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March 25, 2024

BY eTARIFF FILING

Hon. Debbie-Anne A. Reese, Acting Secretary
Federal Energy Regulatory Commission
Dockets Room, Room 1A
888 First Street, N.E.
Washington, DC 20426

**Re: Orange and Rockland Utilities, Inc.
Proposed Formula Rate Template and Protocols
NYISO OATT Rate Schedules 19 and 10**

Docket No. ER24-____

Dear Acting Secretary Reese:

Pursuant to Section 205 of the Federal Power Act (“FPA”)¹ and Part 35.13 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) regulations,² Orange and Rockland Utilities, Inc. (“O&R” or “Applicant”) submits via eTariff this filing to amend the New York Independent System Operator, Inc. (“NYISO”) Open Access Transmission Tariff (“OATT”).³ The proposed amendments will add O&R’s *pro forma* formula rate template, associated implementation protocols (together, “Formula Rate”), and conforming OATT amendments addressing derivation and recovery of the costs for eligible transmission projects identified and designated under Rate Schedules 19 and 10, as explained further below.

The proposed Formula Rate would cover both: (a) local transmission upgrades determined by the New York State Public Service Commission (“NYPSC”) to be necessary to meet New York

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R Part 35.13 (2021).

³ The NYISO is submitting this filing in FERC’s eTariff system on O&R’s behalf solely in the NYISO’s role as the tariff administrator of the NYISO OATT. The burden of demonstrating that the proposed tariff amendments are just and reasonable rests on O&R, as Applicant. The NYISO takes no position on any substantive aspect of this filing at this time. Unless otherwise defined herein, capitalized terms used in this transmittal letter shall have the meanings ascribed to them in the NYISO OATT, including Section 1, Attachment Y, and Rate Schedules 10 and 19 thereto.

State climate and renewable energy goals as required by New York State law and consistent with the Commission’s “Order Accepting Proposed Cost Sharing and Recovery Agreement, Rate Schedule, Tariff Revisions, and Certificates of Concurrence” issued August 19, 2022 in Docket Nos. ER22-2152-000, et al.,⁴ (“Schedule 19 Projects” or “CLCPA Eligible Projects”);⁵ and (b) any regulated transmission project (or portion thereof) that is eligible for cost recovery under Schedule 10 of the NYISO OATT in accordance with the NYISO’s Comprehensive System Planning Process requirements set forth in Attachment Y of the NYISO OATT (“Schedule 10 Projects”). Such Schedule 10 Projects may include, but are not limited to, (i) Public Policy Transmission Projects proposed by O&R, as a Developer, in response to a request by the NYPSC or Long Island Power Authority in accordance with Section 31.4.3.2 of Attachment Y of the NYISO OATT, as well as (ii) pursuant to the exercise of its federal right of first refusal, upgrades to O&R’s existing transmission facilities that are part of,⁶ or needed by,⁷ another Developer’s Public Policy Transmission Project (referred to in the NYISO OATT as Public Policy Transmission Upgrades and Designated Network Upgrade Facilities, respectively) for which O&R is eligible to construct, finance, own, and maintain, and for which cost recovery is permitted through the Regulated Transmission Facilities Charge (“RTF Charge”) under Rate Schedule 10 of the NYISO OATT, consistent with Attachment Y of the NYISO OATT.

As demonstrated by this transmittal letter and the attached testimonies and exhibits, the proposed Formula Rate is just and reasonable and not unduly discriminatory. O&R requests the Commission to accept the proposed tariff amendments for filing, with an effective date of May 25, 2024, which is the day following the end of the statutory 60-day notice period.

I. Background

A. Applicant

O&R, a wholly owned subsidiary of Consolidated Edison, Inc., is a regulated public utility, incorporated in the State of New York, engaged in the generation, transmission, distribution, and

⁴ *Consolidated Edison Co. of N.Y., Inc. et al.*, 180 FERC ¶ 61,106 (2022) (“CSRA/Schedule 19 Order”).

⁵ The state laws include the Climate Leadership and Community Protection Act (“CLCPA”) and the Accelerated Renewable Energy Growth and Community Benefit Act (“AREGCBA”). *See* 2019 N.Y. Sess. Laws, ch. 106 (CLCPA); 2020 N.Y. Sess. Laws, ch. 58, Part JJJ (AREGCBA).

