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VIA ELECTRONIC FILING

April 29, 2024

Honorable Debbie-Anne A. Reese
Acting Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: New York Power Authority
Application to Modify Formula Rate Template
Docket No. ER24-____-000**

Dear Acting Secretary Reese:

Pursuant to section 205 of the Federal Power Act ("FPA")¹ and Part 35 of the Federal Energy Regulatory Commission's (the "Commission" or "FERC") regulations,² the New York Power Authority ("NYPA") respectfully submits this filing to modify its formula rate template in Section 14.2.3.1 of Attachment H to the New York Independent System Operator, Inc. ("NYISO") Open Access Transmission Tariff ("OATT")³ to 1) revise the calculation of most rate base items and all capitalization items to a 13-month average in place of the existing beginning-of-year/end-of-year average; 2) add land held for future use to rate base; 3) add the amortization and interest associated with "right to use" assets to depreciation expense, operation and maintenance ("O&M") expenses and to administrative and general ("A&G") expenses, as appropriate; and 4) add depreciation rates for three new transmission accounts now recognized under the FERC's Uniform System of Accounts.

As shown below, NYPA's filing presents evidence that supports the conclusion that these proposed changes are just and reasonable and should be approved by the Commission without delay. NYPA respectfully requests that the Commission issue an order no later than Friday, June 28, 2024, which is after the end of the statutory 60-day

¹ 16 U.S.C. §§ 824d, 824s (2018).

² 18 C.F.R. pt. 35 (2022).

³ See *New York Indep. Sys. Operator, Inc.*, NYISO Tariffs, NYISO OATT, § 14 (attach. H), § 14.2.3.1 (7.0.0). NYISO submits this filing on behalf of NYPA solely in its role as the administrator for NYISO OATT. The burden of demonstrating that the proposed tariff revisions are just and reasonable rests with NYPA, the sponsoring party. Capitalized terms or initialisms not defined herein shall have the meaning set forth in the NYISO OATT, including Section 14.2.3.2 (*i.e.*, NYPA's formula rate protocols). Together, NYPA's template and protocols are known as the Formula Rate.

notice period to permit the revisions to become effective on July 1, 2024, the date of NYPA's Formula Rate update for the Rate Year July 1, 2024 to June 30, 2025.

I. Background on NYPA

NYPA is a corporate municipal instrumentality and a political subdivision of the State of New York, organized under the laws of New York, and operates pursuant to Title 1 of Article 5 of the New York Public Authorities Law. NYPA is a "municipality" within the meaning of section 3(7) of the FPA and is a "state instrumentality" within the meaning of FPA section 201(f).⁴ As a voluntary, founding member of the NYISO, NYPA is engaged in the generation, transmission, and sale of electric power and energy at wholesale and retail throughout New York. NYPA's bulk power transmission system encompasses 1,569 circuit miles and consists of facilities ranging from 115 kilovolts ("kV") to 765 kV. As the largest state-owned power organization in New York, NYPA has taken responsibility for constructing and owning critical segments of transmission infrastructure throughout New York. NYPA has no distribution facilities or defined geographical service territory of its own, and since the inception of NYISO, has recovered its cost of owning and maintaining its transmission facilities primarily through the NYPA Transmission Adjustment Charge (NTAC).⁵

II. Background and Description of Proposed Tariff Modifications

NYPA has collected its annual transmission revenue requirement ("ATRR") since April 1, 2016 through its FERC-authorized Formula Rate contained within Attachment H to the NYISO OATT. Under the Formula Rate, NYPA sets its ATRR using actual data from the prior calendar year. Since its inception, the Formula Rate has used the beginning-of-year/end-of-year average balance approach to calculate most rate base and all capitalization items. As explained in detail in the direct testimony of Mr. Vincent Zuccarelli, NYPA's Director of Transmission Revenue, these rate base items include net plant in service, materials and supplies, prepayments, and Marcy South transmission line-related capital leases.⁶ The principal request in this application is to convert the determination of the balances for those rate base items, plus CWIP, along with all capitalization items, to the 13-month average method.⁷

Mr. Zuccarelli's testimony also addresses, in turn, NYPA's request for the addition of land held for future use to rate base; recovery of the amortization and

⁴ 16 U.S.C. §§ 796(7) and 824(f).

⁵ NYISO OATT § 14.2.2.

⁶ NYPA's costs related to cash working capital and construction work in progress ("CWIP") are currently not determined using the beginning-of-year/end-of-year average balances. Prepared Direct Testimony of Vincent Zuccarelli, Exhibit No. NYP-100 at 3-4 & fn.4 (Attachment C to this filing) ("Zuccarelli").

