

May 6, 2022

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

**Re: New York Independent System Operator, Inc.,
New York Power Authority
Docket No. ER22-1014-000**

Dear Secretary Bose:

The New York Power Authority (“NYPA”) respectfully submits this response to the April 7, 2022 deficiency letter (“Deficiency Letter”) issued by the Federal Energy Regulatory Commission (“FERC” or the “Commission”) in the above-referenced proceeding regarding NYPA’s February 10, 2022 request for incentive rate treatments associated with NYPA’s investment in the Smart Path Connect Project (“Project” or “SPC Project”) and for corresponding revisions to NYPA’s formula rate as 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”).¹ Specifically, NYPA, submitted a request for: (i) authorization of a 50-basis point return on equity adder for the significant risks and challenges faced by the Project (“ROE Adder”) and (ii) in connection with the requested incentive-based rate treatments, acceptance of revisions to the Index, Schedule Summary, Schedule D2, Schedule F1 and Schedule F3 of its Formula Rate, as well as the addition of Work Paper (“WP”) BJ to its Formula Rate² to incorporate the ROE Adder and a risk-sharing and cost containment mechanism to be used in connection with NYPA’s recovery of the Project’s costs.³

¹ *New York Indep. Sys. Operator, Inc.*, NYISO Tariffs, NYISO OATT, 14.2.3-14.2.3.1 OATT Att. H - NYPA Formula Rate (6.0.0). The NYISO submits this filing on behalf of NYPA solely in its role as the administrator for the NYISO OATT. The burden of demonstrating that the proposed tariff revisions are just and reasonable rests with NYPA, the sponsoring party.

² *Id.* at § 14.2.3.1.

³ 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.

NYPA also filed a Petition for Declaratory Order in Docket No. EL22-15-000, requesting an Abandoned Plant Incentive in connection with NYPA's investment in the SPC Project.⁴ On March 11, 2022, the Commission conditionally approved NYPA's Petition for an Abandoned Plant Incentive.⁵

I. RESPONSES TO DEFICIENCY LETTER

1. *In Order No. 679, the Commission stated that each incentive must be tailored to the risks and challenges faced and that each applicant must demonstrate that there is a nexus between the incentive sought and the investment being made.⁶ As clarified by Order No. 679-A, the Commission requires an applicant to demonstrate how the total package of incentives is tailored to address demonstrable risks and challenges faced by the applicant in undertaking the transmission project.⁷*

On page 3 of NYPA's filing, NYPA states that it requests: "approval of the following transmission incentive rate treatments for its investment in the SPC Project: (i) a 50-basis point [Return on Equity (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."

- a. *Please identify the risks and challenges addressed by the proposed performance-based rate incentive, which are not addressed by the base ROE or other requested incentives, such as the ROE Risk Adder, or the conditionally granted Abandonment Incentive.⁸*

⁴ 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").

⁵ *New York Power Authority*, 178 FERC ¶ 61,172, (Mar. 11, 2022).

⁶ Order No. 679, 116 FERC ¶ 61,057 at P 26.

⁷ *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129, at P 10 (2012); Order No. 679-A, 117 FERC ¶ 61,345, at P 27 (finding applicants "must provide sufficient explanation and support to allow the Commission to evaluate each element of the package and the interrelationship of all elements of the package. If some of the incentives would reduce the risks of the project, that fact will be taken into account in any request for an enhanced ROE.").

⁸ *New York Power Authority*, 178 FERC ¶ 61,172, at PP 28-29 (2022).

NYPA will be subject to significant financial, development, and regulatory risks when developing and constructing the Project.⁹ As has been recognized by the Commission, regulatory risk can affect financial stability and result in higher capital costs.¹⁰ To alleviate such demonstrable risks, NYPA requested a 50-basis point ROE Adder. Where an incentive ROE based on a project's risks and challenges is requested, the Incentive Policy Statement requires "applicants . . . to commit to limiting the application of the incentive ROE based on a project's risks and challenges to a cost estimate."¹¹ Consistent with the Incentive Policy Statement and NYPA's request for an ROE Adder, NYPA agreed to incorporate a cost-containment and risk-sharing mechanism.¹² Specifically, NYPA agreed to adopt an 80/20 cost-containment mechanism, under which NYPA assumes the risk that if actual costs exceed the "Cost Cap,"¹³ NYPA will earn no ROE for 20% of the equity portion of the costs that are greater than the Cost Cap and only its base ROE for 80% of the equity portion of the costs that are greater than the Cost Cap (i.e., NYPA will not earn the requested 50 basis-point ROE Adder, nor the RTO Adder¹⁴).¹⁵ If the Project costs fall below the "Adjusted Cost Cap,"¹⁶ NYPA will earn an incentive ROE (i.e. a "performance based rate") on the total Project investment as shown below in Table 1.