⁶ *See New York Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,179 (March 11, 2022) (granting complaint and accepting amendments to the NYISO OATT that provides a mechanism by which O&R and other transmission owners in New York may exercise their federal right of first refusal to build, own, and recover the costs of upgrades to their existing transmission facilities that are part of a transmission solution selected by the NYISO Board of Directors pursuant to the NYISO’s Order No. 1000’s Public Policy Transmission Planning Process (“March 2022 Order”).

⁷ *See New York Indep. Sys. Operator, Inc.*, Docket No. ER23-1151-000 (unpublished letter order dated April 5, 2023) (accepting NYISO OATT amendments to align the development, funding, and cost recovery provisions for Network Upgrade Facilities identified through the NYISO’s Transmission Interconnection Procedures under Attachment P that satisfy the definition of “upgrade” under Section 31.6.4 of the OATT with the rules for the associated selected Public Policy Transmission Project).

the wholesale and retail sale of electric power in southeastern New York.⁸ O&R has conveyed operational control of its bulk electric retransmission facilities to the NYISO, which provides transmission services over O&R's transmission facilities pursuant to the NYISO's OATT.

B. The CSRA and Rate Schedule 19

In the CSRA/Schedule 19 Order, the Commission accepted for filing under Section 205 both the CSRA and Rate Schedule 19 to the NYISO OATT. Together, these tariff records provide a cost recovery and allocation framework for CLCPA Eligible Project(s).⁹ The CSRA is a voluntary participant funding agreement among the six New York State-regulated public utility transmission owners, Long Island Power Authority ("LIPA"), New York Power Authority and, for limited purposes, the NYPSC to share the costs of Approved Local Transmission Upgrades. The CSRA addresses only these local transmission upgrades, the costs of which have historically been borne primarily through state-administered, bundled, local transmission and distribution rates that reflect both NYPSC-approved return on equity ("ROE") and associated capital structure. The CSRA provides that the costs of CLCPA Eligible Project(s) shall be shared statewide and recovered on a volumetric load-ratio share basis from Load Serving Entities ("LSEs"). To implement statewide cost allocation for such CLCPA Eligible Projects consistent with any NYPSC order approving the upgrades, the six New York State-regulated public utility transmission owners need to amend or establish an applicable Formula Rate under the NYISO OATT, which is the subject of this filing for O&R.¹⁰

The Commission has determined that the "CSRA is necessary to establish the voluntary commitment of the [New York Transmission Owners] and the voluntary concurrence of the NYPSC to allocate the costs of the [CLCPA Eligible Project(s)] on a volumetric load-ratio share basis across the state," and that the CSRA "also establishes eligibility for cost allocation under Rate Schedule 19, pursuant to the NYPSC approval of the applicable local transmission upgrade."¹¹ As of the date hereof, the NYPSC has approved for some of the New York State-regulated public utility transmission owners several, proposed, local transmission upgrades for statewide cost allocation under the CSRA, while others remain pending.

Rate Schedule 19 to the NYISO OATT calculates and allocates to New York LSEs on a

⁸ O&R's affiliate, Rockland Electric Company, is engaged in the transmission, distribution, and retail sale of electricity in Northern New Jersey.

⁹ CLCPA Eligible Projects/Schedule 19 Projects are also referred to in the CSRA/Schedule 19 Order as "Approved Local Transmission Upgrades."

¹⁰ As of the date of this letter, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Rochester Gas & Electric Corporation and Central Hudson Gas & Electric Corporation have filed for, and received Commission approval of, their respective formula rates for such use, with the limited issue of the respective fixed return on equity ("ROE") reference value(s), which are pending under pending settlement procedures. *See Consolidated Edison Co. of N.Y., Inc.*, 185 FERC ¶ 61,091 at PP1-2 (2023); *N.Y. State Elec. & Gas Corp.*, 185 FERC ¶ 61,164, at PP 1-2 (2023); *Cent. Hudson Gas & Elec. Corp.*, 185 FERC ¶ 61,271, at P 1 (2023). *See also Order of Chief Judge Partially Granting Motion and Making Substitute Designation of Settlement Judge*, Docket Nos. ER23-2212; ER23-1816; ER23-1817 and ER23-2507 (Jan 25, 2024).

