nationalgrid

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January 30, 2023

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

Re: Niagara Mohawk Power Corporation Docket No. ER23-____

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,² and Order No. 679,³ the New York Independent System Operator ("NYISO"), as administrator of the NYISO Open Access Transmission Tariff ("OATT" or "Tariff"), submits via eTariff on behalf of Niagara Mohawk Power Corporation⁴ ("NMPC") the following application consisting of (1) amendments to the NYISO OATT to allocate and recover the costs of NMPC's investment in a new transmission project, the Smart Path Connect Project (alternatively, the "SPC Project" or the "Project"), that the State of New York has determined is needed on an expedited basis in order to meet its clean energy requirements; (2) a separate request for authorization to establish certain incentive rate treatment associated with the Project; and (3) a request to establish a regulatory asset for the Cost of Removal less Salvage ("COR") incurred to remove certain transmission assets as necessary for construction of the Project.⁵ As discussed below, this filing addresses the issue that led the Commission to reject NMPC's March 4, 2022 filing relating to the SPC Project in Docket No. ER22-1201.⁶ Consistent with the Commission's determinations in the July 15 Order, this filing proposes to apply to the SPC Project the 10.3% return on equity ("ROE") reflected in the 2015 settlement involving NMPC's wholesale Transmission Service Charge

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. Part 35 (2021).

³ 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) ("Order No. 679").

⁴ NYISO submits this filing on behalf of NMPC solely in its role as administrator of the NYISO OATT. The burden of demonstrating that the proposed tariff amendments are just and reasonable rests with NMPC, 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.

⁵ On January 20, 2023, the NYISO submitted revisions to the NYISO OATT on NMPC's behalf in Docket No. ER23-907. In addition to addressing minor clean up items, the revisions pending in Docket No. ER23-907 are necessary for NMPC to maintain compliance with the Internal Revenue Service's Accumulated Deferred Income Taxes proration methodology and are unrelated to the authorizations requested in this filing. Following Commission action on both filings, NMPC commits to submit a compliance filing to reflect all changes accepted by the Commission in either docket.

⁶ See N.Y. Indep. Sys. Operator, Inc., 180 FERC ¶ 61,026 (2022) ("July 15 Order").

("TSC"), and NMPC is not requesting any additional incentive ROE adders. Otherwise, the filing is substantially similar to NMPC's March 4, 2022 filing.⁷

I. EXECUTIVE SUMMARY

The SPC Project was identified and selected by the New York Public Service Commission ("NYPSC"), pursuant to New York State legislation, as a "priority transmission project" that is needed on an expedited basis in order to meet the State's legislatively enacted clean energy policies and provide benefits to consumers throughout New York State. In particular, the SPC Project is needed to unlock both existing and planned renewable generation in northern New York, which will be a key component in New York's ability to achieve its ambitious clean energy mandates, which require a minimum 70% of statewide electric generation to be produced by renewable energy by 2030, and 100% emissions free resources by 2040. The SPC Project will alleviate existing and well-known transmission deliverability constraints by establishing, together with other transmission projects currently under construction in New York, a new and continuous 345 kilovolt ("kV") transmission path from northern New York to the downstate region that would help mitigate current and projected congestion. The Project will effectively unlock northern New York's potential as a significant site for renewable development for the benefit of the rest of the State, serve as a foundation for the State to meet its clean energy goals, and result in substantial congestion cost savings and lower capacity market costs, reducing the cost of delivered power.

Pursuant to New York State law,⁸ the selection of the SPC Project as a priority transmission project authorizes the New York Power Authority ("NYPA"), by itself or in collaboration with other parties, as NYPA determines appropriate, to develop the Project outside of the auspices of the NYISO public policy transmission planning process. Following a competitive 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 NMPC. This selection of NMPC as a co-developer was based in significant part on NMPC's extensive experience planning, developing, constructing, managing, and operating similar scale projects, as well as NMPC's ownership of and familiarity with property and transmission facilities that can be used to support the expeditious development of the Project.

The SPC Project is an undertaking of significant scope, consisting of over 100 linear miles of transmission line rebuilds and associated substations and other upgrades. The Project is estimated to cost a total of approximately \$1.2 billion, with NMPC's share of the project estimated at approximately \$535 million. Consistent with its designation as a "priority transmission project" under New York State law, NYPA and NMPC plan to place the Project in service by December 2025. Moreover, in addition to its key role in facilitating the achievement

⁷ On March 4, 2022, as amended May 16, 2022, NYISO filed a request on behalf of NMPC in Docket No. ER22-1201-000 seeking to: (1) revise tariff records in the NYISO OATT to establish a new Rate Schedule 18 to allocate and recover the costs of NMPC's investment in the SPC Project, and (2) establish certain transmission rate incentives for the Project.

⁸ Accelerated Renewable Energy Growth and Community Benefit Act, 2020 N.Y. Laws, ch. 58, Part JJJ.

of New York's climate plan by unbottling renewable generation in Northern New York, the Project is also expected to provide customers with substantial financial benefits in terms of delivered energy cost savings (costs paid by load) of approximately \$214 million annually in 2025 dollars and capacity market benefits of upwards of \$25–\$50 million annually. By enabling renewable resources to reach load centers, the Project will result in lower carbon dioxide ("CO₂") emissions for New York of 1.16 million tons annually and lower nitrogen oxide ("NO_x") emissions of 160 tons annually. In addition to these economic and environmental benefits, the SPC Project will provide significant reliability benefits throughout New York through the enhancement and reinforcement of the transmission backbone system in the State, including providing an additional 1,000 MW of transfer capability from Northern New York and Quebec to the rest of New York.

Once the Project enters service, operational control of the Project will be turned over to NYISO, and service over the Project will be provided pursuant to the terms and conditions of the NYISO OATT. In order to recover the costs of its portion of the SPC Project, NMPC is proposing amendments to the NYISO OATT consisting of the following key elements:

- In accordance with the July 15 Order rejecting NMPC's original filing to recover the costs of the Project,⁹ the revenue requirement for the Project will utilize the ROE that applies to NMPC's wholesale TSC. Per the February 24, 2015 settlement relating to NMPC's TSC in Docket Nos. EL14-29, *et al.*, that ROE is currently 10.3%, inclusive of any incentive adders.¹⁰ Similarly, the revenue requirement for the Project will be based on NMPC's actual capital structure, capped at 50 percent equity, consistent with the existing TSC.
- NYISO will allocate and collect the costs of the Project statewide on a load-ratio share basis. Although the Project was not identified through the NYISO's transmission planning process, statewide cost allocation is appropriate due to the Project's designation by the NYPSC as a priority transmission project, pursuant to New York State legislation, in order to meet New York clean energy mandates and benefit all New York consumers. Statewide allocation is consistent with Commission policy and is supported by New York's transmission owners, as reflected in an agreement between NMPC and New York's other transmission owners, which is discussed below and is also being separately filed with the Commission on the same date as this filing.¹¹ Also, both the NYPSC and FERC have approved load-ratio share allocation for other transmission projects that, like the SPC Project, are being built to meet New York's clean energy mandates.

⁹ See July 15 Order at P 2.

¹⁰ See Settlement Agreement and Offer of Settlement, Docket Nos. EL14-29-000, *et al.* (Feb. 24, 2015) ("2015 TSC Settlement"). The Commission accepted the 2015 TSC Settlement in an order issued May 13, 2015. *N.Y. Ass 'n of Pub. Power v. Niagara Mohawk Power Corp.*, 151 FERC ¶ 61,121 (2015).

¹¹ *See* Section II.E below regarding an agreement that the New York Transmission Owners have entered into, submitted as Attachment J hereto, addressing the use of a volumetric, load-ratio share basis for the proposed statewide cost allocation. This agreement does not bind the New York Transmission Owners with respect to any positions they might adopt regarding other aspects of the filing, including the proposed rate.

• A robust cost-containment mechanism based on those previously approved by the Commission for other transmission projects designed to address New York State policy goals, including that approved for NYPA in connection with the SPC Project.¹²

NMPC also requests, in this filing, that the Commission approve a transmission incentive rate treatment in the form of recovery of 100 percent of prudently incurred costs for construction work in progress ("CWIP") in rate base ("100 Percent CWIP Request").¹³ As demonstrated below and in the accompanying testimonies and supporting materials, there is a nexus between the 100 Percent CWIP Request and the risks and challenges that will be faced by NMPC in developing and constructing the Project. In addition, the requested incentive is narrowly tailored to address the unique risks and challenges faced by the Project.

NMPC originally filed to recover the costs and obtain incentive treatment for the SPC Project in a filing submitted on March 4, 2022. That filing included a different proposed ROE for the Project. The Commission rejected that filing in its July 15 Order, finding that NMPC's proposed ROE for the Project, including incentive adders, was inconsistent with the terms of a 2015 settlement which established a 10.3% ROE, inclusive of any incentive adders, for the TSC. The Commission found that this 10.3% ROE settlement applies to NMPC's transmission facilities, including the SPC Project. The Commission therefore rejected the proposed Rate Schedule 18 and related tariff revisions. Because it rejected NMPC's proposal for statewide load-ratio share cost allocation and the requested CWIP incentive. As discussed in greater detail below, the use of the 10.3% ROE, inclusive of any incentive adders, for the SPC Project is reflected in the tariff revisions included in this filing, and NMPC is not requesting any additional incentive ROE adders. As such, the current filing satisfies the Commission's findings in the July 15 Order.

NMPC requests that the Commission authorize the requested incentive rate treatment, proposal to record Project-related COR to a regulatory asset, and revisions to the NYISO OATT described herein, effective no later than April 1, 2023 (*i.e.*, the first day following the end of the statutory 60-day notice period).

¹² The 2015 TSC Settlement did not address cost containment. The proposed cost-containment mechanism is therefore not inconsistent with the 2015 TSC Settlement.

¹³ NMPC submits this request pursuant to Sections 205 and 219 of the FPA, 16 U.S.C. §§ 824d, 824s, 18 C.F.R. Part 35 of the Commission's regulations, and Order Nos. 679 and 679-A. In addition to the incentive treatment requested herein, the Commission previously authorized a 50-basis point ROE adder for NMPC's participation in a Regional Transmission Organization ("RTO") ("RTO Adder") with respect to those of NMPC's facilities placed under NYISO's operational control. *See Niagara Mohawk Power Corp.*, 124 FERC ¶ 61,106, at P 35 (2008), *order on reh'g*, 126 FERC ¶ 61,173 (2009). Additionally, on March 11, 2022, the Commission conditionally granted NMPC's request for authorization to recover 100% of its prudently incurred costs for the Project in the event the Project is cancelled or abandoned for reasons beyond NMPC's control ("Abandoned Plant Incentive"). *See Niagara Mohawk Power Corp.*, 178 FERC ¶ 61,173 (2022). On August 23, 2022, as supplemented on October 11, 2022, NMPC submitted a compliance filing to satisfy the condition in the March 11, 2022 order. The Commission accepted NMPC's compliance filing in an order issued October 24, 2022. *See Niagara Mohawk Power Corp.*, 181 FERC ¶ 61,065 (2022).

I. BACKGROUND

A. Description of Developing Companies

1. Niagara Mohawk Power Corporation

NMPC is a Commission-regulated public utility company organized and operated under the laws of the State of New York. It provides electric service to over 1.5 million customers and natural gas service to over 540,000 customers in upstate New York. NMPC owns and operates transmission facilities in New York, all of which are subject to the operational control of the NYISO. NMPC recovers its transmission revenue requirements pursuant to formula rates under the NYISO OATT.¹⁴

The outstanding common shares of NMPC are wholly owned by National Grid USA. National Grid USA is an indirect, wholly owned subsidiary of National Grid plc, a company incorporated in England and Wales. National Grid USA is a public utility holding company; it is not a public utility because it does not directly own or operate FPA-jurisdictional facilities (or any electric facilities), nor does it engage in the sale, transmission, or distribution of electric power. Direct and indirect subsidiaries of National Grid USA are engaged in: (i) electric transmission under Commission jurisdiction in New York, Massachusetts, Vermont, and New Hampshire;¹⁵ (ii) electric distribution to residential, commercial, and industrial customers in New York, and Massachusetts; and (iii) the distribution of natural gas to residential, commercial, and industrial customers in New York and Massachusetts. These various subsidiary companies operate and maintain power lines, substations, and/or natural gas distribution facilities; provide metering, billing, and customer service; design and build electric and/or gas facilities; and provide related products and services, including energy efficiency programs for customers. National Grid USA is also affiliated with entities that own, operate, or control qualifying facilities, distributed generation, behind-the-meter solar, and other renewable generating capacity.

NMPC is the only National Grid USA subsidiary that owns or operates transmission facilities in New York. National Grid USA also indirectly owns four New York generation subsidiaries: (1) National Grid Generation LLC, (2) National Grid Glenwood Energy Center LLC, (3) National Grid Port Jefferson Energy Center LLC, and (4) National Grid Generation Ventures, LLC. The energy and capacity of these public utility subsidiaries on Long Island are wholly committed to the Long Island Power Authority under long-term contracts.

2. New York Power Authority

NYPA is a corporate municipal instrumentality and a political subdivision of the State of New York, organized under the laws of the State, and operating pursuant to Title 1 of Article 5 of the New York Public Authorities Law. NYPA is a "municipality" within the meaning of

¹⁴ See NYISO OATT, Attachment H (sections 14.1.9 and 14.2.1).

¹⁵ National Grid's electric transmission facilities in New York and New England are under the operational control of the NYISO and ISO New England Inc. ("ISO-NE"), respectively.

Section 3(7) of the FPA and is a "state instrumentality" within the meaning of Section 201(f) of the FPA.¹⁶ NYPA generates, transmits, and sells electric power and energy at wholesale throughout the state. NYPA's customers include businesses and various large governmental customers located within the metropolitan area of New York City, including the City of New York and the Metropolitan Transportation Authority. NYPA is a transmission-owning member of the NYISO and recovers its transmission revenue requirement through the NYPA Formula Rate included in Section 14.2.3 of the NYISO OATT.

