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SUBMITTED VIA E-TARIFF FILING

February 10, 2022

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

Re: ***New York Power Authority***
Docket No. ER22-___-000

Dear Secretary Bose:

Pursuant to Sections 205 and 219 of the Federal Power Act ("FPA"),[1] Part 35 of the Federal Energy Regulatory Commission's ("Commission" or "FERC") regulations, and Order No. 679,[2] the New York Power Authority ("NYPA") hereby submits this request for: (i) authorization of a 50-basis point return on equity ("ROE") adder ("ROE Risk Adder") to reflect the significant risks and challenges associated with NYPA's investment in a set of transmission projects in northern New York known as the "Smart Path Connect Project" (alternatively, "SPC Project" or "Project"), and (ii) in connection with the requested incentive-based rate treatments, acceptance of related revisions to NYPA's Formula Rate which is set forth in Section 14.2.3.1 of Attachment H of the New York Independent System Operator, Inc. ("NYISO") Open Access Transmission Tariff ("OATT").[3] NYPA proposes revisions to the Index, Schedule Summary, Schedule D2,[4] Schedule F1 and Schedule F3 of its Formula Rate, as well as the addition of Work Paper

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1 16 U.S.C. § 824d, 824s.

2 *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 2006–2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,222, *order on reh'g*, Order No. 679-A, 2006–2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,236 (2006), *order on reh'g*, Order No. 679-B, 119 FERC ¶ 61,062 (2007). Pursuant to Order No. 679, NYPA submits this request as a "single-issue" Section 205 filing. *See* Order No. 679 at PP 79, 191.

3 *See generally* NYISO OATT §§ 14.2.3.1 (NYPA Formula Rate), and 14.2.3.2 (NYPA Formula Rate Implementation Protocols). NYISO submits this filing on behalf of NYPA solely in its role as administrator of the NYISO OATT. The burden of demonstrating that the proposed NYPA Formula Rate amendments are just and reasonable rests with NYPA, the sponsoring party. 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 NYPA's proposed revisions to the NYISO OATT are attached hereto as Attachment A (clean version of the proposed tariff revisions) and Attachment B (marked version of the proposed tariff revisions). As further explained herein, NYPA's request for acceptance of revisions to Schedule D2 of NYPA's Formula Rate to incorporate a cost-containment mechanism for the SPC Project is subject to the Commission's acceptance of the related ROE Risk Adder requested herein for the Project.

("WP") BJ to its Formula Rate[5] to incorporate the ROE Risk Adder and a risk-sharing and cost-containment mechanism to be used in connection with NYPA's recovery of the Project's costs.[6]

The Smart Path Connect Project is needed to relieve severe and chronic congestion of both existing and planned generation, particularly renewable generation, in northern New York. Relief of this congestion is needed to assist the State of New York ("State") in meeting its legislatively enacted climate and clean energy requirements. The State has enacted ambitious climate and clean energy goals that call for the development and delivery of large amounts of clean energy to all New York customers. Northern New York, where the SPC Project will be located, is the site of significant amounts of planned renewable generation development needed to meet the State's goals. However, the State's transmission network does not currently offer sufficient capability to deliver fully the large amounts of existing and planned renewable generation in northern New York to the electric load centers of the State. The Smart Path Connect Project would address this transmission limitation by establishing, together with other projects currently under construction by NYPA and other developers, a new and continuous 345 kV transmission path from northern New York to the downstate region that would help mitigate the current and projected congestion. The Project will effectively unlock northern New York's potential as a significant site for renewable development for the rest of the State, serve as a foundation for the State to meet its ambitious goals, and result in substantial congestion cost savings.

The SPC Project was identified and selected by the New York State Public Service Commission ("NYPSC") as a "priority transmission project" ("Priority Project"), the construction of which is needed "expeditiously" to meet the State's clean energy goals.[7] This statutory designation authorizes NYPA, by itself or in collaboration with other parties, as NYPA determines appropriate, to develop the Project.[8] Following a public process to solicit potential co-participants in the Project and assess whether joint development of the Project would provide for additional benefits, NYPA determined that it would jointly develop the Project with Niagara Mohawk Power Corporation ("Niagara Mohawk") d/b/a National Grid USA ("National Grid").

The SPC Project is estimated to cost a total of approximately $1.2 billion (including allowance for funds used during construction or "AFUDC"). NYPA's share of the estimated Project cost is approximately $641.3 million.[9] In addition to its role in assisting to achieve the State's climate plan, the Project is also expected to provide customers with delivered energy cost savings (costs paid by load) of approximately $214 million annually in 2025 dollars ($2,853

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5 NYISO OATT § 14.2.3.1.

6 As explained further herein, the addition of WP BJ serves to replace the currently provided supplemental addendums to its informational filings and annual updates that provide stakeholders with necessary financial information on certain of NYPA's transmission projects.

7 *Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*, NYPSC Case 20-E-0197, Order on Priority Transmission Projects (Oct. 15, 2020) ("Priority Project Order") (attached hereto as Attachment C).

8 Accelerated Renewable Energy Growth and Community Benefit Act, 2020 N.Y. Laws, ch. 58, Part JJJ, § 7(5) ("AREGCBA").

9 Prepared Direct Testimony of NYPA Transmission Development Panel, Ex. No. NYP-100 at 17 ("NYPA Panel Testimony"), which is set forth in Attachment D to this filing.

million, 20-year net present value ("NPV")),[10] and capacity market benefits of upwards of $25 million – $50 million annually (using the midpoint of $37.5 million results in a 20-year NPV of $500 million).[11] The planned in-service date for the SPC Project is December 2025.[12] By enabling renewable resources to get to market, the Project will result in lower carbon dioxide ("CO_2") emissions for New York of 1.16 million tons annually and lower nitrogen oxide ("NO_x") emissions downstate of 160 tons annually, together having a value of $74 million per year or $981 million NPV over 20 years.[13] Further, as northern New York's transmission system is approaching end of life, the Project serves to reduce future costs of refurbishing or replacing aging transmission infrastructure, a savings of $270 million 20-year NPV.[14]

NYPA specifically requests, in this filing, approval of the following transmission incentive rate treatments for its investment in the SPC Project: (i) a 50-basis point ROE adder (i.e., the ROE Risk Adder) to reflect the significant risks and challenges associated with the development of the Project; and (ii) if applicable upon Project in-service, a performance-based rate in the form of an ROE adjustment consistent with the 80/20 risk mitigation proposed in the cost-containment mechanism contained herein. NYPA proposes revisions to the NYISO OATT to incorporate a risk-sharing and cost-containment mechanism similar to the one the Commission previously authorized in the LS Power Grid New York Corporation I ("LSPG-NY") formula rate proceeding for its investment in Segment A of the AC Transmission Public Policy Transmission Need project ("Segment A Project") (alternatively referred to as the "Central East Energy Connect Project") and for NYPA for its investment in that same project.[15]

As discussed further herein, there is a nexus between the incentives requested and the risks and challenges that will be faced by NYPA in developing and constructing the Project. In addition, the incentives requested are narrowly tailored to address the unique risks and challenges faced by the Project. Accordingly, NYPA requests that the Commission authorize the requested incentive rate treatment and revisions to the NYPA Formula Rate and Formula Protocols, as set forth in Attachment H of the NYISO OATT, effective no later than April 11, 2022 (i.e., the first day following the end of the statutory 60-day notice period).

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[10] *See* Ex. No. NYP-103 (showing how customer load payment energy cost savings were calculated), which is set forth in Attachment D to this filing.

[11] *See* Ex. No. NYP-104 (showing how capacity cost savings were calculated), which is set forth in Attachment D to this filing.

[12] Ex. No. NYP-100 at 19.

[13] *See id.* at 19-20.

[14] *Id.*

[15] LSPG-NY filed an Offer of Settlement pertaining to its formula rate on April 1, 2021, in Docket No. ER20-716-001. LS Power Grid New York Corp. I, Offer of Settlement, Docket No. ER20-716-001 (Apr. 1, 2021, errata Apr. 9, 2021) ("LSPG-NY Settlement"). The Commission approved the settlement by order dated June 17, 2021. *N.Y. Indep. Sys. Operator, Inc.*, 175 FERC ¶ 61,210 (2021). NYPA, the co-developer of Segment A of the Central East Energy Connect Project, adopted LSPG-NY's cost-containment mechanism for NYPA's share of the investment. The Commission approved NYPA's proposal by order dated September 29, 2021, in Docket Nos. ER21-2392, *et al. N.Y. Indep. Sys. Operator, Inc.*, 176 FERC ¶ 61,211 (2021).

I. BACKGROUND

A. Description of Companies

1. NYPA

NYPA is a corporate municipal instrumentality and a political subdivision of the State, organized under the laws of New York, and operates pursuant to Title 1 of Article 5 of the New York Public Authorities Law. NYPA is a "municipality" within the meaning of Section 3(7) of the FPA and is a "state instrumentality" within the definition of Section 201(f) of the FPA, and therefore is exempt from the requirements of Part II of the FPA.[16] It is engaged in the generation, transmission, and sale of electricity at wholesale and retail throughout New York and is a founding member of NYISO. As the largest state-owned electric power organization in the United States, NYPA has taken responsibility for constructing, owning, and operating critical segments of transmission infrastructure throughout the State. NYPA's customers are a geographically diverse group that includes large governmental entities (e.g., the City of New York and the Metropolitan Transportation Authority), municipal utilities (47 located throughout the State), rural electric cooperatives (four located in the State), and hundreds of end-use business customers.

NYPA's bulk power transmission system currently encompasses approximately 1,400 circuit miles and consists of facilities ranging from 115 kV to 765 kV. Many of these facilities comprise backbone paths necessary for critical North-South and West-East energy transfers to load centers not directly served by NYPA. Lacking distribution facilities or a defined geographical service territory of its own, NYPA has, since the inception of the NYISO, recovered its cost of owning and maintaining its backbone transmission facilities primarily through the NYPA Transmission Adjustment Charge ("NTAC"), a charge assessed to virtually all loads in NYISO on a load-ratio share basis.[17]

2. National Grid

National Grid is a public utility holding company and an indirect, wholly owned subsidiary of National Grid plc, a company incorporated in England and Wales. Niagara Mohawk, of which National Grid wholly owns all of the outstanding common shares, is the only National Grid subsidiary that owns or operates transmission facilities in New York. Niagara Mohawk is a Commission-regulated public utility company organized and operated under the laws of the State. It provides electric service to over 1.5 million customers and natural gas service to over 540,000 customers in upstate New York. Niagara Mohawk owns and operates bulk electric transmission facilities in New York, which are subject to the operational control of NYISO. Niagara Mohawk recovers its transmission revenue requirements for wholesale transmission service pursuant to a

[16] 16 U.S.C. §§ 796(7) and 824(f).

[17] *See Cent. Hudson Gas & Elec. Corp.*, 86 FERC ¶ 61,062, at p. 61,212, *order on reh'g*, 88 FERC ¶ 61,138, at pp. 61,403-04 (1999), *order on reh'g*, 90 FERC ¶ 61,045 (2000), *order on reh'g*, 95 FERC ¶ 61,008 (2001). The NTAC formula appears at Section 14.2.2.2.1 of Attachment 1 to Attachment H of the NYISO OATT. *See* NTAC Formula, NYISO OATT, Att. H, Annual Transmission Revenue Requirement for Point-to-Point Transmission Service and Network Integration Transmission Service § 14.2.2.2.

formula rate under the NYISO OATT.[18] By virtue of its New York subsidiary Niagara Mohawk, National Grid was selected as NYPA's co-developer of the Smart Path Connect Project. NYPA understands that National Grid will soon make its own rate and incentive filing with the Commission concerning its portion of the SPC Project.

B. New York's Climate Legislation

The Smart Path Connect Project is the outgrowth of ambitious clean energy legislation known as the Climate Leadership and Community Protection Act ("CLCPA") that was enacted by the New York legislature in 2019.[19] The CLCPA requires a 40% statewide reduction in greenhouse gas emissions from 1990 levels by 2030 and an 85% reduction by 2050; a minimum of 70% statewide electric generation produced by renewable energy by 2030 (the "70 x 30 Target"); a 100% emissions-free electric demand system by 2040; and the procurement of at least 9 gigawatts ("GW") of offshore wind by 2035, 6 GW of photovoltaic solar generation by 2025, and 3 GW of energy storage resources by 2030 (collectively, the "CLCPA Requirements").[20]

In 2020, in recognition of the fact that significant changes to the New York power grid are required to meet the CLCPA Requirements, the New York legislature enacted the Accelerated Renewable Energy Growth and Community Benefit Act ("AREGCBA").[21] To achieve the CLCPA Requirements, the AREGCBA requires the State to provide for the construction of expanded transmission and distribution infrastructure sufficient to ensure that new renewable energy generation projects used to meet the CLCPA Requirements can be timely and cost-effectively delivered to load.[22] In furtherance of this goal, the AREGCBA calls for the NYPSC

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[18] *See* NYISO OATT, Att. H, § 14.1.9.

[19] 2019 N.Y. Laws, ch. 106.

[20] CLCPA §§ 2(1)(a) and 7(a); N.Y. Energy Conservation Law § 75–0107(1); N.Y. Pub. Serv. L. § 66-p(2), (5).

[21] This filing refers to the goals set by CLCPA as CLCPA Requirements. NYPA notes that while AREGCBA calls them "CLCPA targets," the legislation indicates that these are binding requirements:

> "CLCPA targets" shall mean the public policies established in the climate leadership and community protection act enacted in chapter one hundred six of the laws of two thousand nineteen, including the ***requirement*** that a minimum of seventy percent of the statewide electric generation be produced by renewable energy systems by two thousand thirty, that by the year two thousand forty the statewide electrical demand system will generate zero emissions and the procurement of at least nine gigawatts of offshore wind electricity generation by two thousand thirty-five, six gigawatts of photovoltaic solar generation by two thousand twenty-five and to support three gigawatts of statewide energy storage capacity by two thousand thirty.

