



1050 Thomas Jefferson Street, NW
Seventh Floor
Washington, DC 20007
(202) 298-1800 Phone
(202) 338-2416 Fax

Gary D. Bachman
Partner
202-298-1880
gdb@vnf.com

SUBMITTED VIA ETARIFF FILING

November 23, 2022

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: New York Power Authority
Docket No. ER23 - ____ - 000
Proposed Amendments to New York Power Authority Formula Rate

Dear Secretary Bose:

Pursuant to sections 205 and 219 of the Federal Power Act (“FPA”)¹ and Part 35 of the Federal Energy Regulatory Commission’s (the “Commission” or “FERC”) regulations,² the New York Power Authority (“NYPA”) respectfully submits this filing to revise its Formula Rate Template and Formula Rate Protocols, as set forth in Sections 14.2.3.1 and 14.2.3.2 of Attachment H to the New York Independent System Operator, Inc. (“NYISO”) Open Access Transmission Tariff (“OATT”),³ to 1) update the allocation methodology for Administrative and General costs and expenses as well as depreciation expense and net plant costs for General Plant (hereinafter “A&G”) in the Formula Rate Template (as set forth in Section 14.2.3.1 of Attachment H to the NYISO OATT); 2) incorporate into the Formula Rate Protocols (as set forth in Section 14.2.3.2 of Attachment H to the NYISO OATT) the new cost containment mechanism approved by the Commission on July 5, 2022 for the Smart Path Connect Project⁴ and related conforming changes to Schedule D2 of the Formula Rate Template; and 3) to make certain

¹ 16 U.S.C. §§ 824d, 824s (2018).

² 18 C.F.R. pt. 35 (2022).

³ See *New York Indep. Sys. Operator, Inc.*, NYISO Tariffs, [NYISO OATT, § 14 \(attach. H\), §§ 14.2.3.1-14.2.3.2 \(7.0.0\)](#). 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. Capitalized terms not defined herein shall have the meaning set forth in the NYISO OATT, including Section 14.2.3.2 (*i.e.*, NYPA’s Formula Rate Protocols).

⁴ *Order on Formula Rate and Transmission Incentives*, 180 FERC ¶ 61,004 (2022) (“July Order”).

technical and clarifying improvements to the Formula Rate Template described below, none of which affect the rate.

NYPA respectfully requests that the Commission permit the revisions to become effective on the day following the end of the statutory 60-day notice period (*i.e.*, January 24, 2023).

I. Background of NYPA

NYPA is a corporate municipal instrumentality and a political subdivision of the State of New York, 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 meaning of FPA section 201(f).⁵ As a voluntary, founding member of the NYISO, NYPA is engaged in the generation, transmission, and sale of electric power and energy at wholesale and retail throughout New York. NYPA’s bulk power transmission system encompasses approximately 1,400 circuit miles and consists of facilities ranging from 115 kilovolts (“kV”) to 765 kV. As the largest state-owned power organization in New York, NYPA has taken responsibility for constructing, owning, and operating critical segments of transmission infrastructure throughout New York. NYPA has no distribution facilities or defined geographical service territory of its own, and since the inception of NYISO, has recovered its cost of owning and maintaining its backbone transmission facilities primarily through the NYPA Transmission Adjustment Charge (“NTAC”).⁶

II. Background and Description of Proposed Tariff Modifications

New York State has embarked on an aggressive climate change initiative that requires substantial construction of new transmission to accommodate large increases in renewable and other clean generation for the benefit of customers.⁷ As a result, over the past three to five years, NYPA’s business focus and investment profile has shifted dramatically so that transmission development and construction have become the dominant activities requiring management attention. For example, NYPA’s total transmission investment as of 2020 was approximately \$2.1 billion and, by 2025, it is projected to be \$4.3 billion. These changes in the focus of the business led NYPA to review how it has allocated A&G and conclude that continued use of a single factor labor ratio allocator did not adequately capture the appropriate allocation to transmission of these costs given the changed business focus.