B. Description and History of the Smart Path Connect Project

1. Project Overview

The SPC Project consists of rebuilding approximately 100 miles of existing 230-kV transmission lines to either 230 kV or 345 kV along with associated substation construction and upgrades. The Project includes rebuilding all or parts of the following transmission lines primarily within existing rights-of-way ("ROW"): NYPA's Moses-Willis 1&2, NYPA's Willis-Patnode, and NYPA's Willis-Ryan; and NMPC'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 "MA 1&2" or "Smart Path") ROW.

Specifically, the Project consists of two components: the Adirondack-Porter component and the Moses-Willis-Patnode ("MW-Patnode") component. The respective Project components are described below, with the owner of each facility comprising each component noted in parentheses.

The Adirondack-Porter component includes the following Project facilities and proposals: (1) the rebuild of NMPC's Adirondack-Porter 230 kV lines (NMPC); (2) the construction of the proposed Adirondack Substation (NYPA); (3) the interface connection of the proposed Adirondack Substation to the MA 1 & 2 ROW (NYPA); (4) the construction of the proposed Austin Road Substation (NMPC); (5) the extension of the existing 230 kV Rector Road to Chases Lake Line 10 (NMPC); (6) the expansion of the Edic Substation (NMPC); (7) the removal of the existing 230kV Edic to Porter Line 17 and equipment at the Porter and Chases Lakes Substations (NMPC); and (8) the extension of the existing 345kV Marcy Substation (NYPA).

The MW-Patnode component includes the following Project facilities and proposals: (1) the rebuild of NYPA's Moses-Willis 1&2, Willis-Patnode, and Willis-Ryan 230 kV lines and a short portion of the Ryan-Plattsburgh 230 kV line (NYPA); (2) the 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 (NYPA); (3) the construction of the proposed Haverstock Substation (NYPA); (4) the interface connection of the proposed Haverstock Substation to the MA1&2 transmission facilities (NYPA); (5) the expansion of the Willis Substation (NYPA); (6) the modifications of the Ryan, Patnode, and

¹⁶ 16 U.S.C. §§ 796(7) and 824(f).

Massena Substations within the existing fence lines (NYPA); and (7) a ROW expansion at the Ryan Substation (NYPA).

Together with other projects under construction in New York, the SPC Project will create a continuous 345 kV path from the northern border of the State to the downstate region. The Project will also involve the replacement of approximately 1,696 existing structures with approximately 1,248 new structures, predominantly monopole, resulting in approximately 448 fewer structures within the ROW. Details regarding the configuration of the Project are set forth in the Prepared Direct Testimony of Brian Gemmell, National Grid's Chief Operating Officer, Electric New York, included as Exhibit No. NMPC-100 set forth in Attachment E to this filing ("Gemmell Testimony").

NMPC and NYPA estimate that the total capital cost of the SPC Project will be approximately \$1.2 billion.¹⁷ Of that total cost, NYPA's share is estimated to be approximately \$641.3 million, and NMPC's share is estimated to be approximately \$534.5 million (\$495 million excluding financing costs).¹⁸

2. The Smart Path Connect Project Originated With New York Climate Legislation Establishing Renewable Generation Requirements and Associated Transmission System Expansion Requirements

In 2019, the New York legislature enacted the Climate Leadership and Community Protection Act ("CLCPA").¹⁹ The CLCPA is grounded in legislative findings that climate change is adversely affecting the economic well-being, public health, natural resources, and

¹⁷ A more granular breakdown on project costs for the SPC Project for both NMPC and NYPA is set forth in Attachment F to NYPA's FERC filing relating to the SPC Project. *N.Y. Power Auth.*, Docket No. ER22-1014 (filed Feb. 10, 2022) ("NYPA SPC Project 205 Filing"), Attachment F. On July 5, 2022, the Commission issued an order conditionally granting the transmission incentives requested in the NYPA SPC Project 205 Filing and conditionally accepting the tariff revisions proposed therein. *New York Indep. Sys. Operator*, 180 FERC ¶ 61,004 (2022) ("NYPA SPC Project 205 Order"). The Commission accepted NYPA's subsequent compliance filing satisfying the conditions in the NYPA SPC Project 205 Order in an order issued on January 19, 2023. *See N.Y. Power Auth.*, 182 FERC ¶ 61,017 (2023) ("NYPA Order on Compliance").

¹⁸ This estimate is based on the Article VII Application for a Certificate of Environmental Compatibility and Public Need submitted to the NYPSC for the Project and is stated in 2025 dollars. As required under 16 NYCRR § 86.10 (a), the estimate includes the cost of: (1) right-of-way; (2) surveys; (3) materials; (4) labor; (5) engineering and inspection; (6) administrative overhead; (7) fees for legal and other services; (8) interest during construction; and (9) contingencies. *See Application of N.Y. Power Auth. and Niagara Mohawk Power Corp. 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"), available at*

https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=21-T-0340. See also Gemmell Testimony at 16:4-6. As addressed in further detail in NYPA's recent FERC filing relating to the SPC Project, NYPA's portion of the total project costs has increased by approximately \$56 million based on the estimate provided in the Article VII application, resulting in the current total project cost estimate of approximately \$1.2 billion. NYPA SPC Project 205 Filing, Transmittal Letter at 32, n.175.

¹⁹ 2019 N.Y. Laws, ch. 106.

environment of New York, and that numerous benefits will accrue to New York residents through reducing and eliminating anthropogenic greenhouse gas emissions. CLCPA requires a 40% statewide reduction in greenhouse gas emissions from 1990 levels by 2030, and an 85% reduction by 2050. Further, CLCPA requires that (1) a minimum of 70% of statewide electric generation be produced by renewable energy by 2030 (the "70 x 30 Target"); (2) the electric demand system be 100% emissions-free by 2040; and (3) the State meet the following procurement targets: 9 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 recognition of the significant changes and upgrades that must be made to the New York power grid infrastructure to meet the CLCPA Requirements, the New York legislature in 2020 enacted the Accelerated Renewable Energy Growth and Community Benefit Act ("AREGCBA"). AREGCBA requires the State to provide for the construction of expanded transmission and distribution infrastructure sufficient to ensure the cost-effective and timely development of the renewable energy generation projects needed to meet the CLCPA Requirements.²¹ In furtherance of this goal, AREGCBA directs the NYPSC to establish a bulk transmission investment program to be submitted to the NYISO for incorporation into its transmission studies and planning processes. To implement the bulk transmission investment program, AREGCBA effectively prescribes two pathways for project selection. The "default" process for identifying projects necessary to implement the plan is the NYISO's public policy planning process, with AREGCBA stating that NYPSC "shall utilize the state grid operator's public policy transmission planning process" for project selection.²² However, for projects that the NYPSC determines are needed "expeditiously" in order to meet the CLCPA Requirements, AREGCBA forgoes the NYISO public policy transmission process and designates NYPA as the presumptive developer of such "priority transmission projects" ("PTPs").

²⁰ CLCPA §§ 2(1)(a) and 7(a); Energy Conservation Law § 75–0107(1); Public Service Law ("PSL") § 66-p(2), (5). While AREGCBA calls them "CLCPA targets," the legislation indicates that these are binding requirements:

[&]quot;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).

²¹ AREGCBA, § 2 (the 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 state 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 NMPC need to acquire new property rights for certain Project facilities.

²² Id. § 7(4).

Due to the State's need for the timely development of bulk transmission, AREGCBA specifically directs that PTPs be developed by NYPA, subject to the concurrence of NYPA's Board of Trustees ("Trustees").²³ Once a project has been designated as a PTP by the NYPSC, and the NYPA Trustees have concurred. NYPA is required to undertake a public solicitation process to assess whether joint development would provide for significant additional benefits in achieving the CLCPA Requirements.²⁴ NYPA may then determine to undertake development on its own, or develop the project jointly with one or more other parties on such terms and conditions as NYPA finds appropriate in order to undertake and timely complete the project.²⁵

3. The New York Transmission System Currently Lacks Transfer Capacity Sufficient to Deliver the Substantial Quantities of Renewable Resources That Have Already Been Built in, or Are Planned For, the Northern New York Region

Substantial amounts of renewable generation necessary to meet the CLCPA Requirements will be located in upstate New York. The NYPSC projects that approximately 6,500 MW of renewable generation capacity will come online in NYISO Load Zones D and E, which are primarily in northern New York.²⁶ However, significant transmission upgrades and expansions are necessary in order to facilitate the delivery of this generation to load centers. In northern New York, the bulk transmission system is constrained into 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, with the exception of a NYPA 765 kV transmission line that runs from Chateaugay to Massena to Utica paralleling the north-south 230 kV circuits. As currently configured, this transmission system does not provide sufficient transfer capability to deliver all of the available renewable generation in northern New York to load. 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 approximately 66 GWh annually over the period 2018-2020.²⁷ On the basis of these constraints of existing renewable generation, 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."²⁸

The NYISO has called for the construction of additional transmission in northern New York for several years. In 2019—even before the enactment of CLCPA and its ambitious

²³ Id.

²⁴ Id.

 $^{^{25}}$ Id.

²⁶ Initial Report on the New York Power Grid Study, NYPSC, (Jan. 19, 2021), available at https://www.nyserda.ny.gov/-/media/Project/Nyserda/Files/Publications/NY-Power-Grid/full-report-NY-powergrid.pdf. ("Initial Power Grid Study Report").

²⁷ 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"), available at

https://www.nyiso.com/documents/20142/2223020/2021-Power-Trends-Report.pdf. 28 *Id*.

climate goals—the 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."²⁹ 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."³⁰

The need for additional transmission infrastructure in the region is further emphasized by 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 70 x 30 Target were added to the grid, and those generation pockets include key transmission lines that would be upgraded as a part of the SPC Project.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

4. The Smart Path Connect Project Will Provide Significant Statewide Benefits

As discussed in further detail in Mr. Gemmell's testimony, the SPC Project will provide a number of economic and environmental benefits, as well as benefits for the reliability of the bulk power system in northern New York.³³ Also, by unbottling renewable generation in northern New York, the Project will increase the diversity of fuel supply of resources serving New York consumers as well as help promote job growth and economic opportunities in an area of the State that has seen significant economic hardships over the past several decades.³⁴

The SPC Project will facilitate the deliverability of both existing renewable generators and planned generation expected to come online in the near future by avoiding potential congestion that could impede their delivery.³⁵ In addition to the significant curtailments already imposed on existing renewable generation in northern New York, there are significant amounts of planned renewable generation in the NYISO interconnection queue that will 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 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.

²⁹ NYISO Comments, NYPSC Case No. 18-E-0623, at 6 (Jan. 22, 2019) ("NYISO Jan. 22, 2019 Comments").

³⁰ *Id.* at 6-7.

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

³² NYISO Jan. 22, 2019 Comments at 10.

³³ Gemmell Testimony at 21:4-29:19; *see also* NYPSC Case 21-T-0340, Order Adopting Joint Proposal, at 31-32 (issued Aug. 11, 2022) ("Article VII Order").

³⁴ Gemmell Testimony at 23:19-24:2.

³⁵ Article VII Order at 31-32.

Transmission planning studies performed by NYPA have found that the Project will accommodate an additional 1,000 MW of firm transfer capability for renewable energy generation in the northern New York region.³⁶ This compares to the 975 to 1,050 MW of increased transmission capability that NYISO has estimated would be necessary on the northern New York system to eliminate potential curtailments of the renewable generation that will be built in this region to meet New York's CLCPA Requirements. Indeed, analysis performed by NYPA shows that the SPC Project would eliminate curtailments from existing generators in upstate New York, resulting in 7.5 TWh of avoided renewable generation curtailments annually.³⁷

In relation to the Commission's consideration of the 100 Percent CWIP Request discussed in Section III of this filing, it is also notable to consider that the SPC Project is expected to provide substantial cost savings to New York consumers, reducing the cost of delivered power in the State.³⁸ Studies performed by NYPA show an estimated delivered energy cost savings (costs paid by load) of \$214 million per year (nearly \$3 billion based on a 20-year Net Present Value ("NPV")) and capacity market benefits of \$25–\$50 million annually (\$500 million NPV utilizing the midpoint of this range).³⁹ The Project is also expected to lead to emissions reductions of 1.16 million tons of CO₂ and 160 tons of NO_x on an annual basis, with these reductions being valued at \$981 million based on a 20-year NPV.⁴⁰ Moreover, the Project is expected to reduce the future costs of refurbishing or replacing aging transmission infrastructure, valued at \$270 million based on a 20-year NPV.⁴¹ These benefits total over \$4 billion based on a 20-year NPV.⁴²

5. The NYPSC Has Determined That the Smart Path Connect Project Is Needed on an Expedited Basis for New York to Meet Its Clean Energy Requirements

On October 15, 2020, the NYPSC, pursuant to its authority under AREGCBA, issued an order establishing two general criteria by which it would determine whether a project qualifies as a PTP.⁴³ First, the NYPSC determined that "a key and perhaps determinative factor" for the analysis of whether a transmission project qualifies as a PTP is whether the project addresses the deliverability of existing generation.⁴⁴ The fact that operating generators "are not able to offer their full capacity due to transmission constraints is a strong indicator of whether traditional

⁴³ 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 (Oct. 15, 2020) ("Priority Project Order") (attached hereto as Attachment I).

⁴⁴ *Id*. at 16.

³⁶ See Article VII Application, Engineering Justification at E-4-10.

³⁷ *Id. See also* Gemmell Testimony at 10:5-10.

³⁸ Article VII Order at 31-32.

³⁹ See Gemmell Testimony at 27:10-15; Exhibit Nos. NMPC-101 - NMPC-103.

⁴⁰ *Id.* at 27:12-13.

⁴¹ *Id.* at 28:1-3.

