent of congestion value in the day-ahead market and 25 percent in the real-time market in 2018."[40] Similarly, the MMU found in the 2017 State of the Market Report that "[t]he largest share of congestion values accrued on the Central-East interface, which accounted for 41 percent of congestion value in the day-ahead market and 31 percent in the real-time market in 2017."[41] Central East experienced congestion during more than 50% of hours in the Day-Ahead Market in 2017.[42]

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36 Exhibit LSPG-NY-103 at 13.

37 Willick Testimony at 20-21, fn. 20-21 providing links to the 2009, 2011, 2013, 2015 and 2017 Congestion Assessment and Resource Integration Study (CARIS).

38 *See* CARIS reports for a definition of Demand$ Congestion, which is not necessarily the same as the cost of congestion to ratepayers but a measure of the relative difference in the price of electricity across a congested flowgate.

39 Willick Testimony at 21, *citing* 2017 CARIS, p. 43.

40 *Id*. at 21-22, *citing* https://www.nyiso.com/documents/20142/2223763/2018-State-of-the-Market-Report.pdf/b5bd2213-9fe2-b0e7-a422-d4071b3d014b?t=1557344025932 at A. 67.

41 https://www.nyiso.com/documents/20142/2926481/NYISO-2017-SOM-Report-5-07-2018_final.pdf, ("2017 State of the Market Report") Executive Summary at A-65, see also Executive Summary at ii, "Consequently, the most significant congestion appeared on the Central-East Interface, which flows power from Western New York to Eastern New York and accounted for 41 percent of total day-ahead congestion revenues in 2017".

42 2017 State of the Market Report at 9.

The AC Transmission Public Policy Transmission Planning Report ("Public Policy Transmission Planning Report") presents NYISO's specific analysis of congestion relief provided by the Project. NYISO conducted a 20-year production cost analysis of proposal groupings for a baseline scenario as well as several sensitivities including high natural gas forecast, low natural gas forecast, and a Clean Energy Standard ("CES") scenario.[43] For all cases, the Project provided among the highest decrease in total Demand Congestion. For the Baseline analysis, the selected projects were identified as providing $2.576 billion in Demand Congestion Change in 2018 dollars.[44] For the CES Scenario, the Project was identified as providing $9.633 billion in Demand Congestion Change in 2018 dollars.[45]

2. Resiliency

The resiliency of the New York State transmission network was a key consideration of the New York Energy Highway beginning with the Task Force Blueprint in 2012. State officials were concerned with the ability to maintain reliability in the event of the retirement of downstate baseload generators, specifically the Indian Point Energy Center. The 2012 Reliability Needs Assessment studied the potential retirement of Indian Point and identified the potential for reliability violations to arise with the retirement of Indian Point without further action.[46] Other downstate generating units were also identified as being at risk of retirement.[47]

The New York State transmission system was also tested by Hurricane Sandy in October 2012, with local service outages as a result of certain transmission/distribution facilities and local generating units being forced out of service. Therefore, the need for a resilient transmission system was a key consideration when the NYPSC issued the Order Instituting the AC Transmission Proceeding in November 2012. In fact, at the same time the AC Transmission Proceeding was initiated, the NYPSC also issued an Order Instituting Proceeding and Soliciting Indian Point Contingency Plan in Case 12-E-0503. The Project increases the system resiliency as reflected in subsequent orders, such as in the December 2015 Order, stating that transmission improvements will "enhance system reliability, flexibility, and efficiency; improve preparedness for and mitigation of impacts of generator retirements; enhance resiliency/storm hardening; …and relieve gas transportation constraints."[48]

3. Replacement of Aging Infrastructure

The December 2015 Order also realized the replacement of aging transmission infrastructure as a priority and a benefit of the Project. The New York State Transmission Assessment and Reliability Study ("STARS") Report in April 2012 identified a significant

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43 Exhibit LSPG-NY-109 at 76.

44 *Id*. at 76.

45 *Id*.

46 Willick Testimony at 23.

47 *Id*.

48 Willick Testimony at 24, *citing* Exhibit LSPG-NY-105 at 13.

amount of New York state transmission facilities that would require future replacement due to condition/age, including the Porter to Rotterdam 230 kV facilities and the 115 kV transmission facilities between Greenbush and Pleasant Valley.[49] The Department of Public Service staff report identified a significant amount of cost that would be required to replace these facilities with facilities of the same voltage. By replacing these facilities with facilities of a higher voltage, such replacement could increase the transfer capability of the corridor without significant incremental construction activity. The NYPSC December 2015 order recognized that "[s]ome of the facilities are aging and will shortly need to be rebuilt in place,"[50] and thus required consideration of aging infrastructure as a criterion in the analysis.

4. Fuel Diversity and Renewable Resources

Several of the benefits identified in the NYPSC's December 2015 Order relate to emission reductions: "take better advantage of existing fuel diversity; to increase diversity in supply, including additional renewable resources; to promote job growth and the development of new efficient generation resources Upstate; to reduce environmental and health impacts through reductions in less efficient electric generation; to reduce costs of meeting renewable resource standards . . .."[51] The NYPSC recognized that transmission improvements will result in both more efficient dispatch of existing resources and provide transmission capacity to utilize additional new renewable resources.

While the NYPSC's Order Adopting a Clean Energy Standard[52] was not issued until August 1, 2016, after the Order Adopting an AC Transmission Public Policy Transmission Need, the carbon reducing goals were included in the State Energy Plan, and there was an expectation that a form of clean energy standard would be adopted.[53] The NYPSC recognized that transmission expansion would be needed to meet these goals. The August 2016 CES Order established a renewable energy goal to have 50% of New York's electricity from renewable sources by 2030.[54]

The ability for the Project to help meet the CES is clearly identified in the Public Policy Transmission Planning Report. The Project, along with the selected project for Segment B, provides significantly improved performance in terms of Central East energy flows in the CES scenario, and significant carbon emission reductions of 10.7 million tons in the CES scenario.[55]

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49 http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Documents_and_Resources/Special_Studies/STARS/Phase_2_Final_Report_4_30_2012.pdf, at 32-36.

50 Exhibit LSPG-NY-103 at 30.

51 Exhibit LSPG-NY 103 at 66-67.

52 http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={44C5D5B8-14C3-4F32-8399-F5487D6D8FE8} ("August 2016 CES Order")

53 Willick Testimony at 26.

54 *Id*. at 27

55 *Id.* at 27-28.

Other New York stakeholders have identified transmission upgrades such as the Project as required. For example, in a presentation made to the Integrating Public Policy Task Force by the City of New York, it is noted that transmission upgrades such as the Project are necessary to meet the State's carbon reduction goals.[56] Another Task Force stakeholder presentation by Daymark Energy Advisors on behalf of the New York Department of State Utility Intervention Unit quantifies the impact of transmission upgrades, such as the Project, in meeting the CES.[57]

5. Capacity Market Benefits

The Public Policy Transmission Planning Report and Addendum identify capacity market benefits from the Project, in addition to the production cost savings and congestion relief discussed above. The capacity market benefit arises from several impacts of the transmission system expansion on the ability of generation throughout the state to meet local capacity requirements. By increasing the transfer limits across several key interfaces, there is capacity procurement savings due to factors including a reduction in the capacity required to meet the loss of load expectance requirement (as a result of reduced system losses) and also the required location of capacity needed to meet the LOLE requirement. NYISO estimates this benefit to in the range of $744 million to $1,936 million on a net present value basis in 2018, while the MMU's assessment of the capacity market benefit ranges from $237 million to $592 million.[58]

II. REQUESTED APPROVALS AND AUTHORIZATIONS

A. Request for Approval of Formula Rate

LSPG-NY requests that the Commission accept for filing and incorporation into the NYISO OATT, as a new Section 6.10.6, Attachment 1 to Rate Schedule 10, the: (i) the Formula Rate Template, which will calculate LSPG-NY's ATRR; and (ii) the associated Formula Rate Protocols. The Formula Rate Template is generally consistent with Formula Rate Templates of other transmission developers previously accepted by the Commission for incorporation into the OATT, with minor modifications as discussed below.

B. Request for Approval of Transmission Rate Incentives

Pursuant to Section 219 of the Federal Power Act and *Order No. 679*, LSPG-NY requests that the Commission grant the following incentive rates: (1) capitalization of certain costs that would not otherwise be capitalized and authorization to establish a regulatory asset for such

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56 Recommendations for the Integrating Public Policy Task Force by the City of New York, February 5, 2018 at slide 4 https://www.nyiso.com/documents/20142/1408068/NYC%20IPPTF%20Presentation_020518.pdf/34358746-347f-2a0a-b686-10cfabb25c57.

57 Evaluating Mechanisms to Meet Public Policy Goals presentation by Daymark Energy Advisors https://www.nyiso.com/documents/20142/1404028/Evaluating%20Mechanisms%20to%20Meet%20Public%20Policy%20Goals.pdf/5d8146f3-9705-2360-a5ee-caebeb01fd54.

58 Report Addendum at 27.

costs; (2) use of a hypothetical capital structure consisting of 47% debt and 53% equity until the Project achieves full commercial operation; (3) a 50 basis point adder to LSPG-NY's return on equity ("ROE") for participating in a Regional Transmission Organization ("RTO") as an ITC, subject to the resulting overall ROE being within the zone of reasonableness; (4) a 50 basis point adder to LSPG-NY's ROE for the risks and challenges of the Project, subject to the resulting overall ROE being within the zone of reasonableness; and (5) a performance-based ROE adjustment if appropriate based on Project costs under the 80/20 risk mitigation required as part of the Project proposal. The incentives requested are narrowly tailored to the risks faced in the development and construction of the Project and will allow LSPG-NY to attract the capital necessary to move forward with the Project in the most efficient and cost-effective manner.

Although the Project would also appear to qualify for additional incentives under *Order 679* and Commission precedent,[59] LSPG-NY is mindful that the incentive measures requested, taken together, must balance the need to reduce the risk for the Project sufficiently to allow it to raise capital in sufficient amounts at a reasonable cost with the need to ensure that rates to consumers remain just and reasonable.[60] LSPG-NY has tailored its request for incentives to a package of incentives necessary given the risks and challenges faced by the Project.