⁹ See *New York Power Authority*, Tariff Filing: Revisions to NYPA Formula Rate, Docket No. (Feb. 10, 2022) ("SPC Incentive Filing"); SPC Incentive Filing, Attachment D (containing the NYPA Panel Testimony); SPC Incentive Filing, Attachment E (containing the Direct Testimony of Scott Tetenman).

¹⁰ *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 at P 12 (2012). ("Incentives Policy Statement").

¹¹ *Id.* at P 28.

¹² SPC Incentive Filing at 31-36.

¹³ The "Cost Cap" for NYPA's portion of the SPC Project consists of: (i) 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, (ii) less AFUDC, and (iii) less interconnection and network upgrade costs resulting from the NYISO interconnection process. See Ex. No. NYP-200 at 15.

¹⁴ NYPA previously received authorization to include a 50-basis point ROE adder for its participation in the NYISO ("RTO Adder"). See *New York Indep. Sys. Operator, Inc., New York Power Authority*, Docket No. ER16-835-000, Offer of Settlement § 3.1 (filed Sept. 30, 2016); accord *N.Y. Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,268, at P 21, *errata*, 155 FERC ¶ 61,027 (2016). The 50-basis point RTO 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).

¹⁵ SPC Incentive Filing at 31-36.

¹⁶ The "Adjusted Cost Cap" for NYPA's portion of the SPC Project consists of NYPAs Cost Cap (defined above in n.13) less 50% of the Project cost contingency included in the Cost Cap.

Table 1¹⁷
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%

This performance-based rate is part of a suite of rate incentives that includes a cost containment package that, together, balance risks between NYPA and the New York (“NY”) electric customers. As clarified in Order No. 679-A, and as acknowledged by FERC staff in the Deficiency Letter, the Commission requires an applicant to demonstrate how the total package of incentives is tailored to address demonstrable risks and challenges faced by the applicant in undertaking the transmission project.¹⁸ Applicants are not required to make such a demonstration for each incentive separately.¹⁹ In Order No. 1000, the Commission acknowledged the importance of balancing competing interests in developing cost containment requirements.²⁰ Cost recovery must be sufficient to support the transmission provider’s investment in necessary transmission to maintain reliability, but still cost effective for customers. By agreeing to the cost containment mechanism, NYPA assumed the risk that if the Project’s actual costs exceed the Cost Cap, for 20% of the equity portion of its costs, it will earn no ROE, and for 80% of the equity portion of its costs in excess of the Cost Cap, it will not earn the ROE Adder or the RTO Adder. Absent the ROE Adder NYPA faces substantial regulatory risks, risks that directly impact NYPA’s financial

¹⁷ SPC Incentive Filing at 35.

¹⁸ *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129, at P 10 (2012); Order No. 679-A, 117 FERC ¶ 61,345, at P 27 (finding applicants “must provide sufficient explanation and support to allow the Commission to evaluate each element of the package and the interrelationship of all elements of the package. If some of the incentives would reduce the risks of the project, that fact will be taken into account in any request for an enhanced ROE.”).

¹⁹ *Id.*

²⁰ *New York Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,040 at P 2 (2015).