⁴² *Id.* at 27:5-7. The NYPSC, in its order approving the certificate of need for the Project, considered and specifically found that the SPC Project would provide significant economic and environmental benefits of these types. *See* Article VII Order at 31-32.

planning processes have kept pace with State policy."⁴⁵ 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.⁴⁶ The NYPSC summarized these considerations into a single criterion it will consider for designating a PTP 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].⁴⁷

The NYPSC separately noted that, where solving a transmission problem outside of the NYISO public policy transmission planning process "will increase the likelihood of meeting the CLCPA deadlines, the proposed transmission project may qualify as a PTP."⁴⁸ Accordingly, the NYPSC established a second general criterion for selection of a PTP 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.⁴⁹

Projects selected via the PTP designation pathway do not directly participate in the NYISO public policy transmission planning process. However, as the NYISO pointed out in comments filed in the NYPSC proceeding that resulted in the issuance of the Priority Project Order, and as reflected in the NYPSC's PTP designation criteria, the process for designating priority transmission projects can operate "in tandem" with the NYISO public policy transmission planning process.⁵⁰

After setting forth the PTP criteria, the NYPSC in the Priority Project Order found that the SPC Project met these criteria and designated it a PTP. 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."⁵¹ The NYPSC noted NYPA's analysis indicating that with respect to existing generation, the Project will avoid 7.5 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 that a project to unbottle that

⁴⁵ *Id*.

⁴⁶ *Id*. at 17.

⁴⁷ Id.

⁴⁸ *Id.* at 18.

⁴⁹ *Id.* The final language of this criterion resulted from the NYPSC accepting the criterion proposed by New York Department of Public Service ("NY DPS") Staff, with the addition of the language stipulating that the project could be placed in-service sooner than the NYISO process would allow. *Id.*

⁵⁰ Id. at 11-12 (citing NYISO Comments at 7-8).

⁵¹ *Id.* at 25.

generation is 'needed expeditiously."⁵² The NYPSC also noted NYPA's identification of approximately 2,400 MW of planned generation that would not be deliverable to downstate load without additional transmission capacity in northern New York, and 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."⁵³

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 public policy transmission planning process.⁵⁴ 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 SPC Project is needed expeditiously.⁵⁵

The NYPSC concluded its analysis by stating that NYPA had shown a sufficient basis for identifying the Project as a PTP based on the NYPSC's established criteria. Following its designation of the Project as a PTP, the NYPSC included the Project as a baseline assumption in the Initial Power Grid Study Report.⁵⁶

6. NYPA Selected NMPC as a Co-Developer of the Smart Path Connect Project Through a Public Solicitation Process

Following designation of the Project as a PTP, NYPA, consistent with its statutory obligations,⁵⁷ publicly solicited 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 NYPA issued a press release on October 30, 2020, announcing that it was issuing a written Solicitation of Interest to invite expressions of interest by parties that wished to be considered as co-developers.⁵⁹ On December 21, 2020, NMPC submitted a written response. The public solicitation process was conducted over a five-month period.⁶⁰ On March 30, 2021, after completing its public solicitation process, the NYPA Board of Trustees issued an press release announcing its decision to "accept, develop and operate" the Project and its

⁶⁰ *Id.* at 18:5-6.

⁵² *Id*. at 21.

⁵³ Id.

⁵⁴ *Id.* at 22-23.

⁵⁵ *Id.* at 25.

⁵⁶ Initial Power Grid Study Report at 2 n.2, 79 n.76, and Appendix E at E-4, E-38.

⁵⁷ See AREGCBA, §7(5).

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

⁵⁹ Gemmell Testimony at 17:9-13.

selection of NMPC (d/b/a National Grid) as a co-participant in the development of the Project ("Approval Press Release").⁶¹

In its Approval Press Release, the NYPA Board discussed its reasoning for selecting NMPC as a co-developer:

In selecting National Grid as a co-participant on the project, NYPA cited among other things, National Grid's extensive experience planning, developing, constructing, managing and operating transmission projects similar in type and scale to [the Project] as well as ownership and familiarity of property and transmission facilities that can be used to support the expeditious development of the project. National Grid also has a longstanding relationship with communities in the North Country, working with them to meet their needs.⁶²

In the Approval Press Release, the NYPA Board also announced that NMPC's selection as co-developer was subject to the parties reaching agreement on the terms for development of the Project. On May 25, 2021, NYPA issued a press release to announce that the NYPA Board of Trustees approved a Joint Development Agreement between NYPA and NMPC to establish the terms under which the parties would jointly develop the Project.⁶³

7. NMPC and NYPA Have Coordinated and Will Continue to Coordinate with the NYISO in Developing the Smart Path Connect Project

As noted above, in the NYPSC PTP Proceeding, the NYISO acknowledged that PTPs such as the SPC Project could proceed in tandem with the NYISO regional transmission planning process. In order to ensure a smooth development process and implementation of the Project, NMPC and NYPA have been closely coordinating with the NYISO. The Project's System Impact Study ("SIS") was completed in July 2021. On October 14, 2021, the SIS received final Operating Subcommittee approval, which signifies that the NYISO has determined that the Project meets the NYISO minimum interconnection standard.⁶⁴ The Project will be added to the NYISO's "baseline" for planning purposes once the NYISO completes its Facilities Study, which is expected to be completed in early 2023.⁶⁵ Finally, once the Project is commissioned, operational control of the Project will be turned over to the NYISO.⁶⁶

⁶¹ Article VII Application at 3.

⁶² "NYPA Board of Trustees Approves Northern New York Priority Transmission Project Plan," NYPA Press Release (Mar. 30, 2021), https://www.nypa.gov/news/press-releases/2021/20210330-nny.

⁶³ See Gemmell Testimony at 19:1-3.

⁶⁴ Id. at 20:21-21:3.

⁶⁵ *Id.* at 20:19-21.

⁶⁶ *Id.* at 20:7.

C. New York State Article VII Approval to Construct, Operate, and Maintain the Smart Path Connect Project

On June 15, 2021, NYPA and NMPC submitted a joint Article VII Application to the NYPSC to "construct, operate and maintain" the SPC Project.⁶⁷ On December 27, 2021, NYPA and NMPC filed a notice of impending settlement negotiations notifying parties and interested persons that settlement negotiations would begin in January 2022.⁶⁸ The settlement negotiations took place over ten sessions from January 2022 to May 2022. Two virtual information sessions/public statement hearings were also held before an Administrative Law Judge on February 16, 2022. On May 19, 2022, NYPA, NMPC, the New York Department of Public Service, the New York State Department of Environmental Conservation, the New York State Department of Agriculture and Markets, and other parties submitted to the NYPSC a joint proposal to address and resolve all statutory and regulatory issues related to NYPA and NMPC's Article VII Application.⁶⁹ The parties to the May 19 Joint Proposal agreed that, based on the evidence in the Article VII Application, the SPC Project would "greatly expand[] the deliverability of renewable generation from northern and western New York to load centers" and "significantly reduce congestion and curtailments affecting that renewable generation thereby reducing the costs of delivered power for customers," and would also provide significant reliability benefits throughout the State.⁷⁰ The May 19 Joint Proposal also included a proposed finding to this effect.⁷¹

On August 11, 2022, the NYPSC approved NMPC's and NYPA's Article VII Application for a Certificate of Environmental Compatibility and Public Need to construct, maintain, and operate the SPC Project ("Certificate").⁷² The Article VII Order found that the May 19 Joint Proposal addressed all of the statutory and regulatory issues pertaining to the Article VII Application, and therefore adopted the terms of the May 19 Joint Proposal.⁷³ The Article VII Order also found that the record in the Article VII Application supported a finding of

⁶⁹ Id. A notice inviting comment on the joint proposal which included a summary was issued on May 27, 2022, and letters transmitting the notice were sent to all landowners adjacent to the project right-of-way. ⁷⁰ See id. at PP 16, 85.

⁷¹ See *id* at Appendix C, Finding 6:

⁶⁷ See Article VII Application at 20.

⁶⁸ See NYPSC Case 21-T-0340, Joint Proposal (filed May 19, 2022) ("May 19 Joint Proposal").

Based on the information provided in the Evidentiary Record Exhibits 6, 13, and 18, sponsored by S. Davis (WSP, USA), G. Behal (NYPA), Dr. Xia Jiang (NYPA), and M. Domino (National Grid) the Project conforms to the requirements and planning objectives of the NYISO and is consistent with State's long-range plans for the enhancement of the transmission facilities and will serve the interests of electric system economy and reliability. The Project will provide significant reliability benefits to New York State through enhancement and reinforcement of the existing backbone transmission infrastructure. The Project will significantly reduce congestion and curtailments and result in substantial congestion cost savings and capacity market benefits, thereby reducing the costs of delivered power for customers.

⁷² See Article VII Order.

⁷³ *Id.* at 2-3.

public need.⁷⁴ The NYPSC determined that consistent with the public interest, granting the Certificate would provide numerous benefits, including reduced curtailments, pointing to the SPC Project eliminating curtailments of approximately 7.5 TWh.⁷⁵ In addition, the NYPSC determined that, once in service, along with other complimentary projects, the SPC Project will significantly improve the deliverability of renewable generation from northern New York.⁷⁶ The NYPSC also found that the Project represents an upgrade to the transmission backbone system of New York that will improve reliability throughout the State.⁷⁷ In sum, the NYPSC found that "the Project will improve reliability, serve the interests of electric system economy and reliability, and provide increased transmission capability for renewable resources required to meet the State's obligations under the CLCPA."⁷⁸

II. THE NYISO OATT AMENDMENTS PROVIDING FOR THE ALLOCATION AND RECOVERY OF THE COSTS OF THE SMART PATH CONNECT PROJECT ARE JUST AND REASONABLE

Because the SPC Project is being developed and constructed pursuant to New York State legislation designed to ensure the achievement of New York's CLCPA Requirements, and because the SPC Project benefits consumers across New York State in numerous ways, the NMPC portion of the costs of the SPC Project are appropriately allocated to and collected from all New York load-serving entities ("LSEs") on a volumetric load-ratio share basis. The cost allocation for the SPC Project revenue requirement is therefore distinct from the allocation under the existing TSC, which only assigns costs to customers within NMPC's service territory. In order to transparently implement this statewide allocation, while ensuring that customers within NMPC's service territory are not double-charged, NMPC proposes to incorporate in the NYISO OATT a new Smart Path Connect Facilities Charge ("SPC-FC").

The calculation and billing of the SPC-FC are set forth in a new proposed Rate Schedule 18 to the NYISO OATT, Section 6.18 of the NYISO OATT. As explained below, the SPC-FC is a cost-of-service formula rate, the revenue requirement for which will be determined on an annual basis using actual costs in accordance with new schedules that NMPC proposes to include in the formula rate templates associated with its existing wholesale TSC.⁷⁹ Consistent with the Commission's determination in the July 15 Order, the SPC-FC will utilize the same ROE set forth in the TSC. Moreover, the new Schedules that NMPC proposes to include in the TSC to implement the SPC-FC mostly leverage existing TSC structures and formulas, except where necessary to ensure that the costs of the SPC Project are appropriately identified and segregated

⁷⁴ *Id.* at 3.

⁷⁵ *Id.* at 31. In granting the Certificate for the SPC Project, the NYPSC ultimately determined that the Project would serve the broader, statewide purpose of advancing New York State's "clean energy goals, including the requirements of the CLCPA[,]" and also found that the Project would produce, among other such benefits, significant congestion cost savings. *See id.*

⁷⁶ *Id.* at 32.

⁷⁷ Id.

⁷⁸ Id.

⁷⁹ NYISO OATT, Attachment H, Section 14.2.1.

in order to implement statewide allocation and avoid double-charging NMPC's existing TSC customers.

A. Rate Schedule 18

As explained in the testimony of Ms. Tiffany Escalona, National Grid's Director of New England Regulation, Exhibit No. NMPC-400, which is set forth in Attachment H to this filing ("Escalona Testimony"), NMPC is proposing to add a new Rate Schedule 18 to the NYISO OATT. Rate Schedule 18 establishes the SPC-FC, the rate mechanism for the recovery of the facilities that comprise NMPC's portion of the SPC Project (the "NMPC Smart Path Connect Facilities"). Rate Schedule 18 is modeled on NYISO OATT rate schedules previously accepted by the Commission that established charges for public policy projects in New York where the costs are allocated on a statewide basis, such as Rate Schedule 13 (establishing the Transco Facilities Charge) and Rate Schedule 17 (establishing the Western New York Facilities Charge).⁸⁰

Rate Schedule 18 provides that the SPC-FC will be allocated on a load-ratio share basis, calculated volumetrically based on Actual Energy Withdrawals (excluding Withdrawal Billing Units for Exports and Wheels Through) by all Load Serving Entities serving load in the New York Control Area (each a "Responsible LSE"). The rationale and support for statewide allocation of the costs of the NMPC portion of the SPC Project, including the agreement of the New York utilities with respect to this cost allocation approach, is discussed in Section II.E below. The SPC-FC charged by the NYISO to each Responsible LSE for each NYISO Billing Period will be based on an annual revenue requirement, which will be calculated by NMPC and provided to the NYISO in accordance with new Schedules 15a and 15b to be added to NMPC's existing TSC formula rate templates (as set forth in Attachment H to the NYISO OATT), using data from NMPC's filed FERC Form No. 1 for the most recent calendar year and based on the books and records of NMPC consistent with FERC accounting policies.⁸¹ These new Schedules utilize the 10.3% ROE adopted in the 2015 TSC Settlement for purposes of calculating the Project's annual revenue requirement, consistent with the July 15 Order.

The Commission-accepted formula rate protocols that apply to NMPC's TSC will also apply to the determination of the SPC-FC revenue requirement. NMPC will recalculate the revenue requirement for the SPC-FC each year as part of the Annual Update process that it uses to calculate the TSC, as set forth in Section 14.1.9.4 of Attachment H to the NYISO OATT. The SPC-FC revenue requirement will be separately stated in the Annual Update, and NMPC will provide supporting documentation for the calculation of the SPC-FC as part of that process. Each Responsible LSE shall be an "Interested Party" that will have the right to review and challenge the calculation of the SPC-FC revenue requirement. The SPC-FC revenue requirement

⁸⁰ Unlike Rate Schedule 17, which uses a carrying charge approach in light of the relatively small cost of the associated facility upgrades, the proposed SPC Project schedules will calculate a more detailed revenue requirement where each component of the existing TSC formula rate will be assessed to determine amounts directly attributable to the SPC Project or amounts that will be allocated to the SPC Project. *See* Escalona Testimony at 6:14-7:12. ⁸¹ *See id.* at 4:10-14.

for the first year will be calculated retroactively to include any CWIP amounts authorized by the Commission for recovery in rate base.

