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June 8, 2023

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

RE: *New York Transco, LLC*  
*New York Independent System Operator, Inc.*  
**Docket No. ER20-2259-001**  
**Response to May 9, 2023 Deficiency Letter**

Dear Secretary Bose:

On February 27, 2023, New York Transco, LLC (“NY Transco”) submitted its compliance filing (“February 27 Compliance Filing”) to an Order on Compliance issued on December 29, 2022 (“December 29 Order”)<sup>1</sup> by the Federal Energy Regulatory Commission (“FERC” or the “Commission”). This proceeding was initiated to comply with the requirements of Order No. 864<sup>2</sup> requiring public utility transmission providers with formula rates to revise those formula rates to account for changes caused by the Tax Cuts and Jobs Act of 2017 (“TCJA”) on the accumulated deferred income tax (“ADIT”) reflected in rates.<sup>3</sup> On May 9, 2023, the Office of Energy Market Regulation issued a Deficiency Letter requesting NY Transco to submit additional information regarding the February 27 Compliance Filing. In this filing, NY Transco submits the requested information and a slightly revised Attachment 11b to its formula rate template to address the Office of Energy Market Regulation’s request.<sup>4</sup>

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<sup>1</sup> *New York Transco, LLC*, 181 FERC ¶ 61,271 (2022) (“December 29 Order”).

<sup>2</sup> *Pub. Util. 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).

<sup>3</sup> *Id.*

<sup>4</sup> NY Transco’s formula rate template is set forth in Section 36.3.1.1 of Attachment DD to the New York Independent System Operator, Inc. (“NYISO”) Open Access Transmission Tariff. NYISO submits this filing in its role as Tariff Administrator. The burden of

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## I. Background

On June 30, 2020, NY Transco submitted proposed revisions to its Transmission Formula Rate (“Formula Rate”) contained in Attachment DD (Section 36) of the NYISO Open Access Transmission Tariff (“OATT”) to comply with the requirements of Order No. 864 (“Order No. 864 Compliance Filing”). As part of the Order No. 864 Compliance Filing, NY Transco added a new permanent ADIT Worksheet to Attachment 11 of its Formula Rate and made other changes to incorporate the Rate Base Adjustment Mechanism<sup>5</sup> and the Income Tax Allowance Adjustment.<sup>6</sup> NY Transco also included workpapers demonstrating the support for the various inputs in the new ADIT Worksheet Attachment 11.

In the December 29 Order, the Commission found that NY Transco’s proposed revisions partially comply with the requirements of Order No. 864 and directed a further compliance filing to address several issues. NY Transco submitted its February 27 Compliance Filing and, among other things, included a new, permanent Attachment 11b of its Formula Rate to address any future federal, state or local change in the tax rate. On May 9, 2023, the Office of Energy Market Regulation issued the Deficiency Letter requesting additional information related to the proposed Attachment 11b.

## II. Deficiency Response

In its Deficiency Letter, the Office of Energy Market Regulation made a single request for additional information. That request and NY Transco’s response is as follows:

- 1. In Order No. 864, the Commission required the ADIT Worksheet to include five categories of information: (1) how any ADIT accounts were re-measured and the excess or deficient ADIT contained therein; (2) the accounting for any excess or deficient amounts in Accounts 254 (Other Regulatory Liabilities) and 182.3 (Other**

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demonstrating that the proposed tariff amendments are just and reasonable rests with NY Transco, the sponsoring party. The NYISO takes no position on any substantive aspect of this filing at this time.

<sup>5</sup> The Rate Base Adjustment Mechanism is a mechanism to deduct any excess ADIT from or add any deficient ADIT to its rate base to ensure rate base neutrality. The Commission accepted NY Transco’s revisions to incorporate this mechanism in the December 29 Order. *See* December 29 Order at P 13.

<sup>6</sup> The Income Tax Allowance Adjustment is a mechanism to increase or decrease income tax allowances by any amortized excess or deficient ADIT which returns excess ADIT to or recovery of deficient ADIT from ratepayers. The Commission accepted NY Transco’s revisions to its Formula Rate to incorporate this requirement in the December 29 Order. *See* December 29 Order at P 18.

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Regulatory Assets), respectively; (3) whether the excess or deficient ADIT is protected or unprotected; (4) the accounts to which the excess or deficient ADIT are amortized; and (5) the amortization period of the excess or deficient ADIT being returned or recovered through the rates.<sup>7</sup> The Commission stated that it expects public utilities to identify each specific source of the excess or deficient ADIT, classify the excess or deficient ADIT as protected or unprotected, and list the proposed amortization period associated with each source in their proposed ADIT Worksheets.<sup>8</sup> Further, the Commission required the ADIT Worksheet to apply to any future local, state, and federal tax rate changes.