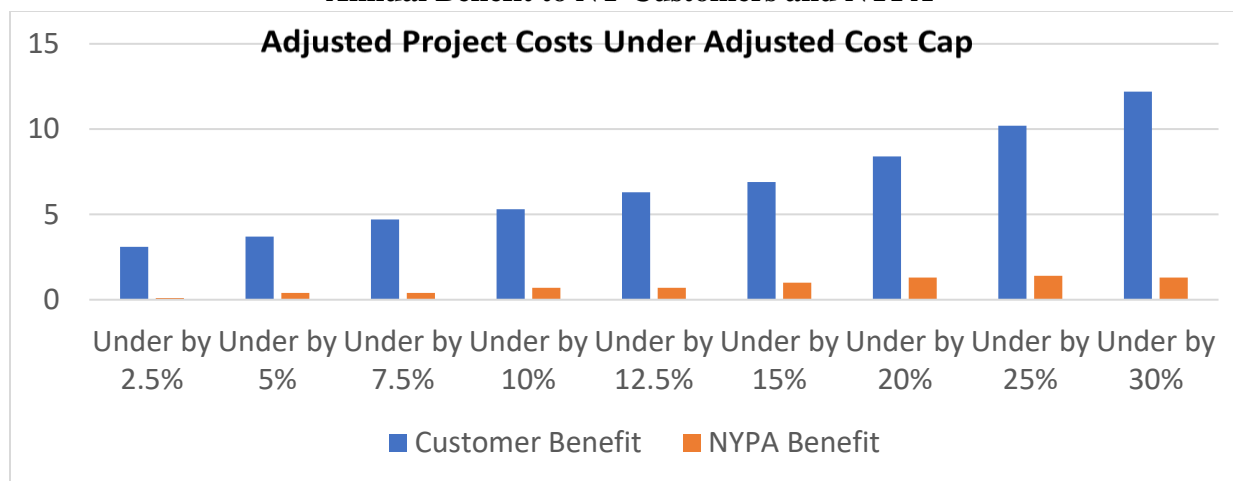
stability. The performance-based rate acts to balance the competing interests of NYPA and NY electric customers. First, to the benefit of NY electric customers, the performance-based rate reinforces NYPA's engagement in cost effective practices by penalizing NYPA if it exceeds the Cost Cap, and incentivizing NYPA for coming in under the Adjusted Cost Cap. To the benefit of NYPA, the performance-based rate partially mitigates the risk NYPA assumes as a result of agreeing to the cost containment mechanism, by incentivizing NYPA's actual Project costs to be lower than estimated.

b. Please explain how the performance-based rate incentive is addressed as part of the total package of incentives that addresses the demonstrable risks and challenges faced by NYPA in undertaking the Project.

As detailed above, the performance-based rate incentive is part of a package of incentives that, together, balance NYPA's significant financial, development, and regulatory risks and the financial risks to NY electric customers. The performance-based rate mitigates the risk of significant cost overruns to NY electric customers by penalizing NYPA if actual Project costs exceed the Cost Cap while also mitigating the risk that NYPA incurred because of its agreement to the cost containment mechanism, by incentivizing NYPA to come in under an Adjusted Cost Cap. As can be seen in Table 2, the benefit to customers from Project costs coming in below the Adjusted Cost Cap is substantial. In fact, the further the actual cost of the Project falls below the Adjusted Cost Cap, the greater the benefit to customers – a benefit that far exceeds the benefit of the performance-based rate to NYPA.

Table 2²¹

Annual Benefit to NY Customers and NYPA



This would not be the first time the Commission has approved an incentive package containing a cost-containment and risk-sharing mechanism that incorporates a performance-based

²¹ The scale in Table 2 is in Millions of Dollars.

rate incentive. For instance, in 2015, the Commission approved a cost-containment and risk sharing mechanism proposed as part of New York Transco, LLC's ("NY Transco") settlement with respect to NY Transco's proposed Alternating Current ("AC") Transmission Project.²² As part of its cost-containment provisions, NY Transco incorporated an additional ROE adder on costs below its "adjusted cost cap."²³ Likewise, in 2018, the Commission approved NextEra Energy Transmission New York, Inc.'s ("NEET NY") cost-containment and risk sharing mechanism for its proposals to invest in transmission facilities located in the NYISO region.²⁴ Like NY Transco, NEET NY included in its cost containment provisions an additional ROE adder for eligible project costs below its "adjusted cost cap."²⁵ Similarly, in 2021, the Commission approved a cost-containment and risk sharing mechanism proposed as part of LS Power Grid New York Corporation I's ("LSPG-NY") settlement of its formula rate proceeding for its investment in Segment A of the AC Transmission Project ("Segment A Project").²⁶ Identical to the proposed cost containment and risk-sharing mechanism here, LSPG-NY's cost-containment and risk sharing mechanism for the Segment A Project adopted an 80/20 cost-containment mechanism and a performance based rate incentive, earned only if actual project costs fall below the "adjusted cost cap."²⁷ Shortly after, the Commission approved the same 80/20 cost-containment mechanism and performance based rate incentive for NYPA's investment in the Segment A Project.²⁸ Consistent with its past precedent, the Commission should approve the cost-containment and risk-sharing mechanism proposed by NYPA in the above captioned proceeding.

c. If NYPA is seeking the performance-based rate incentive as something other than an incentive subject to Order No. 679, please explain.

NYPA is seeking the performance-based rate as part of NYPA's agreement to commit to limiting the application of the ROE Adder based on the Project's risk and challenges to the cost

²² *New York Transco, LLC*, 161 FERC ¶ 61,161 (2017).

²³ *New York Transco, LLC*, Offer of Settlement, Docket No. ER15-572-006 at p. 8 (Aug. 21, 2017).