Rate Schedule 18 also expressly provides that the "Base Revenue Requirement" portion of the revenues that NMPC receives from the SPC-FC will be applied as a revenue credit in the revenue requirement for NMPC's TSC, and that after considering the revenue credit for the SPC-FC, the net cost for the NMPC Smart Path Connect Facilities included in NMPC's TSC will be zero. This crediting mechanism is explained in further detail in the discussion of the TSC amendments below, but the overall purpose is to ensure that no costs of the NMPC Smart Path Connect Facilities are recovered through the TSC.

NMPC will request incremental transmission congestion contracts ("Incremental TCCs") with respect to the NMPC Smart Path Connect Facilities in accordance with Attachment M to the NYISO OATT.⁸² The NYISO will disburse the associated revenues to NMPC.⁸³ These Incremental TCC revenues associated with the NMPC Smart Path Connect Facilities will be subtracted from the SPC-FC revenue requirement when the NYISO calculates the SPC-FC rate. Schedule 18 also addresses the treatment of outage charges related to any Incremental TCCs awarded by the NYISO for the Smart Path Connect Facilities.

The billing units for the SPC-FC for each applicable Billing Period will be based on the actual energy withdrawals available for the current Billing Period for each Responsible LSE. The NYISO will determine the applicable SPC-FC rate and collect the appropriate SPC-FC charges from the Responsible LSEs in each Billing Period and remit those revenues to NMPC in accordance with the NYISO's billing and settlement procedures. NMPC has discussed the proposed design of the SPC-FC rate recovery mechanism with the NYISO, and the NYISO has indicated that it can accommodate the administration of the SPC-FC as proposed in this filing.

B. Amendments to Attachment H of the NYISO OATT

As discussed more fully in Ms. Escalona's testimony, NMPC is proposing the following amendments to its formula rate templates set forth in Section 14.2.1 to Attachment H of the NYISO OATT⁸⁴:

- Addition of new Schedules 15a, 15b, 15c, and 15d in order to calculate the SPC-FC revenue requirement.
- Revisions to Schedule 1 (Historical TRR) and Schedule 10 (Other Billing Adjustments, Bad Debt Expense, Revenue Credits and Transmission Rents) to

⁸² Incremental TCCs are transmission congestion contracts awarded by the NYISO for incremental increases in transfer capacity from new transmission expansions and improvements in accordance with the requirements of Section 19.2.4 of Attachment M to the NYISO OATT.

⁸³ Any Incremental TCCs that do not sell in NYISO-administered TCC auctions will receive congestion payments pursuant to Section 20.2.3 of Attachment N of the NYISO OATT.

⁸⁴ The proposed amendments are shown as redline additions to the native format version of NMPC's TSC formula rate templates provided as Attachment K hereto.

include the appropriate revenue credit for the SPC-FC revenue requirement in the TSC rate calculation to ensure that there is no over-recovery from TSC customers.

• A ministerial revision to Schedule 4 (Annual True-Up) to update the line reference to Schedule 1 therein in light of the revisions to Schedule 1 noted above.⁸⁵

New Schedules, 15a, 15b, 15c, and 15d will be used to calculate the revenue requirement specific to the SPC Project. The SPC Project requires a separate revenue requirement calculation because the costs of the Project will be allocated statewide through the new SPC-FC rate. This is in contrast to costs charged through the TSC, which are only allocated to wholesale transmission customers within NMPC's service territory. Calculating a dedicated revenue requirement for the SPC Project will also ensure transparency and guarantee that TSC customers are not double-charged for the costs associated with the SPC Project.

Additionally, Schedules, 15a, 15b, 15c, and 15d are appropriately added to Attachment H of the NYISO OATT—rather than new Rate Schedule 18—because the SPC Project revenue requirement inputs will be derived from amounts included in the TSC revenue requirement per Attachment H of the NYISO OATT.⁸⁶ Incorporating these new schedules into the existing formula rate under Attachment H will render them subject to the Commission-accepted formula rate review protocols that apply to NMPC's TSC. This will allow interested parties to confirm that the associated costs are appropriately allocated and that there is no over-charge or double-recovery.⁸⁷

Schedule 15a calculates the revenue requirement for the SPC Project. Specifically, Schedule 15a shows the determination of the components of the "Net Investment Base" for the Project, the components of the "Base Revenue Requirement" and "Non-Base Revenue Requirement," and the calculation of the Annual True-Up amount, including interest.⁸⁸ The distinction between Base and Non-Base Revenue Requirement is important in order to ensure that the credit to NMPC's existing TSC customers is correctly calculated. The Base Revenue Requirement represents the amount that will be used to determine the credit to TSC customers, and will include inputs for Project-related depreciation expense, amortization of regulatory assets (liabilities), real estate taxes, and operation and maintenance expenses, in addition to a Base Return and Associated Income Taxes amount that will be sourced from proposed Schedule 15b and calculated using inputs from the existing TSC formula.⁸⁹ The Non-Base Revenue Requirement consists of components that would not be reflected in TSC, *e.g.*, return and taxes associated with any CWIP amounts for the SPC Project approved for inclusion in rate base.⁹⁰ Therefore, it would not be appropriate to include these amounts in the credit to TSC customers.

⁹⁰ *Id.* at 12:18-13:14.

⁸⁵ See Escalona Testimony at 3:17-4:9.

⁸⁶ *Id.* at 7:13-20.

⁸⁷ *Id.* at 8:5-9.

⁸⁸ See id. at 8:15-13:20.

⁸⁹ *Id.* at 11:1-12:17. As relevant to the Base Revenue Requirement input for Project-related amortization of regulatory assets (liabilities), NMPC's request to establish a regulatory asset for the SPC Project relating to the cost of removing certain transmission assets is discussed in Section IV below.

For components where the source column includes "Workpaper _", NMPC will provide an appropriate workpaper during the Annual Update process supporting the input amount. The data for these components will be sourced from NMPC's general ledger records and will show reconciliations to filed FERC Form No. 1 amounts.⁹¹ Similarly, where the definitions column indicates "Authorized by FERC Order," those inputs will be populated only upon approval by the Commission.

Schedule 15b will calculate the "Base Return" and "Associated Income Tax" items for the SPC Project using the cost of capital inputs from the TSC. The calculation of these amounts is explained in Ms. Escalona's testimony, and as discussed in greater detail therein, will utilize the existing 10.3% ROE under the TSC— in accordance with the July 15 Order—as well as NMPC's actual capital structure with the common equity ratio capped at 50 percent.⁹²

Schedules 15c and 15d are to be utilized in the event there is excess or deficient Accumulated Deferred Income Taxes ("ADIT") due to changes in federal, state, or local income taxes that can be directly attributed to the SPC Project. This will ensure that balances relating to excess or deficient ADIT are appropriately refunded or charged to the correct customer groups, in accordance with Order No 864.⁹³ These schedules directly correspond to Schedules 14 and 14a proposed by NMPC to account for any excess or deficient ADIT in the TSC in compliance with Order No. 864 and approved by the Commission in Docket No. ER20-2051-001.⁹⁴

NMPC is also proposing revisions to Schedules 1 and 10 to ensure the proper credits associated with the revenue requirement for the SPC Project flow through the TSC, as well as a ministerial update to Schedule 4 to reflect the changes proposed to Schedule 1.⁹⁵

C. The Revenue Requirement for the Smart Path Connect Project Will Be Determined Using the Return on Equity and Capital Structure Set Forth in the TSC

1. Return on Equity

Consistent with the Commission's findings in the July 15 Order, NMPC will calculate the Smart Path Connect revenue requirement using the ROE set forth in the TSC. Per the terms of the 2015 TSC ROE Settlement, the ROE is currently 10.3%, inclusive of any incentives.⁹⁶ This is reflected in new Schedule 15b in Section 14.2.1 of Attachment H, which states that the ROE for the Project will be 10.3%. As discussed above, this Schedule, along with Schedules 15a, 15c

⁹¹ *Id.* at 9:1-5. For instance, Line 2 will include any CWIP that the Commission authorizes NMPC to include in rate base for the SPC Project.

⁹² *Id.* at 13:21-14:16.

⁹³ Id. at 14:17-15:3. See also Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes, Order No. 864, 169 FERC ₱ 61,139 (2019), order on reh'g and clarification, Order No. 864-A, 171 FERC ¶ 61,033 (2020).

⁹⁴ Escalona Testimony at 15:7-10 (citing *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER20-2051-003 (Oct. 7, 2022) (delegated letter order)).

⁹⁵ *Id.* at 15:11-16:3.

⁹⁶ 2015 TSC ROE Settlement at P 5.

and 15d, will be used to calculate the annual revenue requirement for the SPC Project, which will form the basis of the SPC-FC per Rate Schedule 18, Section 6.18.3.2.

2. Capital Structure

NMPC proposes to determine the weighted cost of capital for the SPC Project using the same approach set forth in its existing TSC, which utilizes NMPC's actual capital structure with the common equity ratio capped at 50 percent.⁹⁷ This approach is just and reasonable, as it utilizes the Commission-accepted TSC cost of capital formula and is consistent with Commission precedent on capital structure. Commission precedent reflects a long and clear preference for using the actual capital structure of the utility in establishing the overall rate of return.⁹⁸ Moreover, this approach satisfies the Commission's test for utilizing a company's actual capital structure for ratemaking purposes.⁹⁹ In particular, the common equity ratio of 50 percent or less is well within the range of capitalization ratios that the Commission has previously approved. Historically, "the Commission has allowed a maximum equity ratio of 68.86% (minimum debt ratio of 31.14%) and a maximum debt ratio of 64.76% (minimum equity ratio of 35.24%)."¹⁰⁰

D. NMPC Is Proposing to Adopt a Robust Cost Containment Mechanism for the Smart Path Connect Project Based on Those Approved for Other New York Public Policy-Driven Transmission Projects

NMPC is proposing to adopt a robust cost containment commitment that will apply to the calculation of the ROE for the SPC Project. This cost containment mechanism is substantially identical to the mechanism proposed in NYPA's filing relating to the SPC Project,¹⁰¹ and subsequently accepted by the Commission,¹⁰² and will incentivize NMPC to develop and place into service its portion of the SPC Project at or below a specified "Cost Cap." This cost containment mechanism is also similar to cost containment mechanisms accepted by the Commission for other public-policy driven transmission projects in New York, most notably with respect to both NYPA¹⁰³ and LS Power Grid New York Corporation ("LSPG-NY"),¹⁰⁴ the two entities developing the Central East Energy Connect project.¹⁰⁵ Additionally, in the Priority

⁹⁷ See NYISO OATT, Section 14.2.1 of Attachment H, Schedules 8 and 15b.

⁹⁸ See, e.g., Ky. W. Va., 2 FERC ¶ 61,139 (1978) ("In our opinion a utility should be regulated on the basis of its being an independent entity; that is, a utility should be considered as nearly as possible on its own merits."); *Transcontinental Gas Pipeline Corp.*, 84 FERC ¶ 61,084 (1998).

⁹⁹ See ITC Holdings Corp., 143 FERC ¶ 61,257, at P 78 (2013) (stating that the Commission will use an operating company's actual capital structure where it (1) issues its own debt without guarantees; (2) has its own bond rating; and (3) has a capital structure within the range of capital structures approved by the Commission).

¹⁰⁰ See Opinion No. 572, 173 FERC ¶ 61,045 at P 53 (2020) (citing 165 FERC ¶ 63,001, at P 195; *Pac. Gas Transmission Co.*, 62 FERC ¶ 61,109, at 61,778-79 (1993); *Allegheny Power*, 106 FERC ¶ 61,241, at PP 25-27 (2004)).

¹⁰¹ NYPA SPC Project 205 Filing, Transmittal Letter at 31-36.

¹⁰² See NYPA Order on Compliance at P 20.

¹⁰³ N.Y. Indep. Sys. Operator, Inc., 176 FERC ¶ 61,211 (2021).

¹⁰⁴ N.Y. Indep. Sys. Operator, Inc., 175 FERC ¶ 61,210 (2021).

¹⁰⁵ In the relevant proceedings, this project was referred to as the "Segment A Project."

Project Order, NYPSC indicated that it expected that a cost containment mechanism would be included as part of the SPC Project.¹⁰⁶ Such a cost containment measure is not precluded by the 2015 TSC Settlement. The 2015 TSC Settlement did not include provisions relating to cost containment or otherwise address cost containment at all.

NMPC's cost containment commitment is explained in the Prepared Direct Testimony of Andrew Byrne, Commercial Development Director, Clean Energy Development, Exhibit No. NMPC-200, which is set forth in Attachment F to this filing ("Byrne Testimony"). Under the proposed cost containment mechanism, where "Eligible Project Costs" exceed the Cost Cap, NMPC will earn no ROE on 20% of the equity portion of the actual costs that exceed the Cost Cap.¹⁰⁷ NMPC will remain eligible to recover the depreciation and debt costs on its share of all actual Project-related costs.¹⁰⁸ The Cost Cap is calculated based on the SPC Project cost estimate submitted to the NYPSC by NMPC and NYPA as part of the permitting process before the NYPSC under Article VII of the New York Public Service Law, less interconnection and network upgrades resulting from the NYISO evaluation process and financing costs. For NMPC's portion of the project, the Cost Cap is \$481.8 million.¹⁰⁹

Eligible Project Costs are defined as all capital costs incurred to develop, construct, and place the SPC Project into service excluding "Third Party Costs" and "Unforeseeable Costs" in excess of 2.5% of the Cost Cap.¹¹⁰ Third Party Costs include: (i) interconnection and network upgrade costs resulting from the NYISO evaluation process; (ii) property taxes; and (iii) 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 NMPC to control or mitigate.¹¹¹ Third Party Costs will be excluded from Eligible Project Costs, exempted from application of the Cost Cap, and recovered under the SPC-FC.