¹¹ CSRA/Schedule 19 Order at P 45.

volumetric load-ratio share basis a new CLCPA Facilities Charge (“CFC Charge”) or, in the case of LIPA, a LIPA CFC Charge. The CFC Charge is a cost-of-service charge to be derived from Formula Rates filed by O&R and each of the other New York State-regulated public utility transmission owners. Rate Schedule 19 does not by itself create or produce transmission use charges.¹² Rather, such charges and implementation of Rate Schedule 19 depend on acceptance of each New York transmission owner’s Formula Rate, which is submitted herein for O&R. The Commission’s acceptance of Rate Schedule 19 did not include or imply any form of acceptance or pre-approval of costs or revenue requirements for any CLCPA Eligible Project.¹³ Rate Schedule 19’s treatment of CLCPA Eligible Project(s) provides comparable treatment to the rates recovered under Attachment H of the NYISO OATT and provides the same structure that the Commission has approved for facilities recovered under several other NYISO OATT Rate Schedules.¹⁴ In accepting Rate Schedule 19, the Commission determined that the rate schedule is “necessary to recover costs” and that it is just and reasonable and not unduly discriminatory or preferential to allocate the costs of CLCPA Eligible Project(s) that the NYPSC approves on a volumetric, load-ratio share basis.¹⁵

In the CSRA/Schedule 19 Order, the Commission found that CLCPA Eligible Project(s) “that are subject to the CSRA [and Rate Schedule 19 to the NYISO OATT] are those that the NYPSC has found to facilitate achievement of the statewide mandates applicable to all [New York Transmission Owners].”¹⁶ The Commission explained that such CLCPA Eligible Project(s) “benefit customers throughout the state insofar as they facilitate compliance with the New York State climate and renewable energy goals as required by New York State law and have been determined by the NYPSC to be necessary to meet such obligations.”¹⁷ The Commission noted that its acceptance of the CSRA and Rate Schedule 19 included a finding that “the proposed ceiling ROE structure is just and reasonable.”¹⁸ The Commission has also acknowledged that Rate Schedule 19 does not itself produce or create any transmission charges because implementation of the rate “depends on later submission and acceptance of each transmission owner’s formula rate template, which will be submitted separately for Commission review under FPA section 205.”¹⁹ This filing constitutes that submission on behalf of O&R.

C. Transmission Projects Eligible for Cost Recovery under NYISO OATT Rate Schedule 10

In its March 2022 Order, the Commission approved NYISO’s proposed revisions to the NYISO OATT to allow a Transmission Owner that becomes a Designated Entity for a Public

¹² See CSRA/Schedule 19 Order at P 47.

¹³ See *id.*

¹⁴ *Id.*

¹⁵ *Id.* at PP 46, 50.

¹⁶ *Id.* at P 50.

¹⁷ *Id.*

¹⁸ *Id.* at P 51.

¹⁹ *Id.*

Policy Transmission Upgrade to allocate costs under Section 31.5 of Attachment Y to the NYISO OATT consistent with the selected Public Policy Transmission Project. The order also authorized Designated Entities to use Rate Schedule 10 of the NYISO OATT to recover costs of the “Designated Public Policy Project” comprised of Public Policy Transmission Upgrades, subject to appropriate filings with and review by the Commission. Consistent therewith, by delegated order issued April 5, 2023, in Docket No. ER23-1151, the Commission accepted revisions to both Section 31.5 of Attachment Y to the NYISO OATT and Rate Schedule 10 of the NYISO OATT, allowing a Connecting Transmission Owner or Affected Transmission Owner, designated under Section 22.9.6 of Attachment P to the NYISO OATT, to use the same cost allocation and recovery mechanism with respect to Designated Network Upgrade Facilities.

Entities eligible for Designated Public Policy Project (including those comprised of Public Policy Transmission Upgrades) and Designated Network Upgrade Facility cost recovery are responsible for satisfying requirements to obtain cost recovery through the NYISO OATT. Consistent with the existing cost recovery eligibility for Designated Public Policy Projects that are comprised of new transmission facilities, actual project cost recovery for both Public Policy Transmission Upgrades and Designated Network Upgrade Facilities requires Commission approval under Section 205. O&R anticipates that it will become a Designated Entity with respect to one or more Designated Public Policy Projects and Designated Network Upgrade Facilities in the future and seeks here to establish a formula rate for purposes of cost recovery on a prospective basis for purposes of certainty and efficiency.