AREGCBA § 4(2)(b) (emphasis added).

[22] *Id.* § 2 ("[T]he state shall take appropriate action to ensure that . . . renewable energy can be efficiently and cost effectively injected into the state's distribution and transmission system for delivery to regions of the state where it is needed. In particular, the [S]tate shall provide for timely and cost-effective construction of new, expanded and upgraded distribution and transmission infrastructure as may be needed to access and deliver renewable energy resources."). Consistent with these requirements, AREGCBA also provides that the public interest would be served by "expediting the regulatory review for the siting of major renewable energy facilities and transmission infrastructure necessary to meet the CLCPA [Requirements]." *Id.* § 4(a). Ultimately, it was determined that the SPC Project did not satisfy the criteria of the expedited process because NYPA and National Grid need to acquire some new property rights for certain Project facilities. Ex. No. NYP-100 at 27.

"to make a comprehensive study of the [S]tate's power grid to identify distribution and transmission infrastructure needed to enable the [S]tate to meet the CLCPA [Requirements]."[23]

In connection with the comprehensive power grid study, the AREGCBA directs the NYPSC to establish a bulk transmission investment program to be submitted to NYISO for incorporation into its transmission studies and planning processes.[24] To implement the bulk transmission investment program, the AREGCBA prescribes two pathways for project identification and development. In general, for projects necessary to implement the plan, the NYPSC "shall utilize the state grid operator's public policy transmission planning process" – i.e., the Public Policy Transmission Planning Process ("PPTPP") set forth in Section 31.4 of Attachment Y to the NYISO OATT – for project selection after a particular need is identified.[25] However, the AREGCBA separately charges the NYPSC with identifying "priority projects" that are needed on an "expeditious" basis to meet the CLCPA Requirements ("Priority Projects").[26]

In recognition of the State's specific need for the timely development of bulk transmission and NYPA's unique position in the State as an experienced and capable developer with significant existing assets that can be leveraged for timely project development, the AREGCBA specifically directs that Priority Projects be developed by NYPA, subject to the concurrence of NYPA's Board of Trustees ("Trustees").[27] Once a project has been designated as a Priority Project by the NYPSC and the NYPA Trustees have concurred, the AREGCBA additionally requires NYPA to undertake a public solicitation process to assess whether joint development would provide for significant additional benefits in achieving the CLCPA Requirements.[28]

C. The Need for Additional Transmission in Northern New York.

In northern New York, the bulk transmission system is constrained in east-west and north-south orientations due to the physical boundaries of Adirondack State Park and historical limitations on construction of transmission projects within its boundaries. Both the east-west and north-south elements of the bulk transmission system in the northern New York region currently consist of 230 kV infrastructure, of which the lengthier portion (the north-south components) was built in the 1940s. The less extensive east-west portions were built in the 1950s and 1970s. The only exception to the 230 kV infrastructure in this region is NYPA's 765 kV transmission line that runs from Chateauguay to Massena to Utica, paralleling the north-south 230 kV circuits.

As currently configured, the bulk transmission system does not provide sufficient transfer capability to deliver all of the available generation in northern New York—including substantial levels of renewable generation and noncarbon-emitting hydroelectric generation—to load.

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[23] AREGCBA § 2(3). This comprehensive power grid study must identify "distribution upgrades, local transmission upgrades and bulk transmission investments that are necessary or appropriate to facilitate the timely achievement of the CLCPA [Requirements]." *Id.* § 7(2). AREGCBA further provides that the required study shall address bulk transmission investments separately from distribution and local transmission upgrades. *Id.*

[24] *Id.* § 7(4).

[25] *Id.*

[26] *Id.* § 7(5).

[27] *Id.*

[28] *Id.*

Existing renewable generation in the upstate region is currently vulnerable to periodic, and increasing, curtailment. NYISO data shows that wind curtailments alone are significant in nature, averaging more than 66 GWh per year from 2018-2020.[29] Due to these constraints, the NYISO has recently concluded that: "[a]dditional transmission capability is necessary to alleviate constraints and maximize the potential contribution of these [existing] renewable resources to meet electric demand and achieve public policy goals."[30]

The need for increased transmission capacity is even clearer when considering the significant amount of additional renewable generation that will be needed in northern New York to meet the CLCPA Requirements. NYISO has studied renewable generation pockets within which curtailments would occur if renewable generation sufficient to meet the CLCPA's "70 x 30 target" is added to the grid, and those generation pockets include the areas where key transmission lines to be upgraded by the Project are located.[31] As a part of that study, NYISO found that between 975 and 1,050 MW of increased transmission capability would be needed on the northern New York 230 kV and 115 kV systems to unbottle potentially curtailed renewable generation.[32]

The amount of renewable generation projected to come online in northern New York is significant. To operate at the levels of renewable generation projected for 2030, in connection with meeting the CLCPA Requirements, the NYPSC has estimated that approximately 6,500 MW of renewable generation capacity in NYISO Load Zones D and E, which are primarily in northern New York, will come online.[33]

D. Designation of the Smart Path Connect Project As a Priority Project.

On July 2, 2020, NYPA and the New York State Department of Public Service jointly filed a petition requesting (1) that the NYPSC adopt criteria for selecting Priority Projects; and (2) that the NYPSC designate NYPA's SPC Project as a Priority Project.[34] On October 15, 2020, pursuant

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[29] NYISO, *Power Trends 2021 – New York's Clean Energy Grid of the Future: The New York ISO Annual Grid & Markets Report*, at 16 (fig. 9) (2021) ("Power Trends 2021 Report"), https://www.nyiso.com/documents/20142/2223020/2021-Power-Trends-Report.pdf.

[30] *Id.* (emphasis in original). NYISO has called for the construction of additional transmission in northern New York for several years. In 2019—before the enactment of CLCPA and its ambitious climate goals—NYISO noted that "additional transmission capability is needed [in upstate and northern New York] to deliver energy from renewable resources to New York consumers in order to achieve New York's environmental and energy policies." *In re New York Independent System Operator, Inc.'s Proposed Public Policy Transmission Needs for Consideration for 2018*, Comments of the New York Independent System Operator, Inc., NYPSC Case 18-E-0623, at 6 (Jan. 22, 2019) ("NYISO Jan. 22, 2019 Comments"). In the same comments, the NYISO highlighted that "bottling of renewable resources is already occurring on the Moses South transfer path and will only be exacerbated by future growth of renewables in the northern New York region." *Id.* at 6-7.

[31] *See* Power Trends 2021 Report at 39 (fig. 16).

[32] NYISO Jan. 22, 2019 Comments at 10.

[33] NYPSC, *Initial Report on the New York Power Grid Study*, at 15-16 (fig. 2) (Jan. 19, 2021), https://www.nyserda.ny.gov/-/media/Files/Publications/NY-Power-Grid/full-report-NY-power-grid.pdf ("Initial Power Grid Study").

[34] *Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*, Petition Requesting Adoption of Criteria for Guiding Evaluation of Whether a Bulk Transmission Investment Should be Designated as a Priority Transmission Project, and for Designation of Certain Transmission Investments in Northern New York as a Priority Transmission Project, NYPSC Case 20-E-0197 (July 2, 2020) ("Priority Project Petition").

to its authority under the AREGCBA, the NYPSC adopted criteria for selecting Priority Projects and designated the Smart Path Connect Project as a Priority Project, the construction of which it determined is "needed expeditiously" to meet the CLCPA Requirements.[35] In the Priority Project Order, the NYPSC established two general criteria by which it would determine whether a project qualifies as a Priority Project. First, the NYPSC determined that "a key and perhaps determinative factor" for the analysis of whether a transmission project qualifies as a Priority Project is whether the project addresses the deliverability of existing generation.[36] The fact that operating generators "are not able to offer their full capacity due to transmission constraints is a strong indicator of whether traditional planning processes have kept pace with State policy."[37] Additionally, the NYPSC noted that the presence of generation in the planning queue that will benefit from solving a transmission constraint affecting existing generation should be given weight.[38] The NYPSC summarized these considerations into a single criterion it will consider for designating a Priority Project as follows: "The transmission investment's potential for unbottling existing renewable generation, as well as projects that are in the NYISO interconnection process, for delivery to load centers in the State, thereby reducing the amount of new generation that must be constructed to meet the CLCPA [Requirements]."[39]

The NYPSC separately noted that, where solving a transmission problem outside of the NYISO PPTPP "will increase the likelihood of meeting the CLCPA deadlines, the proposed transmission project may qualify as a [Priority Project]."[40] Accordingly, the NYPSC established a second general criterion for selection of a Priority Project as follows:

> Whether an early in-service date for the transmission investment would: (a) increase the likelihood that the State will meet the CLCPA [Requirements]; and/or (b) enhance the value of recent, ongoing or anticipated distribution, local transmission, and/or bulk transmission investments, and/or help the State realize benefits from such investments because it can be placed in-service sooner than the NYISO process would allow.[41]

The NYPSC then found that the SPC Project met these criteria and designated it a Priority Project.[42] With respect to the first criterion, concerning the unbottling of generation, the NYPSC found that "the State's investments in renewable generation in the northern region are not being fully realized due to transmission limitations."[43] The NYPSC noted NYPA's analysis indicating that with respect to existing generation, the Project will avoid 7.5 Terawatt-hours ("TWh") of renewable generation curtailments annually, and found that "the presence of a significant amount of existing renewable generation that is currently not served by the transmission system indicates

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35 Priority Project Order at 25. Though the NYPSC refers to this Project as the "Northern New York Project" or "NNY Project," NYPA now refers to it as the Smart Path Connect Project, which is the designation used in the Article VII siting application before the NYPSC in NYPSC Case 21-T-0340 discussed herein.

36 *Id.* at 16.

37 *Id.*

38 *Id.* at 17.

39 *Id.*

40 *Id.* at 18.

41 *See id.* at 3, 18.

42 *Id.* at 20-25.

43 *Id.* at 25.

that a project to unbottle that generation is 'needed expeditiously.'"[44] With respect to planned generation, the NYPSC noted NYPA's identification of approximately 2,400 MW of planned generation that would not be deliverable to load centers without additional transmission capacity in northern New York, and then found "that the number of interconnection applications that are being studied by the NYISO suggests there is strong developer interest in this area of the State, and that advancing the [SPC Project] would help capture the investment these applications represent, increasing the overall benefits of the project."[45]

With respect to the second general criterion, the NYPSC found that, given that the NYISO 2020 public policy planning cycle had only recently been initiated, the SPC Project would likely be placed in service earlier than a comparable project selected via the NYISO PPTPP.[46] The NYPSC accordingly found that "the NYISO process cannot meet the same goals in the same time frame that NYPA may achieve" and concluded that the Project is needed expeditiously.[47] The NYPSC concluded its analysis by stating that NYPA had shown a sufficient basis to identify the Project as a Priority Project based on the NYPSC's established criteria.[48]

Following its designation of the Project as a Priority Project, the Initial Power Grid Study required by the AREGCBA assumed that the Project will be constructed as a predicate for purposes of NYPSC's local transmission planning under the AREGCBA.[49]

E. Description of the Project

1. Project Overview

The Smart Path Connect Project consists of rebuilding more than 100 linear miles of existing 230 kV transmission lines and converting 90% of these facilities to 345 kV, along with associated substation construction and upgrades.[50] The remainder of these facilities are being rebuilt to higher-capability 230 kV transmission lines.[51] The Project includes rebuilding all or parts of the following transmission lines: NYPA's Moses-Willis 1&2, NYPA's Willis-Patnode

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44 *Id.* at 21.

45 *Id.*

46 *Id.* at 22-23.

47 *Id.* at 25. Projects designated as Priority Projects do not participate in the NYISO PPTPP, but the process for designating priority transmission projects can still operate "in tandem" with the NYISO PPTPP. *Id.* at 11-12 (citing NYISO Comments at 7-8). NYPA's engagement with the NYISO in the SPC Project planning process is detailed in the NYPA Panel Testimony. *See* Ex. No. NYP-100 at 15-17.

48 Priority Project Order at 25.

49 Initial Power Grid Study at 2, n.2, 79, n.76, and App. E at E-4, E-38.

50 *See Application of New York Power Authority and Niagara Mohawk Power Corporation d/b/a National Grid for a Certificate of Environmental Compatibility and Public Need for the Rebuild of Approximately 100 Linear Miles of Existing 230 kV to Either 230 kV or 345 kV along with Associated Substation Upgrades Along the Existing NYPA Moses-Willis 1&2, Willis-Patnode, Willis-Ryan, and National Grid's Adirondack-Porter 11, 12 and 13 Lines in Clinton, Franklin, St. Lawrence, Lewis, and Oneida Counties, New York*, NYPSC Case 21-T-0340, Matter of Application at 4, (June 15, 2021) ("Article VII Application") https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=21-T-0340; *see also* Priority Project Order at 4-5 (describing the Project at an earlier stage, when it was referred to as the Northern New York Project).