⁷ With the exception of the Marcy South capital leases rate base item. Mr. Zuccarelli explains that due to its linear amortization, the current beginning-of-year/end-of-year average approach for the Marcy South capital leases produces the same result as the 13-month average, so no change is proposed for this item. *Id.* at 6-7.

interest portion of right to use assets; and inclusion of three newly FERC-recognized transmission accounts to NYPA's depreciation schedule.

A. Conversion to 13-Month Average Balance Method for Determining Rate Base and Capitalization

As Mr. Zuccarelli explains, the 13-month average balance method is superior for determining a utility's rate base and capitalization, and has gained broad acceptance from the Commission, regulated utilities, and their customers. The primary benefit of the 13-month average balance method is its accuracy. As Mr. Zuccarelli explains, using the average of 13 monthly plant balances provides a more accurate representation of how the assets are being used, especially when the utility is developing and constructing large, new transmission assets. While the beginning-of-year/end-of-year average balance method – an average using only two values, rather than 13 – produced fairly accurate rate base and capitalization results when NYPA's net plant balances were stable, this is no longer the case for NYPA which is and has been constructing significant transmission asset additions.⁸

Mr. Zuccarelli further explains that the 13-month average balance method is always more accurate and does not necessarily produce a higher average balance for the utility. For example, Mr. Zuccarelli notes that under the beginning-of-year/end-of-year average method, for a \$130 million asset that was placed in service in December of the current year, the average of \$0 (the beginning of the year balance) and \$130 million (the end of the year balance) would produce a \$65 million rate base balance. On the other hand, using a 13-month average balance for this same set of facts would produce only a \$10 million plant balance (*i.e.* \$130 million ÷ 13 months = \$10 million), much lower than \$65 million. Mr. Zuccarelli also describes contrary circumstances where using the average of 13 months of plant balances provides a higher rate base for the utility, but that also reflects an appropriate recognition of how new assets were used over the year in question.⁹

NYPA further notes, consistent with Mr. Zuccarelli's testimony, that the 13-month average balance method is widely accepted under FERC-approved transmission tariffs, and that the use of the beginning-of-year/end-of-year average is not typical today. For example, the tariffs of electric utilities operating within NYISO, PJM Interconnection, L.L.C. ("PJM"), Midcontinent Independent System Operator, Inc. ("MISO") and Southwest Power Pool ("SPP") provide strong evidence of the 13-month average balance method's acceptance. Within NYISO, this includes LS Power Grid New York

⁸ *Id.* at 4-6.

⁹ Mr. Zuccarelli's chief point in this regard is that if the same \$130 million asset were placed in service in March under the 13-month average balance approach, 10/13ths or \$100 million would be recognized in rate base (not \$65 million), which properly reflects the use of this new asset. *Id.* at 5-6 & fn.6.

Corporation I (“LSPG-NY”),¹⁰ New York Transco LLC (“NY Transco”),¹¹ and NextEra Energy Transmission New York, Inc. (“NextEra”),¹² all electric transmission utilities that use the 13-month average balances to determine rate base and capitalization.

In PJM, Jersey Central Power & Light Corporation (“Jersey Central”) similarly employs 13-month average balances to determine virtually all of its rate base items and capitalization.¹³ In MISO, Entergy Louisiana, LLC’s Formula Rate Tariff shows its use of 13-month average plant balances throughout for its rate base and capitalization.¹⁴ In SPP, Oklahoma Gas and Electric Company (“OG&E”) also adopted the 13-month average balance method for all major components of its rate base and capitalization.¹⁵

Furthermore, FERC precedent has long-required regulated utilities, absent a waiver, to use 13-month average plant balances to calculate rate base¹⁶ as reflected in FERC’s regulations.¹⁷

For the reasons discussed above, NYPA’s proposed conversion to the use of 13-month average balances is just and reasonable, and should be approved by the Commission.

In the attached formula rate template (see Attachments A and B to this filing), numerous schedules are modified to address the 13-month average balance conversion and a number of new Workpapers have also been developed related to this proposed change. Many of these are discussed by Mr. Zuccarelli,¹⁸ and full list of all the Formula Rate Template changes requested in this application are included in table format in Mr. Zuccarelli’s Exhibit No. NYP-101.