C. Requested Effective Date

LSPG-NY requests an effective date of March 2, 2020 for its Formula Rate, which is more than sixty (60) days after the date of this filing. The elements of this filing are consistent with Commission policy and are fully supported by the testimony and associated exhibits included as part of this filing. In the event that the Commission finds that a hearing is necessary, LSPG-NY requests that the Commission suspend the filing for a nominal period of only one day so that the requested Formula Rate can go into effect on the requested effective date.

III. CONTENTS OF FILING

This filing consists of the following:

1. This transmittal letter;

2. Attachment A: clean version of the proposed revisions to the NYISO OATT to add a new Section 6.10.6, Attachment 1 to Rate Schedule 10, including LSPG-NY Formula Rate, including the Formula Rate Template and Implementation Protocols. Because these are new Tariff sheets, a blackline is not included;

3. Attachment B: The Direct Testimony and Exhibits of Lawrence Willick, Exhibit Nos. LSPG-NY 100-107. Mr. Willick's testimony provides an overview of LSPG-NY's filing, describes LSPG-NY, describes the Project and the benefits of the Project, and

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59 For example, inclusion of Construction Work in Progress ("CWIP") in rate base.

60 *See*, Joint Comments of American Chemistry Council, the American Forest & Paper Association, *et al*, Docket No. RM10-23-000 (Sep. 29, 2010), at 13-23; Reply Comments of the Illinois Commerce Commission ("ICC"), Docket No. RM10-23-000 (Nov. 5, 2010), at 6-9.

summarizes the NYISO process that led to LSPG-NY and NYPA being selected to develop the Project and the issues of concern addressed by the Project and explains how LSPG-NY is implementing the 80/20 Cost Containment.

4. Attachment C: The Direct Testimony and Exhibits of Casey Carroll Exhibit Nos. LSPG-NY 200-201. Mr. Carroll's testimony describes the Project, the advanced technology used by the Project, and the process for development and construction of the Project including the risks and challenges faced by LSPG-NY which are the bases for certain specific transmission rate incentive requests.

5. Attachment D: The Direct Testimony and Exhibits of Cameron Tajvar, Exhibit Nos. LSPG-NY-300-301. Mr. Tajvar's testimony (i) explains how LSPG-NY is currently funded and will be funded in the future, including LSPG-NY's targeted credit profile; (ii) describes the financial risks facing LSPG-NY as a non-incumbent transmission owner; (iii) explains why LSPG-NY qualifies for the Hypothetical Capital Structure Incentive; and (iv) supports the cost of debt and incentive ROE adder that are included in the proposed Formula Rate Template.

6. Attachment E: The Direct Testimony and Exhibits of Joseph L. Myers, Exhibit No. LSPG-NY-400. Mr. Myers' testimony describes the accounting matters related to LSPG-NY's formula rate filing, including the treatment of affiliate costs, basis for the incentive rate request for regulatory asset treatment of prudently incurred costs not capitalized and the calculation of a tax allowance.

7. Attachment F: The Direct Testimony and Exhibits of Christopher A. Nagle, Exhibit Nos. LSPG-NY-500-502. Mr. Nagle's testimony describes the features of LSPG-NY's proposed Formula Rate and Protocols and explains why LSPG-NY's proposal is just and reasonable. Exhibit No. LSPG-NY-501 is an Excel version of the Formula Rate Template with all formulas active.

8. Attachment G: The Direct Testimony and Exhibits of Dane Watson, Exhibit Nos. LSPG-NY 600-603. Mr. Watson's testimony supports the depreciation rates proposed for the Project facilities.

9. Attachment H: The Direct Testimony and Exhibits of Robert B. Hevert, Exhibit Nos. LSPG-NY 700-713. Mr. Hevert's testimony establishes the appropriate base ROE for LSPG-NY investment in the Project and included in the Formula Rate Template.

IV. THE PROPOSED FORMULA RATE IS JUST AND REASONABLE

LSPG-NY requests that the Commission accept the attached Formula Rate for filing effective March 2, 2020. The Commission has encouraged public utilities to file "transmission-related formula rates," observing that "formula rates can provide the certainty of recovery that is conducive to large transmission expansion programs."[61] Acceptance of the Formula Rate will

[61] Order No. 679 at P 386.

provide LSPG-NY with certainty of cost recovery as it develops the Project and potentially future transmission projects in NYISO.

The LSPG-NY Formula Rate Template and Formula Rate Protocols, submitted as Attachment 1 to Rate Schedule 10 of the OATT (Section 6.10.6 of Rate Schedule 10) and set forth in Attachment A to this filing, are just and reasonable, consistent with other Commission approved formula rates and associated protocols incorporated into the OATT. The LSPG-NY ATRR determines the charges for the use of LSPG-NY facilities in providing transmission service within NYISO. The Formula Rate Template is designed to calculate an ATRR that will be recoverable by LSPG-NY under the NYISO Tariff. The Formula Rate Template is a forward-looking formula under which costs are projected and then trued-up to actual costs once they are known. In addition to consistency with other approved formula rate template and formula rate protocols,[62] the Formula Rate Template follows Commission precedent for other formula rates recently approved by the Commission for other transmission-owning companies in NYISO, [63] as well as LSPG-NY affiliates including Northeast Transmission Development, LLC,[64] Desertlink, LLC,[65] and Republic Transmission, LLC.[66] The Formula Rate Template is consistent with Commission-approved ratemaking methodologies and contains sufficient specificity so that it can be applied without discretion on the part of LSPG-NY. The Formula Rate Template also fully incorporates the 80/20 Cost Containment.[67]

The Formula Rate Protocols for populating and updating the Formula Rate Template likewise are consistent with recent Commission precedent requiring all such protocols to comply with the requirements announced in orders addressing MISO transmission owning members.[68]

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62 *See, NYISO Interconnection, LLC*, 152 FERC ¶ 61,180 (2015). *See also American Transmission Co.*, 97 FERC ¶ 61,139 (2001); *Boston Edison Co.*, 91 FERC ¶ 61,198 (2000); *Northeast Utilities Service Co.*, 105 FERC ¶ 61,089 (2003), *reh'g denied*, 111 FERC ¶ 61,333 (2005); *San Diego Gas & Electric Co.*, 103 FERC ¶ 61,115 (2003), *reh'g denied*, 104 FERC ¶ 61,149 (2003); *Commonwealth Edison Co.*, 122 FERC ¶ 61,030 (2008); *American Electric Power Service Corp.*, 124 FERC ¶ 61,306 (2008); *Tallgrass Transmission*, LLC, 132 FERC ¶ 61,114 (2010); *AEP Appalachian Transmission Company, Inc.*, 135 FERC ¶ 61,066 (2011); *RITELine Illinois, LLC*, 137 FERC ¶ 61,039 (2011); *Xcel Energy Southwest Transmission Co., LLC*, 149 FERC ¶ 61,182 (2014).

63 Exhibit No. LSPG-NY-500, Direct Testimony and Exhibits of Christopher Nagle ("Nagle Testimony"), at 5-6, *citing New York Transco, LLC* Docket No. ER15-572 and *NextEra Energy Transmission New York, Inc.* Docket No. ER16-2719; The Commission's initial decisions in those matters are: *New York Transco, LLC*, 151 FERC ¶ 61,004 (2015); *NextEra Energy Transmission New York, Inc.*, 161 FERC ¶ 61,138 (2017).

64 *Northeast Transmission Development, LLC*, Docket No. ER16-453, 155 FERC P 61097 (2016).

65 *See DesertLink, LLC*, Docket No. ER17-135, 161 FERC ¶ 61126 (2017)

66 *See Republic Transmission, LLC*, Docket No. ER19-605, 167 FERC ¶ 61215 (2019).

67 Exhibit No. LSPG-NY-100, Direct Testimony and Exhibits of Lawrence Willick ("Willick Testimony") at 30.

68 *See Midwest Independent Transmission System Operator, Inc.*, 143 FERC ¶ 61,149 (2013) (the "MISO Investigation Order"), *reh'g denied*, 146 FERC ¶ 61,209 (2014) and *Midwest Independent*

LSPG-NY's Formula Rate Protocols also comply with the July 17, 2014 Commission Staff Guidance on formula rate updates.[69] The Protocols establish a transparent process governing an annual informational filing, information exchange between LSPG-NY and interested parties, as well as procedures for informal and formal challenges to LSPG-NY's implementation of the Formula Rate Template.

A. LSPG-NY ATRR Attachment

As Mr. Nagle explains in his testimony, NYISO will use the LSPG-NY ATRR to determine charges for the use of LSPG-NY facilities in providing transmission service within NYISO.[70] The Formula Rate Template calculates LSPG-NY's cost of service in the form of an ATRR, which is then provided to NYISO and will be recovered through Rate Schedule 10 of the NYISO Tariff.[71] LSPG-NY's Formula Rate and Protocols will be incorporated into the OATT as Attachment 1 to Rate Schedule 10 (Section 6.10.6 of Rate Schedule 10).

B. Formula Rate Template

1. General Formula Rate Provisions

The Formula Rate Template is similar to formula rate templates accepted by the Commission for other Transmission Owners that have been incorporated into the OATT.[72] To calculate its ATRR, LSPG-NY will forecast the values that will populate the Formula Rate Template each Rate Year.[73]

The Formula Rate Template uses 13-month average plant balances in determining the rate base upon which the return and the income tax components of the annual net revenue requirement are calculated.[74] LSPG-NY will forecast the average of the 13 monthly balances in rate base.[75] If the projected balances are incorrect, the true-up mechanism subsequently will adjust the rate produced by the Formula Rate Template to account for any prior over or under collections.

Transmission System Operator, Inc., 146 FERC ¶ 61,212 (2014) (the "MISO Compliance Order"), *reh'g denied*, 150 FERC ¶ 61,024 (2015). *See also PJM Interconnection*, 152 FERC ¶ 61,180 at P 18.

69 FERC Staff's Guidance on Formula Rate Updates (Jul. 17, 2014), *available at* https://www.ferc.gov/industries/electric/indus-act/oatt-reform/staff-guidance.pdf.

70 Nagle Testimony at 3.

71 *See* Section 6.10 of the NYISO Tariff, Schedule 10, Rate Mechanism for the Recovery of the Regulated Transmission Facilities Charge.

72 *Id*. at 5-6

73 Nagle Testimony at 3.

74 *Id.* at 3.