51 Priority Project Order at 4-5.

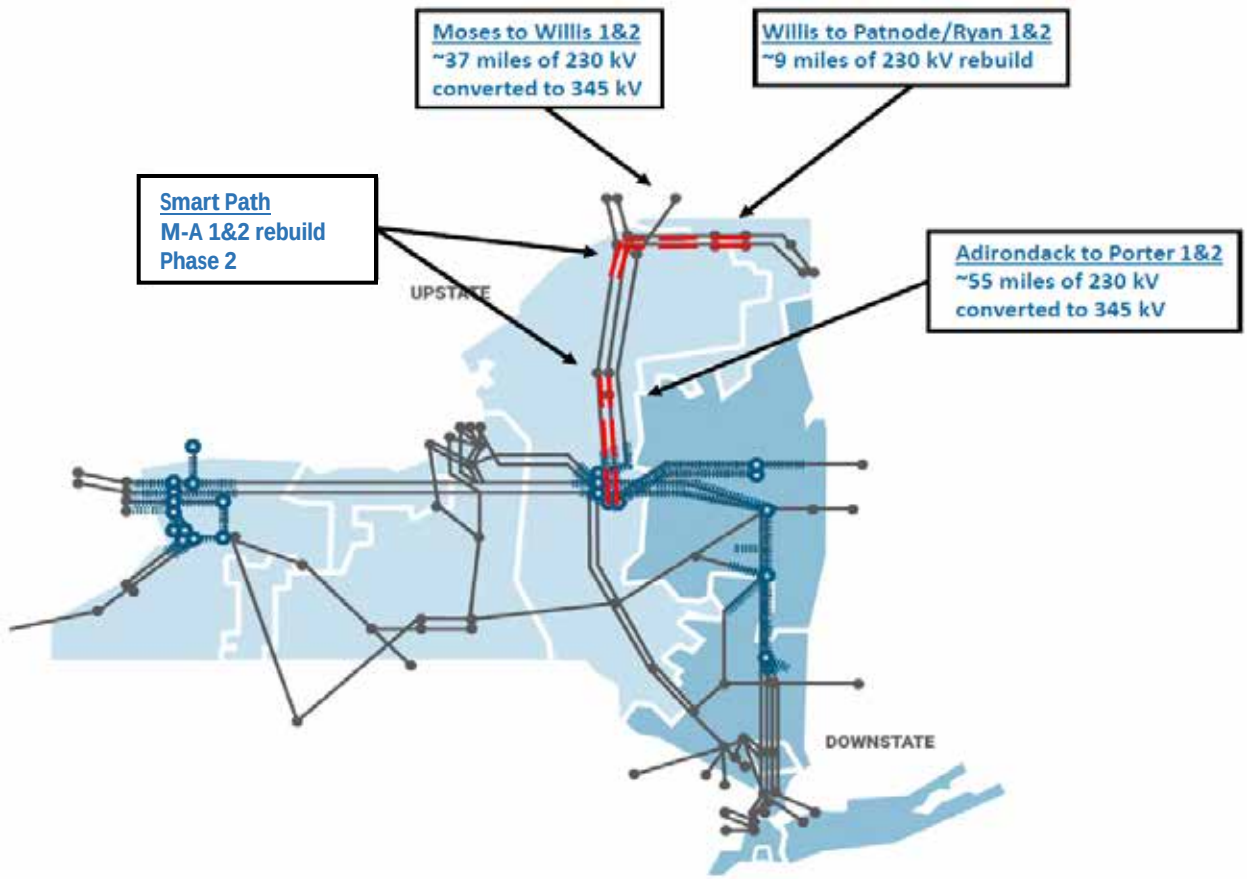
and NYPA's Willis-Ryan, and National Grid's Adirondack to Porter (Chases Lake-Porter Line 11, Adirondack-Porter Line 12, and Adirondack-Chases Lake Line 13), as well as connecting to NYPA's Moses-Adirondack 1&2 (also known as "MA1 & MA2" or "Smart Path") transmission facilities.[52] The Project is proposed to be built primarily within existing rights-of-way ("ROWs").

The Project consists of two components: the Moses-Willis-Patnode ("MW-Patnode") component and the Adirondack-Porter component.[53] The MW-Patnode component, owned by NYPA, is the northern section of the project and covers approximately 46 miles running from the Town of Massena to the Town of Clinton in Clinton County, New York. The MW-Patnode component includes the following facilities: (1) rebuild of NYPA's Moses-Willis 1&2 to convert 230 kV circuits to 345 kV (about 37 linear miles); (2) rebuild of Willis-Patnode and Willis-Ryan 230 kV lines and a short portion of the Ryan-Plattsburgh 230 kV line resulting in single-circuit 230 kV lines upgraded to double-circuit 230 kV lines (together, about nine linear miles); (3) construction of the proposed Haverstock Substation; (4) interface connection of the proposed Haverstock Substation to the MA1 & MA2 transmission facilities which consists of an upgrade of approximately six linear miles of 230 kV circuits to 345 kV lines; (5) expansion of the Willis Substation; (6) modifications of the Ryan, Patnode, Massena, and Moses Substations within the existing fence lines; and (7) a ROW expansion at the Ryan Substation.[54]

The Adirondack-Porter component is the southern section of the Project and involves the rebuild of approximately 55 miles of transmission from Croghan to Marcy. This component is comprised of the following Project facilities (items (2), (3) and (8) will be owned by NYPA, and the rest by National Grid): (1) rebuild and upgrade of National Grid's Adirondack-Porter 230 kV lines (Chases Lake-Porter Line 11, Adirondack-Porter Line 12, and Adirondack-Chases Lake Line 13) to 345 kV; (2) construction of a new Adirondack Substation; (3) construction of the interface connection of the proposed Adirondack Substation to the MA1 & MA2 transmission facilities; (4) construction of the proposed Austin Road Substation; (5) extension of the existing 230 kV Rector Road to Chases Lake Line 10; (6) expansion of the Edic Substation; (7) construction by National Grid of interface connection of one circuit to NYPA's Marcy Substation; and (8) extension of the existing 345 kV Marcy Substation.[55] Project costs for both components described above will also include any required interconnection costs identified by the NYISO. Figure 1, below, highlights the components of the Project.

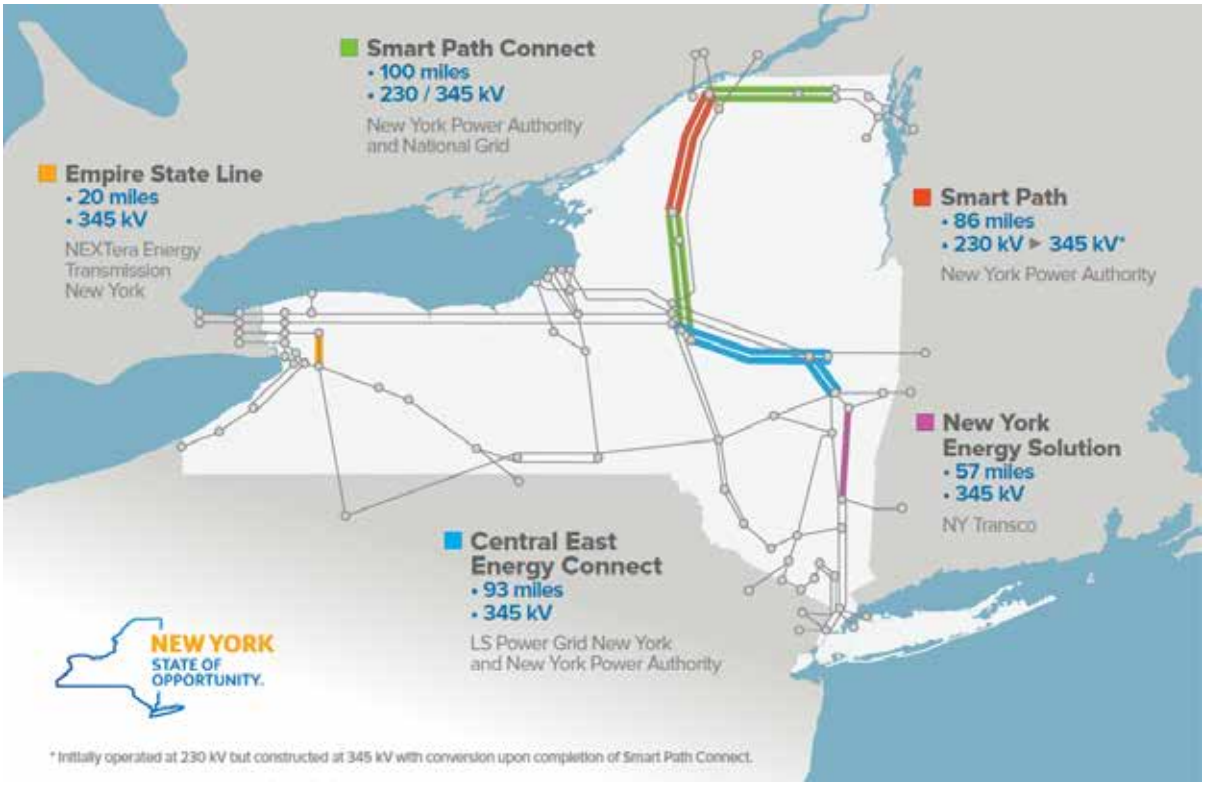
52 Article VII Application at 4.
53 *Id.*; Priority Project Order at 4-5.
54 Ex. No. NYP-100 at 6-7.
55 *Id.* at 7-8.

Figure 1 – Components of Smart Path Connect Project



As shown below in Figure 2, together with other projects under construction by NYPA and other developers, the Project will create a continuous 345 kV path from the northern border of New York to the downstate region.

Figure 2 – Transmission Projects Under Construction in the State of New York



Once the Project is commissioned, operational control will be turned over to the NYISO. The total capital cost of the Project is estimated at $1.2 billion (including AFUDC); NYPA's share is $641.3 million. Construction is anticipated to begin in 2022, and the anticipated in-service date for the Project is December 2025.[56]

2. Selection of National Grid as Co-Participant.

Following designation of the Project as a Priority Project, NYPA, consistent with its statutory obligations,[57] initiated a comprehensive public process to solicit interest from potential co-participants to assess whether joint development of the Project would provide for significant additional benefits in achieving the CLCPA Requirements.[58] On March 30, 2021, after completing its public solicitation process, NYPA determined that it would develop the Project with National Grid as a co-participant.[59] NYPA selected National Grid as a co-participant because of National

[56] Article VII Application, Ex. E-4: Engineering Justification at E-4-11 ("Engineering Justification"); *see also* NYPA, "Smart Path Connect Transmission Project," https://www.nypa.gov/power/transmission/transmission-projects/smart-path-connect (last visited Jan. 28, 2022).

[57] *See* AREGCBA § 7(5).

[58] *See* NYPA Press Release, "NYPA Invites Interested Parties to Propose Co-Participant Roles for the Development of the Northern New York Priority Transmission Project" (Oct. 30, 2020), https://www.nypa.gov/news/press-releases/2020/20201030-nny. This solicitation was required by, and consistent with, the requirements of the AREGCBA. *See* AREGCBA § 7(5).

[59] Article VII Application at 3. NYPA selected National Grid as a co-participant on the Project, due to, among other reasons, National Grid's extensive experience with projects similar in type and scale and National Grid's ownership

Grid's extensive experience with transmission projects, its ownership of and familiarity with existing facilities in New York that complement NYPA's portion of the Project, and the significant engineering and design work that National Grid had already conducted to determine the optimal method for upgrading its existing facilities in northern New York.[60]

3. Benefits of the Project.

a. Economic and Environmental Benefits.

As detailed above, congestion in northern New York has been well documented,[61] and NYISO and numerous other parties have noted the importance of expanding transmission facilities to enable the delivery of renewable resources from the constrained upstate and northern New York regions to customers statewide.[62] Placing the Project into service would address this congestion and provide a series of related economic and environmental benefits.[63] Specifically, the Project would provide several quantifiable benefits: (i) reduced customer energy costs (costs paid by load) of $214 million per year ($2.853 million 20-year NPV); (ii) emission reductions due to the statewide displacement of fossil fuel generation of 1.16 million tons of CO_2 and 160 tons of NO_x on an annual basis, valued at $74 million annually and $981 million (20-year NPV); (iii) capacity market benefits of $25 million – $50 million annually, and by utilizing the $37.5 million midpoint, is valued at $500 million (20-year NPV);[64] and (iv) avoidance of the replacement of aging infrastructure as northern New York's transmission system approaches end of life – reducing the future costs of refurbishing or replacing aging transmission infrastructure, valued at $270 million (20-year NPV). Based on these benefits, the NYPA Panel calculates a benefit-cost ratio for the SPC Project of 3.9.[65]

In addition to the aforementioned benefits, there are additional ways to quantify certain discrete benefits, including: (i) the elimination of approximately 7.5 TWh of renewable curtailments per year resulting in congestion cost savings of approximately $450 million per year in the northern New York region; and (ii) single-year production cost savings of $99 million in

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of and familiarity with property and transmission facilities that can be used to support the expeditious development of the Project. NYPA Press Release, "NYPA Board of Trustees Approves Northern New York Priority Transmission Project Plan," (Mar. 30, 2021), https://www.nypa.gov/news/press-releases/2021/20210330-nny.

60 Ex. No. NYP-100 at 18.

61 *See supra* Part I.C.

62 *See, e.g.*, NYISO Jan. 22, 2019 Comments at 6 (citing previous comments in *Matter of New York Independent System Operator, Inc.'s Proposed Public Policy Transmission Needs for Consideration*, Nos. 14-E-0454, *et al*., and *In the Matter of New York Independent System Operator, Inc.'s Proposed Public Policy Transmission Needs for Consideration for 2016*, NYPSC Case 16-E-0588); Priority Project Order at 6-13 (summarizing numerous parties' comments in addition to those of NYISO).

63 As part of its Priority Project Petition before the NYPSC, NYPA included a detailed simulation of the impact of the Project's benefits, using General Electric Multi-Area Production Simulation Software. The analysis conducted by NYPA utilized metrics akin to those applied by NYISO in evaluating project proposals pursuant to its PPTPP. NYPA's simulation is attached as Exhibit No. NYP-102 ("NYPA Simulation Study"), which is contained within Attachment D to this filing. Further discussion of NYPA's Simulation Study is contained in the NYPA Panel Testimony. *See* Ex. No. NYP-100 at 14-15.

64 *See* the NYPA Panel Testimony (Ex. No. NYP-100 at 19-20) and its accompanying Exhibit Nos. NYP-103 and NYP-104 (explaining the estimated customer energy payment savings and capacity cost savings calculations).