For these reasons, NYPA has adopted an Accounting Change effective January 1, 2022, to incorporate a multi-factor Massachusetts Method of allocating A&G, modified as appropriate to NYPA’s circumstances, to better capture the appropriate allocation of A&G to transmission. In accordance with its Protocols, the impacts from this Accounting Change will be identified and presented for stakeholder review as part of NYPA’s Annual Update Process that starts on July 1,

⁵ 16 U.S.C. §§ 796(7) & 824(f).

⁶ NYISO OATT, § 14.2.2.

⁷ See Accelerated Renewable Energy Growth and Community Benefit Act, 2020 N.Y. Laws, ch. 58, Part JJJ, § 7(5) (“AREGCBA”); see also *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).

2023, when 2022 Calendar Year costs and expenses are reflected in the new rates that are made effective on that date. NYPA seeks approval to modify the Formula Rate Template so that the A&G allocator shown in the template will properly reflect this Accounting Change as it currently reflects only the “labor ratio” allocator.

A. The Massachusetts Method modified for NYPA’s circumstances properly considers multiple factors to provide a more reasonable and appropriately proportionate A&G allocation result.

As stated above, NYPA has adopted an Accounting Change effective in 2022 from the current, single-factor labor ratio method used for the allocation of A&G to a three-factor Massachusetts Method formula modified for NYPA’s circumstances.⁸ Section 14.2.3.2.4 of the Formula Rate Protocols permits the incorporation of any changes to data inputs identified in the Annual Update, including “accounting changes” such as this one.⁹ The modifications proposed here implement these accounting changes. As the Formula Rate Protocols provide, NYPA will identify and describe this accounting change in its next Annual Update documentation.¹⁰

The Massachusetts Method of allocation has broad regulatory acceptance, and using equal labor, plant and revenue factors parallels typical utility practices.¹¹ Moving from a single labor allocation method to this three-factor allocation mechanism better reflects NYPA’s business which, as described above, has changed over the years. Over the last decade with the change in how New York generates and transmits its electricity, NYPA has increasingly focused on building new and expanded transmission infrastructure to accommodate its customers and New York customers generally.¹² NYPA, and other stakeholders expect these trends to continue and be amplified as more renewable resources come online.

Under this modified Massachusetts Method, NYPA will use an equally weighted combination of direct labor, net plant, and net revenue. Using net revenue avoids distortions that

⁸ Schedule E1 of the NYPA Formula Rate Template currently indicates that a “labor ratio” is determined which NYPA uses to allocate its A&G costs and expenses to the transmission function. Accordingly, Schedule E1 and Work Paper EA of the NYPA Formula Rate Template are proposed to be revised in the instant filing.

⁹ NYPA Formula Rate Protocols § 14.2.3.2.4 (“Any changes to the data inputs, including but not limited to revisions to NYPA’s Financial Report, or as the result of any FERC proceeding to consider the Annual Update, or as a result of the Annual Review Procedures set forth herein, shall be incorporated into the Formula and into the charges produced by the Formula (with interest determined in accordance with 18 C.F.R. § 35.19a) in the Annual Update for the next effective Rate Year as a Prior Period Adjustment.”); *see also id.* § 14.2.3.2.2(d)(i) (“[The Annual Update for the Rate Year] [s]hall identify and provide a narrative explanation of Accounting Changes and their impacts on inputs to the Formula Rate or resulting charges billed under the Formula Rate.”)

¹⁰ *Id.* § 14.2.3.2.2(d)(i) (“[The Annual Update for the Rate Year] [s]hall identify and provide a narrative explanation of Accounting Changes and their impacts on inputs to the Formula Rate or resulting charges billed under the Formula Rate.”).

¹¹ *See Distrigas of Massachusetts Corp.*, 41 FERC ¶ 61,205 (1987) (“*Distrigas*”) (confirming that there several appropriate multi-factor methods for cost allocation, including the Massachusetts Method and a newly approved multi-factor formula consisting of direct labor, capital investment and net operating revenues).