75 *Id.*

The annual projected values are subject to a true-up mechanism, which ensures that LSPG-NY and its customers are protected from potential variances between projected and actual values. The rate in effect for the Rate Year is calculated pursuant to the formula using this forecast. On or before June 30 after the end of the Rate Year, the actual average rate base and annual expenses are then computed.[76] The difference between the ATRR forecast and the actual ATRR, positive or negative, is computed, with interest, and is used to adjust the projected rate for the subsequent Rate Year. Interest on any over-recovery is calculated pursuant to Section 35.19a of the Commission's regulations.[77]

2. Lump Sum Lease Payment Provision

As discussed above, the Project is expected to be built within existing utility rights-of-way. The NYPSC held that these rights-of-way are held by the incumbent utilities for the benefit of ratepayers and will be made available to the entity selected as a result of the competitive process. It is expected that the incumbent utilities will be compensated for the use of their right-of-way as well as for the value of the existing transmission lines that will be removed. Although LSPG-NY has begun discussions with the incumbent utility, LSPG-NY does not know the amount or form of such payment, or how such payments will be accounted for in its books and records. Specifically, LSPG-NY does not know if it will be a purchase of the existing right-of-way, a license to use the existing right-of-way, a long-term lease, or some other agreement, and if the payment would be an upfront purchase, an annual capital lease payment, or an upfront pre-payment of a long-term lease, or a combination of approaches. Therefore, LSPG-NY requests to include upfront lump sum payments of the lease of transmission assets or right of ways if the lease qualifies as a capital lease under the Uniform System of Accounts through the inclusion of Account 101.1 in ratebase. The unamortized balance would be included in Line 26 of the Formula Rate Template. Consistent with General Instruction No. 20, "Accounting for Leases," LSPG-NY would record these capital leases in Account 101.1, with offsetting liabilities in account 227, Obligations under Capital Leases—Noncurrent, or account 243, Obligations under Capital Leases—Current, and the amortization of the lump sum payment over the life of the lease to Account 567, Rents.[78]

3. Acquisition Adjustment Provision

As noted above, the Project, in part, involves replacing the two existing 230 kV transmission circuits with new 345 kV circuits and using existing right of way, where available. Use of existing rights-of way was a significant requirement in the PPTPP. The replacement of aging infrastructure was a key priority of the Public Policy Transmission Need identified by the

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76 *Id.* at 4

77 18 C.F.R. § 35.19a (2015).

78 *See, NextEra Energy Transmission New York, Inc.*, 162 FERC ¶ 61,196 (2018)(granting this incentive to a similarly situated transmission developer regarding a project arising from the New York Energy Highway Public Policy initiative.)

NYPSC.[79] Although the NYPSC specifically required that incumbent utilities make rights-of-way available to the selected developer, compensation for, and terms governing use of, the rights-of-way remain outstanding.[80] Beyond the fact that the rights-of-way are owned by an incumbent utility, the rights-of-way are occupied by existing facilities. LSPG-NY will need to coordinate with the existing asset owner regarding the disposition of these facilities which may result in transfer to LSPG-NY. The compensation for, and terms governing the required removal of those existing facilities also remains outstanding. At the current stage of development, negotiations regarding these matters have only recently begun and the structure of the ultimate transaction or transactions is unknown.

To facilitate potential acquisition transactions related to the rights-of-way and existing facilities, the Formula Rate Template includes provisions for incorporating a 'Net Acquisition Adjustment,' if applicable for these required transactions. LSPG-NY will not know whether the use of this provision will be needed until conclusion of negotiations with the existing owner of those assets, an existing transmission owner and non-affiliate of LSPG-NY. If LSPG-NY's use and control of the rights-of-way results in a purchase transaction, the policy in New York State is for a transfer of utility real estate to occur at fair market value, which is likely to represent a higher value than when the original utility placed the property in service. This transaction would be subject to approval of the NYPSC who will also ensure that rate payers receive the benefit of the any purchase and the associated acquisition adjustment.

Under Commission policy, rate recovery of an existing facility is generally limited to the original cost of the facility. Recovery of amounts above the original cost, referred to as an acquisition premium, in cost-based rates is allowed only if the acquisition is prudent and provides measurable, demonstrable benefits to ratepayers.[81] Amounts above the original cost, including goodwill, are excluded from rates absent a filing under FPA section 205 and Commission authorization to include an acquisition premium in rates.[82]

Consistent with Commission precedent, if LSPG-NY's development of the Project results in an acquisition of existing facilities at more than book cost, any amount above cost will be considered an acquisition 'premium' which cannot be included in rates unless LSPG-NY demonstrates that: (1) the transaction was an arms-length transaction; (2) the acquired facility is being put to a new use; and (3) whether the purchaser has demonstrated consumer benefits

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79 *See infra*, Section I.C.3 at 12-13.

80 LSPG-NY-103, at 60 (finding: "The Commission does not expect the utility company owner of the rights-of-way to give away its ratepayer-funded property rights for free. Nor does the Commission expect the utility company owner to allow the use of utility rights-of-way without reasonable operating conditions. Instead, the Commission expects the utility company owner to bargain in good faith to reach an agreement with the developer of the transmission solution as to property access and compensation as it would for other linear project developers that seek to co-locate on utility property. The utility company owner is the steward of the property held for the benefit of its ratepayers, and the beneficiaries of the transmission solution should provide just compensation to the utility company ratepayers that funded the asset.")

81 *Ameren Corporation.,* 140 FERC ¶ 61,034, at PP 10-11 (2014).

82 *Policy Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189 at P 18 (2016).

resulting directly from the sale.[83] Each of those facts is true here and LSPG-NY's acquisition of the required rights-of-way and existing facilities meets the requirements for such inclusion. Because the existing owner is an incumbent transmission owner, non-affiliate, and competitor of LSPG-NY, the negotiations will be at arms-length. The acquired facilities will be put to new use as the rights-of-way where existing facilities reside will be used for newly developed transmission facilities operating at a higher voltage (230 kV existing vs. 345 kV planned) that constitute the Project. As described in Section I.C. the new use was determined to be a Public Policy Transmission Need for the State of New York and will provide "tangible, non-speculative, and quantifiable" benefits to consumers.[84] As reflected, NYISO's Baseline analysis found that the selected projects would provide $2.576 billion in Demand Congestion Change in 2018 dollars and for the CES Scenario $9.633 billion in Demand Congestion Change in 2018 dollars.[85] NYISO estimates that capacity market benefits will be in the range of $744 million to $1,936 million on a net present value basis in 2018, while the MMU's assessment of the capacity market benefit ranges from $237 million to $592 million.[86]

As such, any 'premium' resulting from LSPG-NY's required acquisition of the rights-of-way or existing facilities to facilitate the development of the Project will be determined through an arms-length transaction and result in direct and substantial customer benefits as a result of the Project. To the extent that LSPG-NY's required acquisition of the use or control of rights-of-way results in an acquisition adjustment under Commission precedent, LSPG-NY requests that the Commission allow inclusion of those required acquisition expenses in rates through inclusion of the Net Acquisition Adjustment in the Formula Rate Template up to the fair market value of the acquired rights-of-way. The fair market value will be determined by an independent appraiser. LSPG-NY would not be able to recover any amount over fair market value without Commission authorization.

4. Inclusion of Segment B Costs

Although the Project represents the only current transmission development for LSPG-NY, the Formula Rate Template is structured to accommodate multiple projects. As reflected in NYISO AC Transmission Public Policy Transmission Planning Report,[87] LSPG-NY was not only a respondent to the NYISO solicitation regarding Segment B, LSPG-NY and NYPA's joint proposal was initially selected. Regardless of that selection, the NYISO Tariff specifically provides for the recovery of developer solicitation response costs if the NYPSC requested the developer to respond to the solicitation. LSPG-NY meets the requirements for recovery of its Segment B expenses. As discussed below, those expenses will be recovered through the Formula Rate in the same manner as LSPG-NY's Regulatory Asset for the Project.

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83 *Missouri Public Service Comm'n v. FERC*, 601 F.3d 581, 586 (D.C. Cir. 2010).

84 *Id.*, *quoting Kan. Pipeline Co.*, 81 FERC ¶ 61,005, at 61,018 (1997).

85 *Infra*, Section I.C.1 at 11-12.

86 *Infra*, Section I.C.5 at 14.

87 LSPG-NY-105, Attachment A.

C. Formula Rate Protocols

Mr. Nagle's Direct Testimony describes LSPG-NY's proposed Formula Rate Protocols, which are consistent with the protocols approved for other NYISO transmission owners. The Formula Rate Protocols set out the procedures for populating and updating LSPG-NY's Formula Rate Template. Based on the Commission's instruction to other entities with forward-looking formula rates,[88] LSPG-NY's Protocols satisfy the Commission's concerns with respect to (i) scope of participation in LSPG-NY's information exchange process; (ii) the transparency of the information exchange; and (iii) the ability of interested parties to challenge LSPG-NY's implementation of the Formula Rate as a result of the information exchange. LSPG-NY's Formula Rate Protocols are consistent with the MISO Investigation Order and MISO Compliance Order.[89] Because LSPG-NY's proposed Formula Rate Protocols satisfy the Commission's requirements for forward-looking formula rate protocols, LSPG-NY's proposed Protocols are just and reasonable.[90]

D. Base Return on Equity

Mr. Hevert provides an independent appraisal of the cost of equity to LSPG-NY and recommends a rate of return on equity that is fair and provides LSPG-NY with the ability to attract capital on reasonable terms. Mr. Hevert's evaluation considers the Commission's most recent guidance and policy objectives, including the guidance provided on remand of *Emera Maine v. FERC*[91] and Opinion No. 569.[92] Mr. Hevert concludes that a base ROE of 10.00% is just and reasonable.[93]

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88 *See, e.g., PJM Interconnection*, 152 FERC ¶ 61,180; *see also The Empire District Electric Co.*, 148 FERC ¶ 61,030 at P 7 (2014) (directing Empire to file revisions to its formula rate protocols "to conform to the requirements of the MISO Investigation Order and MISO Compliance Order or show cause why it should not be required to do so.")