65 Ex. No. NYP-100 at 19.

2025.[66] The following benefits are also expected from the Project, but have not been quantified: (i) enhanced system reliability, efficiency, and operational flexibility of the transmission grid; (ii) enhanced resiliency and storm hardening; (iii) improved market competition and liquidity; (iv) increased diversity of fuel supply; and (v) promotion of job growth.[67]

The Smart Path Connect Project would facilitate the deliverability of renewable generation that is expected to come online in the near future by avoiding potential congestion and potential thermal overloads that could impede its delivery. The NYISO interconnection queue[68] contains more than 2,460 MW of planned renewable generation in the northern New York region that would not be deliverable to load centers on a firm basis without significant expansion of the transmission network in northern New York. To meet the CLCPA Requirements, all of these proposed renewable generation projects will need to be brought online without delay, and a significant portion of their output will need to be delivered to load centers. Without adequate expansion of the transmission system, interconnecting these proposed renewable generating facilities to the grid would exacerbate curtailment of renewable generation and could potentially trigger reliability concerns. As noted, NYPA estimates the Project would result in approximately $450 million in annual congestion savings.

b. Projected Reliability Benefits.

The Project will provide significant reliability benefits by facilitating a more robust transmission system in northern New York that will enable the State to meet the CLCPA Requirements.[69] To meet the CLCPA Requirements, it is necessary to realize additional transfer of clean energy from northern New York, Ontario, and Quebec Canada to load centers in the rest of New York.[70] Specifically, additional transmission capacity is required in the corridor from Ryan/Patnode to Willis to Haverstock/Moses to Adirondack to Utica.[71] This necessitates a connection to the NYPA "Smart Path" project (a rebuild of MA1 & MA2 currently under construction), the rebuild of the Adirondack-Chases Lake-Porter circuits to 345 kV, and the rebuild and conversion of Moses-Willis along with the required new or rebuilt substations to 345 kV.[72] The Project will provide an additional 1,000 MW of firm transfer capability to the rest of the State beyond Utica.[73] This additional capability will enable the transmission system in northern New York to accommodate significant additional renewable generation.

The Smart Path Connect Project will interconnect directly to and become a part of the existing transmission backbone system of the New York Control Area.[74] It will improve reliability

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66 Article VII Application, Engineering Justification at E-4-10. *See also* Ex. No. NYP-100 at 20 (explaining that congestion cost savings and production cost savings were not included as part of the NYPA Panel's benefit to cost ratio to avoid the risk of double counting).

67 Ex. No. NYP-100 at 21.

68 *See* NYISO, Interconnection Process (select Prior Interconnection Queues, NYISO Interconnection Queue 5/31/2020 (published June 10, 2020)), https://www.nyiso.com/interconnections.

69 *See* Article VII Application, Engineering Justification at E-4-10.

70 *Id*. at E-4-9.

71 *Id*.

72 *Id*.

73 *Id*.

74 Article VII Application at 17.

by reinforcing the Moses – Adirondack – Porter and Moses – Willis – Patnode/Ryan transmission corridors, complementing NYPA's "Smart Path" project and Segments A and B of the AC Transmission Public Policy Transmission Need projects to establish a continuous 345 kV path that greatly expands the energy and capacity deliverability of renewable generation from northern and western New York to load centers.[75] The Project will also enable an increase in power transfer limits across the Moses-South interface.[76] Moreover, the Project will further enhance reliability by replacing the existing 80-year-old wood H-frame structures with steel monopole structures, thus strengthening the resilience of the transmission system to withstand, for example, additional "ice-loading" beyond what the wood pole structures can withstand.

II. CONTENTS OF FILING

In addition to this pleading, which provides a detailed description of the approvals requested and the bases for those requests, this filing contains the following supporting exhibits and attachments:

1. A clean version of NYPA's proposed revisions to the NYISO OATT, also submitted in Native Excel File Format ("Attachment A");

2. A blacklined version of NYPA's proposed revisions to the NYISO OATT ("Attachment B");

3. A copy of an order issued by the NYPSC on October 15, 2020 in NYPSC Case 20-E-0197 ("Attachment C");

4. Exhibit Nos. NYP-100 – NYP-104: Prepared Direct Testimony and accompanying Exhibits of the NYPA Transmission Development Panel ("Attachment D");

5. Exhibit No. NYP-200: Prepared Direct Testimony of Scott Tetenman ("Attachment E");[77] and

6. A redacted copy of the SPC Project Article VII Application, Exhibit 9, Cost of Proposed Facility, setting forth the Project cost estimate ("Attachment F").[78]

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[75] *Id*.

[76] *See* Article VII Application, Engineering Justification at E-4-11.

[77] In alignment with current Commission regulations, Ex. NYP-100 and Ex. NYP-200 are not accompanied uniformly by notarized affidavits. *See* Extension of Non-Statutory Deadlines, Supplemental Notice Waiving Regulations, Docket No. AD20-11-000 (filed Dec. 8, 2021) (extending the waiver of the Commissions' requirement that filings with the Commission be notarized through and including March 31, 2022).

[78] A privileged version of Exhibit 9 of the Article VII Application, showing the Project cost estimate will be filed separately, along with a proposed protective order, shortly after the instant filing is accepted and a docket number is assigned.

III. INCENTIVE REQUEST

NYPA seeks authorization to utilize an ROE Risk Adder to reflect the significant risks and challenges associated with NYPA's development of the Project. This is in addition to the Abandoned Plant Incentive for this Project that NYPA requested in its November 2021 petition in Docket No. EL22-15-000.[79]

Recognizing the need to encourage investment in transmission infrastructure, Congress in 2005 directed the Commission to establish rules for transmission incentive-based rate treatments for the purpose of benefitting consumers by ensuring reliability and reducing transmission congestion.[80] In response to this directive, FERC issued Order No. 679, setting forth procedures by which utilities may seek incentive-based rate treatments for their investments in new transmission projects. Under Order No. 679, the incentives a public utility may request include an ROE sufficient to attract capital "sufficient to encourage new investment" in certain infrastructure projects.[81]

Applicants seeking incentive rate treatments under Order No. 679 must demonstrate that the facilities for which incentives are sought either ensure reliability or reduce congestion and 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).[82] Applicants must additionally show that the total package of incentives requested is tailored to address the demonstrable risks or challenges faced by the applicant in undertaking the project – i.e., the "nexus" test.[83] In its Incentives Policy Statement, the Commission explained that the nexus test is fact-specific and requires the Commission to "analyze the need for each individual incentive, and the total package of incentives" to determine whether a sufficient nexus has been demonstrated between the incentives sought and the investment being made.[84]

A. Rebuttable Presumption

Order No. 679 provides that to obtain a transmission rate incentive under Section 219 of the FPA, an applicant must demonstrate that the proposed transmission project will "either ensure reliability or reduce the cost of delivered power by reducing transmission congestion."[85] Order No. 679 established 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 the project for reliability or congestion; or (2) the transmission project has received construction

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79 *See* New York Power Authority, Petition of New York Power Authority for Declaratory Order Authorizing Abandonment Recovery, Docket No. EL22-15-000 (Nov. 16, 2021) ("Abandoned Incentive Petition").

80 Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594, 315 and 1283.

81 Order No. 679 at P 94, *id.* at PP 91-96.

82 *See id.* at P 48; Order No. 679-A at P 16. The Commission has emphasized that, to meet the nexus requirement, the applicant does not need to satisfy a "but for" test and show that the projects would not be built without the incentives.

83 *Promoting Transmission Investment through Pricing Reform*, 141 FERC ¶ 61,129, at P 10 (2012) ("Incentives Policy Statement"); Order No. 679-A at P 115; 18 C.F.R. § 35.35(d) (2021).

84 Incentives Policy Statement at P 10 (2012); *see also N.Y. Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,004, at P 24 (2015) ("NY Transco Incentive Order").

85 Order No. 679 at P 76; 18 C.F.R. § 35.35(d).

approval from an appropriate state commission or state siting authority.[86]

In Order No. 679, the Commission stated that it "carefully consider[s] the views of any state bodies having jurisdiction" over project siting and permitting in determining whether a project qualifies for incentives, and that it will adopt the rebuttable presumption for "projects approved by an appropriate state commission or siting authority."[87] In Order No. 679-A, the Commission further clarified that it created the rebuttable presumption "for the purpose of avoiding duplication in determining whether a project maintains reliability or reduces congestion," stating that the Commission "do[es] not wish to repeat the work of state siting authorities, regional planning processes, or the DOE in evaluating these issues."[88]

The Smart Path Connect Project should be considered to qualify for the Commission's rebuttable presumption under Order No. 679 because the SPC Project has been designated as a Priority Project by the NYPSC as a part of its mandate under the AREGCBA to expedite bulk transmission investments needed to achieve the CLCPA Requirements. In the Priority Project Order, the NYPSC found that the Project is "needed expeditiously" to meet the State's CLCPA Requirements because it would unbottle a significant amount of existing renewable generation in the northern New York region.[89] In making this determination, the NYPSC specifically found that "the State's investments in renewable generation in the northern region are not being fully realized due to transmission limitations" and that "a significant amount of existing renewable generation is subject to curtailment because of those limitations."[90] The NYPSC also noted that advancing the Project would help facilitate the development of planned renewable generation in the area.[91]

In evaluating the Project, the NYPSC reviewed the costs and benefits of addressing the curtailment of existing renewable generation through construction of the Project and found that NYPA had shown the costs and benefits of addressing that problem by constructing the Project to be in "rough balance."[92]

Following its designation as a Priority Project, the Project was included as a part of the baseline transmission system in the Initial Power Grid Study required by the AREGCBA, which is a foundational element of the NYPSC's transmission and distribution planning process to meet the CLCPA Requirements.[93] Thus, the Project has been approved by the NYPSC. A failure to grant the rebuttable presumption here would require the Commission to duplicate the NYPSC's review and analysis of transmission congestion in northern New York and solutions that effectively address it, which the Commission stated in Order No. 679-A that it seeks to avoid in such cases.[94]

Additionally, the Project's designation as a Priority Project has resulted from a fair and

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86 Order No. 679 at P 58; Order No. 679-A at P 49; 18 C.F.R. § 35.35(i).
87 Order No. 679 at P 54.
88 Order No. 679-A at P 46.
89 Priority Project Order at 21.
90 *Id.* at 25.
91 *Id.* at 21.
92 *Id.* at 25. In making this determination, the NYPSC found that "the engineering and economic analyses provided by NYPA in support of the Northern New York Project were sufficient" to evaluate the Project. *Id.* at 27.
93 Initial Power Grid Study at 2, n.2, 79, n.76, and App. E at E-4, E-38.
94 Order No. 679-A at P 46.

open public planning process. The AREGCBA specifically requires the NYPSC to establish and implement a bulk transmission system investment program, and as a part of that program, to identify Priority Projects.[95] The NYPSC designated the Project as a Priority Project in the proceeding in which it is conducting this transmission planning process required under the AREGCBA.[96] The public has been afforded the opportunity to comment on the NYPSC transmission planning actions throughout the process, including with respect to the Project. Before designating the Project as a Priority Project, pursuant to the New York State Administrative Procedure Act, the NYPSC solicited input from the public on general criteria to use in identifying Priority Projects and on whether the SPC Project should be designated as a Priority Project.[97] In its order designating the Project as a Priority Project, the NYPSC considered and responded to numerous comments it received from the public.[98]

Because the NYPSC substantively approved the Project in the Priority Project Order, and because the Project has been identified as a part of the NYPSC's AREGCBA-required planning process, the Project should be considered by the Commission to qualify for Order No. 679's rebuttable presumption.

B. The Project Is Eligible for Incentive Rate Treatment Under Order No. 679 Because It Is Needed to Maintain Reliability and Reduce Congestion.

If the Commission finds that the Project does not qualify for the rebuttable presumption based on the NYPSC's Priority Project Order, the Project is nonetheless eligible for transmission rate incentives because the Project is needed to maintain reliability and reduce congestion. The Commission has held that where an applicant does not qualify for Order No. 679's rebuttable presumption, applicants may still qualify for incentives if they "demonstrate that their project is needed to maintain reliability or reduce congestion by presenting a factual record that would support such findings".[99]

As detailed above, the Project will provide significant reliability benefits. Specifically, the Project will reinforce the Moses/Willis to Patnode/Ryan and Adirondack to Porter to Marcy transmission corridors by enabling an additional 1,000 MW of transfer capability for renewable energy from northern New York, and Ontario and Quebec, Canada to load in the rest of New York that will be necessary to meet the CLCPA Requirements. Additionally, as explained above, the Project will also significantly reduce congestion in New York. Specifically, the Project is estimated to result in approximately $450 million in annual congestion cost savings in northern

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95 AREGCBA § 7(4) ("4. The commission shall . . . commence a proceeding to establish a bulk transmission system investment program . . . that identifies bulk transmission investments that the commission determines are necessary or appropriate to achieve the CLCPA [Requirements] (the "state bulk transmission investment plan"). The commission shall establish a prioritized schedule for implementation of the state bulk transmission investment plan and, in particular shall identify projects which shall be completed expeditiously to meet the CLCPA [Requirements].").

96 *See Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*, NYPSC Case 20-E-0197, Order on Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act (May 14, 2020).

97 *Id.* at 7-8.

98 Priority Project Order at 25.

99 Order No. 679 at P 57.

New York.[100] Further, the Project will improve the reliability of the transmission system in northern New York by upgrading existing, 230 kV wooden pole transmission lines nearing end of life with 345 kV steel tower transmission lines.

Accordingly, if the Commission does not consider the Project to qualify for Order No. 679's rebuttable presumption, the Commission should determine that the Project is nonetheless eligible for transmission rate incentives under Order No. 679 because it enhances reliability and substantially reduces congestion.

C. There Is a Nexus Between the ROE Incentive Adder, the Previously Requested Abandonment Incentive, and the Risks Faced by NYPA in Developing and Constructing the Project.