¹² The Smart Path Connect Project consists of rebuilding approximately 100 linear miles of existing 230 kV transmission lines in northern New York to 345 kV, along with associated substation construction and upgrades, to address existing congestion and curtailment issues by establishing, together with other projects currently under development by NYPA, a continuous 345 kV transmission path from areas of planned renewable generation to New York’s load centers. *See Application of New York Power Authority and Niagara Mohawk Power Corporation d/b/a*

are unique to NYPA by excluding those fuel, purchased power, and other charges that are passed through to its direct service customers.¹³

B. Implementation of Cost Containment in the Tariff.

NYPA proposes to add a new Section 14.2.3.2.10 to the Formula Rate Protocols to include the Smart Path Connect Project Cost Containment mechanism in its NTAC calculation, to implement the already approved cost containment provisions for this project. The Commission's July Order approved NYPA's 80/20 cost-containment mechanism being implemented by these changes as part of NYPA's request for a Performance-based ROE Incentive.¹⁴

Under the proposed cost containment mechanism, any incentive ROE is tied to the project's cost estimate. The 80/20 cost-containment mechanism provides that NYPA will earn no ROE for 20% of the equity portion of the adjusted costs that are greater than the cost estimate. For 80% of the equity portion of the adjusted 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). Under the prior tariff amendments accepted by the Commission in its July Order, if there are Smart Path Connect Project cost containment impacts, they will be computed on a workpaper and provided as supporting documentation with each applicable Annual Update.

The Commission agreed with NYPA that the 80/20 cost containment mechanism both "mitigates the risk of significant cost overruns to New York electric customers . . . [and] incentiviz[es] NYPA to come in under an adjusted cost cap."¹⁵ The proposed revisions

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).

¹³ See *Distrigas*, 41 FERC ¶ 61,205 at pp. 61,555-56 (determining that the use of net over gross revenues in the Massachusetts method to be an appropriate modification of the original Massachusetts method because the gross revenues from unregulated entities do not accurately reflect the automatic passthrough of massive costs the same as purchased gas costs in the regulated setting). See also *SFPP, L.P.*, 134 FERC ¶ 61,121, p. 61,579 (2011), *vacated on other grounds*, 827 F.3d 122 (D.C. Cir. 2016) (recognizing and upholding the "basic rationale" for the pipeline's use of net revenue rather than gross revenues when an entity's gross revenues are predominately from sales).

¹⁴ July Order at PP 42-46. NYPA made a compliance filing on September 8, 2022, confirming that it had met the conditions for approval contained in the July Order. See *New York Power Authority*, Docket Nos. EL22-15-001 & ER22-1014-001, Filing to Comply with Conditions (filed Sept. 8, 2022). On September 16, 2022, NYPA received construction approval, *i.e.*, the Environmental Management and Construction Plan ("EM&CP"), from state regulators for the first segment of transmission upgrades and the associated substations for its portion of the Smart Path Connect Project, and NYPA has since commenced such construction. See Case 21-T-0340, *and* Order Approving Environmental Management and Construction Plan (issued Sept. 16, 2022). NYPA further demonstrated its compliance with FERC's conditions through its November 21, 2022 supplement in those same FERC dockets, explaining how the EM&CP approval process in New York occurs in stages, and that construction approval for the remaining NYPA segment will not be issued until 2023. Therein, NYPA also explained that such construction approvals are unrelated to state regulators' earlier findings in Case 21-T-0340 that the Smart Path Connect Project will benefit electric consumers in New York State through reduced congestion—resulting in substantial cost savings to customers—as well as by improving reliability. For the same reasons, FERC recently determined that National Grid, NYPA's co-developer of the Smart Path Connect Project, satisfied the conditions for approval of its transmission incentives. *Niagara Mohawk Power Corp.*, 181 FERC ¶ 61,065 (2022).

