

Evan Reese
555 11th Street, N.W.
Washington, DC 20004
(202) 218-3917
ERese@DayPitney.com

June 30, 2020

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

Re: ***New York Transco, LLC***
Order No. 864 Compliance Filing – Accumulated Deferred Income Tax
ER20-____-000

Dear Secretary Bose,

In compliance with Order No. 864 issued in Docket No. RM19-5-000 (“Order No. 864”),¹ New York Transco, LLC (“NY Transco” or “Company”) submits for filing revisions to NY Transco’s transmission formula rate (“Formula Rate”) included in Attachment DD (Section 36) of the New York Independent System Operator, Inc. (“NYISO”) Open Access Transmission Tariff (“OATT”).² As discussed below, this compliance filing fully satisfies the directives of the Federal Energy Regulatory Commission (“FERC” or “Commission”) in Order No. 864 to address various income tax-related items relating to the effects of the Tax Cuts and Jobs Act of 2017 (“TCJA”).³

NY Transco submits this filing as a limited, single-issue filing in compliance with Order No. 864.⁴ This filing is appropriately classified as a single-issue filing because it consists of very limited tax-related changes to NY Transco’s Formula Rate Template, which will more closely

¹ *Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, 169 FERC ¶ 61,139, Order No. 864 (2019); *order on reh’g*, Order No. 864-A, 171 FERC ¶ 61,033 (2020).

² NYISO submits this filing on behalf of itself and NY Transco in its role as Tariff Administrator. The burden of demonstrating that the proposed tariff amendments are just and reasonable rests with NY Transco, the sponsoring party. The NYISO takes no position on any substantive aspect of this filing at this time.

³ *Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018*, H.R. 1, 115th Cong. (2017).

⁴ Order No. 864 at P 18.

Hon. Kimberly D. Bose, Secretary
June 30, 2020
Page - 2 -

align NY Transco's revenue requirement for income tax expense with its actual tax liability and facilitate a return to customers of excess accumulated deferred income tax ("ADIT").

I. INTRODUCTION

A. DESCRIPTION OF NY TRANSCO AND ITS FORMULA RATE TEMPLATE

NY Transco is a New York limited liability company that was formed to plan, develop, construct, own, and operate major new high-voltage bulk power electric transmission projects emanating from an Order No. 1000-compliant competitive solicitation process. NY Transco is a transmission-owning member of NYISO, an independent system operator that coordinates the transmission of wholesale electricity within its footprint. NYISO provides transmission service pursuant to the rates, terms and conditions of the NYISO OATT. NYISO's OATT governs transmission service over the facilities of each of the NYISO transmission owners ("Transmission Owners" or "TOs"), including NY Transco. NY Transco and other NYISO Transmission Owners have the right to file under Section 205 of the FPA to establish or change the revenue requirement for their respective transmission facilities for services provided under the NYISO OATT.

On December 4, 2014, NY Transco submitted a filing in Docket No. ER15-572-000 for acceptance of, among other things, a proposed transmission formula rate and implementation protocols for recovery of NY Transco's revenue requirements and base return on equity ("ROE") component; and revisions to the NYISO OATT to include a Transco Facilities Charge ("TFC") under Rate Schedule 13 (Section 6.13) and the Formula Rate and proposed cost allocation methodology in Attachment DD (Section 36).⁵ On April 2, 2015, the Commission issued an order accepting the Formula Rate for filing, setting the Formula Rate for hearing and establishing settlement procedures.⁶

On November 5, 2015, NY Transco filed an Offer of Partial Settlement that resolved all outstanding issues with respect to the Transmission Owner Transmission Solutions projects ("TOTS Projects"). The Commission approved the TOTS Settlement by Letter Order issued March 17, 2016. NY Transco submitted a compliance filing on April 12, 2016, with revisions to the NYISO OATT to incorporate the TOTS Settlement considerations, and the Commission accepted the revisions for filing by Letter Order dated May 18, 2016.

On August 21, 2017, NY Transco submitted an Offer of Settlement resolving all of the remaining issues then pending and related to the AC Transmission Projects. Because the AC Transmission Projects had not yet been selected pursuant to the requirements of the NYISO's Public Policy Transmission Planning Process, the Settlement stipulated that, if NY Transco were

⁵ See Filing Letter, Docket No. ER15-572-000 (December 4, 2014).