Unforeseeable Costs are defined in terms of costs that NMPC could not have reasonably anticipated at the time the estimate was submitted to the NYPSC as part of the Article VII application process.¹¹² Because these Unforeseeable Costs were not included in the estimate, they are appropriately excluded from Eligible Project Costs. More specifically, Unforeseeable Costs include the following costs:¹¹³

1. Costs associated with material modifications to the routing or scope of work of the Project that results from a NYPSC order, negotiation, or settlement agreement within

¹¹³ *Id.* at 29:16-31:5.

¹⁰⁶ See Priority Project Order at 27.

¹⁰⁷ Byrne Testimony at 27:6-9.

¹⁰⁸ *Id.* at 27:9-10.

¹⁰⁹ *Id.* at 27:14-17. Throughout this transmittal letter, references to the Cost Cap mean the Cost Cap that applies solely to NMPC. Although the cost containment structure proposed herein is substantially similar in operation to the one accepted by the Commission for NYPA's portion of the Project, NYPA is subject to its own Cost Cap, which are dollar amounts different from the Cost Cap amounts applicable to NMPC.

¹¹⁰ *Id.* at 28:3-6.

¹¹¹ *Id.* at 29:1-5.

¹¹² *Id.* at 29:16-18.

the siting process, or are imposed or required by any other governmental agency. For the avoidance of doubt, foreseeable obligations, as included in NYPA and NMPC's Article VII Application, or non-material obligations imposed upon NMPC as a normal part of the siting process, shall not be deemed to be Unforeseeable Costs;

- 2. Costs associated with changes in applicable laws and regulations, or interpretations thereof by governmental agencies;
- 3. Costs incurred as a result of orders of courts or action, or inaction, by governmental agencies;
- 4. Costs 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,¹¹⁴ 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 NMPC, (ii) NMPC made reasonable efforts to avoid or minimize the adverse impacts of any of the above-listed events, and (iii) NMPC 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 Cost Cap;¹¹⁵ 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 Cost Cap.

Only Unforeseeable Costs that exceed 2.5% of the Cost Cap will be excluded from Eligible Project Costs, exempted from application of the Cost Cap, and recovered under the SPC-FC.¹¹⁶

As noted above, this cost containment commitment is substantially identical to the one approved by the Commission with respect to NYPA's portion of the SPC Project.¹¹⁷ The two differences are (1) the NMPC cost containment mechanism does not include a provision to forego any incentive ROE adders, because in accordance with the July 15 Order, NMPC is not requesting any incentive adder for the SPC Project; and (2) NMPC is not proposing to include a

¹¹⁴ NMPC 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).

¹¹⁵ Steel cost escalation is measured by the Handy Whitman Construction Cost Index.

¹¹⁶ As explained in Mr. Byrne's testimony, NMPC is proposing to reduce the threshold for exclusion of "unforeseeable costs" from Eligible Project Costs from the 5% used by LSPG-NY for the Central East Energy Connect project. *See* Byrne Testimony at 31:8-32:2.

¹¹⁷ See NYPA Order on Compliance at P 20.

performance-based ROE incentive, per the July 15 Order. In short, the cost containment provision will only serve to benefit ratepayers, because all of the financial risk will be on NMPC to avoid cost overruns.

E. Statewide Cost Allocation on the Basis of Load-Ratio Share for the NMPC Portion of the Smart Path Connect Project Is Just and Reasonable

1. Allocating the Costs of Priority Transmission Projects Such as the Smart Path Connect Project on a Statewide Basis Is Consistent with New York State Legislation and Commission Policy

As discussed above, NYPA and NMPC are developing and constructing the SPC Project pursuant to the process set forth in New York State's CLCPA and AREGCBA clean energy statutes. The SPC Project was designated by the NYPSC as a PTP due to its determination that the Project will increase the likelihood that New York will meet the CLCPA Requirements and because it can be placed in-service sooner than selection through the NYISO public policy transmission planning process would allow.¹¹⁸ Because the SPC Project is designed to achieve statewide policy goals, the costs of the Project should be allocated on a statewide basis. Statewide allocation of the costs of the SPC Project is fully consistent with not only New York State law, but also the Commission's precedent and policy pronouncements.

The Commission has consistently recognized that selection through a Commissionjurisdictional regional planning process is not the only permissible pathway by which the costs of a project can be allocated to entities beyond the specific transmission owner constructing the project. In Order No. 1000, the Commission required public utilities to have in place methods for allocating on a region-wide basis the costs of transmission facilities selected in regional transmission plans for purposes of cost allocation,¹¹⁹ but did not prohibit alternative cost allocation arrangements. In particular, the Commission indicated that its regional cost allocation requirements did not "in any way foreclose" the use of "participant funding" approaches by which a developer, groups of developers, or one or more transmission customers voluntarily assume the costs of a new transmission facility.¹²⁰

More recently, the Commission issued a policy statement addressing state efforts to develop transmission facilities through voluntary arrangements to plan and pay for such facilities.¹²¹ Therein, the Commission acknowledged that voluntary agreements between states and public utility transmission providers "may allow state-prioritized transmission facilities to be planned and built more quickly than would comparable facilities that are planned through the regional transmission planning process(es)."¹²² Such agreements can further the Commission's

¹¹⁸ Priority Project Order at 18.

¹¹⁹ Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000, FERC Stats. & Regs. ¶ 31,323, at P 622 (2011) ("Order No. 1000").

¹²⁰ See id. at P 724.

¹²¹ See State Voluntary Agreements to Plan and Pay for Transmission Facilities, 175 FERC ¶ 61,225 (2021) ("State Agreement Policy Statement").

¹²² *Id.* at P 2.

priority of "[d]eveloping cost-effective and reliable transmission facilities" by "providing states with a way to prioritize, plan, and pay for transmission facilities that . . . are not being developed pursuant to the regional transmission planning processes."¹²³ Moreover, the Commission affirmed that Order No. 1000 permits market participants, including states, to negotiate cost sharing arrangements that are distinct from the relevant regional cost allocation methods.¹²⁴

Statewide allocation of the costs of NMPC's portion of the SPC Project is consistent with the Commission's voluntary funding policies. The New York Transmission Owners,¹²⁵ including NMPC and NYPA, have executed a cost allocation agreement ("CAA"), provided as Attachment J hereto, to memorialize their understanding and concurrence regarding the statewide volumetric load-ratio share cost allocation for the revenue requirement associated with NMPC's portion of the Project, pending the Commission's acceptance of the formula rate amendments proposed herein.¹²⁶ As set forth in the CAA, the New York Transmission Owners agree that such allocation is consistent with the "roughly commensurate with benefits" standard, and therefore, subject to certain conditions, agree that the SPC Project revenue requirement should be recovered statewide on the basis of load-ratio share. The CAA is consistent with other types of voluntary agreements that the Commission has accepted. Most notably, the Commission recently accepted a Cost Sharing and Recovery Agreement ("CSRA") entered into by New York Transmission Owners, as well as related amendments to the NYISO OATT, including the addition of a new Rate Schedule 19 (Section 6.19 of the NYISO OATT).¹²⁷ Together, these implement statewide cost allocation on a load-ratio share basis for local transmission upgrades selected by the NYPSC to meet CLCPA mandates. The Commission determined that it is just and reasonable to allocate the costs of local transmission upgrades that the NYPSC determines are necessary to meet CLCPA requirements on a statewide basis, because they benefit customers throughout the state in that they facilitate compliance with New York climate and renewable energy goals required by State law.¹²⁸

The CAA executed for the SPC Project is modeled after the CSRA previously accepted by the Commission and is consistent with the Commission's State Agreement Policy Statement as a "voluntary agreement" between six public utilities¹²⁹ and two non-jurisdictional utilities.¹³⁰

 $^{^{123}}$ *Id*.

¹²⁴ *Id.* at P 3.

¹²⁵ In addition to NMPC and NYPA, the "New York Transmission Owners" consist of Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corporation; Orange and Rockland Utilities, Inc.; Rochester Gas and Electric Corporation; and Long Island Power Authority.

¹²⁶ Execution of the CAA does not bind the New York Transmission Owners with respect to any positions they might adopt regarding other aspects of this filing, including the proposed rate.

¹²⁷ See Consol. Edison Co. of N.Y., et al., 180 FERC \P 61,106 (2022) at P 2 ("CSRA Order"). Execution of the CAA has no effect on the respective rights and obligations of the parties under the CSRA, or as to the CAA with respect to facilities or projects other than the SPC Project.

¹²⁸ *Id.* at P 50.

¹²⁹ The six public utilities are Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corporation; Orange and Rockland Utilities, Inc.; Rochester Gas and Electric Corporation; and NMPC.

¹³⁰ The two non-jurisdictional utilities are Long Island Power Authority and NYPA.

The CAA reflects "state efforts to develop transmission facilities through voluntary agreements to plan and pay for those facilities...."¹³¹ As a voluntary agreement developed among the New York Transmission Owners, the CAA exhibits a shared acceptance as to how NMPC will allocate Project costs. As with the projects at issue in the CSRA Order, the SPC Project is being built because the NYPSC has determined that it is necessary to meet New York State clean energy mandates, which are implemented through directives to load-serving entities such as the New York Transmission Owners. Thus, as it did in the CSRA Order, the Commission should find that the CAA is the type of voluntary arrangement that the Commission recognized in Order No. 1000 need not follow the default cost allocation methodologies established in compliance with that rule, and that it supplements but does not conflict with or replace NYISO's Order No. 1000 process.¹³²

NMPC is on the same date as this filing separately submitting the CAA for Commission review and approval. The CAA is just and reasonable for the reasons discussed herein, in the separate CAA filing, and in the CSRA Order, *i.e.*, it reflects the appropriate statewide allocation of the costs of a project that will benefit customers throughout New York State insofar as it facilitates compliance with New York's clean energy requirements, and which therefore is roughly commensurate with the benefits.¹³³

Moreover, even without the CAA, the PTP mechanism adopted in AREGCBA fits squarely in the mold of a voluntary funding arrangement permitted under the FPA. AREGCBA expresses a "public interest of the people of the state of New York" in the "timely development" of bulk transmission investments necessary to meet the CLCPA Requirements, such that certain projects needed on an expedited basis (i.e., PTP projects) should be identified by the NYPSC and developed by NYPA and its selected co-developers outside of the NYISO public policy transmission planning process.¹³⁴ And although AREGCBA does not expressly reference a specific cost allocation mechanism for PTP projects, the only logical conclusion is that it contemplates statewide cost allocation for these facilities. First, the public policy purposes and benefits that AREGBCA (and by extension, CLCPA) is designed to achieve are clearly statewide in scope; the emissions-reduction requirements and associated benefits are designed to benefit all New Yorkers, and are not exclusive to particular New York customers or regions.¹³⁵ The New York legislature consistently refers throughout CLCPA to greenhouse gas emission targets as being statewide limits.¹³⁶ In addition, AREGCBA designates NYPA as the presumptive developer for PTP projects, with NYPA having the ability to select co-participants for these projects.¹³⁷ NYPA recovers the costs of its transmission facilities on a statewide basis through

¹³⁷ AREGCBA § 7(5).

¹³¹ State Agreement Policy Statement at P 1.

¹³² CSRA Order at P 48.

¹³³ See id. at P 50.

¹³⁴ AREGCBA § 7(5).

¹³⁵ See Testimony of Bart D. Franey, Exhibit No. NMPC-300 at 7:1-8:6 (citing CLCPA, §§ 1, 2(1)(a), 7(a)), which is set forth in Attachment G to this filing ("Franey Testimony").

¹³⁶ The legislature titled Section 75-0109 of CLCPA, "Promulgation of regulations to achieve *statewide* greenhouse gas emissions reductions." (Emphasis added.) Moreover, the definitions involving greenhouse gas emission all refer to statewide emissions.

its NTAC rate.¹³⁸ There is no reason to treat the costs incurred by a PTP project co-participant, such as NMPC, any differently as there is nothing in AREGCBA to suggest that the costs of meeting the CLCPA targets should disproportionately be allocated to downstate versus upstate customers.¹³⁹

In short, through AREGCBA, the State of New York has essentially volunteered New York customers to pay for PTP projects. This approach is analogous to the cost allocation method set forth under the PJM State Agreement Approach accepted by the Commission as a component of PJM's Order No. 1000 compliance filings.¹⁴⁰ As the Commission explained in the State Agreement Policy Statement, under the State Agreement Approach, state governmental entities, individually or jointly, "may agree voluntarily to be responsible for the allocation of all costs of a proposed transmission facility that addresses state public policy requirements identified or accepted by the relevant state(s) in the PJM region."¹⁴¹

Additionally, statewide allocation of the costs of the SPC Project is also consistent with precedent and Commission policy requiring that costs recovered through rates subject to the FPA must be allocated in a manner "roughly commensurate with estimated benefits," and establishing that such benefits may include "meeting Public Policy Requirements."¹⁴² Accordingly, the costs associated with the development and construction of the SPC Project, a project selected to meet public policy goals adopted to benefit all New York residents, are appropriately allocated on a statewide basis. Such statewide allocation is consistent with statewide allocation of projects previously developed to satisfy public policy requirements.¹⁴³ In addition to the established public policy benefits, the SPC Project will benefits customers of New York by delivering control area-wide load savings, capacity market savings, and reduction of transmission congestion that will permit the delivery of transmission-constrained northern New York generation across the State.¹⁴⁴ These benefits are not limited to any one zone or Transmission Owner service territory.¹⁴⁵ Accordingly, statewide cost allocation would still be roughly commensurate with benefits even if public policy benefits were not considered. Given these

¹³⁸ NYISO OATT, Attachment H, Section 14.2.2.2.

¹³⁹ Indeed, the NYPSC, in addressing "local" transmission upgrades being planned pursuant to AREGCBA as necessary to meet the same CLCPA Mandates as bulk transmission projects such as the SPC Project, explicitly found that the costs of such upgrades should be allocated statewide. *Order on Local Transmission and Distribution Planning Process and Phase 2 Project Proposals*, Case 20-E-0197 (Sept. 9, 2021) ("Local Transmission Order") at 22-23. It would make no sense to allocate those costs to lower voltage transmission facilities statewide, but allocate differently for bulk facilities.