II. Description of Filing and Request for Acceptance under FPA Section 205

A. Formula Rate and Conforming Amendments for Both Rate Schedule 19 and Rate Schedule 10 Transmission Projects

The CSRA/Schedule 19 Order authorizes O&R to submit for filing under FPA Section 205 a Formula Rate to be applicable to NYPSC-approved CLCPA Eligible Project(s).²⁰ This filing constitutes submission of O&R’s proposed “applicable” Formula Rate for such future projects.²¹ Additionally, under Attachment Y to the NYISO OATT, O&R may become eligible for regional cost allocation and cost recovery for any of several different types of transmission projects designated or selected by the NYISO under Attachment Y, including but not limited to Public Policy Transmission Projects, Public Policy Transmission Upgrades, and Designated Network Upgrade Facilities. As is the case with Schedule 19 Projects, O&R has yet to place a Commission accepted formula rate for eligible Schedule 10 Projects into the NYISO OATT. O&R anticipates being designated in the longer term to build and own Schedule 10 and Schedule 19 Projects, which will require a formula rate to be on file under the respective Rate Schedules to effectuate the annual revenue requirement and applicable cost allocation and to implement associated cost recovery for any such projects.

²⁰ *Id.*

²¹ O&R’s Formula Rate, which is proposed to be incorporated into the NYISO OATT, as Attachment 5 to Rate Schedule 19 of the NYISO OATT is provided in Attachment A.

The proposed Formula Rate is designed to include functionality that would separately cover both Schedule 19 Projects, as well as Schedule 10 Projects. It is proposed to be placed in the NYISO OATT under Attachment 5 to Rate Schedule 19, with appropriate cross references pertaining to Schedule 10 Projects in proposed Attachment 5 to Rate Schedule 10. As described in the prepared direct testimony and exhibits of Dr. Paul A. Dumais, provided herewith in Attachment B (“Dumais Testimony”),²² the proposed Formula Rate is consistent with Commission-approved ratemaking methodologies and contains sufficient specificity to permit non-discretionary implementation. The Formula Rate is just and reasonable and should be accepted for filing.

Specifically, O&R proposes to incorporate its Formula Rate in proposed Attachment 5 to Rate Schedule 19 of the NYISO OATT (Section 6.19.10.) to provide a consistent and transparent mechanism to establish an annual transmission revenue requirement (“ATRR”) related to CLCPA Eligible Projects under Rate Schedule 19. O&R also proposes to add a new Attachment 5 to Rate Schedule 10 of the NYISO OATT (Section 6.10.11) to address Schedule 10 Projects and leverage the Formula Rate proposed herein. As proposed, the Formula Rate would also address, in separate designated columns, derivation of ATRR for any Schedule 10 Projects for which O&R is the designated entity as determined by the NYISO. Because the Formula Rate will be set forth in proposed Attachment 5 to Rate Schedule 19 of the NYISO OATT, a detailed cross-reference to the Formula Rate is required under O&R’s proposed Attachment 5 to Rate Schedule 10 of the NYISO OATT, the language for which is proposed as part of this filing.

Upon acceptance and designation of an effective date by the Commission, the proposed Formula Rate would be included in the NYISO’s OATT. Prior to recovering any costs related to an eligible project, O&R would be required to satisfy all applicable requirements of the NYISO OATT and the Formula Rate. O&R seeks acceptance of its Formula Rate at this time as it is in the public interest to establish the Formula Rate under the NYISO OATT so that cost allocation and cost recovery may proceed in a timely and efficient fashion under terms that have been reviewed and accepted by the Commission.

As explained in the Dumais Testimony, the proposed Formula Rate is forward-looking and similar to formula rates the Commission has accepted for certain transmission owners in New York and elsewhere.²³ O&R’s Formula Rate has two parts: proposed Section 6.19.10.2.2 of Attachment 5 to Rate Schedule 19 of the NYISO OATT is the cost-of-service, formula rate template (“Template”),²⁴ while proposed Section 6.19.10.2.1 of Attachment 5 to Rate Schedule 19 contains implementation protocols (“Protocols”). O&R is proposing that both the Template and Protocols be housed under Rate Schedule 19, with cross-references provided under proposed Attachment 5 to Rate Schedule 10 of the NYISO OATT addressing O&R’s Schedule 10 Projects, so that a single

²² See Att. B, Exhibit Nos. O&R 001-004.

²³ See fn. 10, *infra*.