²⁴ *NextEra Energy Transmissions New York, Inc.*, 164 FERC ¶ 61,117 (2018).

²⁵ *NextEra Energy Transmissions New York, Inc.*, Offer of Settlement, Docket No. ER16-2719-000 at p 16 (May 25, 2018).

²⁶ See *N.Y. Indep. Sys. Operator, Inc.*, Offer of Settlement, Docket No. ER20-716-001 (Apr. 1, 2021, errata Apr. 9, 2021); *N.Y. Indep. Sys. Operator, Inc.*, 175 FERC ¶ 61,210 (2021) (approving LSPG-NY Settlement).

²⁷ *N.Y. Indep. Sys. Operator, Inc.*, 175 FERC ¶ 61,210 (2021) (approving LSPG-NY Settlement).

²⁸ *N.Y. Indep. Sys. Operator, Inc.*, 176 FERC ¶ 61,211 (2021).

estimate, in accordance with Order No. 679 and the Commission’s Incentive Policy Statement.²⁹ While the Project was not selected via the Order No. 1000 process, NYPA notes that its proposed cost containment provisions align with the precedent cited above and with the Cost Cap parameters added to NYISO’s Tariff in 2020.³⁰ Notably, the NYISO’s evaluation of a proposed Cost Cap includes “[t]he effectiveness of the proposed Cost Cap in providing an incentive to the Developer to contain its Included Capital Costs, i.e., how aligned is the Developer’s incentive to maximize its profits by avoiding cost overruns compared to the level of risk exposure to consumers”³¹ Further, NYPA’s proposed cost containment provisions are consistent with FERC Order No. 1000’s goals to increase consumer benefits, such as cost certainty.³² Together, NYPA’s cost containment provisions and risk sharing mechanism provide customers with real benefits in the form of cost savings and certainty, shifting some of the risk of cost overruns from NY electric customers to NYPA. The proposed performance-based rate balances NYPA’s overall risk so that it can, as the Commission hoped,³³ take on the risk of cost overruns without affecting its financial stability.

II. DOCUMENTS SUBMITTED WITH THIS FILING

1. A clean version of NYPA’s proposed revisions to the NYISO OATT (“Attachment H”); and
2. A blacklined version of NYPA’s proposed revisions to the NYISO OATT (“Attachment I”).³⁴

III. CONCLUSION

WHEREFORE, for the reasons discussed herein, NYPA respectfully requests that the Commission accept these responses to the requests in the Deficiency Letter, authorize the incentive rate treatment and revisions to the NYPA Formula Rate and Formula Protocols as requested February 10, 2022, effective no later than July 6, 2022 (i.e., the first day following the end of the statutory 60-day notice period), and in accordance with the NYPSC’s finding that the Project is

²⁹ See Incentive Policy Statement at P 28.

³⁰ See *New York Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,098 (2020).

³¹ NYISO OATT Attachment Y 31.4.8.2.2(i).

³² See *New York Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,040 (2015).

³³ *Id.*

³⁴ NYPA notes that no substantive changes are being made to the proposed tariff revisions previously submitted as part of the SPC Incentive Filing. However, NYPA is making a ministerial edit to Schedule A2, to add a period at the end of note 1.

needed on an emergent basis to achieve NY State legislated policy mandates – act expeditiously.³⁵ Thank you for your assistance in this matter. Should you have any questions, do not hesitate to contact the undersigned.

Respectfully Submitted,

Glenn D. Haake
Special Counsel
New York Power Authority
30 S. Pearl Street
Albany, NY 12207
Tel: (518) 433-6720
Glenn.Haake@nypa.gov

/s/ Gary D. Bachman
Gary D. Bachman
Michelle L. Castaline
Van Ness Feldman, LLP
1050 Thomas Jefferson Street, NW
Washington, DC 20007
Tel: (202) 298-1800
gdb@vnf.com
mcastaline@vnf.com

Counsel for the New York Power Authority

Dated: May 6, 2022

³⁵ 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 Priority Transmission Projects at 21 (Oct. 15, 2020) (finding that the Project is “needed expeditiously” to meet the State’s Climate Leadership and Community Protection Act (“CLCPA”) requirements). See also AREGCBA § 7(5) (charging the NYPSC with identifying “priority projects” that are needed on an “expeditious” basis to meet the CLCPA requirements).

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2021), I hereby certify that I have this 6th day of May 2022, served the forgoing document on each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 6th day of May, 2022.

/s/ Marco Bracamonte

Marco Bracamonte, Paralegal
Van Ness Feldman, LLP
1050 Thomas Jefferson Street, NW
Washington, D.C. 20007
(202) 298-1800