Applicants seeking incentive rate treatments under Order No. 679 must also demonstrate that there is a nexus between the incentives sought and the investment being made. That is, the applicant must show that there is a rational relationship between the requested incentives and the proposed project.[101] The Commission explained in its November 15, 2012 Incentives Policy Statement that the nexus test is fact-specific.[102]

1. NYPA Will Face Considerable Risks and Challenges During Project Development and Construction

a. Financial Risks and Challenges.

There are a variety of significant financial risks and challenges facing NYPA in the development of the Project. As described in the testimony of Scott Tetenman, the SPC Project represents a major transmission investment for NYPA as it is the single largest expenditure in NYPA's 2021-2025 capital plan, representing almost 20% of NYPA's total capital investments.[103] Given the size of NYPA's proposed investment—$641.3 million for its share of the SPC Project—compared to its current average annual transmission investment, NYPA will face considerable financial risk because of its development of the SPC Project.

During the 2021-2025 period, NYPA will construct and put into service four significant transmission projects. This will include, in addition to the SPC Project, the Segment A Project (i.e., Central East Energy Connect Project), the MA1 & MA2 rebuild, and the Y-49 transmission line reconductoring. Comparatively, the Segment A Project, being constructed in partnership with LSPG-NY, comprises only $208 million of NYPA's capital investment during the 2021-2025

[100] Ex. No. NYP-100 at 450.

[101] *See* Order No. 679 at P 48; Order No. 679-A at P 16. The Commission has emphasized that, to meet the nexus requirement, the applicant does not need to satisfy a "but for" test and show that the projects would not be built without the incentives.

[102] Incentives Policy Statement at P 6.

[103] NYPA projects that during the 2021 through 2025 construction period, it will invest over $2.9 billion in its transmission, generation and general plant and equipment, almost double NYPA's investments during the 2016-2020 period. Prepared Direct Testimony of Scott Tetenman, Ex. No. NYP-200 at 5-7 ("Tetenman Testimony") (set forth as Attachment E to this filing).

period, less than half of NYPA's expected investment in the SPC Project. Likewise, NYPA's investment in the MA1 & MA2 rebuild,[104] comprises just $300 million of capital investment during the 2021-2025 period, also less than half of NYPA's expected investment in the SPC Project. Additionally, NYPA's reconductoring of the Y-49 transmission line in downstate New York during the 2021-2025 period comprises just $70 million of capital investment during the 2021-2025 period. NYPA is also currently engaged in a multi-year life extension and modernization plan for its existing transmission system. This multi-year life extension and modernization plan includes, but is not limited to, upgrades or replacements of transformers, conductors, relays and cables. This substantial program is comprised of over 34 different projects, but only averages just under $15 million per project with total capital investments over the 2021-2025 period estimated to be $256 million.[105] The SPC Project is by far the largest transmission investment NYPA will make over the 2021-2025 period, comprising 20% of its total capital investment budget.

Further, not only does the scope and scale of the SPC Project far exceed any transmission project planned by NYPA for the 2021-2025 period, the scope and scale of the SPC Project also far exceeds any transmission project undertaken by NYPA in the past five years. During the 2016-2020 period, NYPA's largest transmission project consisted of a portion of the rebuild of two transmission lines (part of the MA1 & MA2 rebuild), resulting in total capital costs of only $183 million.[106] The SPC Project is a significant undertaking by NYPA and will require significant capital resources. Due to the significant capital needs forecasted through 2025, it is possible that the efficiency and modernization upgrades or other NYPA capital projects may have to be delayed or reduced in scope in order to proceed with the SPC Project as proposed.[107]

There are inherent risks associated with constructing major bulk power transmission lines. The Commission has acknowledged that "no single utility [is] obligated to build" new high-voltage lines and upgraded infrastructure necessary to support the wholesale power markets no matter the generation source.[108] The Commission has recognized these inherent risks, including cash flow prior to facilities being placed into rate base.[109] In New York, these risks are particularly challenging as there has been only limited transmission development in the past 30 years, even in historically constrained areas of the State. Accordingly, NYPA's investment in the Project is, by definition, an effort that "exceed[s] the normal risks undertaken by a utility."[110]

Additionally, factors beyond the control of NYPA also could impact whether or not the Project will ultimately be built. The Project was approved as a Priority Project based on the NYPSC's finding that the Project is needed expeditiously to meet the State's CLCPA Requirements. Legal challenges could lead to cancellation or significant modification of the Project. Similarly, changes in the legislative or executive leadership of the State could introduce changes to the CLCPA, the AREGCBA, or other state laws that could result in cancellation or modification of the Project. These risks are significant and will only grow as NYPA continues

104 Also referred to as the "Smart Path project" or "MA1 and MA2."
105 Ex. No. NYP-200 at 6.
106 *Id.* at 7.
107 *Id.* at 7-8.
108 Order No. 679 at P 25 (internal quotation marks omitted).
109 *See* Incentives Policy Statement at P 12.
110 Order No. 679 at P 27.

development of, and increases its investment in, the Project. To offset this risk, NYPA requested the Abandonment Incentive for the SPC Project in a separate docket, Docket No. EL22-15-000.[111]

b. Regulatory Risks and Challenges.

As described in the NYPA Panel Testimony, there are also several known environmental, regulatory, and siting risks associated with the development of the Project.[112] Most significantly, although the NYPSC has already designated the Project as a Priority Project, NYPA and National Grid still need to obtain all necessary permits and approvals, including siting approvals required under Article VII of the New York Public Service Law.

Under Article VII, the Project qualifies as a "major utility transmission facility,"[113] and as a result will require a Certificate of Environmental Compatibility and Public Need ("Certificate") and an approved Environmental Management and Construction Plan ("EM&CP") from the NYPSC before Project construction may begin.[114] The intent of the EM&CP is to minimize environmental impacts during construction and operation of the transmission facility. Accordingly, Article VII requires the NYPSC to conduct a full environmental, public health, and safety impact review of the siting, design, construction, and operation of all major transmission facilities in New York State, as well as determine the need for the Project. The NYPSC has broad authority and discretion to impose in the Certificate any terms, conditions, limitations, or modifications of the proposed project that it deems appropriate.[115] These Certificate conditions can include facility location requirements, construction activity restrictions, required environmental or agricultural inspections, and applicant reporting requirements to regulators. NYPA expects to submit an EM&CP for the facilities it will own, potentially utilizing a phased approach in accordance with the various phases of construction of the Project. Approval for a single EM&CP for longer or complicated projects can take a year or more, whereas, filing multiple EM&CPs for a project can help keep construction on schedule.[116]

Moreover, the Article VII approval process requires significant public consultation, opening the Project up to public opposition to the construction of these new facilities by affected landowners, elected officials, and other stakeholders. The public consultation may be particularly challenging and could play a significant role in the Article VII permitting process. An Article VII application potentially triggers an administrative evidentiary hearing phase, in which interested parties may submit challenges to the Project.

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111 *See* Abandoned Incentive Petition.

112 Ex. No. NYP-100 at 21-25.

113 Major electric transmission facilities are lines with a design capacity of 100 kV or more extending for at least 10 miles, or 125 kV and over, extending a distance of one mile or more. *See, e.g.*, NYPSC, *The Certification Review Process for Major Electric and Fuel Gas Transmission Facilities: A Guide from the New York State Public Service Commission*, at 3 (Nov. 2017), https://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/a021e67e05b99ead85257687006f393b/$FILE/19336071.pdf/Article%20VII%20Guide%20Web%2011-17%20Final.pdf.

114 *See id*.

115 N.Y. Pub. Serv. Law § 121; *see also In re Cty. of Orange v. Pub. Serv. Comm'n of N.Y.*, 353 N.Y.S.2d 916 (1974), *modified*, 37 N.Y.2d 762 (1975).

116 Ex. No. NYP-100 at 27-28.

If a party challenges NYPA's Article VII Application, NYPA must offer evidentiary proof in support of its application, defend its positions, and demonstrate compliance with applicable statutes and regulations. Often, these evidentiary hearings do not proceed day to day, but extend over weeks until complete.[117] Administrative law judges ("ALJs") often require post-hearing briefs (initial and responsive/rebuttal briefs) from the parties, and the briefing schedule may take months to complete. Generally, the ALJ makes a recommended decision and the NYPSC makes a final determination. This adjudicatory process could take months or years, resulting in significant construction delays, or, ultimately, abandonment of the Project.[118] NYPA and National Grid issued a notice of impending settlement negotiations on December 27, 2021, and settlement discussions commenced on January 10, 2022.[119]

In addition to meeting the Article VII requirements, prior to construction, the Project will need to apply to the U.S. Army Corps of Engineers ("USACE") for Sections 10 and 404 permits for wetlands and waterbody crossings which, because of increased compliance burdens due to 2021 regulatory changes applicable to Army Corps permits, will pose increased risk to the Project in light of the planned siting for the Haverstock Substation. USACE requires that wetlands and waterbody impacts be mitigated or minimized. NYPA chose the location of the proposed Haverstock Substation to optimize the intersection point of the existing transmission lines and reduce the rebuild needed to the two transmission lines (MA1 & MA2 and Moses-Willis 1&2) that connect to NYPA's existing Saint Lawrence-FDR Hydroelectric Project ("STL"). While the reduced building scope lowers construction costs and minimizes the impacts on the local environment, the approximate two-mile line segments between the proposed Haverstock Substation and the existing Moses Substation at STL are comprised of significant wetlands and long water crossings. There is a risk that the Army Corps permits could be delayed or denied due to new regulatory compliance burdens imposed in 2021. If denied, NYPA will need to pursue a more complex rebuild that would add approximately $25 million to the cost of the Project, plus the cost of an enhanced Federal Aviation Administration permit for the transmission tower height needed over alternative terrain.

Finally, several other stand-alone permits will need to be obtained prior to the Project's construction, including but not limited to: New York State Department of Environmental Conservation State Pollution Discharge Elimination System General Permit for Stormwater Discharge During Construction Activities; Utility Work Permit from the New York State Department of Transportation; Coastal Consistency Certificate from the New York State Department of State; and historic and archaeological clearances from the New York State Historic Preservation Office/New York Office of Parks, Recreation and Historic Preservation.[120] These authorizations are set forth in more detail in Exhibit No. NYP-101.

To minimize costs and environmental impacts, NYPA has proposed to develop the majority of the Project within existing ROWs owned by NYPA and its co-developer, National Grid.[121]

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[117] N.Y. Pub. Serv. Law § 121.

[118] The Article VII hearing that invites public comment will commence on February 16, 2022. This is where opposition to the Project would likely first be registered.

[119] Ex. No. NYP-100 at 26.

[120] *See* Article VII Application, Ex. 8 ("Other Pending Filings").

[121] *See* Article VII Application at 4.

However, the configuration of the Project will nonetheless require NYPA and National Grid to engage in good faith negotiations with some third-party property owners to obtain certain property rights necessary to construct the Project as proposed. Although NYPA has experience in negotiating and obtaining easements, including from other utilities and private landowners, it is possible that NYPA and National Grid's efforts to obtain the ROWs may result in disputes or challenges that could, at a minimum, jeopardize the Project's in-service date or require a material modification to the Project as proposed. For the Project to be in-service by its target in-service date, cooperation by these landowners is necessary. To the extent the Project must be modified as a result of any of these processes, the Project could be significantly delayed or could be jeopardized entirely.[122]

c. Execution Risks.

The NYPA Panel Testimony also details several execution risks, many of which are heightened as a result of the COVID-19 pandemic and current political environment. For instance, the SPC Project may face issues with material procurement. The SPC Project's material procurement risks include raw materials, particularly steel price volatility which has been heightened due to the aforementioned pandemic.[123] Further, manufacturing availability, quality, and delivery logistics risks are significant for a project of this scale.[124]

The SPC Project also faces labor and equipment shortages, risks that have likewise been exacerbated by the COVID-19 pandemic and are anticipated to pose a significant challenge. The large number of transmission projects undertaken in New York and nationally over the same period as the SPC Project is expected to strain the availability of transmission line contractors and crews. This is likely to have an impact on cost and schedule.[125]

Both NYPA and National Grid will also require system outages which at times may not be granted by NYISO due to system operation constraints. These outages will need to be coordinated to ensure continued system reliability. Moreover, the existing transmission facilities provide a significant amount of power to downstate New York. Requested outages to perform the necessary facility work will likely be heavily scrutinized, i.e., shorter outage/construction durations or the need for temporary transmission lines may be required to mitigate reliability concerns, resulting in additional costs to the Project. As a result, the scale of the Project and the volume of additional transmission projects currently underway across New York raises the risk that required system outages may not be obtainable in the timeframe needed for Project completion consistent with the target in-service date. This could impact the Project schedule and impose additional costs.[126]

Lastly, NYPA or National Grid may face unexpected underground risks, including the potential for unexpected geotechnical conditions during construction, such as rocks, which would

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122 Ex. No. NYP-100 at 23-24.

123 Mr. Tetenman's testimony explains NYPA's proposal to mitigate the financial risks to the Project associated with unforeseen steel price increases. *See* Ex. No. NYP-200 at 17-18.

124 Ex. No. NYP-100 at 22.

125 Mr. Tetenman's testimony addresses NYPA's proposal to mitigate partially the Project's financial risks associated with labor and equipment cost increases in his testimony. *See* Ex. No. NYP-200 at 18.

126 Ex. No. NYP-100 at 21-22

require rerouting or drilling. Such unforeseen underground risks could result in schedule delays and increase costs.[127] For NYPA, these unexpected underground risks extend to the development of land associated with the building of new or expanded substations. The NYPA Panel describes how the large acreage of these undeveloped land tracts presents significant risk.[128]

d. Other Risks and Challenges.