89 *Midwest Independent Transmission System Operator, Inc.*, 143 FERC ¶ 61,149 (2013), *reh'g denied*, 146 FERC ¶ 61,209 (2014); *Midwest Independent Transmission System Operator, Inc.*, 146 FERC ¶ 61,212 (2014), *reh'g denied*, 150 FERC ¶ 61,024 (2015); *Midwest Independent Transmission System Operator, Inc.*, 150 FERC ¶ 61,025 (2015)(Order on Compliance Filings).

90 Nagle Testimony at 4-6.

91 *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017*); Martha Coakley, Attorney General of the Commonwealth of Massachusetts, et. al., v. Bangor Hydro, et. al.*, Order Directing Briefs, 165 FERC ¶ 61,030 (2018).

92 Opinion No. 569, Order on Briefs, Rehearing, and Initial Decision, 169 FERC ¶ 61,129 (November 21, 2019)("Opinion No. 569").

93 LSPG-NY-700, Direct Testimony and Exhibits of Robert B. Hevert ("Hevert Testimony") at 6.

In reaching his recommendation, Mr. Hevert applied both the Commission's recent guidance in Docket Nos. EL11-66-001 and EL14-12-003,[94] (providing results for the two-stage form of the Discounted Cash Flow ("DCF") model,[95] the Capital Asset Pricing Model ("CAPM"), the Bond Yield Plus Risk Premium model, and the Expected Earnings approach), but also the Commission issuance of Opinion No. 569 on November 21, 2019. Mr. Hevert determined that based on the Company's risk profile, and the results based on reasonable adjustments to the Commission's prescribed methods, LSPG-NY's ROE should be set toward the upper end of the range of 9.63 percent to 10.11 percent.[96] Mr. Hevert concludes that upper end of the zone of reasonableness should be 11.35 percent.[97]

E. Capital Structure

LSPG-NY proposes no more than 53% equity for the Project. LSPG-NY will use its actual capital structure after the Project is placed in service, subject to the cap of 53%.[98] The limitation is incorporated into the Formula Rate Template.

LSPG-NY has requested, as discussed below, the Hypothetical Capital Structure Incentive. Because the Project has multiple components and will in some instances be replacing facilities currently in use, LSPG-NY expects the Project may go into service in phases. As such LSPG-NY requests that it be permitted to use the Hypothetical Capital Structure Incentive until all portions of the Project are fully placed in service, at which time it would use its actual capital structure, subject to the limitation referenced above.

F. Cost of Debt

LSPG-NY proposes to use the actual cost of long-term debt in the Formula Rate.[99] This will be based on the actual total cost of long-term debt including interest and amortization of all fees, divided by the total amount of long-term debt outstanding, on a 13-month average basis. During the development and construction period, prior to the issuance of long-term debt, LSPG-NY proposes to use a proxy debt rate calculated based on the 1-year London Interbank Offered Rate ("LIBOR") plus 175 basis points.[100] For each applicable month used in the Formula Rate's

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94 *See* Docket No. EL11-66-001, *et al*., *Order Directing Briefs*, 165 FERC ¶ 61,030 (October 16, 2018); Docket No. EL14-12-003, *et al*., *Order Directing Briefs*, 165 FERC ¶ 61,118 (November 15, 2018).

95 The Commission's preferred two-stage form of the DCF model is also referred to herein as the Two-Step DCF model.

96 Hevert Testimony at 56-57.

97 *Id*. at 57, *citing* Tables 9, 10.

98 Tajvar Testimony at 10.

99 Exhibit No. LSPG-NY-200, Direct Testimony and Exhibits of Casey Carroll ("Carroll Testimony") at 7.

100 Tajvar Testimony at 7.

calculations, LSPG-NY proposes to utilize the Proxy Debt Rate effective for the last business day of the month.[101]

G. Depreciation Rates

Consistent with Commission precedent, the Formula Rate Template includes stated depreciation rates for transmission and general plant. As a transmission-only company that is in the process of developing and constructing its first transmission asset, LSPG-NY lacks an operating history upon which to base a depreciation study. The Commission has authorized companies that do not yet own operational transmission facilities to use the depreciation rates of an affiliate as a proxy for the new entity's depreciation rates. In this instance LSPG-NY believes that the depreciation rates of Cross Texas Transmission, LLC ("Cross Texas"), with two minor changes, approximate the appropriate rates. As discussed in the Testimony of Dane E. Watson, the transmission facilities encompassing the Project will be of similar design, age, and voltage as the Cross Texas facilities.[102] The two minor changes include (i) calculating the depreciation rate for underground facilities using industry averages until such time as LSPN-NY's own historical data is sufficient to analyze their characteristics and (ii) depreciate any contribution in aid of construction (CIAC) received using a weighted average based on the life parameters for the underlying assets and related plant accounts.[103]

Under the Formula Rate Protocols, LSPG-NY's depreciation rates cannot be changed absent a filing pursuant to Sections 205 or 206 of the Federal Power Act. LSPG-NY will update its depreciation rates within 5 years of the Project being placed in service *via* a Section 205 filing.

V. INCENTIVE RATE REQUEST

A. Section 219 Requirements

1. Rebuttable Presumption

Order No. 679 and Section 35.35 of the Commission's regulations[104] provide that a public utility may file a petition for declaratory order to obtain transmission rate incentives upon a demonstration that the transmission facilities either ensure reliability and/or reduce transmission congestion. *Order No. 679* establishes a rebuttable presumption that this standard 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

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101 *Id.* at 7-8.

102 Exhibit No. LSPG-NY-600, Direct Testimony and Exhibits of Dane Watson ("Watson Testimony") at 6.

103 *Id.*

104 18 C.F.R. §35.35 – Transmission Infrastructure Investment Provisions.

authority.[105] The Project meets the first prong of the rebuttable presumption test because it was selected through NYISO's Commission approved Order No. 1000 compliant regional PPTPP,[106] and has been identified as significantly decreasing congestion. The Project, together with the Segment B proposal, was identified as providing production cost savings, capacity procurement benefits, and avoided refurbishment costs in the range of $1.95 billion to $4.08 billion depending on future system conditions.[107] The Project was selected over alternatives, including non-transmission alternatives, in the NYISO PPTPP, and evolved from the NYPSC process and Energy Highway Task Force process that each considered many alternatives. The Project will also require construction approval from the NYPSC before construction can begin, thus meeting the second prong as well.

2. Nexus Between the Transmission Incentives Sought and the Risks and Challenges Faced by LSPG-NY in Developing the Project

a. Financial Risks and Challenges

There are a variety of financial risks and challenges facing LSPG-NY in the development of the Project. The Project represents the largest single transmission investment within New York since the introduction of competitive markets.[108] The Project is also the largest transmission investment that resulted from an Order No. 1000 competitive process.[109] LSPG-

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105 *Order No. 679* at PP 57-58; *Order No. 679-A* at P 49.

106 *See NextEra Energy Transmission New York, Inc.*, 162 FERC ¶ 61,196 at P 17 ("[T]he Empire Project is the product of NYISO's Order No. 1000 Public Policy Planning Process, which the Commission has previously found to be a fair and open regional planning process, and the Empire Project will enhance reliability and reduce congestion in Western New York. Therefore, we find that the Empire Project is entitled to the rebuttable presumption that it meets this requirement of section 219."); *New York Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068 (2008); *New York Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059 (2013); *New York Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,044 (2014); *New York Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61, 040 (2015).

107 *See page 3, supra.*

108 *See* Carroll Testimony at 8, *citing* 2018 Power Trends, Figure 10, at 18 "New Transmission in New York State: 2000-2018" identifies new transmission projects to consist of two in-state projects, Transmission Owner Transmission Solutions ($241 million) and ConEd M29 ($468 million), along with four inter-regional merchant projects (Hudson Transmission Project, Linden VFT, Cross Sound Cable and Neptune DC Cable. This report did not include the Western New York Project (estimated to cost $181 million). https://www.nyiso.com/documents/20142/2223020/2018-Power-Trends.pdf/4cd3a2a6-838a-bb54-f631-8982a7bdfa7a.

109 Tajvar Testimony at 6, fn 1. Order No. 1000 competitive projects to date, by ISO/RTO with estimated costs, are: CAISO – Imperial Valley Policy Element ($25 million), Gates to Gregg ($115-145 million), Miguel Project ($30-40 million), Spring Substation ($35-45 million), Wheeler Ridge ($90-140 million), Suncrest Project ($50-75 million), Estrella Project ($35-45 million), Delaney to Colorado River ($337 million), Harry Allen to Eldorado ($159 million); ISONE - None; MISO – Duff to Coleman ($60 million), Harburg to Sabine ($130 million); NYISO – Western New York ($181 million); PJM does not identify specific projects but

NY currently has no rate base and no revenue. Therefore, the initial investments in development and construction of the Project will represent negative cash flow for LSPG-NY and the Project will represent 100% of LSPG-NY's plant in service.

The Commission has recognized that transmission development has certain inherent risks, including cash flow risks as a result of the long lead time necessary prior to facilities being placed into rate base.[110] In addition, regulatory risk can also affect financial stability and result in higher capital costs.[111] The Project faces competition for investment from other projects in its effort to obtain financial commitments from third party investors and lenders. This competition can be greater for entities that have agreed to cost containment provisions for their projects, as LSPG-NY has, which inure to the benefit of ratepayers, but which place increased financial risk on such project developers, particularly where other transmission projects are not subject to such limitations.

Changes in factors beyond the control of LSPG-NY also could impact whether or not the Project will ultimately be built. The Project was approved based primarily on the basis of economic benefits to be derived from completion of the Project. Significant changes in those benefits could result in efforts to cancel the Project. The substantial financial risk based on Project changes beyond a developer's control, including the regulatory risks discussed below, could be in the millions of dollars, or even the tens of millions of dollars, depending on the timing of any decision to halt or otherwise terminate the Project. This risk is not hypothetical, as several transmission projects in other regions have been approved but subsequently not completed.[112]

b. Regulatory Risks and Challenges

The Project has already evolved over the course of several solicitation processes and has been the subject of years of regulatory proceedings at the NYPSC. This has included participation from many different state agencies and local government representatives. The Project will continue to be subject to multiple layers of regulatory review involving federal, state and local agencies. Construction of the Project requires numerous permits and approvals at each of the federal, state, and local government levels. The Project is expected to pass through portions of five different counties with 19 townships and one village. There has been significant public involvement throughout the NYPSC process. The process was already put on hold once to allow time to resubmit proposals to be more responsive to public comments.[113] There have

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greenfield non-incumbent selections in PJM windows have been– Artificial Island ($147 million), Thorofare Project ($60 million), Transource Independence Project ($320 million); SPP – Walkemeyer to North Liberal ($17 million)(subsequently canceled).