²⁴ As required by the Commission in other formula rate template filings, O&R also provides as part of this filing the proposed Template, with all inputs with zero values, in its entirety in a workable Microsoft Excel file that contains all the formulas necessary to calculate all the numbers used in the formula. In addition, O&R notes that all formulas and variables are visible and not hidden and the spreadsheets do not use security features that prevent copying, modification or printing, nor do the spreadsheets contain any links to sources outside of the spreadsheet document.

Formula Rate may cover both project types, as explained further below.

Further, as explained in the prepared direct testimony and sponsored exhibits of Mr. Adrien McKenzie, provided herewith as Attachment C (“McKenzie Testimony”),²⁵ O&R is proposing a ceiling ROE as a fixed value in the Formula Rate as pertains to Schedule 19 Projects and a base ROE as a fixed value in the Formula Rate as pertains to Schedule 10 Projects. Both the proposed ceiling ROE for Schedule 19 Projects and the base ROE for Schedule 10 Projects have been developed using the methods accepted by the Commission for transmission cost-of-service revenue requirement purposes, as described in greater detail in the McKenzie Testimony.²⁶

Because Schedule 10 Projects will involve high-voltage transmission facilities that will be turned over to the NYISO’s operational control, O&R requests the Commission to authorize a 50 basis point Regional Transmission Operator (“RTO”) Participation Adder to reflect O&R’s continued membership and participation in the NYISO. As explained in the Dumais Testimony, the proposed Formula Rate includes the base ROE recommended in the McKenzie Testimony for Schedule 10 Projects, plus the requested RTO Participation Adder. The Commission has consistently granted requests for the RTO Participation Adder in similar circumstances with respect to jurisdictional transmission facilities owned by the NYISO member transmission owners and subject to the NYISO’s operating control upon emerging service and used to provide jurisdictional transmission services.²⁷ O&R is an ongoing member of the NYISO, which is a Commission-approved independent system operator. Order No. 679 provides that an entity will be presumptively eligible for the incentive if it is a member of an RTO or comparable transmission organization.²⁸ With respect to New York and the NYISO, specifically, the Commission has explained that: “NYISO, like other ISOs and RTOs, manages an evolving and complex transmission grid and rapidly evolving power market” and thus the same benefits the Commission found compelling in Order No. 679 continues “to remain relevant.”²⁹ O&R emphasizes that it proposes to add the RTO Participation Adder only to the base ROE approved by the Commission for use under the proposed Formula Rate for Schedule 10 Projects. O&R is not requesting the RTO Participation Adder with respect to Schedule 19 Projects.

²⁵ See Att. C, Exhibit Nos. ORU 100-112.

²⁶ For Schedule 19 Projects, the CSRA and Rate Schedule 19 to the NYISO OATT contemplate FERC determining the base ROE for each of the jurisdictional New York Transmission Owners, which would become the ROE ceiling, with the applicable ROE for a Schedule 19 Project being the lesser of the FERC-approved ceiling or the ROE determined by the NYPSC.

²⁷ See *N.Y. Indep. Sys. Operator, Inc., Central Hudson Gas & Elec. Corp.*, 171 FERC ¶ 61,119, at PP 19-20 (2020).

²⁸ See *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, at P 327 (“An entity will be presumed to be eligible for the incentive if it can demonstrate that it has joined an RTO, I[ndependent] S[ystem] O[perator], or other Commission-approved Transmission Organization, and that its membership is ongoing.”), *order on reh’g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007) (Order No. 679).

²⁹ See *N.Y. Indep. Sys. Operator, Inc., LS Power Grid New York Corp.*, 172 FERC ¶ 61,266, at P 14 (2020).

B. Common Formula Rate Template for Rate Schedule 10 and 19 Projects Improves Efficiency and Aligns Informational Filing Processes

Rate Schedule 19 to the NYISO OATT provides the rate mechanism for recovery of the CFC Charge. Pursuant to annual revenue requirements determined by proposed Attachment 5 to Rate Schedule 19 of the NYISO OATT, O&R utilizes the CFC Charge to recover its reasonably incurred costs associated with Schedule 19 Projects approved by the NYPSC, as outlined in Rate Schedule 19. Pursuant to Section 6.19.10.2.1 of Attachment 5 to Rate Schedule 19, O&R (or the NYISO on its behalf) will make annual informational filings with the Commission under the proposed Formula Rate. These filings allow for public and Commission's review and consideration of projected costs and resulting revenue requirements to be recovered through the CFC Charge as an Eligible Transmission Owner.