As described in the NYPA Panel Testimony, other risks include: (i) delays and increased project costs that could arise due to an unusually wet environment that requires an increased use of matting; (ii) wet conditions during construction that could lead to delays to the Storm Water Pollution Prevention Plan inspection schedule and increased costs for maintenance and sediment control; and (iii) extreme weather related issues that may include, but is not limited to, rain, ice, snow, hurricanes, and blizzards that could lead to schedule delays and additional costs.

2. The ROE Risk Adder Will Address the Identified Project Risks.

As discussed above and in the accompanying testimonies of Mr. Tetenman and the NYPA Panel, NYPA will be subject to significant financial, development, and regulatory risks when developing and constructing the Project. The Commission has recognized that regulatory risk can affect financial stability and result in higher capital costs.[129] The requested incentive is designed to alleviate such demonstrable risks.

NYPA requests authorization to include in its annual transmission revenue requirement, for this Project, an ROE Risk Adder to mitigate the significant risks of the Project. In its Incentives Policy Statement, the Commission affirmed that it "will continue to allow applicants the flexibility necessary to demonstrate why their projects may merit an incentive ROE, and at what level, based on those project's risks and challenges."[130] The Commission requires applicants to make four showings to demonstrate that an incentive ROE is appropriate: (i) an explanation of the specific risks and challenges of the project; (ii) a demonstration that the applicant is taking appropriate steps and using appropriate mechanisms to minimize its risk during project development; (iii) a demonstration that alternatives to the project have been, or will be, considered in either a relevant transmission planning process or another appropriate forum; and (iv) an explanation of whether the applicant has committed to limiting the application of the incentive ROE based on a project's risks and challenges to a cost estimate.[131]

As described above and demonstrated below, the Project faces significant risks and challenges, and satisfies each of the four criteria identified in the Incentives Policy Statement for ROE incentive applications. Notably, the Commission has previously recognized that an ROE incentive adder is warranted to address the risks and challenges of projects substantially similar to the Project, and for projects of smaller scope and investment. For example, the Commission previously granted requests for an ROE risk adder for NYPA's investment in the Segment A

127 *Id.* at 23.
128 *Id.*
129 Incentives Policy Statement at P 12.
130 *Id.* at P 17.
131 *Id.* at PP 20-30.

Project, an estimated $208 million investment.[132] NYPA's co-participant in the Segment A Project, LSPG-NY, also received an ROE risk adder for its estimated $300 million investment.[133] New York Transco, LLC ("NY Transco") also received an ROE risk adder for its investment in the New York Energy Solution (i.e., Segment B of the AC Transmission Public Policy Transmission Need project), an estimated $592 million investment.[134] Finally, the Commission also awarded an ROE risk adder to NextEra Energy Transmission New York, Inc. ("NEET NY") for its Empire State Line Project despite the fact that the project's new transmission infrastructure only spanned 20 miles and NEET NY estimated its investment to be $181 million.[135] The New York transmission projects that have been awarded an ROE risk adder for risks and challenges by the Commission—other than the NY Transco project which investment approaches an estimated $600 million—have been smaller in scope and investment than the SPC Project. Accordingly, for the reasons stated above, the Commission should grant NYPA's request for an ROE Risk Adder to mitigate the risks of the Project.

a. Risks and Challenges of the Project.

In the Incentives Policy Statement, the Commission required applicants for the ROE risk adder to address the specific risks and challenges that are faced by the Project.[136] With respect to this issue, the Commission observed that, based on its industry expertise, certain types of transmission projects likely face risks and challenges that would not be addressed by either the base ROE or other risk-reducing incentives. These types of projects include those that "unlock location constrained generation resources that previously had limited or no access to the wholesale electricity markets" and "projects that relieve chronic or severe grid congestion that has demonstrated cost impacts to consumers."[137] The SPC Project will unlock location-constrained generation resources and relieve chronic and severe congestion, and its risks and challenges are not adequately addressed by the other risk-reducing incentive (Abandoned Plant Incentive) or by NYPA's base ROE of 8.95%. The Project thus qualifies for an incentive ROE under the Commission's Incentives Policy Statement.

i. The Project Relieves Chronic and Severe Grid Congestion That Will Have Demonstrated Cost Impacts on Customers.

As described above and in the NYPA Panel Testimony, the northern New York bulk transmission system is subject to chronic and severe congestion due to the physical boundaries of Adirondack State Park and historical limitations on construction of transmission projects within its boundaries.[138] The NYPSC designated the Project a Priority Project because it found that the

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132 *N.Y. Power Auth.*, 169 FERC ¶ 61,125 (2019).

133 *See* LSPG-NY Settlement § III(B)(2). The Commission approved the settlement by order dated June 17, 2021. *N.Y. Indep. Sys. Operator*, 175 FERC ¶ 61,210 (2021).

134 *See* NY Transco Incentive Order at PP 80-83, 85-87, 97-98; *id.* at P 97 (finding that the Project is "an investment of more than $1 billion in capital, which itself is a major financial risk, and will be constructed to relieve chronic and severe grid congestion that has had demonstrated cost impacts to consumers" and granting the requested ROE Risk Adder). *See also* Substation Engineering Co., *AC Transmission New York Public Policy Transmission Need: Technical Review Report*, at 8, 20 (rev. 8, June 18, 2018).

135 *See NextEra Energy Transmission N.Y., Inc.*, 162 FERC ¶ 61,196, at PP 6 n.8, 36-42 (2018) ("NEET NY Order").

136 Incentives Policy Statement at P 20.

137 *Id.* at P 21.

138 Ex. No. NYP-100 at 10.

Project is "needed expeditiously" to meet the State's CLCPA Requirements. Specifically, the NYPSC found that the Project would unbottle a significant amount of existing renewable generation in the northern New York region.[139]

That northern New York is subject to severe transmission constraints is undisputed. In making their Priority Project determination, the NYPSC found that "the State's investments in renewable generation in the northern region are not being fully realized due to transmission limitations" and that "a significant amount of existing renewable generation is subject to curtailment because of those limitations."[140] NYISO also previously determined that between 975 and 1,050 MW of increased transmission capability would be needed on the northern New York 230 kV and 115 kV systems to unbottle potentially curtailed renewable generation.[141]

The SPC Project will alleviate these severe transmission constraints in northern New York by increasing transfer capability by 1,000 MW and by establishing, together with other projects currently under construction by NYPA and other developers, a continuous 345 kV transmission path from northern New York to the down-State region that would mitigate the projected congestion. It is estimated that the Project will avoid 7.5 TWhs of renewable generation curtailments annually.[142] The SPC Project will deliver significant benefits to customers in the New York State area, in the form of lower prices for delivered power. NYPA estimates lower energy costs to New York State of $214 million per year and over $2.8 billion over a 20-year NPV and lower capacity costs to New York State of $25 to $50 million annually and over $500 million 20-year NPV.[143] Notably, the Project is expected to reduce congestion costs by $450 million annually.[144] Moreover, as determined by the NYPSC, the construction of the Project is needed expeditiously in order for the State to meet its CLCPA Requirements in the coming years.[145] The Project is the type of facility warranting an incentive ROE under the Commission's Incentives Policy Statement.

ii. The Risk-Reducing Incentive Requested by NYPA Does Not Fully Mitigate the Project's Substantial Risks.

As discussed above, the Project faces numerous risks due to, among other things, possible challenges from adverse parties through the NYPSC Article VII certification and other permitting processes, resource availability, and raw material price volatility. Simply put, the abandonment incentive previously requested by NYPA does not fully address these risks.

The abandonment incentive only addresses concerns regarding the cancellation of the Project for reasons beyond the control of NYPA; it does not mitigate the financial risks and challenges of the Project that continue to exist if the Project is not abandoned. Although it helps to reduce the risk of significant losses if the Project is abandoned for reasons outside of NYPA's

139 Priority Project Order at 21.
140 *Id.* at 25.
141 NYISO Jan. 22, 2019 Comments at 10.
142 Priority Project Order at 20-21.
143 Ex. No. NYP-100 at 20.
144 *Id*.
145 Priority Project Order at 25.

control, it does not eliminate those risks, because an additional FPA Section 205 filing must be made to recover those costs. In such a proceeding, parties may protest the recovery of such costs, and the matter may be set for lengthy hearings or some of the costs may be ultimately disallowed by the Commission.

Notably, aside from the risks identified above and discussed in the Tetenman Testimony and the NYPA Panel Testimony, the Commission has recognized that transmission infrastructure projects, like the SPC Project, that "unlock location constrained generation resources" or "relieve chronic or severe grid congestion" are projects likely to face the types of risks and challenges that warrant an incentive ROE based on those risks.[146]

b. NYPA Is Taking Appropriate Steps and Using Appropriate Mechanisms to Minimize Its Risk During Project Development.

i. The Project's Risks and Challenges Are Not Already Accounted for in NYPA's Base ROE.

Not only are the Project's risks and challenges not fully offset by the Abandonment Incentives that NYPA has requested in Docket No. EL22-15-000, but they are also not covered by its 8.95% base ROE. Section 219 of the FPA was passed "against the backdrop of a long decline in transmission investment," as a mechanism to encourage much-need infrastructure investment.[147] As a result, at Congress' direction, the Commission reasoned that, pursuant to Section 219, "we are obligated to establish ROEs for public utilities that both reflect the financial and regulatory risks attendant to a particular project and that are sufficient to actively promote capital investment."[148]

In recognition of this, the Commission has found that incentive ROEs may be appropriate "where the risks of a particular project exceed the normal risks undertaken by a utility (and hence are not reflected in a traditional [discounted cash flow ("DCF")] analysis."[149] As described above, the Project is far riskier than the typical utility investment, as is evidenced by the lack of sufficient transmission development in the northern New York region in the past several decades, despite continued congestion and reliability concerns. Construction of the Project is highly dependent on taking existing facilities out of service to perform work. The transmission corridor in which the Project will be constructed affects the flow of electricity to many different communities throughout New York, and therefore the oversight for reliability concerns with outages will be intense. The Project is therefore significantly riskier than the typical investment in new transmission infrastructure, which is in turn riskier than investment by a utility in a relevant DCF analysis proxy group that generally is in the business of owning and operating existing transmission infrastructure and adding new, smaller scale transmission assets. Thus, the risk is not adequately captured in NYPA's existing base ROE.

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146 Incentives Policy Statement at 15.
147 Order No. 679-A at P 14.
148 *Id.* at P 15.
149 Order No. 679 at P 27.

An outcome that results in NYPA not being able to recover an ROE reflective of the actual Project risk would be contrary to the purpose of Section 219. If the ROE earned by competitive transmission developers, who do not have a franchised service territory and an obligation to build needed transmission infrastructure, provides an insufficient risk premium for complex and risky investment like the Project, developers may decline to compete. Highly efficient and innovative solutions may thus continue to go undeveloped in constrained and overburdened grid regions. NYPA and National Grid's significant efforts and investment of intellectual and financial capital to develop a variety of effective and cost-efficient solutions will ultimately provide customers with significant benefits. However, given the high level of risk associated with this and other similar projects, without sufficient equity returns needed to attract capital on par with a project's risk profile, utilities and developers will likely divert capital to less risky investments in lieu of investing in the development of new, complex, and risky high voltage transmission projects.[150]

ii. NYPA Is Taking Appropriate Steps to Minimize Risks.

The Commission requires an applicant seeking an incentive ROE to "demonstrate that it is taking appropriate steps and using appropriate mechanisms to minimize its risks during project development."[151] Notably, the Commission has recognized both the benefits of formula rates to mitigating regulatory lag risk and the advantages of other incentives, such as the abandonment incentive.

NYPA currently has a transmission Formula Rate set forth in Section 14.2.3.1 of Attachment H to the NYISO OATT pursuant to which NYPA will recover costs associated with the Project. NYPA plans to recover the annual revenue requirement of the Project through its NTAC. In accordance with the procedures set forth in NYPA's Formula Rate Implementation Protocols (*see* Section 14.2.3.2.7 of Attachment H to the NYISO OATT),[152] NTAC recovery for the SPC Project was authorized by stakeholders in September 2021.[153] In addition to the mitigation benefits provided by recovering costs associated with the Project through NYPA's NTAC, NYPA has taken explicit steps to further mitigate the risks of the Project. First, NYPA requested a risk-reducing abandonment incentive in a separate docket (Docket No. EL22-15-000). If granted, the abandonment incentive will mitigate the risks of Project cancellation beyond NYPA's control.

NYPA selected National Grid as its co-participant. NYPA and National Grid each have significant experience managing complex projects with aggressive schedules. Pursuant to a Joint-Development Agreement entered into between NYPA and National Grid as joint developers of the Project, NYPA and National Grid have clearly defined project development roles and obligations, including the establishment of a "National Grid Project Manager" and "NYPA Project Manager,"

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150 *See* Ex. No. NYP-200 at 13-14.

151 Incentives Policy Statement at P 24.

152 NYISO OATT, Att. H.

153 The Voting Member Systems empowered to approve NTAC recovery for the SPC Project include: Central Hudson Gas and Electric Corporation; Consolidated Edison Company of New York and Orange and Rockland Utilities, Inc.; Niagara Mohawk Power Corporation d/b/a National Grid; New York State Electric and Gas Corporation and Rochester Gas and Electric Corporation; and Long Island Power Authority. *See* Ex. No. NYP-200 at 9.

with assigned roles and responsibilities.[154] As noted in the testimony of the NYPA Panel, NYPA is the lead developer, though, both NYPA and National Grid will review and provide input to all joint governmental permit approval applications prior to submittal.[155] Accordingly, to mitigate the risk of non-performance by National Grid with respect to its portion of the Project, NYPA has appropriate step-in rights to direct Project completion. This will provide additional risk mitigation for project completion but would result in increased financial risk. Further, by selecting National Grid as its co-participant, NYPA has mitigated its risk by reducing its capital investment outlays from an estimated $1.2 billion for the entire Project to slightly under $650 million for NYPA's share of the Project.[156] Further, by selecting National Grid as its co-participant, NYPA reduced the risk of having to obtain ROWs from either National Grid or from another third party.