110 Policy Statement at P12.

111 *Id.*

112 *PJM Interconnection, LLC and Potomac-Appalachian Transmission Highline, L.L.C.*, 141 FERC ¶ 61,177 (2012); *See also*, Docket Nos. ER12-239-000, ER12-2274-000, and ER16-1025-000.

113 Willick Testimony, footnote 11.

been thousands of public comments already in the years long NYPSC process leading to development of the solicitation of AC Transmission Public Policy Needs.

Significant additional public consultation will be required in the permitting process for the Project, in order to obtain a Certificate of Environmental Capability and Public Need (CECPN) from the NYPSC under Article VII of the Public Service Law. This permitting process will provide an opportunity for many constituencies to raise issues and concerns with impacts of the transmission line construction and operation within the community. This includes participation from the New York Department of Agriculture and Markets, a party to transmission line permitting by statute in New York State, which protects the interests of agricultural resources.[114] The New York Department of Conservation will participate, and many provisions will be required to minimize impacts on sensitive species, such as the endangered Indiana bat, which will require seasonal limitations on construction activities. The CECPN requires a showing to be made for Project need. Since the Project is not strictly needed for reliability, there could be challenges to the need for the Project. There has already been significant public comment related to the AC Transmission Public Policy Needs, with over 3,000 public comments received to date, largely in opposition to aspects of the process including the need for new or upgraded transmission lines.[115] Local regulations and the compatibility of the Project with local plans is another area that is required to be described in the Article VII application and considered in the Article VII process. There has already been significant participation in the NYPSC process by many local towns in the project area.

c. Construction Risks and Challenges

Beyond the development risks associated with securing the required permits, regulatory authorizations and real estate rights, LSPG-NY faces significant risks and challenges in connection with constructing the Project.[116] Many of these risks and challenges go beyond what is typical for a high-voltage transmission project.

The Project involves demolition of existing transmission lines and replacement with new transmission lines with a higher voltage. The Central East upgrades generally involves removing existing 230 kV transmission lines and building new double-circuit 345 kV transmission facilities in the rights-of-way. There are also natural gas pipelines, buried fiber optic cable, and parallel transmission lines in some portions of the rights-of-way. This can make construction more difficult and presents the risk of potential mitigation of impacts to these parallel facilities. This can increase the cost of the project and/or result in project delays.

The rights-of-way are owned by an incumbent public utility. LSPG-NY will need to coordinate with the incumbent public utility just to get access to the rights-of-way. While LSPG-

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114 In many states, in order to avoid clearing and minimize impacts to wetlands and habitat, regulatory authorities prefer that transmission line routing be routed through previously cleared agricultural areas. In New York State, this is not the case.

115 Carroll Testimony at 5.

116 *Id*. at 6-8.

NY anticipates that the incumbent public utility will cooperate in coordination of these important public policy projects, the added layer of complexity and review could delay the process, result in unreasonable access restrictions or otherwise obstruct the construction efforts. The NYPSC specifically required that incumbent utilities bargain in good faith regarding rights-of-way, compensation for, and terms governing use of the rights-of-way were not specifically addressed and could be an issue.[117]

Beyond the fact that the rights-of-way are owned by an incumbent utility, the rights-of-way are occupied by existing transmission facilities owned by an incumbent public utility. LSPG-NY will need to coordinate with the existing asset owner regarding the disposition of these facilities, and the compensation for, and terms governing the removal of existing facilities could be an issue.

The removal of existing facilities will need to be performed in such a manner as to not interrupt the electrical service in the local area or cause issues on the transmission system. This will require significant coordination and planning to sequence the demolition and construction in a manner that continues to provide adequate service in the area. This complex construction sequencing means that construction will not be able to proceed in a linear fashion as with a typical green-field new transmission facility. The difficulty in sequencing the work and potential for interruptions or the inability to obtain outages in a manner to support the required construction sequencing presents heightened risk of delay for the project relative to a typical transmission facility.

The specific construction risks and challenges facing the Project are in addition to the many risks and challenges that face any construction project including the cost and availability of materials, cost and availability of specialized skilled labor, cost and availability of specialized equipment, adverse weather, vandalism and theft, earthquakes, etc. In addition, there are several recent industry developments for transmission projects in New York and the United States that highlight these risks. The magnitude of the Project alone – the largest transmission project in New York State since at least the advent of competitive markets in 2000[118] – could stress the availability of skilled labor and necessary equipment in the area. In addition, the Project is also scheduled to be in construction at the same time as several other large transmission construction projects in New York including NextEra Energy Transmission of New York's Empire State Line, NYPA's SMART Path project, and New York Transco's New York Energy Solution (Segment B) project. It is common for transmission facility equipment and materials to be sourced from suppliers outside of the United States. U.S. import tariffs on steel and aluminum have impacted some supplies of raw materials, and the prospect of additional tariffs on other materials could impact the cost and ability to find willing suppliers of material and equipment.

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117 If a negotiated arrangement is unavailable on commercially reasonable terms, implementation of the NYPSC's requirement that incumbent utilities make right-of-way available may be a case of first impression in New York.

118 Carroll Testimony at 8.

LSPG-NY and NYPA will enter into a Development Agreement with NYISO, which requires NYISO's approval of material modifications to the Project and contains remedies, including termination of the agreement, if there are significant Project delays. Further, the Project will need interconnection agreements with incumbent transmission owners which could also delay the Project.

These risks are magnified when viewed together. LSPG-NY is creating a new transmission utility and has no tariff to expense current development activities. These risks and challenges, taken together, necessitate the tailored individual rate incentives requested below.

3. Advanced Technology Statement

The Commission requires an applicant seeking incentive rates to provide an advanced technology statement. In the Policy Statement the Commission stated that it would "consider deployment of advanced technologies as part of the overall nexus analysis when an incentive ROE is sought."[119] LSPG-NY anticipates employing several elements considered to be advanced technology under Section 1223(a). In addition, the Project will require LSPG-NY to use advanced engineering approaches and construction techniques to facilitate addressing a number of Project challenges and public policy goals. The implementation of advanced technology, engineering approaches and construction techniques increases the overall risk associated with the Project. The technologies described below meet the standards set forth in *Order No. 670* and *EPAct 2005* because the technologies will "increase the capacity, efficiency, or reliability" of the Project and overall transmission system.

a. Use of Existing Rights-of-Way

To address a public policy goal of limiting the acquisition of new rights-of-way as much as possible, the Projects will use existing, occupied rights-of-way, performing construction including demolition of existing facilities and construction of replacement facilities, requiring innovative construction techniques to avoid negative system impacts while providing uninterrupted service in the local area.[120] While such techniques are often employed on smaller scale projects, the Project includes a significant amount of conversion of existing lines to new lines of a higher voltage. From Edic to Princetown, approximately 136 miles of existing 230 kV transmission facilities (2 single circuit lines for approximately 68 miles each) will be replaced with 345 kV transmission facilities. From Princetown to Rotterdam, approximately 10 miles of existing 230 kV transmission facilities (2 single circuit lines for 5 miles each) will be replaced with 345 kV facilities. From Princetown to New Scotland new 345 kV facilities will be constructed on existing rights-of-way for approximately 20 miles. Electrically, facilities cannot simply be replaced with facilities of a higher voltage, but either transformation equipment also needs to be added to the system, or alternative termination locations at the appropriate voltage need to be identified.

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119 Policy Statement at P 23.

120 Carroll Testimony at 9.

b. Advanced Substation Equipment

Joint Developers included several items in its proposals that improved the performance or minimized the impact of the proposal substation equipment:[121]

- Oversized, low impedance transformers are planned at the Rotterdam Substation to maximize transfer capacity; and

- Gas-Insulated-Substations ("GIS") in certain circumstances will minimize substation footprint. GIS equipment is typically used in urban areas, but the application strictly for avoiding acquisition of new property is a different deployment of advanced technology. GIS equipment was proposed to minimize the footprint of the proposed Princetown station, due to constraints imposed by the right-of-way. GIS equipment is also proposed for the Rotterdam Substation to address potential siting constraints on existing substation property. The use of advanced GIS equipment increases the project risk since GIS equipment has a longer lead-time than traditional equipment and will require financial commitments to equipment suppliers before all permits and approvals are received in order to meet the project schedule, placing additional financial risk on LSPG-NY in Project implementation.[122]

c. Other Advanced Technology

Joint Developers included several advanced technology features that are becoming more commonly deployed in the construction of new transmission facilities, but which continue to be recognized as advanced technology:[123]

- Optical ground wires (OPGW). Optical fibers in the shield wire provide the traditional function of a shield wire in protecting the phase conductors in the event of a direct lightning strike while also allowing a communications link that can enable the use of differential line protection to reliably detect short circuits. Optical fibers also provide a high-capacity, high-speed communication channel to ensure reliable monitoring and operation of the line within the transmission system, fast, secure and highly reliable transmission system relay protection and control, necessary support of control centers, as well as the potential for excess capacity that may be used outside of the transmission system operation for national security or other public use. The optical fibers will be in full compliance with NERC Critical Infrastructure Protection regulations; and

- Digital Fault Recorders. The state-of-the-art modern digital fault recorder associated with the Project simultaneously detects and records transient faults, transmission system disturbances, specific operational data (often referred to as sequence of events data), and in general provides information necessary to efficiently analyze electric system

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121 *Id.* at 10

122 *Id.* at 10.