- a. You state that to address the requirement in the Order on Compliance with respect to category (1), your filing includes a version of the workpapers from your Order No. 864 Compliance Filing as Attachment 11b to the Formula Rate. In accordance with the Order on Compliance, you state that Attachment 11b will only be populated when there is a future tax rate change and will not be provided on a yearly basis, and includes several column, “Notes” and heading titles bounded by time periods specified, including, but not limited to: Gross Accumulated Schedule M Adjustment (Prior to TCJA) (Note G); 12/31/2017 ADIT Balance (Prior to TCJA); 12/31/2017 ADIT Balance (After TCJA); Change in ADIT due to TCJA; (Excess) Deficient Deferred Income Tax Activity post TCJA; 2017 Return-to-Accrual Adjustment (Recorded in 2018); 2018 Return-to-Accrual (Recorded in 2019), 2019 Amortization (Notes D&E); 12/31/2019 Ending Balance (Note F); Note A: 12/31/2017 ADIT Balances above do not reflect Gross-up on Excess Deferred Income Tax; Note C: Reflects the end of 2017 balance; and Note F: Ending balance of year is the end of 2019 balance.

The Commission required the ADIT Worksheet to apply to any future local, state, and federal tax rate changes. However, Attachment 11b appears to represent only ADIT balances relating to TCJA for years 2017, 2018, 2019 including Notes A, C, and F, with no representation for future tax rate changes as required by Order No. 864. Please explain how Attachment 11b complies with Order No. 864 regarding future tax rate changes. In doing so, please explain how any headings, columns and referenced Notes represent future tax rate changes.

NY Transco recognizes that the Attachment 11b version included in the February 27 Compliance Filing includes specific references to the Tax Cut and Jobs Act and dates reflecting account balances during those periods affected by the law. NY Transco had intended to have

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<sup>7</sup> *Id.* PP 52, 62.

<sup>8</sup> *Id.* P 65.

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each of the relevant information cells appear as highlighted cells to allow for modification to accommodate future federal, state and local tax rate changes.

Upon further consideration, and to avoid confusion in the future as to which information cells are static and which information cells allow for changes in inputs, NY Transco proposes revisions to Attachment 11b to address the Deficiency Letter request. Specifically, NY Transco proposes to strike all references to the TCJA and specific dates and now includes bracketed placeholders that will be populated when a future change in the tax rate is ratified. Consistent with the proposed changes, NY Transco will identify the specific tax rate change necessitating the update and the relevant periods during which the adjustment is necessary. This revised version of Attachment 11b complies with Order No. 864 and allows for the necessary flexibility to apply to any future federal, state or local tax rate change.

### **III. Request for Waiver**

NY Transco understands that the Commission will treat this response as a compliance filing with a proposed change to the version of Attachment 11b included in the February 27 Compliance Filing and will issue a Notice of Filing for public comment. NY Transco respectfully requests a waiver of any applicable Commission regulations in order to allow the Tariff revisions to go into effect January 27, 2020, as directed in the December 29 Order.

### **IV. Documents Submitted With This Filing**

In addition to this response, NY Transco includes the following documents:

1. Attachment A: Redlined version of the current proposed revisions<sup>9</sup> to Attachment DD (Section 36) of the NYISO OATT;
2. Attachment B: Clean version of the current proposed revisions to Attachment DD (Section 36) of the NYISO OATT;
3. Attachment C: Redlined version of proposed Attachment 11b to NY Transco's Formula Rate with edits to address the Deficiency Letter; and

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<sup>9</sup> The redlines included in Attachment A and Attachment C are redlines to address the Deficiency Letter. These documents depict only the proposed incremental changes to the revisions proposed in the February 27 Compliance Filing in redline format. The tariff revisions previously proposed in the February 27 Compliance Filing are contained within these versions but are not depicted in redline format. Attachments C and D are provided as informational to assist in readily identifying the incremental revisions proposed herein, which are limited to Attachment 11b to NY Transco's Formula Rate.

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4. Attachment D: Clean version of proposed Attachment 11b to NY Transco's Formula Rate including the edits to address the Deficiency Letter.

## **V. Communications**

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

Kathleen Carrigan  
Vice President General Counsel and  
Regulatory Affairs  
New York Transco, LLC  
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## **VI. Service**

NY Transco has confirmed with the NYISO that a copy of this filing will be posted on the NYISO website at [www.nyiso.com](http://www.nyiso.com). The NYISO has also informed NY Transco that it will send an electronic link of this filing to the official representative of each of its customers, and each participant on its stakeholder committees.

## **VII. Conclusion**

For the reasons discussed herein, NY Transco requests that the Commission accept this Response to the May 9, 2023 Deficiency Letter and accept the February 27 Compliance Filing, as revised by this filing.

Respectfully submitted,

/s/ Evan C. Reese III  
Evan C. Reese III

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused the foregoing document to be served upon the parties designated on the official service list compiled by the Secretary in the above-referenced proceeding.

Dated at Washington, DC this 8th day of June, 2023

/s/ Margaret Czepiel

Margaret Czepiel

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