

Attachment 1

NYSEG and RG&E
FERC Docket ER23-1816 and 1817
Responses to Deficiency Letter
July 26, 2023

Regulatory Asset for Cost of Removal (COR)

1. Commission regulations require utilities to support a change in depreciation (inclusive of changes to cost of removal and salvage) and cost allocation.¹ The Commission has rejected proposals to retroactively adjust cost of removal in rates.² NYSEG and RG&E request authorization to establish a regulatory asset in FERC Account 182.3 (Other Regulatory Assets) to include the actual cost of removal of existing transmission facilities necessary to build approved CLCPA Eligible Projects (COR regulatory asset).³ NYSEG and RG&E explain that although *estimated* cost of removal was included as part of the depreciation rate recovered from one set of customers via bundled local transmission and distribution rates, each company now proposes to collect the *actual* cost of removal for those same assets from statewide wholesale transmission customers via the COR regulatory asset in the proposed formula rate template.⁴ NYSEG and RG&E state that they have “determined in accord with the Commission’s regulations that COR incurred as a result of a CLCPA Eligible Project(s) are not appropriate for recovery in existing rates” and request that

¹ 18 C.F.R. §§ 35.13(h)(5) (Statement AE- Accumulated depreciation and amortization), 35.13(h)(10) (Statement AJ- Depreciation and amortization expenses) (describing cost of removal as part of this component in cost of service rates), 35.13(h)(36) (Statement BK-Electric utility department cost of service, total and as allocated) (2022).

² *Florida Power Corp. and Carolina Power & Light Co.*, 136 FERC ¶ 61,033, at P 8 (2011) (citing *Florida Power Corp. and Carolina Power & Light Co.*, 134 ¶ 61,145, at P 19 (2011)); *see also*, *PJM Interconnection, LLC*, 93 FERC ¶ 61,056 (2000) (rejecting proposal to calculate depreciation (and related cost of removal) later than the asset’s in-service date, stating “[i]n *Northern Border Pipeline Company*, 77 FERC P 61,006, at 61,021 (1996), the Commission affirmed ... there is no provision in the regulations for not recognizing depreciation on properties previously devoted to public service.”); Order No. 618, FERC Stats. & Regs. ¶ 31,104, at 31,694-95 (2000).

³ Transmittals at 6.

⁴ Transmittals at 3-4.

the Commission confirm that the COR regulatory asset line (among other rate treatment proposals) in the formula rate template is “probable for recovery in rates in a different period.”⁵ NYSEG and RG&E also request that the Commission accept their proposals to amortize the COR regulatory assets and recover those costs over a 10-year period.⁶ NYSEG’s and RG&E’s proposals do not identify specific, approved CLCPA Eligible Projects, and the specific, existing transmission facilities that would need to be removed to build the approved CLCPA Eligible Projects.

- a. The Commission has typically allowed utilities to use regulatory assets to recover costs in two types of cases: (1) to defer recovery of future project costs until future project rates go into effect when the applicant neither provides service at the time of cost-incurrence nor has an effective rate for that service;⁷ and (2) to defer recovery of non-routine costs to a different period than the existing rates provide when the applicant already has existing formula rate authority to make cost adjustments.⁸ Please explain whether NYSEG and RG&E propose to use a regulatory asset to recover the actual cost of removal associated with an existing transmission facility where the company already recovered the estimated cost of removal of the existing transmission facility and, if so, how that is consistent with the Commission’s precedent on regulatory asset treatment and the rule against retroactive ratemaking,⁹ citing to such precedent.

Response: Upon further consideration, NYSEG and RG&E withdraw their respective requests to create a regulatory asset for the cost of

⁵ Transmittals at 6-7.

⁶ Dumais Testimony, Exh. No. NYSEG-001, at 20-21; Dumais Testimony, Exh. No. RG&E-001, at 20.

⁷ *Va. Elec. & Power Co.* 125 FERC ¶ 61,391 (2008) (request to establish a regulatory asset for Regional Transmission Organization (RTO) start-up costs); *Idaho Power Co.*, 123 FERC ¶ 61,104 (2008) (proposal to recover RTO formation costs booked to a regulatory asset); *Pioneer Transmission, LLC*, 168 FERC ¶ 61,055 (2019). *Cf. Cross Sound Cable Co., LLC*, 176 FERC ¶ 61,073 (2021), *order on reh’g*, 178 FERC ¶ 61,134 (2022), *order rejecting reh’g*, 179 FERC ¶ 61,064 (2022).

⁸ *AMP Transmission LLC*, 181 FERC ¶ 61,279 (2022).