123 *Id.* at 11.

performance. The present generation of digital fault recorders provides many new features, including a combination of traditional fault recording with disturbance recording, sequence of event recording, power quality analysis, and others. Together, microprocessor-based relays and digital fault recorders help maintain the reliability of the grid and the quality of power delivery with a minimum intervention by the transmission operator. These are "smart grid advancements" because they perform tasks quickly and largely on their own, perform self-diagnostic activities, report when corrective actions are necessary and can automatically change the operating settings of the protection system based on the actual fault and its magnitude within the system (reducing the risk of the fault damaging other devices or equipment).[124]

4. Risk Reducing Incentives

LSPG-NY requests the following package of rate incentives and treatments, which are appropriate given the risks faced by the Project.[125] Since LSPG-NY is requesting an incentive ROE adder for the risks and challenges of the Project, risk reducing incentives will be discussed first, in accordance with the Commission's November 15, 2012 Policy Statement on Promoting Transmission Investment Through Pricing Reform.[126]

a. Deferred Cost Recovery Through Creation of a Regulatory Asset

Order No. 679 and Section 35.35(d)(1)(vii) permit deferred cost recovery, through creation of a regulatory asset, of all prudently-incurred pre-commercial, start-up and development costs that cannot be capitalized, from inception of a transmission project through commercial operation. LSPG-NY requests authorization to establish a regulatory asset in which it will book costs for the Project, incurred to date and going forward, that cannot be capitalized and would otherwise be expensed. The regulatory asset could include prudently incurred costs, for example, associated with regional planning, formation, or regulatory commission expense that would be booked to Account 928. As the Project has been selected pursuant to the NYISO's PPTPP that was developed in response to Order No. 1000, it is appropriate that all prudently-incurred pre-commercial expenses be allowed for recovery including those incurred during the regional planning process to arrive at the NYISO selection. Placing developers at risk for costs incurred prior to approval would unjustly deny full cost recovery for projects that have been selected in a fair and open regional planning process and could inhibit financing.

In addition to standard start-up and development costs that are not normally capitalized, LSPG-NY also requests approval for deferred cost recovery through creation of a regulatory asset for costs related to submission of its proposal for Segment B, if necessary.

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124 Carroll Testimony at 12.

125 *See generally, PJM Interconnection, L.L.C., et al*., 155 FERC ¶61,097 (2016) ("PJM") *DCR Transmission, LLC,* 153 FERC ¶61,295 (2015)("*DCR Transmission*"); *TransCanyon DCR, LLC,* 152 FERC ¶61,017 (2015)("*TransCanyon*").

126 Policy Statement at P 10.

As noted *infra*, the NYISO Tariff also anticipates recovery of developer cost for project proposal submission under appropriate circumstances. The Tariff provides:

> If the Developer proposed its Public Policy Transmission Project in response to a request by the NYPSC or Long Island Power Authority pursuant to Section 31.4.3.2 and its project was not selected by the ISO, the costs that the Developer is eligible to recover pursuant to Section 31.4.3.2 shall be allocated in accordance with Section 31.5.5.4.3, except as otherwise determined by the Commission. The Developer may recover these costs in accordance with Section 31.5.6 and Rate Schedule 10 of the ISO OATT.[127]

LSPG-NY meets these requirements. Section 31.5.6 provides:

> A Transmission Owner or an Other Developer may recover in accordance with Rate Schedule 10 of the ISO OATT the costs incurred with respect to the implementation of: . . . (ii) a Public Policy Transmission Project proposed by a Developer in response to a request by the NYPSC or Long Island Power Authority in accordance with Section 31.4.3.2 of Attachment Y of the ISO OATT. Such cost recovery will also include reasonable costs incurred by the Developer to provide a more detailed study or cost estimate for such project at the request of the NYPSC, and to prepare the application required to comply with New York Public Service Law Article VII, or any successor statute or any other applicable permits, and to seek other necessary authorizations.

To the extent necessary to recover the referenced costs, LSPG-NY requests approval of deferred cost recovery through creation of a regulatory asset for recovery of its recoverable Segment B costs under the same terms as its regulatory asset for the Project. These costs will be allocated in the same manner as the Project which is consistent with the AC Transmission Public Policy Transmission Need Cost Allocation found in Section 31.8.2 of the NYISO Tariff.

LSPG-NY proposes to accrue carrying charges on any regulatory assets from the effective date of the asset until such time as the cost is included in rate base, at which time LSPG-NY proposes to amortize the asset over ten years. Further, consistent with Commission precedent, LSPG-NY commits that it will restrict the compounding of interest to ensure that such compounding does not result in a higher interest than is allowed for AFUDC. Any deferred cost recovery will be subject to the subsequent submission of a filing under Section 205 of the Federal Power Act for establishment of LSPG-NY's transmission revenue requirement for the Project, in which it demonstrates that the costs included in the regulatory asset are just and reasonable.

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[127] NYISO OATT Attachment Y - 31.5.5.3 Project Eligibility for Cost Allocation.

b. LSPG-NY Does Not Seek Inclusion of Construction Work-In-Progress (CWIP) in Ratebase

LSPG-NY considered the use of CWIP to reduce the risks and challenges facing the Project but is not requesting the CWIP incentive. Discussions with lenders have confirmed that financing would be available under an approach of accruing an Allowance for Funds Used During Construction (AFUDC). LSPG-NY's election to not seek the CWIP incentive benefits ratepayers because they are not paying for CWIP until the project is used and useful.

5. Other Incentive Rate Requests

a. RTO Membership ROE Adder

LSPG-NY requests a 50 basis point adder to its ROE upon its membership in NYISO, contingent on LSPG-NY's overall ROE being within the zone of reasonableness. The incentive for RTO participation as an ITC is consistent with the stated purpose in Section 219 that the incentive applies to all utilities joining an RTO in recognition of the considerable benefits associated with a utility's membership in an RTO.[128] LSPG-NY committed as part of its proposal to the NYISO competitive process to become a Transmission Owner, execute an Operating Agreement as provided for in Section 31.1.7.3 of the OATT, and to turn over operational control of the Project to NYISO.

The Commission treats the RTO Participation Incentive as separate and distinct from other incentives related to the construction of new transmission facilities because the ROE adder for RTO participation is not intended to encourage construction directly.[129] In Order No. 679, the Commission stated that that it will approve an ROE adder for RTO participation "for public utilities that join and/or continue to be a member of an ISO, RTO, or other Commission-approved Transmission Organization."[130] The Commission consistently has approved the ROE adder for RTO participation for similarly situated entities and should do so here.[131]

b. Hypothetical Capital Structure

LSPG-NY requests authorization to use a hypothetical capital structure consisting of 53 percent equity and 47 percent debt until the Project is fully placed in service. Consistent with

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128 *See e.g.*, *San Diego Gas & Electric Company*, 118 FERC ¶ 61,073, (2007) at P 25-26.

129 *See* Order No. 679-A at P 87 & n.143.

130 Order No. 679 at P 326; Order No. 679-A at P 86.

131 *NextEra Energy Transmission New York, Inc.*, 161 FERC ¶ 61,138 (2017), *order on reh'g*, 162 FERC ¶ 61,186 (2018) ("NEET-NY"); *see also*, *PJM* at P 94; *DCR Transmission* at P 51, *citing*, *TransCanyon*, 152 FERC ¶ 61,017 at P 29; *Transource Kansas, LLC*, 151 FERC ¶ 61,010 (2015), at P 46; *MidAmerican*, 147 FERC ¶ 61,179, at P 45; *Transource Missouri*, *LLC*, 141 FERC ¶ 61,075 (2012)("*Transource Missouri*"), at P 75; *Xcel Energy Southwest Transmission Company, LLC* ("*XEST*"), 149 FERC ¶ 61,182 (2014) at P 64..

Commission precedent, LSPG-NY's actual capital structure will replace the hypothetical capital structure when the Project becomes fully commercially operational.[132]

The Hypothetical Capital Structure Incentive mitigates financing risks present during the permitting and construction phase of the Project. LSPG-NY initially will fund the Project with equity contributions. Prior to or during construction, LSPG-NY will also arrange debt financing. Because LSPG-NY is a newly formed transmission company without existing ratebase, during this time period LSPG-NY's capital structure is likely to fluctuate significantly as construction draws take place. As referenced above, the project size is significant and involves multiple facilities, most of which will replace operating facilities. As such, various aspects of the Project may be operational and placed in service before the entire project is complete. LSPG-NY requests that it be permitted to maintain use of the Hypothetical Capital Structure Incentive until the entire Project is placed in-service as the Project's overall capital structure will likely fluctuate significantly until all portions of the Project are complete.

The Commission has recognized that the use of a stable debt-to-equity ratio for ratemaking purposes during construction provides a developer with regulatory certainty, improving its access to capital.[133] The Commission previously found that hypothetical capital structures "result in lower debt costs for the company"[134] and assist companies in "receiving and maintaining an investment grade credit rating profile."[135] Moreover, a hypothetical capital structure presents "a pragmatic approach to address [a company's] fluctuating capital structure."[136]

As the Commission held in a recent decision, "[n]onincumbent transmission developers have a particular need for the hypothetical capital structure incentive because it establishes certain financial principles that incumbent transmission owners currently have in place but that remain undetermined for nonincumbent transmission developers."[137] These same considerations apply here. LSPG-NY is a nonincumbent transmission developer with no existing assets and its actual capitalization will fluctuate significantly during the development and construction phases of the Project based on the amount, timing, and frequency of capital infusions (borrowings and equity infusions) that are needed to fund construction. Adopting a hypothetical capital structure during the full construction period will help raise capital at more reasonable costs and remain competitive with its cost of capital in the new competitive transmission solicitation environment.

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132 *See, e.g.*, *Transource Missouri* at P 66 ("Once each Project achieves commercial operation, Transource Missouri will use its actual capital structure for that project."); NEET-NY, 161 FERC ¶ 61,138 (2017), *order on reh'g*, 162 FERC ¶ 61,186 (2018).

133 *Tallgrass Transmission, LLC,* 125 FERC ¶ 61,248 (2008) at P 68.

134 *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 at P 55 (2008), *reh'g granted in part and denied in part*, 133 FERC ¶ 61,152 (2010)("*PATH*").

135 *Transource Missouri* at P 66.

136 *PATH* at P 55.

137 *XEST* at P 22.

Allowing LSPG-NY to maintain use of the Hypothetical Capital Structure Incentive until all portions of the Project are placed into service places no additional burden on consumers as LSPG-NY would have been able to maintain use of the Hypothetical Capital Structure Incentive throughout construction if the entire project was placed in service when the last element was completed. If allowed to maintain use of the Hypothetical Capital Structure Incentive notwithstanding that certain segments are placed into service, LSPG-NY can place elements in service as they become available, benefiting consumers and maintaining reliability while maintaining a consistent capital structure.