Finally, National Grid and NYPA have and will continue to utilize best-in-class project management practices.[157] This includes the development of a detailed schedule identifying all project tasks, resources, and sequences for such tasks. The schedule will serve to ensure that the entire project team knows what needs to be completed, by when, and by whom. Additionally, standard procurement processes will be utilized to secure the materials and labor resources at competitive prices, which may include the use of a competitive bid process for needed materials. NYPA will incorporate lessons learned on previous projects to assist in reducing risks.

However, as with the abandonment incentive, while selection of National Grid as a co-participant and utilization of best-in-class project management practices certainly help mitigate risks, they are not adequate to fully mitigate against regulatory risks, development risks and financing challenges, given the complexity and the scope of the Project. Due to the Project's magnitude, NYPA will experience a significant cash drain during the Project's construction, possibly limiting NYPA's ability to fund other, necessary capital projects and directly affecting NYPA's financial metrics used by the rating agencies to determine its bond rating. The ROE Risk Adder requested by NYPA helps to compensate NYPA both for the Projects financial risks and for the substantial project development risks.[158]

c. Consideration of Alternatives.

Applicants for an incentive ROE are expected to "demonstrate that alternatives to the project have been, or will be, considered in either a relevant transmission planning process or another appropriate forum."[159] The Commission has determined that this can be satisfied through a showing that the applicant's "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."[160]

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[154] *See* Ex. No. NYP-100 at 18. Through December 31, 2021, NYPA has already contributed approximately $22.6 million toward the Project's development. Ex. No. NYP-200 at 3.
[155] Ex. No. NYP-100 at 18.
[156] Ex. No. NYP-200 at 3, 10.
[157] *See* Ex. No. NYP-100 at 31.
[158] Ex. No. NYP-200 at 10, 12.
[159] Incentives Policy Statement at P 25.
[160] *Id.* at P 26.

As discussed in Section I.D above and in the testimony of the NYPA Panel attached hereto, the NYPSC selected the Project pursuant to its authority under the AREGCBA.[161] The NYPSC, as part of its review of the Project, considered alternatives to the Project. Namely, the NYPSC considered, as directed by the AREGCBA, whether comparable projects identified through "NYISO's established public policy transmission planning process" would be more appropriate.[162] Taking note that the NYISO's 2020 public policy planning cycle has only been recently initiated, the NYPSC determined that "it would be several months before NYPA could even submit the [Smart Path Connect] Project for evaluation [and] . . . conclude[d] that this factual circumstance supports the finding that the . . . [P]roject is likely to be placed in-service earlier than a comparable project selected by NYISO . . . ."[163] Because the Project is likely to be placed in-service earlier, the Commission determined that the proposed transmission project is preferable to alternative projects to be identified by the NYISO 2020 public policy planning cycle.

d. Commitment to Cost Estimates.

Finally, applicants are required to demonstrate a commitment to "limit[] the application of the incentive ROE based on a project's risks and challenges to a cost estimate."[164] The Commission is not "prescriptive as to how applicants might structure this commitment; instead, the Commission is open to approaches that control transmission development costs and provide more transparency regarding how incentives will be applied to costs beyond initial estimates."[165] To meet this commitment, NYPA proposes, as a part of its request for the ROE Risk Adder, the cost-containment and risk-sharing mechanism described in Section III.D below. This mechanism is based on the cost-containment and risk-sharing mechanisms previously approved by the Commission in connection with the Segment A Project by LSPG-NY and NYPA in Docket Nos. ER20-716 and ER21-2392, respectively.

e. The Incentive ROE Adder Will Not Result in NYPA's Total ROE for the Project Exceeding the Zone of Reasonableness.

As discussed above, in Section 219(a) of the FPA, Congress directed FERC to establish incentive-based rate treatments to foster investment in transmission facilities. Among other things, Section 219(a) requires that any Commission-authorized rate incentive must be consistent with FPA Section 205. As a result, the Commission stated in Order No. 679, and has since echoed in Opinion No. 569 that a "utility's total ROE, inclusive of transmission incentive ROE adders, should not exceed the top of the zone of reasonableness produced by the two step DCF methodology."[166] The ROE Risk Adder incentive requested in this Petition is consistent with this

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161 Ex. No. NYP-100 at 6.
162 Priority Project Order at 15.
163 *Id.* at 23.
164 Incentives Policy Statement at P 28.
165 *Id.*
166 *Coakley v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234, at P 165, *subsequent determination*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014), *reh'g denied*, Opinion No. 531-B, 150 FERC ¶ 61,165 (2015), *vacated by*, *Emera Me. v. FERC*, 854 F.3d 9 (D.C. Cir. 2017), *order on remand*, 165 FERC ¶ 61,030 (2018); *see also*

requirement; NYPA's resulting ROE, inclusive of the requested incentive adders and all those previously authorized, will not exceed the zone of reasonableness.

NYPA's current base ROE is 8.95%.[167] NYPA previously received authorization to include a 50-basis point ROE adder for its participation in the NYISO.[168] Accordingly, the addition of the ROE Risk Adder requested herein will result in a total ROE of 9.95%, well below the top of the zone of reasonableness—10.29%—resulting from NYPA's two-step DCF analysis filed in the proceeding resulting in its current base ROE.

In Docket No. ER16-835, NYPA witness Mr. Richard L. Ansaldo performed a two-step DCF analysis consistent with the Commission's guidance in Opinion No. 531 and identified a range of reasonable returns of 6.37% to 10.29%. Based on Mr. Ansaldo's analysis, NYPA filed for a base ROE of 8.65%. Although NYPA's current base ROE was the result of an uncontested settlement in that proceeding, which did not specify a particular zone of reasonableness, the agreed-upon base ROE of 8.95% is 30-basis points *higher* than its filed-for return, suggesting that Mr. Ansaldo's DCF analysis was not viewed unfavorably by the settling parties. Taken together, this supports a finding that NYPA's requested total ROE of 9.95% for the Project is within the zone of reasonableness, and thus consistent with FPA Section 205.[169] Accordingly, and for the reasons stated above, the Commission should find that authorizing the requested ROE Risk Adder for the Project will result in a total ROE for the Project that remains within the zone of reasonableness.[170]

D. Cost-Containment Mechanism.

As noted above, the Incentive 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."[171] As part of its request for the

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Order No. 679 at PP 2, 93; *Ass'n of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569, 169 FERC ¶ 61,129, at P 452 (2019), *order on reh'g*, Opinion No. 569-A, 171 FERC ¶ 61,154, *order on reh'g*, Opinion No. 569-B, 173 FERC ¶ 61,159 (2020).

[167] *New York Independent System Operator, Inc., New York Power Authority*, Docket No. ER16-835-000, Offer of Settlement § 3.1 (filed Sept. 30, 2016).

[168] *Id.*; *accord N.Y. Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,268, at P 21, *errata*, 155 FERC ¶ 61,027 (2016). The 50-basis point ROE adder for participation in the NYISO applies to all investments included in the NTAC that was established at the start of NYPA's transmission formula rate in 2016. *N.Y. Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,043 (2017) (approving settlement of NYPA's transmission formula rate).

[169] *See* Ex. No. NYP-200 at 10-11; *New York Independent System Operator, Inc., New York Power Authority*, Docket No. ER16-835-000, Offer of Settlement § 3.1 (filed Sept. 30, 2016).

[170] In Docket No. RM20-10, Supplemental Notice of Proposed Rulemaking, the Commission put forth a proposal for the Regional Transmission Organization ("RTO") Incentive to be in effect for a transmission owner for three years after joining an RTO, and then the incentive would be eliminated. NYPA's analysis of the financial implications of the Project have been calculated using an overall ROE of has 9.95%. Though NYPA considers this Project eligible for a ROE adder of greater than 50 basis points, as its scope, scale and costs are significant, NYPA is requesting a 50-basis point ROE adder for risk and challenge and relying upon the RTO adder of 50 basis points, applicable to all NTAC projects, to achieve the 9.95% overall ROE. If the Commission changes the criteria for the RTO adder such that NYPA no longer qualifies for it, NYPA would seek here or in a subsequent proceeding an ROE Risk Adder of a total of 100 basis points.

[171] Incentives Policy Statement at P 28.

ROE Risk Adder, NYPA agrees to incorporate a cost-containment and risk-sharing mechanism similar to the one the Commission previously approved in the LSPG-NY formula rate proceeding and for NYPA as it relates to the Segment A Project selected in response to the AC Transmission Public Policy Transmission Need. NYPA agrees that application of any incentive ROE will be limited to the Project's cost estimate and, like LSPG-NY, goes a step further. NYPA agrees to adopt an 80/20 cost-containment mechanism, under which NYPA will earn no ROE for 20% of the equity portion of the costs that are greater than the cost estimate. As shown in Table 1 below, for 80% of the equity portion of the costs that are greater than the cost estimate, NYPA will earn only its base ROE (i.e., NYPA will not earn the ROE Risk Adder, nor the RTO adder).[172] Under the tariff amendments being proposed herein, if there are SPC Project cost containment impacts, they will be computed on a workpaper and provided as supporting documentation with each applicable Annual Update.[173]

Table 1[174]
ROE Incentive for Project Costs Over the Adjusted Cost Cap

Project Costs Over Adjusted Cost Cap	Earn Base ROE	Earn ROE RTO Adder	Earn ROE Risk Adder
20%	No	No	No
80%	Yes	No	No

As described in the Tetenman Testimony, the "cost cap" for NYPA's portion of the SPC Project consists of: (i) $641,280,000 – NYPA's portion of the Project cost estimate, prepared in mid-2021 as part of NYPA's Article VII Application and based upon the Project components to be built and owned by NYPA,[175] (ii) less $36,210,000 – AFUDC, and (iii) less interconnection and

[172] Ex. No. NYP-200 at 13.

[173] *See* Attachment A at Schedule D2, n.5 (containing a clean version of NYPA's proposed revisions to the NYISO OATT).

[174] *See* Ex. No. NYP-200 at 18.

[175] *See* Ex. No. NYP-200 at 3, 15. As part of NYPA's Article VII Application, NYPA prepared a cost estimate for the major portion of what is now defined as the SPC Project. The total projected cost included in the Article VII Application is $1,119,551,457. *See* Article VII Application, Ex. 9: Cost of Proposed Facility at 9-2 (attached hereto as Attachment F). A small portion of the SPC Project, referred to as Smart Path Phase 2, was already awarded an Article VII Certificate as part of NYPA's Article VII Application for its MA1 & MA2 upgrades. *See, e.g.*, Application of New York Power Authority for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for the Rebuild of the Existing Moses-Adirondack 1&2 230 kV Transmission Lines Extending approximately 86 Miles from the Robert Moses Switchyard in the Town of Massena, St. Lawrence County to the Adirondack Substation in the Town of Croghan, Lewis County, New York, NYPSC Case 18-T-0207. *See also*, Ex. No. NYP-100 at n.14; New York State, Governor Hochul Announce Milestone in "Smart Path" Clean Energy Initiative in the North Country, https://www.governor.ny.gov/news/governor-hochul-announces-milestone-smart-path-clean-energy-initiative-north-country (Nov. 14, 2021) (stating that Phase 2 of the Smart Path Project will be completed as part of the Smart Path Connect project). After the Article VII Certificate was awarded, NYPA adjusted the scope of Smart Path Phase 2. It is now estimated that Smart Path Phase 2 will cost approximately $56 million, raising the estimated cost of the SPC Project to $1.175 billion, which has been rounded to $1.2 billion for purposes of the total Project cost estimate and to derive the NYPA "cost cap" discussed in this Section III.D.

network upgrade costs resulting from the NYISO interconnection process (approximately $37,029,000). This results in a total cost cap for NYPA's portion of the Project of approximately $568,041,000.[176] As detailed in Section I.E.1, the SPC Project is composed of two components, the MW-Patnode component which is entirely owned by NYPA, and the Adirondack-Porter component.[177] Of the Adirondack-Porter component, NYPA will own the new Adirondack Substation, the interface connection of the proposed Adirondack Substation to the MA1 & MA2 transmission facilities, and the extension of the existing 345 kV Marcy Substation. It is NYPA's understanding that National Grid will make a separate filing to propose a cost recovery and cost-containment mechanism for the costs associated with its segments of the Adirondack-Porter components of the SPC Project.

The actual Project Cost is comprised of all capital costs incurred by NYPA to develop,[178] construct and place NYPA's share of the Smart Path Connect Project in service. The actual Project Costs to which NYPA will compare to the cost cap includes the total actual Project costs less AFUDC, "third-party costs" and "unforeseeable costs" greater than 2.5% of the cost cap for NYPA's portion of the Project.[179] With respect to NYPA's portion of the Project, "third-party costs" include: (i) interconnection and network upgrade costs resulting from the NYISO interconnection process; and (ii) any increased costs (i.e., costs incurred related to the rescheduling of outages or to the relocation of utility assets, which are beyond the ability of NYPA to control or mitigate).[180] Third-party costs will be recovered under NYPA's transmission Formula Rate.[181]

"Unforeseeable costs" for NYPA's portion of the Project are defined as including any costs and savings that, with the exercise of commercially reasonable due diligence, could not have been anticipated at the time the Project cost estimate was put together, which was in mid-2021. More specifically, as it relates to NYPA's portion of the Project, "unforeseeable costs" include costs:

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[176] Ex. No. NYP-200 at 15. There is no need for inflation adjustment as it is already included in the cost cap for NYPA's portion of the Project.