⁹ *Id.* See also, *PJM Interconnection, LLC*, 93 FERC ¶ 61,056 (2000).

removal for facilities removed to make room for the Schedule 19 Projects. NYSEG and RG&E provide, as Attachments 2 and 3, clean and redline versions reflecting the updated unpopulated formula rate templates (NYISO OATT Section 6.19.6.2.2 of Attachment 1 to Rate Schedule 19 for NYSEG in Docket No. ER23-1816 and Section 6.19.7.2.2 of Attachment 2 to Rate Schedule 19 for RG&E in Docket No. ER23-1817), removing the regulatory asset and related amortization. NYSEG and RG&E reserve their right to request in the future this regulatory asset treatment for the cost of removal pursuant to Section 205 of the FPA.

- b. Please explain, and provide the rationale for your proposal, which historically included via depreciation the estimated cost of removal of the existing retail facilities in retail rates and now proposes to include the actual cost of removal of these same facilities in wholesale rates.

Response: See the response to 1.a. above.

- c. Please explain in detail how the wholesale CLCPA Eligible Projects are the “but for”¹⁰ cause of the retail facilities’ removal and cite to supporting Commission precedent.

Response: See the response to 1.a. above.

- d. Please explain the basis upon which the Commission could accept that the COR regulatory asset is “probable for recovery in rates in a different period” without a demonstration of the specific, approved CLCPA Eligible Project and the specific, existing transmission facilities that would need to be removed to build the approved CLCPA Eligible Project.

¹⁰ *Standardization of Generator Interconnection Agreements & Procs.*, Order No. 2003, 104 FERC ¶ 61,103, at PP 683-703 (2003), *order on reh’g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh’g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh’g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff’d sub nom. Nat’l Ass’n of Regul. Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008). The Commission’s existing “but for” transmission pricing policy is generally that interconnection customers pay the costs of new network upgrades that were not needed “but for” a particular interconnection customer’s generating facility *and that provide no benefits to the other transmission customers on the transmission system.*

Response: See the response to 1.a. above.

- e. Please explain the basis upon which the Commission could accept the proposal to amortize the COR regulatory asset and recover these costs over 10 years without a demonstration of the specific, approved CLCPA Eligible Project and the specific, existing transmission facilities that would need to be removed to build the approved CLCPA Eligible Project.

Response: See the response to 1.a. above.

2. Please explain how NYSEG's and RG&E's proposals will avoid "and"¹¹ pricing; in particular, provide (1) the actuarial method that NYSEG and RG&E will use to measure the cost of removal already recovered in retail rates (e.g., theoretical reserve or another actuarial method); (2) precedent where the Commission has accepted such method; (3) the method to reconcile the amounts already recovered in retail rates with the amounts to be charged in wholesale rates; (4) Commission precedent for shifting cost of removal from retail rates to wholesale rates; and (5) how the Commission and interested parties will be able to review that reconciliation between retail and wholesale rates.

Response: See the response to 1.a. above.

Formula Rate Template

3. NYSEG and RG&E propose to include depreciation rates in Worksheet 8 - Depreciation Rates of the formula rate templates.¹² NYSEG and RG&E note

¹¹ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at P 21, 602 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Pol'y Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹² Dumais Testimony, Exh. NYSEG-001, at 30; Dumais Testimony, Exh. RGE-001, at 29-30.

that the depreciation rates were approved by the NYPSC,¹³ but neither NYSEG nor RG&E submitted a depreciation study with their filings in support of the proposed depreciation rates for the CLCPA Eligible Projects. Please provide the depreciation studies, including all supporting documentation and workpapers, to support the proposed depreciation rates for the CLCPA Eligible Projects as just and reasonable.

Response: Provided as Attachment 6 are NYSEG's and RGE's respective 2018 Depreciation Study each completed by John J. Spanos of Gannet Fleming Valuation and Rate Consultants, LLC and dated May 15, 2019. The final depreciation rates approved by the NYPSC for use in determining depreciation expense for NYPSC jurisdictional rates were the result of settlement. Provided as Attachment 7 is the NYPSC's November 19, 2020 Order approving the June 22, 2020 Joint Proposal,¹⁴ including Attachment Z to the Joint Proposal stating the final approved depreciation rates.

4. The Commission has previously¹⁵ required that if there is a delay in the publication date, formula rate protocols should provide an equivalent extension of time for the submission of information requests.¹⁶ The Commission also requires that formula rate protocols provide that if a deadline for interested parties falls on a weekend or holiday recognized by the Commission, that deadline will be moved to the next business day.¹⁷ Please explain whether NYSEG's and RG&E's proposed formula rate protocols comply with this requirement.

¹³ *Id.*

¹⁴ *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service*, Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal, with Modifications, 164, Docket Nos. 19-E-0378, et al. (Nov. 19, 2020).

¹⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012), *order on investigation*, 143 FERC ¶ 61,149 (2013) (MISO Investigation Order), *order on reh'g*, 146 FERC ¶ 61,209, *order on compliance*, 146 FERC ¶ 61,212 (2014) (MISO Compliance Order).