A stated capital structure will also provide more stable inputs to the rate for the AFUDC, which will improve the predictability of LSPG-NY's accruals and Project costs. LSPG-NY's proposed hypothetical capital structure has less equity, and therefore a lower cost to ratepayers, than hypothetical capital structures previously approved by the Commission.[138]

6. LSPG-NY Requests An ROE Adder Based on Risks and Challenges

a. Requirements for ROE Adder Based on Risks and Challenges

The Supplemental Policy Statement on Incentives provided further guidance on the applicability of incentives based on a Project's risks and challenges.

(1) Types of Projects That May Qualify

The Supplemental Policy Statement on Incentives states that

> Investments in the following types of transmission projects may face the types of risks and challenges that may warrant an incentive ROE based on the project's risks and challenges that are not either already accounted for in the applicant's base ROE or could be addressed through risk-reducing incentives:
>
> 1. projects to relieve chronic or severe grid congestion that has had demonstrated cost impacts to consumers;
>
> 2. projects that unlock location constrained generation resources that previously had limited or no access to the wholesale electricity markets;

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138 *Id.* at 9; *see also NextEra Energy Transmission New York, Inc.* 161 FERC ¶ 61,138 at P 34 (granting a hypothetical capital structure of 60% equity and 40% debt); *see also PJM Interconnection, LLC, Transource West Virginia, LLC* 152 FERC ¶ 61,180 (201) at P 40 (granting a hypothetical capital structure of 60% equity and 40% debt).

> 3. projects that apply new technologies to facilitate more efficient and reliable usage and operation of existing or new facilities.[139]

The Project meets *each* of category of projects. The chronic and severe grid congestion on the Central East interface has long been present in the NYISO-operated markets.[140] The Project also will unlock location constrained generation – specifically existing hydropower, wind generation and proposed solar generation.[141] Further, existing and new/proposed wind and solar generation is also location constrained and has limited access to wholesale electricity markets. Finally, the Project will use advanced technology as discussed above.

In the *New York Transco Order* and *NEETNY Order* the Commission held that other proposals submitted or selected to meet the same public policy transmission need as the Project meet this requirement.[142]

(2) Minimization of Risks

The Supplemental Policy Statement on Incentives also states

> The Commission expects an applicant that requests an incentive ROE based on a project's risks and challenges to demonstrate that it is taking appropriate steps and using appropriate mechanisms to minimize its risks during project development.[143]

LSPG-NY has taken many steps to minimize the risks and challenges presented by the Project discussed above.

LSPG-NY follows best practices in project development. This includes incorporating many features into the project design intended to minimize the impacts of the Project. For example, the Project definition evolved over the course of the NYPSC process to remain entirely in existing utility rights-of-way. LSPG-NY also took many steps to design the Project in a way to minimize the visual impacts. As described above, these steps include the use of innovative engineering approaches to minimize structure heights. LSPG-NY has also undertaken significant public outreach and will implement an updated Public Involvement Plan for the Project moving forward.

The Supplemental Policy Statement also identifies joint ownership arrangements as a measure to mitigate siting and environmental risks and diversifying financial risks across multiple owners. Joint Developers have taken this risk mitigation measure. LSPG-NY jointly proposed the Project with NYPA, and the Project will be jointly owned with NYPA. The

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139 Policy Statement at P 21.

140 Willick Testimony at 20-23.

141 *Id*. at 26-28.

142 *New York Independent System Operator, Inc., et al*, 151 FERC ¶ 61,004 (2015) at P 96.

143 Policy Statement at P 24.

arrangement with NYPA combines the significant in-state experience and history of an incumbent state power authority with the national competitive transmission development experience of LS Power. This joint ownership arrangement has been structured to take advantage of the relative strengths of each entity. LSPG-NY has the primary responsibility for project development and construction management. NYPA has the primary responsibility for project operations and maintenance. Each entity will be responsible to fund and finance its pro-rata share of the Project. The joint ownership arrangement helps to mitigate siting and environmental risks and diversify financial risks across multiple owners.

(3) Alternatives to the Project

The Supplemental Policy Statement describes that

> The Commission expects applicants for an incentive ROE based on a project's risks and challenges to demonstrate that alternatives to the project have been, or will be, considered in either a relevant transmission planning process or another appropriate forum. Such a showing should help identify the demonstrable consumer benefits of the proposed project and its role in promoting a more efficient, reliable and cost-effective transmission system.
>
> . . .
>
> this showing could be satisfied through participation in open processes that are already in existence. For example:
>
> 1. The applicant could show that its project was, or will be, considered in an Order No. 890 or Order No. 1000-compliant transmission planning process that provides the opportunity for projects to be compared against transmission or non-transmission alternatives.
>
> 2. The applicant could show that its project was considered by a local regulatory body, such as a state utility commission, that evaluated alternatives to its proposed project (transmission or non-transmission alternatives) and determined that the proposed transmission project is preferable to the alternatives evaluated.[144]

As discussed above, the Project resulted from the evolution of a project definition resulting from five different sets of submittals to various entities, including the NYPSC and NYISO, from LSPG-NY and other competing developers: (i) May 2012 Request for Information responses to the New York State Energy Highway Task Force; (ii) January 2013 Statements of Intent to the New York NYPSC; (iii) October 2013 Part A Article VII Submittals to the New York NYPSC; (iv) January 2015 revised Part A Article VII Submittals to the New York NYPSC;

[144] Policy Statement at PP 25-27.

and (v) April 2016 proposals to the NYISO in response to the Public Policy Transmission Need solicitation. After each of these submittals, alternatives were considered and evaluated prior to moving to the next stage. The Energy Highway Task Force, NYPSC, and NYISO process each also included consideration of non-transmission alternatives. The NYISO process is an Order No. 890 and Order No. 1000 compliant transmission process that provides the opportunity for projects to be compared against other transmission as well as non-transmission alternatives. The NYISO Public Policy Transmission Planning Report identifies the Project as the more efficient or cost-effective Project for the "Segment A" portion of the identified AC Transmission Public Policy Transmission Need.

(4) Commitment to Cost Estimates

The Supplemental Policy Statement requires "applicants for an incentive ROE based on a project's risks and challenges to commit to limiting the application of the incentive ROE based on a project's risks and challenges to a cost estimate."[145] LSPG-NY agrees that application of any incentive ROE will be limited to the Project's cost estimate and goes a step further. Under the 80/20 Cost Containment LSPG-NY will receive no return on equity for 20% of costs that are greater than the cost estimate.[146]

b. ROE Adder Based on Risks and Challenges

LSPG-NY requests a 50 basis point adder to its ROE based on the many risks and challenges facing the Project. LSPG-NY will face financial, regulatory, site control and other risks and challenges that will not be accounted for in its base ROE or addressed through risk-reducing incentives. As identified above, the Project is unique in many ways. It is the first major transmission project in New York State since the advent of organized markets that directly addresses long-standing congestion across the key Central East interface. It is the culmination of five distinct submittal processes that, in the face of significant public opposition, refined the Project definition. Despite the long planning process that pre-dates this filing, the Project still requires significant state and local approvals prior to beginning construction. It is one of the first projects implemented in New York State under NYISO's Order No. 1000 competitive process, and the largest project in terms of financial investment of any Order No. 1000 project selection in any market. It requires a non-incumbent utility to remove existing transmission facilities in an existing right-of-way and replace with new, higher-voltage transmission circuits, while maintaining local area service. This will require significant coordination and significant project management capability. Even though the Project is within existing rights-of-way, the Project will require significant study and mitigation of impacts to agricultural, cultural, and environmental resources.

Although each project is different, the Commission has approved an incentive ROE adder based on project risk for two competing projects proposed to meet the same public policy need, neither of which was ultimately selected by NYISO to address the "Segment A" portion of the

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145 Policy Statement at PP 28-30.

146 Tajvar Testimony at 10.

identified AC Transmission Public Policy Transmission Need.[147] For example, in the NY Transco case, the Commission determined that an incentive adder for the Edic-to-Pleasant Valley 345 kV Line based on that project's risks and challenges was warranted, finding that the Edic-to-Pleasant Valley 345 kV Line is an investment of more than $1 billion in capital, a major financial risk, that will be constructed to relieve chronic and severe grid congestion that has had demonstrated cost impacts to consumers. The Commission further found that the incentives sought for that project meet the three showings expected under the Transmission Incentives Policy Statement, (1) committing to use best practices in project management and procurement, (2) the project will be evaluated against alternatives in both a competitive NYPSC proceeding and NYISO's regional public policy transmission planning process and (3) limiting the application of the ROE incentive to a cost estimate.

For the reasons stated herein, development of the Project by LSPG-NY will be a major financial risk, will be constructed to relieve chronic and severe grid congestion that has had demonstrated cost impacts to consumers, and meets the three showings expected under the Transmission Incentives Policy Statement because LSPG-NY as demonstrated herein is committed to the best practices in project management and procurement, NYISO evaluated LSPG-NY's proposal against others pursuant to its PPTPP and selected the Project as the more efficient or cost-effective proposal to address the "Segment A" portion of the identified AC Transmission Public Policy Transmission Need, and the incentive will be limited to a cost estimate.

The incentive adder provides some stability that the overall ROE will not become so low that it will be difficult to attach capital for inherently risky, high capital investment projects.

7. Performance-Based Rate To Implement 80/20 Cost Containment

The 80/20 Cost Containment was required by the NYPSC as a component of each proposal and a commitment for LSPG-NY and NYPA in the proposal. Under LSPG-NY's implementation of the 80/20 Cost Containment, if LSPG-NY's Eligible Project Costs[148] exceed

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147 *New York Independent System Operator, Inc., et al*, 151 FERC ¶ 61,004 (2015) at P 96 (NY Transco.)