⁶ *New York Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,004 (2015) (April 2 Order).

Hon. Kimberly D. Bose, Secretary
June 30, 2020
Page - 3 -

selected to build any portion of the AC Transmission Projects, NY Transco would make a compliance filing within thirty (30) days of the date the NYISO makes its selection. The Commission approved the Settlement in the Settlement Order and included the compliance obligation.

In accordance with the settlement, on May 8, 2019, NY Transco submitted revised tariff records to the TFC under Rate Schedule 13 (Section 6.13) and the Formula Rate and proposed cost allocation methodology in Attachment DD (Section 36) to effectuate each of the terms of the AC Transmission Projects Settlement. The Commission accepted the compliance filing by Delegated Order on October 29, 2019.

B. Order No. 864

On December 22, 2017, the Tax Cuts and Jobs Act was signed into law. Among other tax implications, the Tax Cuts and Jobs Act lowered the federal corporate income tax rate from a maximum of 35% to a flat rate of 21%, effective January 1, 2018. Following its ratification, the Commission issued a Notice of Inquiry (“NOI”) seeking comments on the appropriate treatment of excess and deficient ADIT that would potentially be created by the reduction in the federal corporate income tax rate.⁷ Based in part on the comments it received in response to the NOI, the Commission issued a Notice of Proposed Rulemaking (“NOPR”) “to address the fact that many, if not most, transmission formula rates of public utilities do not fully reflect any excess or deficient ADIT following a change in tax rates,”⁸ as required by FERC Order No. 144⁹ and the Commission’s regulations in 18 CFR 35.24.

On November 29, 2019, the Commission issued Order No. 864 and required public utility transmission providers with transmission formula rates, including NY Transco, to revise those formula rates to account for the changes caused by the TCJA on the ADIT reflected in the rates. Specifically, the Commission required public utilities with transmission formula rates to include a mechanism to deduct any excess ADIT from or add any deficient ADIT to their rate bases, and incorporate a mechanism to decrease or increase their income tax allowances by any amortized excess or deficient ADIT. In addition, the Commission required the inclusion of a new, permanent ADIT Worksheet to the formula rate to provide greater transparency to annually track information related to excess or deficient ADIT.

⁷ *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates*, 162 FERC ¶ 61,223 (2018) (“NOI”).

⁸ *Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, 85 Fed. Reg. 59,331 (Nov. 23, 2018), 165 FERC ¶ 61,117 (2018).

⁹ *Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes*, Order No. 144, FERC Stats. & Regs. ¶ 30,254 (1981), *order on reh’g*, Order No. 144-A, FERC Stats. & Regs. ¶ 30,340 (1982).

Hon. Kimberly D. Bose, Secretary
June 30, 2020
Page - 4 -

II. DESCRIPTION OF PROPOSED TARIFF REVISIONS

NY Transco is revising its Formula Rate to implement changes to the treatment of ADIT to be effective as described below. Specifically, NY Transco: (1) explains how its current Formula Rate includes a mechanism to deduct any excess ADIT from or add any deficient ADIT to its rate base (“Rate Base Adjustment Mechanism”) to ensure rate base neutrality, and (2) proposes to modify its Formula Rate Template to include a mechanism to decrease or increase income tax allowances by any amortized excess or deficient ADIT (“Income Tax Allowance Adjustment”) which returns excess ADIT to or recovery of deficient ADIT from ratepayers. In addition, NY Transco includes a new permanent worksheet into the Formula Rate that will annually track information related to excess or deficient ADIT (together, the “Proposed Revisions”). The Proposed Revisions are consistent with Commission precedent and are substantially similar to mechanisms implemented by other transmission owners and approved by the Commission.¹⁰ The Proposed Revisions are necessary to make the calculation of income tax expense consistent with recent changes in federal income tax law and Commission policy. The Proposed Revisions will ensure rate base neutrality and that customers’ contributions to NY Transco’s income tax expense is consistent with current tax laws.