¹⁶ MISO Compliance Order, 146 FERC ¶ 61,212, at PP 61 (2014).

¹⁷ *Id.*

Response:

Delay in Publication Date: The Review Period, during which an Interested Party can make information requests, begins with the Publication Date (June 15) and ends on the following January 31st. During that period, Interested Parties can submit information requests through December 1st (see the proposed formula rate implementation protocols for definition of “Review Period” and deadline for information requests). NYSEG and RG&E agree to extend the information request deadline for any delays in the Publication Date, including if the Publication Date falls on a holiday or weekend. In addition, NYSEG and RG&E agree to move the deadline for information requests and the end of the Review Period to the next business day, in the event these dates fall on a weekend or holiday. NYSEG and RG&E provide, as Attachments 4 and 5, clean and redlined versions of their respective formula rate implementation protocols incorporating this change.

Other Protocol Deadlines: As for Informal Challenges, the protocols provide for extending the due date if the deadline falls on a holiday or weekend (see Protocols Section 8a). NYSEG and RG&E agree to make a comparable extension for the due date for Formal Challenges. NYSEG and RG&E provide, as Attachments 4 and 5, clean and redlined versions of the protocols incorporating these changes.

5. The Commission has previously required that formula rate protocols should be clear that formal challenges are filed pursuant to the formula rate proposed protocols, rather than Rule 206, and detail specifically the filing requirements that an interested party must satisfy in submitting a formal challenge to the Commission.¹⁸ Please explain whether NYSEG’s and RG&E’s proposed formula rate protocols comply with this requirement.

Response: Section 8c of each Applicant’s proposed formula rate implementation protocols provides the filing requirements and information that is required when making a formal challenge to FERC. This section applies to both informal challenges (provided to NYSEG or RG&E) and formal challenges (provided to FERC). NYSEG and RG&E agree to state in their respective formula rate implementation protocols that formal challenges shall be filed pursuant to the protocols (not under Section 206 of the FPA). NYSEG

¹⁸ *Id.* at P 112.

and RG&E provide, as Attachments 4 and 5, clean and redlined versions of their respective formula rate implementation protocols incorporating this change.

6. The Commission has previously required that transmission owners make annual informational filings of their formula rate updates with the Commission. The Commission stated that the informational filing must be made following the information exchange period and must include any corrections or adjustments made during that period.¹⁹ The Commission also required that the informational filing note any aspects of the formula rate or its inputs that are the subject of an ongoing dispute under the challenge procedures. The Commission found that the formula rate protocols must specifically provide that the informational filing include the information that is reasonably necessary to determine: (1) that input data under the formula rate is properly recorded in any underlying workpapers; (2) that the transmission owner has properly applied the formula rate and the procedures in the formula rate protocols; (3) the accuracy of data and the consistency with the formula rate of the actual revenue requirement and rates (including any true-up adjustment) under review; (4) the extent of accounting changes that affect formula rate inputs; and (5) the reasonableness of projected costs included in the projected capital addition expenditures (for forward-looking formula rates).²⁰ Please explain whether NYSEG's and RG&E's proposed formula rate protocols comply with this requirement.

Response: Section 7 of each Applicant's proposed formula rate implementation protocols states that NYSEG and RG&E must submit the required informational filing to FERC by February 1st, at the conclusion of the Review Period, and that such filing must describe (1) any changes made as a result of the annual review procedures and (2) all aspects of the formula rate or its inputs that are the subject of an ongoing dispute under informal or formal challenge procedures.

In addition, Section 7 of each Applicant's proposed protocols states that the informational filing must include the information required under Section 3 of each Applicant's proposed protocols. Section 3 of each Applicant's proposed formula rate implementation protocols contains an exhaustive list of requirements that cover the five categories identified in this question.

¹⁹ MISO Investigation Order, 143 FERC ¶ 61,149 at P 92.

²⁰ *Id.*

1. Input data under the formula rate is properly recorded in any underlying workpapers – see Section 3g (i) and (ii) of each Applicant’s proposed formula rate implementation protocols;
2. The transmission owner has properly applied the formula rate and the procedures in the formula rate protocols – see Section 3g (i), (ii), and (iii) of each Applicant’s proposed formula rate implementation protocols;
3. The accuracy of data and the consistency with the formula rate of the actual revenue requirement and rates (including any true-up adjustment) under review – see 3g (ii), (iv) and (v) of each Applicant’s proposed formula rate implementation protocols;
4. The extent of accounting changes that affect formula rate inputs – see Section 3g (vi) of each Applicant’s proposed formula rate implementation protocols; and
5. the reasonableness of projected costs included in the projected capital addition expenditures (for forward-looking formula rates – see Section 3h (ii) of each Applicant’s proposed formula rate implementation protocols.