¹⁴⁰ See PJM Interconnection, L.L.C., 142 FERC ¶ 61,214, at PP 142-44 (2013) ("[I]f a State decides, through the State Agreement Approach to support a transmission project that serves only the state public policy requirements, then a state may do so."), *order on reh'g and compliance*, 147 FERC ¶ 61,128, at P 92 (2014); PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, section 1.5.9(a).

¹⁴¹ State Agreement Policy Statement at P 4, n.5.

¹⁴² See, e.g., Ill. Com. Comm'n v. FERC, 576 F.3d 470 (2009); Order No. 1000 at P 622.

¹⁴³ In *N.Y. Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,160 (2017), the Commission approved partial statewide allocation for the public policy-driven AC Transmission Upgrades Project that reflects both statewide benefits and more targeted benefits, as determined by the NYPSC. The PSC determined that 25% of the benefits of the project are policy driven and are appropriately allocated statewide on a load-ratio share basis.

¹⁴⁴ Gemmell Testimony at 24:11-26:6.

¹⁴⁵ See Franey Testimony at 14:1-14:13.

widespread benefits to consumers in New York, allocating the costs of the SPC Project to only NMPC's TSC customers would not result in an allocation in a manner roughly commensurate with estimated benefits, and therefore would not be just and reasonable.

Finally, both NMPC and NYPA have held meetings with various New York stakeholders to discuss the SPC Project and the various ratemaking implications, including a proposed mechanism for allocating NMPC's portion of the Project, and as far as NMPC is aware, no entity opposed statewide allocation of the costs of the SPC Project.¹⁴⁶ Also, NYPA, the lead project developer, submitted a proposal for recovery of its share of SPC Project costs through its NYPA Transmission Adjustment Charge ("NTAC") to its Voting Member Systems for their consideration. The NTAC is recovered from all load in New York using a load-ratio share approach. None of the Voting Member Systems, consisting of New York electric distribution companies representing the majority of load in the NYCA, voiced opposition to a statewide cost allocation mechanism or exercised their right to require a vote on the cost allocation mechanism proposed for the Project.¹⁴⁷

2. Load-Ratio Share Is a Just and Reasonable Means to Implement Statewide Allocation of the Costs of NMPC's Portion of the Smart Path Connect Project

The load-ratio cost allocation mechanism proposed by NMPC for its share of the Project costs is set forth in Rate Schedule 18, as described above. This methodology is substantially similar to the allocation mechanism contained in NYPA's Commission-approved NTAC rate, through which NYPA will recover the costs of its portion of the SPC Project.¹⁴⁸ Under this approach, costs will be allocated to all New York LSEs, on a statewide load-ratio share basis.¹⁴⁹ Specifically, NMPC's proposed cost allocation methodology will allocate the costs of NMPC's portion of the SPC Project to individual New York LSEs on the basis of their actual energy withdrawals, rather than on the basis of NYISO load zones. As discussed above, the other New York Transmission Owners have executed the CAA to demonstrate their acceptance of a load-ratio share methodology. Also, load-ratio share cost allocation is "roughly commensurate" with the statewide policy benefits of the Project.¹⁵⁰ The load-ratio share cost allocation methodology

¹⁴⁶ Although two entities representing municipal utilities in New York (Municipal Electric Utilities Association and New York Association of Public Power) protested NMPC's proposal to implement statewide allocation on the basis of load-ratio share in its original SPC Project 205 filing, neither entity objected to the statewide allocation of SPC Project costs. Regardless, as the Commission made clear in its recent order approving the CSRA between the New York Transmission Owners, even though municipal entities represented by NYAPP and MEUA may end up paying a portion of the SPC Project costs through transmission rates, Commission precedent does not require that they as *customers*, sign off on any voluntary arrangement. CSRA Order at P 49.

¹⁴⁷ See Franey Testimony at 13:14-16.

¹⁴⁸ See NYISO OATT, Attachment H, Section 14.2.2.

¹⁴⁹ Franey Testimony at 15:7-13.

¹⁵⁰ See id. at 10:3-11.

is also consistent with the default cost allocation methodology utilized by NYISO for projects selected to meet public policy requirements established by the NYPSC.¹⁵¹

Allocating the costs of the SPC Project on a load-ratio share basis is also appropriate because both the Commission and the NYPSC have approved load-ratio share allocation for other public policy transmission projects being constructed in New York to satisfy the CLCPA requirements. In its September 9, 2021 order in Case 20-E-0197, the NYPSC concluded that "local" transmission upgrades necessary to meet New York's clean energy mandates should be allocated statewide on a load-ratio share basis.¹⁵² In May 2022, the NYPSC made a similar finding with respect to transmission projects that will be solicited through the NYISO public policy planning process in order to facilitate the interconnection of large amounts of expected offshore wind development in New York.¹⁵³ In determining that load-ratio share is the preferred methodology for allocating the costs of such projects, the NYPSC examined the text of the CLCPA, pointed out that CLCPA established numerous statewide targets to address statewide climate impacts, and concluded that "[n]othing in the statute calls for a regional variation in approach to addressing climate change."¹⁵⁴ Moreover, the NYPSC found that the rationale for the downstate-weighted allocation methodology adopted in the earlier "AC Transmission" proceedings did not apply because that determination was based on economic benefits associated with congestion relief, whereas "all utility customers are equal beneficiaries of the projects" relating to offshore wind development "because of the intended role of the projects to distribute zero-emission energy to the rest of the State."¹⁵⁵

More recently, the Commission accepted the CSRA and amendments to the NYISO OATT, including the addition of a new Rate Schedule 19.¹⁵⁶ Together, these implement statewide cost allocation on a load-ratio share basis for local transmission upgrades selected by the NYPSC to meet CLCPA mandates. The Commission determined that it is just and reasonable to allocate the costs of local transmission upgrades that the NYPSC determines are necessary to meet CLCPA requirements on a volumetric load-ratio basis because they facilitate compliance with New York climate and renewable energy goals required by State law, regardless of whether an individual load-serving entity has taken actions that also contribute to New York's policy goals.¹⁵⁷ Therefore, the Commission found that the proposal to allocate costs of approved local transmission upgrades on a load-ratio share basis across the state is roughly commensurate with the benefits.¹⁵⁸

¹⁵¹ NYISO OATT, Attachment Y, Section 31.5.5.4.3 ("Unless the Commission has accepted an alternative cost allocation methodology pursuant to this Section, the ISO shall allocate the costs of the Public Policy Transmission Project to all Load Serving Entities in the NYCA using the default cost allocation methodology, based upon a load-ratio share methodology.").

¹⁵² See Local Transmission Order at 22-23.

¹⁵³ Franey Testimony at 8:13-9:2. *See also Order on Petitions for Rehearing*, Case 20-E-0497, Case 18-E-0623, at 24 (May 16, 2022).

¹⁵⁴ Local Transmission Order at 24.

¹⁵⁵ *Id.* at 27.

¹⁵⁶ CSRA Order at P 2.

¹⁵⁷ *Id.* at P 50.

¹⁵⁸ Id.

These rationales apply with equal force to the SPC Project. Although the SPC Project will afford significant economic benefits to New York ratepayers, the primary purpose of the SPC Project is to facilitate the delivery of clean energy to load throughout New York, in order that New York can meet its statewide clean energy targets, as mandated by CLCPA. Thus, there is no reason to treat cost allocation for the SPC Project any different than other projects being developed to facilitate achievement of the CLCPA mandates. As the Commission has recognized, the statewide greenhouse gas emissions reductions mandated by the CLCPA are implemented in part through NYPSC directives to jurisdictional LSEs,¹⁵⁹ and it is therefore just and reasonable and not unduly discriminatory or preferential to allocate the costs of local transmission upgrades that the NYPSC determines are necessary to meet New York State law requirements on a volumetric load-ratio basis.¹⁶⁰

III. THE COMMISSION SHOULD APPROVE THE INCLUSION IN RATE BASE OF 100 PERCENT OF CWIP FOR THE SMART PATH CONNECT PROJECT

NMPC seeks the recovery of 100 percent of prudently incurred costs for CWIP in rate base for its portion of the SPC Project.

A. The Smart Path Connect Project Qualifies for the Rebuttable Presumption That It Promotes Reliability and Reduces the Cost of Delivered Power

Order No. 679 establishes a rebuttable presumption that a project promotes reliability or reduces the cost of delivered power if: (1) the transmission project results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion; or (2) the transmission project has received construction approval from an appropriate state commission or state siting authority.¹⁶¹

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."¹⁶² 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."¹⁶³ Thus, the SPC Project clearly satisfies the rebuttable presumption test based on the fact that the NYPSC, in approving NMPC's and NYPA's Article VII Application, adequately considered and determined that the Project will benefit the State of New York through reduced congestion—resulting in substantial cost savings to customers—as well as by improving reliability.¹⁶⁴

¹⁶⁰ Id.

¹⁵⁹ Id. (citing CLCPA § 6).

¹⁶¹ Order No. 679 at P 58.

¹⁶² *Id.* at P 54.

¹⁶³ Order No. 679-A at P 46.

¹⁶⁴ Article VII Order at 31-32.

In the Article VII Application to construct, operate, and maintain the SPC Project, NMPC and NYPA submitted evidence that the SPC Project will provide consumers in the State of New York with economic, environmental, and reliability benefits.¹⁶⁵ As evidenced by the NYPSC's Article VII Order, the SPC Project has received state construction approval through a process that adequately considered the reliability and congestion benefits of the Project and found that the Project will provide these benefits, thereby satisfying the criteria set forth in Section 219 of the FPA. Consistent with its legal authority, the NYPSC may grant a Certificate for the construction and operation of a major electric transmission facility only if it first determines the basis of the need for the facility and the nature of the facility's probable environmental impacts.¹⁶⁶ Further, the NYPSC is required to determine that the facility conforms to a long-range plan for the expansion of the electric power grid of the State, and will serve the public interest, convenience, and necessity.¹⁶⁷ Also, in evaluating the terms of a joint proposal, the NYPSC must determine that it produces a result that serves the public interest as a whole, including whether the terms are "consistent with the environmental, social and economic policies of [both the NYPSC] and the State[.]"¹⁶⁸

The Article VII Order found that a May 19 Joint Proposal submitted by NYPA, NMPC, the New York Department of Public Service, the New York State Department of Environmental Conservation, the New York State Department of Agriculture and Markets, and other parties addressed all of the statutory and regulatory issues pertaining to the Article VII Application.¹⁶⁹ Therefore, the Article VII Order adopted the terms and appendices of the May 19 Joint Proposal,¹⁷⁰ which contained terms and findings relating to both economic and reliability benefits, including the finding that the SPC Project will significantly reduce congestion resulting in reduced costs of delivered power for customers. The Article VII Order also found that the record in the Article VII Application supported a finding of public need. The NYPSC determined that consistent with the public interest, granting the Certificate would provide numerous benefits through reduced curtailments.¹⁷¹ In addition, the NYPSC determined that, once in service, along with other complimentary projects, the SPC Project will significantly improve the deliverability of renewable generation from northern New York.¹⁷² The NYPSC also found that the Project represents an upgrade to the transmission backbone system of New York that will improve reliability throughout the State.¹⁷³ In sum, the NYPSC found that "the Project will improve reliability, serve the interests of electric system economy and reliability,

¹⁷¹ *Id.* at 31.

¹⁶⁵ Article VII Application Engineering Justification at E-4-9 and E-4-10.

¹⁶⁶ N.Y. Pub. Serv. Law §§ 126(1)(a), (b).

¹⁶⁷ *Id.* §§ 126(1)(e).

¹⁶⁸ See Article VII Order at 27-28.

¹⁶⁹ *Id.* at 2-3.

¹⁷⁰ *Id.* at 3, 32-33. The only minor exception to the NYPSC's adoption of the May 19 Joint Proposal relates to some terms that are self-executing agreements governing relationship among the parties. *Id.* at 3. These terms are not relevant to this filing.

¹⁷² *Id.* at 32.

¹⁷³ Id.

and provide increased transmission capability for renewable resources required to meet the State's obligations under the CLCPA."¹⁷⁴

Based on these facts, the Commission in an order approving the Abandoned Plant Incentive for the SPC Project found NMPC "has demonstrated that the New York Commission approved the Article VII Application in a robust stakeholder process that adequately considered and found that the Project meets the reliability and congestion criteria established in FPA section 219."¹⁷⁵ This finding is equally applicable here. Therefore, the Commission should conclude that the SPC Project fully satisfies the rebuttable presumption established in Order Nos. 679 and 679-A.

B. NMPC Faces Significant Financial and Construction-Related Risks in Connection with the Development of the Smart Path Connect Project

1. Financial Risks

There are a variety of significant financial risks and challenges facing NMPC in connection with the development of the SPC Project. The Project represents a major transmission investment for NMPC that has the potential to adversely impact NMPC's finances. Given the size of NMPC's proposed investment compared to its current average annual transmission investment, NMPC will face financial risk as a result of its development of the Project. In terms of all transmission capital projects undertaken by NMPC, most are much smaller than the Project, with 85% of all capital projects budgeted at less than \$20 million.¹⁷⁶

There are risks inherent in the construction of major bulk power transmission lines. The Commission has recognized a number of the risks, including cash flow prior to facilities being placed in service. In New York, these risks are particularly challenging. 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.¹⁷⁷ The lack of obligation to assume the financial risks of the construction of bulk power transmission to support wholesale power markets, makes clear why there has been only limited New York transmission development in the past 30 years, even in historically constrained areas of the State. Accordingly, NMPC's investment in the Project is by definition an effort that "exceed[s] the normal risks undertaken by a utility."¹⁷⁸

During the project development and construction phases of the Project, NMPC will expend large amounts of capital – up to \$145 million in a single year.¹⁷⁹ The subsequent balance sheet impairment would have negative impacts on key financial ratios, *i.e.*, credit metrics, and may negatively impact NMPC's ability to attract debt on favorable terms. The choices NMPC

¹⁷⁴ Id.

¹⁷⁵ Niagara Mohawk Power Corp., 181 FERC ¶ 61,065 at P 19.

¹⁷⁶ Byrne Testimony at 8:3-5.

¹⁷⁷ Order No. 679 at P 25.

¹⁷⁸ *Id.* at P 27.