A. Rate Base Adjustment Mechanism

The Commission requires all public utilities with transmission formula rates to include a Rate Base Adjustment Mechanism to deduct any excess ADIT from or add any deficient ADIT to their rate base.¹¹ According to the Commission, adopting this requirement “will ensure that all public utilities with transmission formula rates offset their rate bases by any unamortized excess or deficient ADIT, thus maintaining rate base neutrality.”¹² The Rate Base Adjustment Mechanism must apply to any future changes to tax rates that give rise to excess or deficient ADIT and should apply to state and local tax changes as well.¹³

¹⁰ *PJM Interconnection, L.L.C., and Public Serv. Elec. and Gas Co.*, 165 FERC ¶ 61,275 (2018) (“PSEG Order”); *Midcontinent Indep. Sys. Op., Inc. and Ameren Illinois Company*, 163 FERC ¶ 61,163 (2018) (“Ameren Order”); *Virginia Electric & Power Company d/b/a Dominion Virginia Power*, Docket No. ER16-2116-000 (Letter Order issued Aug. 2, 2016) (“Dominion Order”).

¹¹ ADIT balances occur because of the difference in timing of the collection of corporate income tax liabilities from customers, consistent with Commission ratemaking policies, and the payment of owed corporate income taxes to the Internal Revenue Service (“IRS”) to the extent an entity is able to take advantage of accelerated depreciation. The potential for excess ADIT, therefore, arises because, as a result of the reduction in the federal corporate income tax rate, a portion of an ADIT liability (the amount of tax liability deferred to a later period) will no longer be due to the IRS.

¹² Order No. 864 at P 28.

¹³ Order No. 864 at P 29.

Hon. Kimberly D. Bose, Secretary
June 30, 2020
Page - 5 -

NY Transco proposes to include a new line 24a to its Formula Rate in order to reflect the necessary Rate Base Adjustment Mechanism. NY Transco currently tracks adjustments to deferred taxes in accordance with Generally Accepted Accounting Principles (“GAAP”) and Commission policy. Specifically, NY Transco records amounts associated with deficient ADIT to Account 182.3 as a regulatory asset and amounts associated with excess ADIT to Account 254 as a regulatory liability. The new line 24a will pull the necessary information from a new Attachment 11 explained below.

Line 24 of the NY Transco Formula Rate designates a rate base adjustment attributable to ADIT. With the addition of new line 24a, the NY Transco Formula Rate will reflect and deduct any excess ADIT from rate base as required by the Commission. Moreover, Note A provides that NY Transco treats the excess and deficient balances within Accounts 254 and 182.3 as part of its Financial Accounting Standards Board (“FASB”) 106 or 109 adjustments, which are reflected in Attachments 6a and 6b and segregated by ADIT account, namely, Accounts 190, 282 and 283. The average of the beginning of year and end of year excess ADIT balances (positive or negative) is reflected on line 14 of Attachment 11 which is then included in the Formula Rate as an adjustment to rate base at line 24a to maintain rate base neutrality.

The Commission asserted that “the full amount of excess ADIT resulting from the Tax Cuts and Jobs Act must be returned to transmission formula rate customers.”¹⁴ NY Transco affirms that all excess ADIT beginning from the effective date of the TCJA (January 1, 2018) will be returned to customers. Indeed, on June 22, 2018, NY Transco requested a limited one-time waiver of applicable provisions of its formula rate to allow NY Transco to maintain rate base neutrality in its annual True-up Adjustment calculations for 2017 and 2018 and in its projected Net Adjusted Revenue Requirement for 2019 related to excess ADIT that, as of the end of 2017, were recorded in accounts not included in rate base in NY Transco’s formula rate template.¹⁵ In its waiver request, NY Transco explained that its Formula Rate Template did not include the necessary input line items to make the necessary adjustment in rate base for the average balance in NY Transco’s excess ADIT placed in FERC Account 254. While NY Transco has been maintaining rate base neutrality in rates consistent with the waiver request in Docket No. ER18-1817-000, the proposed revision above ensures that NY Transco’s Formula Rate template and accompanying Attachments will have the necessary input and information to maintain rate base neutrality now and in the future.

¹⁴ Order No. 864 at P 45.

¹⁵ Petition of New York Transco LLC For Limited Waiver of Tariff Provisions, Docket No. ER18-1817-000 (June 22, 2018). NY Transco also sought waiver to include a refund to customers earlier than otherwise would be reflected in NY Transco’s transmission rates for the over-collection of NY Transco’s tax liability that occurred in rate year 2018, as NY Transco’s rates were determined utilizing the then-effective 35 percent federal corporate income tax rate while the actual tax rate in 2018 was 21 percent.