Similarly, Rate Schedule 10 of the NYISO OATT provides the rate mechanism for cost allocation and recovery of the ATRR for Schedule 10 Projects, for which O&R may become eligible for cost allocation and recovery through the RTF Charge. As with Schedule 19 Projects, in accordance with the provisions of Rate Schedule 10 and its proposed Formula Rate, O&R (or the NYISO on its behalf) will include the costs and resulting revenue requirements of Rate Schedule 10 Projects to be covered through the RTF Charge in the annual informational filing to the Commission.

This filing is limited to O&R's request for acceptance under FPA Section 205 of its Formula Rate for both Schedule 19 Projects and Schedule 10 Projects. The Formula Rate will be included in proposed Attachment 5 to Rate Schedule 19 of the NYISO OATT. Once populated after the Commission's prior approval under Section 205, it will establish O&R's ATRR for Schedule 19 Projects and Schedule 10 Projects.

The proposed Formula Rate adheres to established cost-of-service principles for electric utilities like other formula rates accepted by the Commission as just and reasonable. It enables O&R to recover its ATRR on a forward-looking basis using projected data for a January 1 to December 31 period ("Rate Year"), with annual true-up adjustments for Schedule 19 Projects and separately for Schedule 10 Projects. Any difference between an actual ATRR for a Rate Year and the projected ATRR for the same Rate Year, along with interest calculated in accordance with Section 35.19a of the Commission's regulations, will be reflected as a true-up adjustment to the applicable forecasted ATRR for the next applicable Rate Year. This mechanism ensures that neither customers nor the transmission owner are harmed if O&R's revenues received during a Rate Year differ from its actual cost of service. The Commission regularly accepts forward-looking formula rates that use, as proposed by O&R herein, an annual true up process based on actual data from FERC Form 1.³⁰

Consistent with Commission precedent, projected input data will be obtained from O&R's internal budgeting processes, while actual input data will be derived from O&R's FERC Form 1.

³⁰ See, e.g., *NextEra Energy Transmission N.Y., Inc.*, 161 FERC ¶ 61,138 (2017) (approving formula rate template approach for formula rate ATRR template utilizing projected rate year values with an annual true up after actual data becomes available on the FERC Form 1 the year after the Rate Year).

As detailed in the Dumais Testimony, the proposed Formula Rate includes several worksheets necessary to determine and publish O&R's ATRR for Rate Schedule 19 Projects and Rate Schedule 10 Projects, respectively. The initial and any subsequent populations of the Formula Rate Template will be provided in Excel spreadsheets to stakeholders in advance of ATRR or true-up implementation, with substantial time provided for review, inquiries, and feedback, as outlined in the proposed Protocols.

The Formula Rate can calculate project-specific costs, with unique columns covering each separate Schedule 19 Project and Schedule 10 Project. The Template allows for the recovery of a return on rate base, taxes other than income taxes, depreciation and amortization expense, operation and maintenance expense, and administrative and general expense, less any revenue credits. For transmission and general/common plant balances, land held for future use, materials and supplies, unfunded liabilities, and prepayments, the proposed Template uses the average of the Rate Year 13-month balances. In the case of accumulated deferred income taxes, the Template uses the average of beginning and end of year balances or a prorated balance in accordance with Internal Revenue Service regulations. Furthermore, considering O&R's status as a taxable corporation, the Template provides for an income tax allowance consistent with Commission policy.³¹

The Template contains a proposed ROE ceiling for Schedule 19 Projects and a proposed base ROE for Schedule 10 Projects. The proposed ROE values are consistent with Commission-accepted methods of calculating the cost of equity and applies the appropriate ROE that is applicable for each project type (i.e., the lower of the NYPSC-approved ROE or the FERC-approved ceiling ROE for each Schedule 19 Project³² and the FERC-approved base ROE for each Schedule 10 Project).³³ As explained in the McKenzie Testimony, the proposed ceiling ROE for Schedule 19 Projects and base ROE for Schedule 10 Projects are based on established Commission-approved methodologies, as set forth in Opinion No. 569, although Mr. McKenzie opines that it would be wholly appropriate for the Commission to retain the use of both the Risk Premium model and Expected Earnings approach.³⁴

Mr. McKenzie provides an independent appraisal of the cost of equity for O&R using the ROE derivation methodology adopted by the Commission in Opinion No. 569-A. For Schedule 19 Projects, Mr. McKenzie recommends an ROE ceiling of 11.2% for O&R, which corresponds to the upper end of the middle third of the composite zone of reasonableness. Consistent with the CSRA/Rate Schedule 19 Order, the ROE proposed to be used in the Template for determining ATRRs for Schedule 19 Projects is the lower of (i) the return authorized by the NYPSC and applicable to O&R for retail ratemaking purposes, or (ii) the Commission-approved ROE initially established in this proceeding as to O&R. In addition, for Schedule 19 Projects, the Formula Rate

³¹ See, e.g., *Trans-Allegheny Interstate Line Co.*, 124 FERC ¶ 61,075 (2008).