¹⁷⁹ Byrne Testimony at 10:3-5.

must make to account for this risk when choosing how to deploy the capital necessary to develop the SPC Project and other projects could slow the development of much needed transmission infrastructure.

2. Project Construction Risks

As discussed above, the NYPSC approved the Article VII application for a Certificate of Environmental Compatibility and Public Need on August 11, 2022. The Project also requires an approved Environmental Management and Construction Plan ("EM&CP") from the NYPSC, which NMPC submitted in three phases with the approval of the NYPSC. NMPC received the first phase of EM&CP approval—Part 1—on September 16, 2022, which allowed NMPC to begin constructing the initial segment of the Project.¹⁸⁰ NMPC received the second phase of EM&CP approval—Part 2A—on January 20, 2023,¹⁸¹ and expects that NYPSC approval for the final EM&CP phase—Part 2B—will be obtained by November 2023.¹⁸²

Although these necessary regulatory approvals are encouraging with respect to the overall viability of the SPC Project, there are still substantial risks associated with the construction of the Project that have the potential to substantially increase the expected costs of and/or delay the Project. Mr. Byrne's Testimony details several of these risks, many of which are heightened as a result of the COVID-19 pandemic and current economic 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.¹⁸³ Further, manufacturing availability, quality, and delivery logistics-related risks are significant for a project of this scale.¹⁸⁴

The SPC Project also faces potential 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 time period as the SPC Project are expected to strain the availability of

¹⁸⁴ *Id.* at 18:11-13.

¹⁸⁰ See NYPSC Case 21-T-0340, Order Approving Environmental Management and Construction Plan (Sept. 16, 2022).

¹⁸¹ See NYPSC Case 21-T-0340, Order Approving Environmental Management and Construction Plan (Jan. 20, 2023).

¹⁸² Although one part of the Project's EM&CP remains pending approval, this should not prevent the Commission from finding that the SPC Project satisfies the rebuttable presumption. The determination of project need, including how the SPC Project will reduce congestion costs and ensure reliability, is addressed exclusively by the Environmental Compatibility and Public Need portion of the state siting process that culminated in the Article VII Order, which provides the developers with authorization to construct, operate, and maintain the SPC Project facilities. The EM&CP portion of the state siting process will not consider these issues and is solely concerned with *how* the project will be built, rather than *whether* it should be built. Therefore, there is no reason for the Commission to require full EM&CP approval in order to determine that the rebuttable presumption has been satisfied. The Commission agreed with this rationale in its order approving NMPC's compliance filing regarding its request for the Abandoned Plant Incentive, and there is no reason to do differently here. *Niagara Mohawk Power Corp.*, 181 FERC ¶ 61,065 at P 19.

¹⁸³ See Byrne Testimony at 17:14-16.

transmission line contractors and crews, particularly if there are project delays. This could have an impact on Project cost and schedule.¹⁸⁵

Both NMPC and NYPA 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 to be upgraded in connection with the Project provide a significant amount of power across the state. Requested outages to perform the necessary facility work may be restricted, *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.¹⁸⁶ 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. This could impact the Project schedule and impose additional costs.¹⁸⁷

NMPC or NYPA may face unexpected underground risks, including the potential for unexpected geotechnical conditions during construction, such as rocks which would require rerouting or drilling. Such unforeseen underground risks would result in schedule delays and increase costs.¹⁸⁸

Finally, as described in Mr. Byrne's Testimony, other risks include (i) delays and increased project costs 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 are not limited to, rain, ice, hurricanes, and blizzards that could lead to schedule delays and additional costs.¹⁸⁹

C. Approving the 100 Percent CWIP Request Will Mitigate Project Risks and Benefit Customers

The Commission has found that authorizing the inclusion of 100 percent CWIP in rate base can spur transmission investment, provide up-front regulatory certainty and rate stability, and improve cash flow.¹⁹⁰ As discussed in Mr. Byrne's testimony, granting this incentive will mitigate the financial risks and downward pressure on credit metrics that NMPC will endure during project development.¹⁹¹ The SPC Project represents a substantial transmission investment for NMPC and requires large capital expenditures during the construction period that will negatively impact the cash flows and debt levels that influence NMPC's credit metrics.¹⁹² 100 percent CWIP recovery will ensure that the decrease in cash flow and the increase in debt that

¹⁸⁵ *Id.* at 18:4-10.

¹⁸⁶ See id. at 16:17-17:4.

¹⁸⁷ *Id.* at 17:4-11.

¹⁸⁸ See id. at 18:14-22.

¹⁸⁹ See id. at 19:1-7.

¹⁹⁰ Order No. 679 at P 115.

¹⁹¹ See Byrne Testimony at 22:6-23:10.

¹⁹² See id. at 13:8-14:5.

are likely to occur due to the development of this large project are mitigated so that NMPC's credit metrics are not as negatively impacted during the construction period.¹⁹³

Granting the 100 Percent CWIP Request will also help NMPC raise debt from investors who may be discouraged by long delays in the recovery of costs and decide to deploy their capital elsewhere. The competition for capital can be greater for entities that have agreed to cost containment provisions for their projects, as NMPC has, which places increased financial risk on such project developers, particularly where other transmission projects are not subject to such limitations. As the Commission has recognized, granting requests for inclusion of 100 percent CWIP helps to encourage the construction of large-scale transmission projects, such as the SPC Project.¹⁹⁴

Moreover, as described by Mr. Byrne, the Project faces substantial construction-related risks that could significantly increase the cost of the Project, delay its in-service date, or threaten its ultimate completion.¹⁹⁵ As the Commission has recognized, the inclusion of 100 percent CWIP in rate base can provide regulatory certainty during the Project's development and construction phases.

The inclusion of 100 percent CWIP in rate base will also reduce rate shock to ratepayers that would otherwise occur under an approach for recovering the costs of the Project strictly based on Allowance for Funds Used During Construction ("AFUDC").¹⁹⁶ Reducing rate shock will enable NMPC to provide ratepayers with greater rate stability compared to capitalizing such costs as AFUDC.¹⁹⁷ As the Commission has held:

Without any CWIP in rate base, a new plant has no direct effect on consumer prices until it begins to provide service. Then, when it does come on line, consumer's rates must be increased to give the company a cash return on both the direct cost of the plant and the capitalized AFUDC as well as a return of capital through depreciation. If the plant is large relative to the existing rate base, the result can be a rate increase that is both large and sudden, producing a so-called "rate shock" . . . In contrast, with all CWIP in rate base, the impact of new plant is spread over the entire construction period, and the rates when the plant begins to provide service are lower because they do not include a return on and of capitalized AFUDC.¹⁹⁸

¹⁹³ *Id.* at 23:3-10.

¹⁹⁴ *The United Illuminating Co.*, 119 FERC ¶ 61,182, at P 66 (2007) ("The Commission also agrees with UI that allowing the 100 percent CWIP incentive will help ensure completion of the Project.").

¹⁹⁵ See Byrne Testimony at 16:5-9.

¹⁹⁶ See Construction Work in Progress for Public Utilities; Inclusion of Costs in Rate Base, Order No. 298, 48 Fed. Reg. 24,323 at 30,445 (1983) ("Order No. 298") ("[A] CWIP policy would reduce the current cost of capital, thereby reducing current revenue requirements, and benefiting current ratepayers.").

¹⁹⁷ See, e.g., PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co., 135 FERC ¶ 61,229 (2011). See also PPL Elec. Util. Corp., 123 FERC ¶ 61,068, at P 43 (2008), reh'g denied, 124 FERC ¶ 61,229.

¹⁹⁸ Order No. 298 at 30,445.

Accordingly, in addition to the risk reducing benefits to NMPC discussed above, the 100 percent CWIP incentive directly benefits ratepayers by altering the timing of cost recovery and improving rate stability. It also results in a lower overall revenue requirement over its life compared to AFUDC.

To prevent double recovery, NMPC will implement accounting procedures as described in Ms. Escalona's testimony.¹⁹⁹ Specifically, NMPC will monitor and specifically tag all work orders associated with the Project to prevent AFUDC from accruing on the work orders. NMPC will also provide footnote disclosures in the notes to the financial statements of NMPC's annual FERC Form No. 1 and quarterly FERC Form 3-Q which will fully explain the impact of CWIP in rate base, including details of AFUDC non-capitalized because of the inclusion of CWIP in rate base for the current year, the previous two years, and the sum of all years. The proposed disclosure will also include a partial balance sheet which includes an "Assets and Other Debit" section with a line item for AFUDC non-capitalized due to the inclusion of CWIP in rate base.²⁰⁰

To implement this incentive, NMPC respectfully requests waiver of the Commission's other filing requirements related to CWIP, including (i) Section 18 C.F.R. § 35.13(h)(38), which requires an applicant to submit a Statement BM, which serves as an applicant's description of its long-range program for providing reliable and economic power, including an assessment of alternatives and an explanation of why the program is consistent with a least-cost energy supply program; (ii) Section 18 C.F.R. § 35.25(c)(4), which requires the development of forwardlooking allocation ratios and an evaluation of potential anticompetitive effects of CWIP recovery including "price squeeze" and "double whammy" concerns; and (iii) Section 18 C.F.R. § 35.25(g), which requires an applicant to provide additional information regarding the potential anti-competitive impacts of CWIP recovery, including the proposed CWIP levels included in wholesale and retail rates. NMPC notes that the Commission has recognized that Statement BM was designed primarily for CWIP associated with new generation projects,²⁰¹ and that the Commission has waived the requirement to submit Statement BM for utilities that have, or have a pending proposal to have, formula transmission rates.²⁰² Similarly, the Commission's "double whammy" and "price squeeze" requirements relate to concerns that are not present in the case of transmission upgrades in rate base, and the Commission has previously permitted waiver of these requirements for other transmission rate incentive applicants.²⁰³

D. Application of the Nexus Test

In addition to satisfying the Section 219 eligibility requirements, an applicant must demonstrate that there is a nexus between the incentives sought and the investment being made, *i.e.*, the applicant must show that the incentives requested are rationally related to the investments being proposed. The Incentives Policy Statement provides that the applicant

¹⁹⁹ See Escalona Testimony at 16:4-17.

²⁰⁰ *Id.* at 16:14-17.

²⁰¹ Mid-Tex Elec. Coop. v. FERC, 773 F.2d 327 (D.C. Cir. 1985).

²⁰² Commonwealth Edison Co., 119 FERC ¶ 61,238, at PP 92, 94 (2007); see also N.Y. Transco, LLC, 151 FERC ¶ 61,004, at PP 48, 80-83 (2015).

²⁰³ See N. Ind. Pub. Serv. Co., 141 FERC ¶ 61,231, at PP 31-34 (2012).

"demonstrate how the total package of incentives requested is tailored to address demonstrable risks and challenges."²⁰⁴

The preceding section identified the risks faced by NMPC in connection with the development of the Project and the specifically tailored incentive treatment requested in order to address them, *i.e.*, the inclusion of 100 percent CWIP in rate base. As discussed above, downward pressure on cash flows and an increased need for debt during project construction could negatively impact NMPC's credit metrics and lead to increased costs for customers. Additionally, unanticipated regulatory delays could extend project development time and project cost. The 100 Percent CWIP Request is specifically tailored to address timing issues associated with the recovery of the financing costs required for investments in large transmission projects and allows for recovery of a return on construction costs during the construction period, rather than delaying cost recovery until the plant is placed into service.²⁰⁵ As noted above, the Commission has also found that allowing companies to include 100 percent CWIP in rate base results in greater rate stability for customers by reducing the "rate shock" when certain largescale transmission projects come on line, as would result from capitalization of AFUDC costs.²⁰⁶ Moreover, the CWIP incentive is fully compatible with the Abandoned Plant Incentive that the Commission has already approved for the Project in recognition of the Project's risks.²⁰⁷ The Commission frequently approves both incentives as a package of "risk reducing" measures.²⁰⁸ The Commission should do the same here.

E. Advanced Technology Statement

The Commission requires an applicant seeking incentive rates to provide an advanced technology statement. In the Incentives Policy Statement, the Commission stated that it would "consider deployment of advanced technologies as part of the overall nexus analysis when an incentive ROE is sought."²⁰⁹

NMPC anticipates employing elements considered to be advanced technology under Section 1223(a). The technology described below meets the standards set forth in Order No. 679 and Section 219 of the FPA because it will "increase the capacity, efficiency, or reliability" of the Project and overall transmission system.

The Project is expected to employ International Electrotechnical Commission ("IEC") 61850 protocols. IEC 61850 protocols will be used to upgrade existing substation communication and to construct new substation communication systems to improve efficiency and bolster system reliability. Pursuant to IEC 61850 protocols, all substations will be outfitted with fiberoptic cables (replacing copper wires in existing substations) and transitioned to digital

²⁰⁹ *Id.* at P 23.

²⁰⁴ Incentives Policy Statement at P 10.

²⁰⁵ *Id.* at P 12.

²⁰⁶ See id.

²⁰⁷ See Niagara Mohawk Power Corp., 181 FERC ¶ 61,065 (approving the Abandoned Plant Incentive for the Project).

²⁰⁸ See, e.g., New York Power Auth., 169 FERC ¶ 61,125, at PP 22, 26 (2019); PJM Interconnection, L.L.C., 137 FERC ¶ 61,253, at PP 70, 78 (2011).

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.