Hon. Kimberly D. Bose, Secretary
June 30, 2020
Page - 6 -

B. Income Tax Allowance Adjustment Mechanism

The Commission requires all public utilities with transmission formula rates to include an Income Tax Allowance Adjustment that decreases or increases the income tax components of their formula rates by any amortized excess or deficient ADIT. The Income Tax Allowance Adjustment must also remain applicable to any future changes to tax rates that give rise to excess or deficient ADIT. The Income Tax Allowance Adjustment ensures that any excess ADIT is returned to or any deficient ADIT is recovered from ratepayers.

In compliance with this directive, NY Transco proposes to amortize the amounts in Account 182.3 and Account 254 as described herein and record the amounts in Account Nos. 410.1 or 411.1, as appropriate. This treatment is consistent with the Commission's guidance in the November 2018 Policy Statement on the treatment of ADIT.¹⁶

NY Transco also proposes to revise its Formula Rate template to permit amortization of the tax law or tax rate change to be included in the income tax calculations of the formula. Specifically, NY Transco proposes to add a new line 68a ("Income Tax Allowance Adjustment – (Excess)/Deficient Deferred Income Taxes") to page 3 of its Formula Rate template. NY Transco also alters the "Total Income Taxes" formula in line 69 of the Formula Rate template to reflect the addition (or subtraction, as relevant) to account for the Income Tax Allowance Adjustment. A similar adjustment is reflected in new line 57a of Attachment 4 (Incentives) to track the necessary adjustments through the incentive rate treatment workpapers.

In addition, NY Transco has added a new Note O to explain new line 68a. New Note O provides:

Upon enactment of changes in tax law, income tax rates (including changes in apportionment) and other actions taken by a taxing authority, deferred taxes are re-measured and adjusted in the Company's books of account, resulting in excess or deficient accumulated deferred taxes. Such excess or deficient deferred taxes attributed to the transmission function will be based upon tax records and calculated in the calendar year in which the excess or deficient amount was measured and recorded for financial reporting purposes.

For the excess ADIT amounts that are considered "protected," NY Transco will amortize those amounts using the IRS-mandated average rate assumption methodology ("ARAM"). According to IRS policy, the immediate flow through of an excess tax reserve to a utility's customers is prohibited. Instead, for protected (plant-based) ADIT, the excess ADIT should be

¹⁶ See *Accounting and Ratemaking Treatment of Accumulated Deferred Income Taxes and Treatment Following the Sale or Retirement of an Asset*, 165 FERC ¶ 61,115 (2018).

Hon. Kimberly D. Bose, Secretary
June 30, 2020
Page - 7 -

reduced and flowed through to cost-of-service no more rapidly than under the ARAM, or over the remaining life of the property that gave rise to the reserve for ADIT.

For the majority of excess deferred taxes that are deemed “unprotected,” NY Transco intends to flow-back the amounts to customers on a straight-line basis over seven years because it approximates the period of time needed to turn around most of the significant unprotected items with a corresponding minor impact on rates. However, because NY Transco’s primary unprotected deficient ADIT relates to unprotected federal net operating loss carry-forwards, NY Transco proposes to flow-back these amounts on a straight-line basis over ten years, retroactive to 2018, to avoid rate shock for consumers. Amortizing the federal net operating loss in this manner will reduce the yearly impact to roughly \$1 million per year. NY Transco believes the proposed amortization periods are the best option to reduce the immediate impact on customers.

C. ADIT Worksheet

The Commission requires all public utilities with transmission formula rates to include an ADIT Worksheet – a new, permanent worksheet that will annually track information related to excess and deficient ADIT. According to the Commission, the worksheet is “necessary to provide interested parties and the Commission adequate transparency regarding how public utilities with transmission formula rates adjust their rate bases and income tax allowances to account for excess or deficient ADIT.”¹⁷

The ADIT Worksheet is required to include five categories of information:

1. How any ADIT accounts are re-measured and the excess or deficient ADIT contained therein;
2. The accounting for any excess or deficient amounts in Accounts 182.3 (Other Regulatory Assets) and 254 (Other Regulatory Liabilities);
3. Whether the excess or deficient ADIT is protected or unprotected;
4. The accounts to which the excess or deficient ADIT are amortized; and
5. The amortization period of the excess or deficient ADIT being returned or recovered through the rates.