[177] *Id.*

[178] Unlike the prior cost-containment mechanism accepted by the Commission for LSPG-NY, NYPA proposes to include Project development costs, real estate costs and property and sales taxes in its cost cap for its portion of the Project. LSPG-NY's cost cap for the Segment A Project did not include project development costs because they were not part of the cost bid submitted by LSPG-NY to the NYISO. LSPG-NY also excluded real estate costs in its cost cap for the Segment A Project because at the time of submitting its cost bid, real estate costs were uncertain and real estate acquisition was to be significant. Further, LSPG-NY excluded property and sales tax from its cost cap for the Segment A Project because property and sales tax were either not included in their cost bid or there was uncertainty around the costs, subjecting these costs to significant risk. *See* Ex. No. NYP-200 at 16.

[179] NYPA is proposing to reduce the threshold for exclusion of "unforeseeable costs" from Project Costs from the 5% used by LSPG-NY for its Segment A Project to 2.5% for NYPA's portion of the Smart Path Connect Project. This change results in a slighter higher "unforeseeable cost" amount for the Smart Path Connect Project of $14.2 million, as compared to $9.5 million for the Segment A Project. The reduced threshold exposes NYPA to additional risk but not the substantial risk that a 5% threshold would (a 5% threshold would be $28.2 million). *Id.* at 17.

[180] Reference to the incumbent transmission owner has been removed from the description of increased costs from rescheduling outages and relocating facilities because the SPC Project is being built within NYPA and National Grid ROWs, thus any facility relocations are already known and are included in the Project-specific cost cap. *Id.* at 16-17. *See also supra*, n.178 (noting that NYPA is proposing to include real estate costs in its cost cap for the Project). Real estate costs and property and sales taxes will not be recovered as "third-party costs" as was done by LSPG-NY for the Segment A Project. Ex. No. NYP-200 at 16-17.

[181] Ex. No. NYP-200 at 18.

1. Associated with material modifications to the routing or scope of work of the Project that results from a NYPSC order, negotiation, or settlement agreements within the siting process, or are imposed or required by any other governmental agency. For the avoidance of doubt, foreseeable obligations, as included in the New York State Article VII certificate application, or non-material obligations imposed upon NYPA as a normal part of the siting process, shall not be deemed to be "unforeseeable costs;"

2. Associated with changes in applicable laws and regulations, or interpretations thereof by governmental agencies;

3. As a result of orders of courts or action or inaction by governmental agencies;

4. Related to destruction, damage, interruption, suspension, or interference of or with the Project caused by landslides, lightning, earthquakes, hurricanes, tornadoes, severe weather, fires, explosions, floods, epidemics, pandemics,[182] acts of public enemy, acts of terrorism, wars, blockades, riots, rebellions, sabotage, insurrections, environmental contamination or damage, or strike or otherwise unavailability of skilled labor, provided that (i) the cause was not reasonably within the control of NYPA, (ii) NYPA made reasonable efforts to avoid or minimize the adverse impacts of any of the above-listed events, and (iii) NYPA took reasonable steps to expeditiously resolve the event after it occurred;

5. Steel cost escalation that is greater than the "construction cost index" applied to steel costs in determining the Project cost estimate and included in the cost cap for NYPA's portion of the Project;[183] and

6. Total actual project cost escalation, excluding steel costs, that are greater than 150% of the "construction cost index" applied to non-steel costs in determining the Project cost estimate and included in the cost cap for NYPA's portion of the Project.[184]

"Unforeseeable costs" that exceed the 2.5% threshold will be recovered under NYPA's transmission Formula Rate.[185]

Like with LSPG-NY and NYPA's approved cost-containment mechanism for the Segment A Project, if the project costs fall below the "adjusted cost cap," NYPA will earn an

[182] NYPA proposes to add "pandemics" to the force majeure provision of "unforeseeable costs" in recognition of the ongoing global health emergency. *See, e.g.*, *Business Continuity of Energy Infrastructure*, 171 FERC ¶ 61,007 (2020) (acknowledging the impact of the national emergency caused by COVID-19 on business continuity of regulated entities).

[183] Steel cost escalation is measured by the Handy Whitman Construction Cost Index. Ex. No. NYP-200 at 17-18.

[184] NYPA proposes to add provisions that recognize the current and expected economic climate during the equipment purchase and construction phase of the Project. NYPA expects to see inflationary pressures on non-steel costs, such as labor, that was unforeseeable at that time NYPA developed the Project cost estimate.

[185] Ex. No. NYP-200 at *id*.

incentive ROE on the Project. The "adjusted cost cap" for NYPA's portion of the Project equals $535,548,000 (the "cost cap" less 50% of the Project cost contingency included in the cost cap).[186] The incentive ROE for project costs under the "adjusted cost cap" for NYPA's portion of the Project are shown in Table 2 below.

Table 2[187]
ROE Incentive for Project Costs Under the Adjusted Cost Cap
Additional ROE on Smart Path Connect Project

Project Costs Below Adjusted Cost Cap	ROE Adder on Total SPC Project Investment
0% to <=5%	0.05%
>5% to <=10%	0.17%
>10% to <=15%	0.30%
>15% to <=20%	0.45%
>20% to <=25%	0.62%
>25%	0.71%

To implement the ROE Risk Adder and the "80/20 Cost Containment" mechanism, NYPA requests approval of the following revisions to Section 14.2.3.1 of Attachment H to the NYISO OATT, which contains NYPA's transmission Formula Rate:

1. Index – add reference to Workpaper-BJ, a new schedule that will include the investment and depreciation data for the Marcy South Series Compensation Project, the Segment A Project, and the SPC Project;

2. Summary – provide for the ROE Risk Adder for the SPC Project to be included in the total revenue requirement and in the NTAC Facilities' revenue requirement;

3. Schedule D2 – add capital structure and cost of capital for the SPC Project in order to determine the value of the ROE Risk Adder. Also add a footnote explaining that the SPC Project may require a workpaper to be submitted with the annual informational filing if cost containment adjustments apply and stating the components of the ROE for the SPC Project;

[186] The contingency included in the Project cost estimate is $64,986,000. *Id.* at 15.
[187] *Id.*

4. Schedule F1 – to provide for the ROE Risk Adder for the SPC Project and, as it relates to the Marcy South Series Compensation Project and the Segment A Project, to provide a cross-reference to new WP-BJ for the investment and depreciation information needed to determine each project's respective revenue requirement;

5. Schedule F3 – to include the value of the ROE Risk Adder in the NTAC actual net revenue requirement and, as it relates to the Marcy South Series Compensation Project and the Segment A Project, to provide the value of the Actual Net Revenue Requirement with respect to each project; and

6. WP-BJ – a new workpaper that includes investment and depreciation information for the Marcy South Series Compensation Project, the Segment A Project, and the SPC Project.[188]

The Commission has already approved a substantially similar cost-containment mechanism for LSPG-NY's and NYPA's Segment A Project. The cost-containment mechanism described herein is consistent with this prior precedent and policy and should be approved in tandem with the requested ROE Risk Adder.[189]

E. Application of the Nexus Test Under Order No. 679-A.

As stated above, in addition to satisfying the Section 219 eligibility requirements, an applicant must "demonstrate that the *total* package of incentives requested is tailored to address demonstrable risks and challenges" of the project.[190]

In Order No. 679-A, the Commission clarified that its "nexus" test is met when an applicant demonstrates that the total package of incentives required is tailored to address the demonstrable risks or challenges faced by the applicant.[191] In determining whether an applicant has met this requirement, "the Commission will examine the total package of incentives being sought, the inter-relationship between any incentives, and how any requested incentives address the risks and challenges faced by the project."[192] NYPA is not requesting every incentive rate treatment available under Order No. 679. Rather, as described in the supporting testimony of NYPA's witnesses, the package of incentives requested for the Project is narrowly tailored to address the specific challenges faced by NYPA in developing the Project.[193]

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[188] The inclusion of this new workpaper in the Formula Rate not only provides stakeholders with necessary financial information about the SPC Project, but also will obviate the need for NYPA to supply the supplemental addendums to its informational filings and annual updates related to the financial information for the Marcy South Series Compensation Project and for the Central East Connect Project as it has currently been doing. Henceforth, this financial information will be conveniently located within the Formula Rate Template itself.

[189] Provisions related to cost containment for NYPA's portion of the Segment A Project are set forth in the NYPA protocols in Section 14.2.3.2.9 of Attachment H of the NYISO OATT.

[190] Order No. 679-A at P 27.

[191] *Id.* at PP 6, 21.

[192] *Id.* at P 21.

[193] *See* Ex. No. NYP-100; Ex. No. NYP-200.

NYPA seeks authorization in Docket No. EL22-15-000 for the Abandonment Incentive to mitigate the risk of unrecovered costs in the event that all or part of the Project is abandoned for reasons outside of NYPA's control. As described above, the Project faces significant financial, regulatory, permitting, and other requirements that may result in the Project being terminated at no fault of NYPA. As a result, the abandonment incentive is warranted.

The ROE Risk Adder is intended to address the additional risk associated with the Project that is not adequately addressed by the abandonment incentive 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's Incentives Policy Statement. Moreover, the ROE Risk Adder will help to mitigate 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 NYPA is forced to abandon all or part of the Project. Further, as discussed above and in the testimonies the NYPA Panel and Mr. Tetenman, the risks and challenges of the Project are not adequately addressed by the base ROE. The Commission has already approved ROE risk incentive adders for major transmission projects that are substantially similar, yet smaller in scope and investment as compared to the SPC Project.[194] The incentives requested herein are consistent with this prior precedent and policy and should be granted.

F. The Commission Should Approve the Incentive Rate Treatments at the Earliest Possible Date.

NYPA respectfully requests that the Commission authorize the use of the requested incentive rate treatments effective on the date of its order, and no later than April 11, 2022. NYPA has already dedicated considerable resources to the Project and continues to undertake further expenditures to support the development of the Project. Authorization of the requested incentive rate treatments will provide risk mitigation by sending a positive signal of regulatory support for the Project to investors and rating agencies.

IV. ADVANCED TECHNOLOGY STATEMENT

Order No. 679 requires the submission of a technology statement that describes the advanced technologies considered and an explanation if advanced technologies are not to be employed. While NYPA does not specifically seek an advanced technology incentive, it will emphasize good utility practice and efficient engineering design and construction practices.

The Project will employ International Electrotechnical Commission ("IEC") 61850 protocols.[195] IEC 61850 protocols will be used to upgrade existing substation communication and in constructing new substation communication systems to improve efficiency and bolster system

[194] *See*, *e.g.*, NY Transco Incentive Order at PP 80-83, 85-87, 97-98. As discussed, NEET NY was also granted certain incentive rate treatments, including a ROE risk adder, for its Empire State Line Project selected in response to the Western New York Public Policy Transmission Need. *See* NEET NY Order, 162 FERC ¶ 61,196. Notably, the Empire State Line Project is substantially smaller and less risky as compared to the Smart Path Connect Project and is being developed by a single development team.

[195] IEC 61850 is part of the IEC Technical Committee.

reliability. Pursuant to IEC 61850 protocols, all substations will be outfitted with fiberoptic cables (replacing copper wires in existing substations) and transitioned to digital control. Utilizing IEC 61850 protocols will provide greater insight into asset conditions and operations and reduce operating expenditures. Additionally, because substations will be digital, system settings will be able to be adjusted in real-time, permitting a more efficient flow of power.

However, IEC 61850 applications are rare in New York. This Project will be the first time the IEC 61850 protocols are introduced to the NYPA workforce who will be equipped and trained to operate the substation communication system. The IEC 61850 protocols are not yet common in the industry, thus NYPA will be exposed to some design and implementation risks.

V. REQUESTED WAIVERS

Section 381.108 of FERC's regulations exempts "[s]tates, municipalities and anyone who is engaged in the office business of the Federal Government" from the fee otherwise required under Rule 207(c) for a petition for issuance of a declaratory order.[196] As described in Section I.A.1 above, NYPA is a "municipality" within the meaning of Section 3(7) of the FPA and is a "state instrumentality" within the meaning of Section 201(f) of the FPA.[197] It is the established practice of the Commission to exempt municipalities from paying applicable filing fees and from compliance with Section 35.13 of the Commission's regulations. Accordingly, NYPA respectfully requests exemption from the declaratory order filing fees and from any filing requirements of Section 35.13.[198]

In addition to the waivers and exemptions specifically requested above, NYPA respectfully requests that the Commission grant waiver of any other requirements of its regulations as necessary.

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[196] *See* 18 C.F.R. § 381.108(a) ("States, municipalities and anyone who is engaged in the official business of the Federal Government are exempt from the fees required by this part and may file a petition for exemption in lieu of the applicable fee.").

[197] 16 U.S.C. § 824(f) ("No provision in this subchapter shall apply to, or be deemed to include . . . a State or any political subdivision of a State . . . or any agency, authority, or instrumentality of any one or more of the foregoing . . . ."); *see also Village of Bergen v. FERC*, 33 F.3d 1385, 1389 (D.C. Cir. 1994).

[198] The Commission has granted such waivers to NYPA when previously requested. *See, e.g., N.Y. Power Auth.*, 169 FERC ¶ 61,125 at P 49 (waiving filing fees for NYPA as requested due to its status as a municipal utility organized under the laws of New York State); *N.Y. Indep. Sys. Operator*, 154 FERC ¶ 61,268 at PP 69-70 (granting NYPA's requested waiver of Section 35.13 of the Commission's regulations because NYPA is not subject to the Commission's regulatory filing requirements and granting NYPA's requested exemption from the filing fee); *N.Y. Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,240, at PP 36-37 (2012) (same).

VI. CORRESPONDENCE AND COMMUNICATIONS

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VII. CONCLUSION

For the reasons set forth above, NYPA respectfully requests that the Commission issue a declaratory order granting the rate incentive treatments requested herein and approve the proposed changes to its transmission Formula Rate as set forth in Section 14.2.3.1 of Attachment H to the NYISO OATT to incorporate the ROE Risk Adder and cost-containment mechanism to be used in connection with NYPA's investment in the Smart Path Connect Project.

Respectfully submitted,

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Attachments: A - F