¹⁵ July Order at P 49.

submitted as part of this filing simply implement the Commission-approved cost containment proposal in NYPA's NTAC Formula Rate Protocols and calculation.¹⁶ Also related to the Commission's approval for the Smart Path Connect Project, NYPA proposes to insert conforming FERC docket number information on Schedule D2 of the Formula Rate Template.

C. Technical Amendments.

In addition to the proposed changes above, NYPA proposes to amend the Formula Rate Template to remedy grammatical errors and for clarification. These technical changes are not substantive and are explained in detail in Attachment C, including:

- Modification of "SPC Project" name to "Smart Path Connect";
- Inclusion of the naming convention for the AC Project Segment A;
- Corrections to line numbering and adjustments to line numbers in associated notes; and
- Additional rows for the option to include additional line items if approved by the Commission.

III. Documents Submitted with this Filing

NYPA submits the following in support of this compliance filing:

- This transmittal letter;
- Attachment A – Clean version of the proposed revisions to the NYISO OATT;¹⁷
- Attachment B – Redline version of the proposed changes to the NYISO OATT discussed above; and
- Attachment C – A table describing the proposed technical revisions to the Formula Rate Template.

IV. Persons Served

NYPA has confirmed with the NYISO that a complete copy of this filing will be posted on the NYISO's website at www.nyiso.com. The NYISO has also informed NYPA that it will send an electronic link to this filing to the official representative of each its customers and each participant on its stakeholder committees. Such NYISO market participants include the Interested Parties maintained on the NYPA Exploder List.

V. Request for Waivers

To the extent necessary to permit these tariff modifications to become effective as requested herein, NYPA requests that the Commission waive any and all requirements under Part

¹⁶ The Commission previously approved NYPA's implementation proposal for the AC Project Segment A Cost Containment following Commission review. *New York Power Auth.*, 176 FERC ¶ 61,211 (2021); *see also* NYISO OATT, § 14.2.3.2.9.

¹⁷ A clean version of the Formula Rate Template in native excel format that reflects the proposed changes is also being submitted with this filing.

35 of the Commission's regulations (and any other applicable regulations) not addressed by the materials described in Part III of this filing. It is the established practice of the Commission to exempt non-jurisdictional municipal utilities such as NYPA from paying applicable filing fees and from compliance with Section 35.13 of the Commission's regulations.¹⁸ Accordingly, NYPA's request for exemption from such filing requirements is appropriate.

VI. Communications

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

Scott Tetenman*
Senior Vice President – Finance
New York Power Authority
123 Main Street
White Plains, NY 10601
Telephone: (914) 287-6813

Gary D. Bachman*
Mosby G. Perrow
Van Ness Feldman, LLP
1050 Thomas Jefferson Street, NW
Washington, DC 20007
Telephone: (202) 298-1880
gdb@vnf.com
mperrow@vnf.com

Gary D. Levenson*¹⁹
Principal Attorney
New York Power Authority
123 Main Street
White Plains, NY 10601
Telephone: (914) 390-8030
Gary.Levenson@nypa.gov

NYPA respectfully requests that the individuals identified above with an asterisk be placed on the Commission's official service list in this proceeding and be designated for service pursuant to Rule 2010.

VII. Conclusion

NYPA respectfully requests that the Commission approve these proposed OATT modifications with an effective date of January 24, 2023 (*i.e.*, the day following the end of the statutory 60-day notice period).

Respectfully submitted,

/s/ Gary D. Bachman

Gary D. Bachman
Mosby G. Perrow
Van Ness Feldman

¹⁸ See, e.g., July Order at P 55.

¹⁹ Pursuant to Commission Rule, 18 C.F.R. § 385.101(e), NYPA requests waiver of Rule 203(b)(3), in order to permit more than two persons to be included on the service list.

1050 Thomas Jefferson Street, NW
Washington, DC 20007
Telephone: (202) 298-1880
Email: gdb@vnf.com
Email: mperrow@vnf.com

Attachments A – C.