NY Transco proposes a new permanent ADIT Worksheet in Attachment 11 to the Formula Rate. Consistent with the Commission’s directives, the ADIT Worksheet describes how any ADIT accounts were re-measured and the accounting for the excess and deficient amounts in Accounts 182.3 and 254. The worksheet also identifies each specific source of the excess or deficient ADIT, classifies the excess or deficient ADIT as protected or unprotected, and lists the proposed amortization period and accounts associated with each classification or source. The

¹⁷ Order No. 864 at P 62.

Hon. Kimberly D. Bose, Secretary
June 30, 2020
Page - 8 -

permanent worksheet provides the detail needed to verify excess and deficient ADIT resulting from the TCJA and any future tax rate changes, and thus it is consistent with the requirements of Order No. 864.

In accordance with Order No. 864, NY Transco submits a populated ADIT Worksheet reflecting 2020 beginning balances, projected 2020 activity, and forecasted 2020 year-end balances. This demonstrates the data and information that will be provided during each Annual Update under the NY Transco Formula Rate Implementation Protocols. NY Transco also includes, in Attachment D, workpapers demonstrating the support for the various inputs in Attachment 11.

III. CONTENTS OF FILING

This compliance filing consists of the following documents:

1. Filing Letter;
2. Attachment A: Redlined version of the proposed revisions to Appendix DD (Section 36) of the NYISO OATT;
3. Attachment B: Clean version of the proposed revisions to Appendix DD (Section 36) of the NYISO OATT;
4. Attachment C: New ADIT Worksheet populated as requested in Order No. 864; and
5. Attachment D: Workpapers.

Hon. Kimberly D. Bose, Secretary
June 30, 2020
Page - 9 -

IV. COMMUNICATIONS

All communications regarding this filing should be directed to the following individuals:

Kathleen Carrigan
Vice President General Counsel and
Regulatory Affairs
New York Transco LLC
1 Hudson City Center
Hudson, NY 12534
617-455-5329
Kathleen.Carrigan@NYTransco.com

Evan C. Reese III
Sophia Browning
Day Pitney LLP
555 11th Street NW
Washington, DC 20004
202-218-3900
ereese@daypitney.com
sbrowning@daypitney.com

V. SERVICE

This filing will be posted on the NYISO website at www.nyiso.com, and the NYISO will send an electronic link to this filing to the official representative of each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the New Jersey Board of Public Utilities.

VI. TARIFF EFFECTIVE DATE

In accordance with Order No. 864, NY Transco respectfully requests an effective date of January 26, 2020, sixty (60) days following the date of publication in the Federal Register (November 27, 2019). After the Commission accepts these revisions without modification or condition, NY Transco will begin flowing ADIT-related amounts to customers in accordance with the terms of its Formula Rate calculated as of the effective date of the TCJA – January 1, 2018. NY Transco expects to reflect these amounts in its Annual Projection for Rate Year 2021 that is required to be posted by September 30 in accordance with its implementation protocols, and also reflect in the June 2021 true-up calculation the appropriate amortized amounts in previous years. As mentioned above, NY Transco was granted a waiver in Docket No. ER18-1817-000 to allow excess ADIT that, as of the end of 2017, were recorded in accounts not included in rate base in NY Transco's formula rate template to be reflected in its annual True-up Adjustment calculations for 2017 and 2018 and actually be reflected in a rate base adjustment beginning in 2019.

Hon. Kimberly D. Bose, Secretary
June 30, 2020
Page - 10 -

VII. CONCLUSION

This compliance filing complies with the Commission's directives in Order No. 864. NY Transco respectfully requests that the Commission accept this filing without hearing, modification or condition.

Respectfully submitted,

/s/ Evan C. Reese III

Kathleen Carrigan
Vice President General Counsel & Regulatory
Affairs
New York Transco, LLC
1 Hudson City Center
Hudson, NY 12534

Evan C. Reese, III
Sophia Browning
Day Pitney, LLP
555 11th Street, NW
Washington, DC 20004

Attorneys for New York Transco, LLC