148 "Eligible Project Costs" are the costs to place the Project in-service excluding Unforeseeable Costs and costs associated with operations and maintenance provided that Unforeseeable Costs in an amount up to 5% of the Cost Cap shall be considered an Eligible Project Cost. As used herein, "Unforeseeable Costs" are costs: (i) associated with material modifications to the scope of work that result from an NYPSC order, negotiations or settlement agreements in an NYPSC process, or imposed by any other governmental agency; (ii) associated with changes in applicable laws and regulations or interpretations thereof by governmental agencies; (iii) as a result of orders of courts or action or inaction by governmental agencies; or (iv) related to destruction, damage, interruption, suspension, or interference of or with the Project caused by landslides, lightning, earthquakes, hurricanes, tornadoes, typhoons, severe weather, fires, explosions, floods, epidemic, acts of public enemy, acts or threats of terrorism, wars, blockades, riots, rebellions, sabotage, vandalism, insurrections, environmental contamination or damage not caused by LSPG-NY, strike, labor disruption, or civil disturbances.

the Cost Cap[149] then LSPG-NY will receive no ROE for 20% of the Eligible Project costs that exceed the Cost Cap and will recover no incentive ROE adders on the remaining 80% of the Eligible Project Costs that exceed the Cost Cap. LSPG-NY will recover the depreciation and debt costs on its share of all Eligible Project Costs. If LSPG-NY's Eligible Project Costs are below the Adjusted Cost Cap[150] then LSPG-NY will share in the savings through a sliding scale ROE adder based on the level of savings, and thus LSPG-NY addresses the implementation as a performance-based rate under Order 679.[151] Because the ROE adder is based on consumer savings, if LSPG-NY is able to place the Project in service at a cost below the Adjusted Cost Cap, the relevant ROE adder would be applicable. LSPG-NY's understanding is that after Commission approval of the 80/20 Cost Containment NYPA will file to incorporate the 80/20 Cost Containment into its formula rates for the Project on materially the same terms.

To implement the 80/20 Cost Containment, LSPG-NY requests approval of a performance-based rate in the form of a sliding scale adder to the base ROE to the extent actual costs are less than Adjusted Cost Cap. The additional ROE adder to account for sharing of the savings, in a similar 80/20 ratio as the risk sharing, ranges from .05% for costs <5% below the Adjusted Cost Cap, to .71% for costs >25% below the Adjusted Cost Cap. The full range is set forth in the Willick Testimony at 31.

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149 The Cost Cap consists of the sum of: (i) $626,762,363 (representing the independent cost estimate with a 30% contingency, but excluding Segment A Third Party Costs in 2017 dollars) multiplied by LSPG-NY's percentage ownership share of the Project multiplied by a fraction where the numerator is the Handy-Whitman Index for Electric Utility Construction – Total Transmission Plant in the North Atlantic Region for January 2022 and the denominator is the Handy-Whitman Index for Electric Utility Construction – Total Transmission Plant in the North Atlantic Region for January 2017; (ii) Segment A Third Party Costs multiplied by LSPG-NY's percentage ownership share of the Project; and (iii) LSPG-NY AFUDC. As used herein "Segment A Third Party Costs" are costs that result from: (i) NYISO modifications to the Project or NYISO requirements including interconnection costs and upgrades resulting from the NYISO interconnection process; (ii) real estate-related costs incurred in any lease arrangement, purchase, easement, or license related to acquisition of rights-of-way or access to rights-of-way; and (iii) other costs incurred as a result of action or inaction by the incumbent Transmission Owners.

150 "Adjusted Cost Cap" consists of the sum of: (i) $626,762,363 divided by 1.3, and multiplied by 1.05 (to account for a different amount of contingency to be applied for the incentive rate adder) multiplied by LSPG-NY's percentage ownership share of the Project multiplied by a fraction where the numerator is the Handy-Whitman Index for Electric Utility Construction – Total Transmission Plant in the North Atlantic Region for January 2022 and the denominator is the Handy-Whitman Index for Electric Utility Construction – Total Transmission Plant in the North Atlantic Region for January 2017; (ii) Segment A Third Party Costs multiplied by LSPG-NY's percentage ownership share of the Project; and (iii) LSPG-NY AFUDC.

151 Order 679 at PP 270-272, encouraging development of performance-based rate proposals. Because the proposed performance-based rate is a ROE adder tied directly with the implementation cost of the project, whether LSPG-NY meets the requirements for the 'performance' rate will be known based on a one-time determination and not subject to ongoing performance measurement. *See, Id.*, raising concern regarding measurement mechanisms for performance-based rates.

8. Application of the Nexus Test

In addition to satisfying the Section 219 eligibility requirements, an applicant must demonstrate that there is a nexus between the incentives sought and the investment being made, *i.e.*, the applicant must show that the incentives requested are rationally related to the investments being proposed. The Supplemental Policy Statement provides that the applicant "demonstrate how the total package of incentives requested is tailored to address demonstrable risks and challenges."[152] The preceding pages identified each of the incentives and the risks for which the incentive sought to address. The table below reiterates where requested incentives serve to mitigate specific risks and challenges described in this application, and how LSPG-NY has specifically tailored the incentives requested to the risks faced.

	Financial Risks and Challenges	Regulatory Risks and Challenges
Abandonment Incentive (approved in Docket EL19-30)	Benefits can change, which could result in efforts to cancel the Project. Project will have no revenue if it is not completed Need to order equipment prior to receipt of all permits and approvals.	Requires many regulatory approvals that could be denied. Approvals will have participation from many interested parties. Development Agreement with NYISO could be cancelled.
Hypothetical Capital Structure	Financing is lumpy	Long permitting and construction period.
RTO Membership Incentive	Company has no existing rate base	Project selected through Order 1000 competitive process. Project does not meet need that arises from NERC reliability standard violation, but that arises from New York Public Policy initiative with competitive solicitation pursuant to a Commission approved planning process administered by NYISO.
Regulatory Asset	No existing rates	Rights-of-way and incumbent owned transmission assets to be acquired and retired have unknown compensation and terms of use.
ROE Adder Based on Risks and Challenges	Compete with other projects for capital	Provides congestion relief and public policy benefits.

[152] Policy Statement at 7.

		Known public opposition exists. Rebuilding in existing rights-of-way. Need to obtain easements and transmission assets from incumbent utility.
Performance-Based Rate to Implement 80/20 Cost Containment	Risk of no ROE recovery for 20% of project costs above the Cost Cap.	

The hypothetical capital structure incentive mitigates the impact of changes to the capital structure during financing for a newly established utility, without any existing ratebase. The RTO membership incentive encourages continued participation in regional markets, which enables the congestion relief and many other benefits that arise from the Project. The regulatory asset incentive will allow LSPG-NY to record precommercial expenses that cannot be capitalized and address the fact that it has no formula rate in place to recover CWIP.

Finally, the ROE Incentive Adder addresses the additional risk associated with the Project that is not adequately addressed by the other incentives or the base ROE. Authorization of this incentive is merited given the Project's significant scope and complexity, as well as its ability to relieve costs associated with severe and chronic congestion, consistent with the Commission Incentive Policy Statement. The ROE Incentive Adder will help to mitigate against the risk of non-recovery of any investments that may be deemed non-recoverable in an abandonment filing with the Commission, such as pre-filing Project costs, in the event LSPG-NY is forced to abandon all or part of the Project. The Commission has already approved ROE risk incentive adders for substantially similar major transmission projects, including competing proposals. The incentives requested herein are consistent with this prior precedent and policy and should be granted.

VI. ACCOUNTING

Mr. Joseph L. Myers' Direct Testimony provides an overview of LSPG-NY's general accounting in support of LSPG-NY's Formula Rate.[153] LSPG-NY uses the accrual method of accounting as required by Generally Accepted Accounting Principles ("GAAP") to record revenues and expenses. These revenues and expenses are and will be recorded in accounts prescribed by the Commission's Uniform System of Accounts. LSPG-NY has been funded to date with equity from LS Power. LSPG-NY will record the receipt of capital contributions from upstream owners as equity on its balance sheet.

As a part of the LS Power organization, LSPG-NY is able to secure various services, including accounting, financial reporting, information technology, legal, regulatory, and

153 Myers Direct Testimony at 10-13.

engineering services, from its affiliates. Mr. Myers explains that services and transactions between LSPG-NY and its affiliates will be provided at cost based rates consistent with any applicable affiliate pricing requirements.[154]

VII. COST-OF-SERVICE SCHEDULES, POSTING, SERVICE, AND REQUESTED WAIVERS

LSPG-NY requests that the Commission find that the Formula Rate, which tracks and is trued up using LSPG-NY's actual costs incurred during the applicable Rate Year, fully satisfies the requirement to file detailed cost-of-service schedules, as found in Section 35.13 of the Commission's regulations.[155] Relying on the Formula Rate itself to satisfy these requirements is particularly appropriate here because LSPG-NY currently does not own transmission facilities and is in the process of developing its first transmission project. Alternatively, consistent with its rulings on other transmission formula rate filings, LSPG-NY requests that the Commission waive the requirement to submit detailed cost-of-service schedules,[156] because LSPG-NY's rates are formulary and will be based on actual costs incurred during the relevant time period as reflected in FERC Form No. 1 filings.

A copy of this filing will be available on the Commission's eLibrary website located at the following link: http://www.ferc.gov/docs-filing/elibrary.asp in accordance with the Commission's regulations and Order No. 714.

LSPG-NY respectfully requests that the Commission grant any necessary waivers needed so that the Formula Rate can be accepted as filed, given the benefits of the proposed formula rate approach and to support LSPG-NY's efforts to successfully develop and construct the Project.

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154 *Id.* at 6-10.

155 18 C.F.R. §§ 35.13 (2015).

156 *DATC Midwest Holdings, LLC*, 139 FERC ¶ 61,224 at PP 97-98 (2012). *See also Commonwealth Edison Co.*, 119 FERC ¶ 61,238 at P 94 (2007), *order on reh'g*, 122 FERC ¶ 61,037, *order on reh'g*, 124 FERC ¶ 61,231 (2008); *Oklahoma Gas & Electric Co.*, 122 FERC ¶ 61,071 at P 41 (2008); *RITELine Illinois*, 137 FERC ¶ 61,039 at P 134.

VIII. CORRESPONDENCE AND COMMUNICATIONS

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

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LSPG-NY requests that the individuals identified above be placed on the Commission's official service list in this proceeding.

IX. CONCLUSION

For the reasons set forth above, LSPG-NY requests that the Commission approve the requested rate incentives and approve the LSPG-NY Formula Rate Templates and associated Formula Rate Protocols as just and reasonable and accept the Formula Rate for inclusion as NYISO OATT 6.10.6, Attachment 1 to Rate Schedule 10 no later than March 2, 2020, which is more than 60 days after the date of this filing.

Respectfully submitted,

s// *Michael R. Engleman*

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