³² See CSRA/Schedule 19 Order at P 51.

³³ See Dumais Testimony at 33. The Formula Rate Template can have a different ROE and capital structure for each project. However, it is expected that the ROE and capital structure established by the NYPSC will apply to all Schedule 19 Projects.

³⁴ See *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569, 169 FERC ¶ 61,129 at P 98 (2019) ("Opinion No. 569"). See also McKenzie Testimony at 2-4, 8-12, 47-72.

will use the capital structure applicable to O&R for retail ratemaking purposes, as established and revised from time to time by the NYPSC. For Schedule 10 Projects, as explained in the McKenzie Testimony, O&R requests the Commission approve a base ROE of 10.7%, which is equal to the median produced by the composite zone of reasonableness. Under the proposed Formula Rate, O&R is not seeking herein any ROE adders or incentives at this time, other than the RTO Participation Adder for Schedule 10 Projects as discussed above and recognizes that application of any ROE value other than those approved by the Commission in this proceeding will require separate Commission approval with respect to a particular eligible project.

Appendix A of the Template will produce O&R's aggregate ATRR for Schedule 19 Project(s), which will be used to determine CFC Charges pursuant to Rate Schedule 19 of the NYISO OATT.³⁵ Likewise, Appendix A of the Template will produce O&R's ATRR for each Schedule 10 Project to be used in determining the applicable RTF Charges under Rate Schedule 10 of the NYISO OATT. O&R will ensure against double recovery by excluding from its NYPSC-jurisdictional rates the revenue requirements for Schedule 19 Projects and Schedule 10 Projects, or by providing an appropriate credit to its NYPSC-jurisdictional rates equivalent to any recoveries of costs under Rate Schedule 19 or Rate Schedule 10 of the NYISO OATT. The Template facilitates this by determining the respective ATRR for Schedule 19 Projects and Schedule 10 Projects using direct assigned and allocated costs based upon the respective projects' costs.

Further, Rate Schedule 19 and Rate Schedule 10 of the NYISO OATT do not permit duplicative recovery of costs as between the revenue requirement for project costs recovered under each respective Rate Schedule and any other O&R revenue requirement recovered through the NYISO OATT (including costs recovered through O&R's wholesale Transmission Service Charge pursuant to Attachment H of the NYISO OATT).

C. Proposed Formula Rate Protocols

The Dumais Testimony describes the Protocols for populating and updating the Template. The Protocols prescribe O&R's proposed annual update process, which refreshes the calculation of O&R's ATRR and annual true-up adjustments, and includes specific procedures for notice, requests for information, and review and challenges to the informational filing and annual update. The Protocols provide that each annual update will be publicly posted on the NYISO's website not later than October 15. As part of the annual update process, O&R will determine a "true-up adjustment" by comparing the prior calendar year's actual ATRR—using data from its FERC Form 1—against transmission revenues received under Rate Schedule 19 and Rate Schedule 10, respectively, during the preceding Rate Year. The True-up Adjustment will be publicly posted on the NYISO's website not later than June 15. As indicated above, any true-up adjustments will be calculated with interest in accordance with Commission regulations.

Following publication of each annual update, including the true-up adjustment of the prior year's rates based on actual data from FERC Form 1, O&R will hold a remote-accessible open

³⁵ As described in the Dumais Testimony, the NYISO accounts for any Incremental Transmission Congestion Contract-related settlements for each CLCPA Eligible Project in determining the applicable CFC Charges assessed to LSEs. *See* Dumais Testimony at 10-11.

meeting for interested parties within 30 days of such publication. O&R will ensure that notice of each stakeholder meeting concerning the annual update is posted on the NYISO website at least 30 days in advance and will further provide interested parties notice of stakeholder meetings by email. Interested parties will have until December 1 (i.e., 45 days from the posting date) during which to submit information requests and an additional review period of at least 60 days to present preliminary challenges (i.e., through January 31).