F. Even if the Commission Is Unable to Grant the 100 Percent CWIP Request Under Its Section 219 Analysis, the Request Should Be Granted Under the Commission's Section 205 Authority Because Incentivizing the Smart Path Connect Project Is Consistent with Commission Policy

The Commission has the authority to grant transmission rate incentives under Section 205. It has long been established that the Commission has the authority to grant incentives requested under Section 205 even if the Commission is unable to do so under Section 219.²¹⁰ The courts have recognized that one of the primary purposes of the FPA is to encourage plentiful supplies of energy at reasonable prices through the development of transmission infrastructure.²¹¹ Accordingly, the Commission has discretion within its ratemaking authority to consider both cost-related factors and policy-related factors when setting rates, *e.g.*, to incent transmission investment to meet policy goals.²¹² For example, the courts reviewed the Commission's authority to approve incentive rates, and held that the Commission's determinations "involve matters of rate design, which are technical and involve policy judgments at the core of [the Commission's] regulatory responsibilities."²¹³

Among other things, in deciding whether to grant rate incentives under Section 205, the Commission considers "whether the incentive encourages the development of much-needed transmission facilities, improves the performance of the grid by increasing the transfer capability of the grid and providing reliability benefits to the grid, and is intended to increase the supply of energy to the grid. Further . . . [it has] considered whether the proposed project helps to access renewable energy to meet state RPS requirements."²¹⁴ The CWIP incentive requested here by NMPC is intended to facilitate the development and construction of transmission facilities,

²¹⁰ W. Area Power Admin., 99 FERC ¶ 61,306, reh'g denied, 100 FERC ¶ 61,331 (2002), aff'd sub nom. Pub. Utils. Comm'n of the State of Cal. v. FERC, 367 F.3d 925 (D.C. Cir. 2004) ("CPUC v. FERC"); Mich. Elec. Transmission Co., LLC, 105 FERC ¶ 61,214 (2003); Am. Transmission Co., L.L.C., 105 FERC ¶ 61,388 (2003), order approving settlement, 107 FERC ¶ 61,117 (2004); ITC Holdings Corp., 102 FERC ¶ 61,182, reh'g denied, 104 FERC ¶ 61,033 (2003); Trans Bay Cable LLC, 112 FERC ¶ 61,095 (2005), order granting clarification, 114 FERC ¶ 61,104 (2006); see Allegheny Energy, Inc., 118 FERC ¶ 61,042, at P 10 (2007) (rejecting the argument that the Commission can grant transmission rate incentives only under Section 219).

²¹¹ See, e.g., CPUC v. FERC, 367 F.3d at 929 (citing NAACP v. FPC, 425 U.S. 662, 670 (1976)).

²¹² See Xcel Energy Sw. Transmission Co., LLC, 149 FERC ¶ 61,182, at P 22 (2014) (noting the Commission's Section 205 authority to grant rate incentives to promote public policy goals); *Xcel Energy Transmission Dev. Co.,* LLC, 149 FERC ¶ 61,181, at P 13 (2014); *Transource Wis.,* LLC, 149 FERC ¶ 61,180, at P 19 (2014). See also S. Cal. Edison Co., 133 FERC ¶ 61,107 (2010); *Pacific Gas and Elec. Co.,* 123 FERC ¶ 61,067 (2008).

²¹³ Me. Pub. Util. Comm'n v. FERC, 454 F.3d 278, 287 (D.C. Cir. 2006); see also Permian Basin Area Rate Cases, 390 U.S. 747 (1968); see Order 679-A at n.37 ("We also note that the Commission retains its discretion to provide policy-based incentives. As the courts have said, even prior to our new authority in section 219, the Commission's incentive rate determinations 'involve matters of rate design . . . [and] policy judgments [that go to] the core of [the Commission's] regulatory responsibilities.") (citations omitted).

²¹⁴ S. Cal. Edison Co., 133 FERC ¶ 61,107, at P 60 (2010).

determined to be needed on an expedited basis by the NYPSC, that will increase the transfer capacity of the New York transmission system, improve system reliability, and improve access to renewable energy resources needed for New York State to satisfy its renewable targets. Thus, even if the Commission determines that it is unable, for some reason, to grant the 100 Percent CWIP Request under Section 219, the Commission should do so under Section 205.

IV. THE COMMISSION SHOULD APPROVE THE REQUEST TO RECORD A REGULATORY ASSET FOR COST OF REMOVAL INCURRED TO CONSTRUCT THE SMART PATH CONNECT PROJECT

NMPC requests Commission authorization to establish a regulatory asset for the SPC Project relating to the cost of removing certain transmission assets—such as substation equipment, poles, conductors, and other transmission fixtures—that will be removed in order to construct and place the SPC Project in service (the "COR Regulatory Asset"). NMPC expects to incur approximately \$36 million in COR as a result of the SPC Project.²¹⁵ As described in detail in Ms. Escalona's testimony, establishing the requested regulatory asset in FERC Account 182.3 (Other Regulatory Assets) will allow NMPC to eventually recover the COR incurred to remove certain transmission assets as part of the SPC revenue requirement, while also providing credits to NMPC's TSC and retail customers.²¹⁶

The approved depreciation rates charged to NMPC's TSC and retail customers incorporate an estimated net salvage rate that includes a forecasted cost of removal for these assets.²¹⁷ However, these assets would not have been removed in the immediacy absent construction of the SPC Project.²¹⁸ The associated costs should therefore not be recovered through rates specific to NMPC's retail customers and TSC customers.²¹⁹ Rather, it is appropriate that the costs associated with the removal of these assets be recovered through the SPC-FC rate, which will be charged statewide because, as discussed above, the benefits of the SPC Project are statewide in nature. Thus, NMPC is proposing a mechanism to effectuate this outcome. Under the proposed mechanism, NMPC will continue to record these costs in FERC Account 108 (accumulated provision for depreciation).²²⁰ As explained in detail in Ms. Escalona's testimony, NMPC will then create a regulatory asset and offsetting regulatory liability for the COR in the amount charged to FERC Account 108.²²¹ The proposed regulatory asset will be included in the investment base for the SPC Project, with the amortization of the regulatory asset included as expense under the SPC-FC rate.²²² Amortizing this regulatory asset through the SPC-FC rate, combined with the credit that NMPC will provide TSC customers

²¹⁵ Escalona Testimony at 18:1-2. The actual COR incurred as a result of the construction of the SPC Project will not be determined until the Project is completed and placed into service.

²¹⁶ See id. at 17:21-23, 18:5-16. See also Va. Elec. & Power Co., 128 FERC ¶ 61,026, at P 22 (2009) (To defer costs as a regulatory asset in Account No. 182.3, a utility must determine that "the cost is not included in existing rates and it is probable that such cost will be included in future rates[.]").

²¹⁷ Escalona Testimony at 18:7-11.

²¹⁸ See id. at 18:11-16.

²¹⁹ Id.

²²⁰ Id. at 18:17-19.

²²¹ *Id.* at 18:20-22.

²²² Id. at 18:22-19:1.

based on SPC-FC revenues, and NMPC's bundled rate design, will ensure (i) that TSC and NMPC retail customers receive an appropriate credit with respect to COR; and (ii) that COR for these assets is appropriately collected from customers paying the SPC-FC rate.²²³

In order to mitigate the rate impact to SPC-FC customers, NMPC additionally requests to amortize the COR Regulatory Asset over ten years, effective from the SPC Project in-service date.²²⁴ Straight line amortization over 10 years is a fair and reasonable mechanism to collect these expenses from SPC-FC customers and subsequently credit NMPC retail and wholesale TSC customers in consideration of prior costs collected through depreciation rates.²²⁵ Approving the requested amortization period will also enable NMPC to provide the aforementioned credit to retail and wholesale TSC customers over an administratively reasonable period of time.²²⁶

The Commission's Uniform System of Accounts provides that a jurisdictional entity may record a regulatory asset if it is probable that the relevant costs will be included in a different period for purposes of developing the rates that the utility is authorized to charge for its services.²²⁷ To request regulatory asset treatment, a utility must demonstrate that the costs at issue are unrecoverable in existing rates and that it is probable that such costs will be recoverable in future rates.²²⁸ Consistent with the Commission's regulations, NMPC has determined that the COR incurred as a result of the SPC Project should not be recovered in its existing rates, as doing so would necessarily require that these costs be borne by NMPC's retail and Wholesale TSC customers. The COR prudently incurred as a result of the SPC Project should instead be recovered in rates in a future period. Specifically, these costs are appropriately recovered following the Project's in-service date, when actual COR can be accurately determined and charged to SPC-FC customers. NMPC should therefore record the COR Regulatory Asset to reflect these costs.

To reduce regulatory uncertainty and ensure that any COR incurred as a result of the SPC Project is appropriately allocated between NMPC customer groups, NMPC requests confirmation from the Commission that the COR incurred due to the SPC Project is probable to be recovered in rates in a future period and is appropriately provided for as discussed herein. Additionally, NMPC recognizes that Commission approval under Section 205 is required before a regulatory asset may be recovered in Commission-jurisdictional rates, including transmission

²²³ NMPC intends to request authorization from the NYPSC to establish an offsetting regulatory liability, which will be included as part of an NMPC retail rate case filing. This regulatory liability will represent the credit due to retail customers. *See id.* at 19:2-7.

²²⁴ *Id.* at 19:8-11. As discussed in Section II.B above, proposed Schedule 15a includes inputs for, among other things, Project-related amortization of regulatory assets.

²²⁵ *Id.* at 19:11-18.

²²⁶ Id.

²²⁷ See 18 C.F.R. Part 101, Definition No. 31, *Regulatory Assets and Liabilities. See also PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,033 at P 45 (2020); *FirstEnergy Service Co.*, 110 FERC ¶ 61,230, at P 15 & n.6 ("The term 'probable,' as used in the definition of regulatory assets, refers to that which can reasonably be expected or believed on the basis of available evidence or logic but is neither certain nor proved.").

²²⁸ Midwest Indep. Transmission Sys. Operator, Inc., 103 FERC ¶ 61,205, at P 22 (2003).

formula rates.²²⁹ NMPC therefore commits to making a limited filing under Section 205 at the appropriate time to request recovery of COR related to the SPC Project.²³⁰

V. CORRESPONDENCE AND COMMUNICATIONS

All notices, correspondence, and communications regarding this filing should be directed to the following individuals:

David Lodemore	Michael Kunselman
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VI. REQUESTED WAIVERS AND SERVICE

To the extent that waivers of any applicable requirements in 18 C.F.R. § 35.13 are necessary, NMPC respectfully requests such waivers. Good cause exists for waiver. Cost of service statements typically are not needed where the proposed rates are formulary and will be based on actual costs as reflected in the applicant's FERC Form No. 1s and audited books and records.²³¹ As a result, waiver would be consistent with Commission precedent for a formula rate filing of this nature. NMPC also requests a waiver of any other applicable requirement of Part 35 or other Commission regulations for which a waiver is not specifically requested, if necessary, in order to permit this filing to become effective as proposed.

²²⁹ See Kansas Elec. Power Cooperative, Inc. v. Evergy Kansas Central, Inc., 175 FERC ¶ 61,044, at PP 45, 48 (2021); Piedmont Mun. Power Agency v. Duke Energy Carolinas, LLC, 162 FERC ¶ 61,109, at P 32 (2018)
²³⁰ See, e.g., PJM Interconnection, L.L.C., 173 FERC ¶ 61,033, at P 46 (2020); Kanstar Transmission, LLC, 152 FERC ¶ 61,209, at P 23 (2015) (allowing utility to record prudently incurred costs as a regulatory asset, but requiring a further Section 205 filing to demonstrate that the subject costs were just and reasonable before they could be included in rates). Such a Section 205 filing would be for the limited purpose of seeking approval to recover the regulatory asset balances specified above and amortize these expenses in Account 182.3. See PJM Interconnection, L.L.C., 172 FERC ¶ 61,136, at P 91 (2020) (rejecting challenges to unchanged tariff provisions as "beyond the scope of this proceeding."); Pepco Holdings, Inc., 125 FERC ¶ 61,130, at P 113 (2008) ("Unchanged tariff provisions are not subject to revision as part of an FPA section 205 filing.").

²³¹ S. Cal. Edison Co., 136 FERC ¶ 61,074, at P 29 (2011) (granting waiver of Period I and II data); *Pub. Serv. Elec.* & Gas Co., 124 FERC ¶ 61,303, at PP 23-24 (2008) (granting waiver of Sections 35.13(d)(1)-(2), 35.13(d)(5), and 35.13(h)); *Okla. Gas & Elec. Co.*, 122 FERC ¶ 61,071, at P 41 (2008); *Am. Elec. Power Serv. Corp.*, 120 FERC ¶ 61,205, at P 41 (2007) (granting waiver of Period I and II data); *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at PP 92-94 (2007) (granting waiver of Period I and II data and cost-of-service statements); *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, at P 57 (2007) (same); *Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 79 (2007) (granting waiver of Period II data); *Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308, at PP 55-56 (2005) (granting waiver of Period I and II data).

NMPC has served a copy of this filing electronically on the New York State Public Service Commission and on the NYISO. NMPC has confirmed with the NYISO that a complete copy of this filing will be posted on the NYISO's website at <u>www.nyiso.com</u>. The NYISO has also informed NMPC that it will send an electronic link to this filing to the official representative of each of its customers and to each participant on its stakeholder committees. This will ensure that all New York LSEs receive notice of this filing.

VII. CONTENTS OF FILING

In addition to this transmittal letter, this filing contains the following supporting exhibits:

Attachment A:	Revised Section 14.2.1 of Attachment H of NYISO OATT (Clean)
Attachment B:	Revised Section 14.2.1 of Attachment H of NYISO OATT (Marked)
Attachment C:	Section 6.18 of NYISO OATT - Rate Schedule 18 (Clean)
Attachment D:	Section 6.18 of NYISO OATT - Rate Schedule 18 (Marked)
Attachment E:	Prepared Direct Testimony and Exhibits of Brian Gemmell (Exhibit Nos. NMPC-100 through -103)
Attachment F:	Prepared Direct Testimony and Exhibit of Andrew Byrne (Exhibit Nos. NMPC-200 through -201)
Attachment G:	Prepared Direct Testimony of Bart D. Franey (Exhibit No. NMPC-300)
Attachment H:	Prepared Direct Testimony and Exhibit of Tiffany M. Escalona (Exhibit Nos. NMPC-400 through -402)
Attachment I:	NYPSC Priority Project Order
Attachment J:	New York Transmission Owners Smart Path Connect Cost Allocation Agreement
Attachment K:	NMPC's TSC Formula Rate Template in Native Format

VIII. CONCLUSION

For the reasons set forth above, NMPC respectfully requests that the Commission grant its 100 Percent CWIP Request for the SPC Project, confirm its request to record the COR Regulatory Asset, and approve the tariff amendments included in this filing effective no later than April 1, 2023 (*i.e.*, the first day following the end of the statutory 60-day notice period).

Respectfully submitted,

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