By February 1 of each year, O&R shall submit to FERC an informational filing of its annual update and the results of the annual review procedures (“Informational Filing”). This Informational Filing must include the information specified in the Protocols, describe any changes pursuant to the annual review procedures and describe all aspects of the Formula Rate or its inputs that are the subject of an ongoing dispute under the informal or formal challenge procedures. Within five (5) days of such Informational Filing, O&R shall provide (or cause to be provided) notice of the Informational Filing to interested parties via an email and by posting the docket number assigned to O&R’s Informational Filing on O&R’s website and OASIS.

Interested parties will have until May 1 to submit formal challenges to the Commission—including challenges to the prudence of expenditures included in the ATRR for any Schedule 19 Project or Schedule 10 Project. Any changes to the true-up adjustment resulting from the review period will be reflected, with interest, in the next year’s annual update. Parties always retain their rights under Sections 205 and 206 of the FPA, without regard to the Protocols’ review process.

The Protocols provide for review procedures that are consistent with the Commission’s directives and determinations regarding, among other aspects: (i) scope of participation in the information exchange process, including specification that “interested party” is defined broadly to include any transmission customer under the NYISO OATT, the New York State Public Service Commission, other New York State government entities that may have an interest in transmission rates and any party that has standing in a O&R formula rate proceeding under the FPA; (ii) the transparency of the information exchange; and (iii) the ability of interested parties to challenge O&R’s implementation of the Formula Rate as a result of the information exchange.³⁶ The Protocols are also consistent with the Commission’s guidance on timing, sequence, transparency, and other specifications in proceedings concerning the Protocols of transmission owning members of Midcontinent Independent System Operator, Inc. (“MISO”),³⁷ and considers recent formula rate

³⁶ See, e.g., *Empire Dist. Elec. Co.*, 150 FERC ¶ 61,200 (2015).

³⁷ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127, P 8 (2012), *order on investigation of formula rate protocols*, *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013), *order on reh’g*, 146 FERC ¶ 61,209 (2014), *order on compliance*, 146 FERC ¶ 61,212 (2014), *order on compliance*, 150 FERC ¶ 61,025 (2015) (collectively, “MISO Annual Update Protocol Orders”). See also, e.g., *Southwest Power Pool, Inc., et al.*, 180 FERC ¶ 61,024 (2022) (relying on MISO Annual Update Protocol Orders as continuing to establish relevant required parameters for annual updates).

protocol show cause orders issued to various transmission owners by the Commission.

III. Requested Effective Date

O&R respectfully requests an effective date of May 25, 2024, for the Formula Rate. This effective date would implement the Template and associated Protocols that would apply for any Schedule 19 Project or Schedule 10 Project that may be approved by order of the NYPSC or designated to O&R by the NYISO, respectively.

IV. Correspondence and Communications

All correspondence and communications concerning the above-captioned proceeding should be addressed to the following persons:³⁸

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³⁸ O&R requests waiver of Rule 203(b)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203(b)(3) (2021), to the extent necessary to permit more than two persons to be included on the official service list on its behalf in this proceeding.

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V. Service

A complete copy of this filing will be posted on the NYISO's website at www.nyiso.com. The NYISO has confirmed to O&R that it will send an electronic link to this filing to the official representative of each its customers and each participant on its stakeholder committees.

VI. List of Documents

In accordance with the Commission's eTariff regulations and as Tariff Administrator, NYISO is submitting an eTariff XML filing package containing the following materials:

1. This Transmittal Letter;
2. Attachment A: A clean tariff version of O&R's proposed revisions to the NYISO OATT, consisting of a new Attachment 5 to Rate Schedule 10 and a new Attachment 5 to Rate Schedule 19;³⁹
3. Attachment B: Prepared Testimony of Dr. Paul A. Dumais, including supporting materials (Exhibit Nos. O&R 001-004); and
4. Attachment C: Prepared Testimony of Mr. Adrien McKenzie, including supporting materials (Exhibit Nos. ORU 100-112).

³⁹ An unpopulated version of the formula rate template in native Excel format is also being submitted with this filing.

VII. Conclusion

For the reasons set forth above, O&R requests that the Commission accept for filing, effective as of the date specified above, or such other date as may be prescribed by the Commission, the Formula Rate filed herewith.

Respectfully submitted,

/s/ Susan J. LoFrumento