¹⁰ LSPG-NY uses the 13-month average balance method in its formula rate as shown by Attachment 2 – Cost Support, Plant in Service Worksheet and Attachment 3 – Cost Support addressing proprietary capital. LSPG-NY’s formula rate template is set forth in Section 6.10.7.2.1 of Attachment 1 to Rate Schedule 10 of the NYISO OATT.

¹¹ NY Transco employs a 13-month average balance in its formula rate to support its equity and debt calculations as shown by Attachment 3 – Cost Support. NY Transco’s formula rate template is set forth in Section 36.3.1.1 of Attachment DD to the NYISO OATT.

¹² NextEra uses 13-month average balances in its formula rate as shown by Attachment 3 – Cost Support. NextEra’s formula rate template is set forth in Section 6.10.9.2.1 of Attachment 3 to Rate Schedule 10 of the NYISO OATT.

¹³ Jersey Central, Rate Formula Template at 2, 4-5 (available at <https://pjm.com/-/media/markets-ops/trans-service/jan-to-dec/2024/jcpl/2024-ptrr-pdf.ashx>).

¹⁴ See Entergy Louisiana, LLC, Formula Rate Template, Attachment O, *passim* (posted Mar. 19, 2024) (available at <https://www.misoenergy.org/markets-and-operations/settlements/to-rate-data/entergy-louisiana-llc-elto/#nt=%2Frateyear%3A2023&t=10&p=0&s=tsposteddate&sd=desc>).

¹⁵ See OG&E, Formula Rate Template, Worksheet K (Excel file of 2024 revenue requirement made effective Feb. 19, 2024) (available at <http://oasis.oge.com/Formula/FormulaDocs.htm>).

¹⁶ *E.g.*, *Xcel Energy Svcs, Inc.*, 125 FERC ¶ 61,092 at PP 16-17 (2008); *American Elec. Power Serv. Corp.*, 121 FERC ¶ 61,245 at P 12 (2007); *San Diego Gas & Elec. Co.*, 118 FERC ¶ 61,073 at P 29 (2007).

¹⁷ 18 C.F.R. § 35.13(h) (Statement AD—Cost of plant) (requiring cost of transmission plant stated as average of 13 monthly balances).

¹⁸ Zuccarelli at 9-10.

B. Land Held for Future Use Included Rate Base and Recovery of Amortization and Interest Associated with Right to Use Contracts

NYPA also proposes to include in its formula rate template the cost of “Land Held for Future Use.” When NYPA first established its Formula Rate, this component was omitted, and NYPA at that time did not foresee needing to incur such costs. In view of its expanded transmission development role, NYPA foresees the possibility that such costs to acquire land for future transmission projects would need to be incurred in the future. Mr. Zuccarelli notes that costs in this category will be held in Account 105 of the FERC Uniform System of Accounts, and that such costs when included in the formula rate will be determined through the proposed 13-month average balance method.¹⁹ Because Land Held for Future Use is a recognized asset and included in many transmission formula rates, the Commission should find this modification just and reasonable.

NYPA also proposes to recover the amortization and interest component associated with its “right to use” contracts and subscription-based information technology (“IT”) contracts as amortization expenses, O&M expenses for interest on transmission-related contracts, and as A&G expenses for interest on general- and intangible asset-related contracts. NYPA’s current Formula Rate does not provide for recovery of the amortization or interest costs associated with these contracts, but as Mr. Zuccarelli explains, before a recent change in governmental accounting rules applicable to NYPA, it previously recorded payments under such contracts as operating expenses which were recoverable as O&M or A&G. Because of the new accounting rules, NYPA needs to amortize and determine interest in connection with these contract costs, and requests template changes to allow these costs to be recovered. Through this request, NYPA simply seeks to restore its ability to recover these costs as it was doing prior to the change in governmental accounting standards.²⁰

C. Depreciation Schedule Changes

The last set of modifications proposed by NYPA is to include three new transmission accounts in Schedule B3-Deprecation of its formula rate template. Consistent with its June 2023 Order No. 898,²¹ the Commission now permits utilities to include certain computer and communication assets in transmission asset accounts, in addition to general asset accounts. Under NYPA’s proposal, Accounts 351.1 (Computer Hardware), 351.2 (Computer Software) and 351.3 (Communications Equipment) would be part of NYPA’s depreciable transmission plant. Mr. Zuccarelli explains that NYPA proposes a 20% depreciation rate for the transmission computer hardware and software accounts in recognition of the five-year life for these assets, which is the same as the depreciation rate for a significant portion of NYPA’s general plant computer equipment. For the transmission communication equipment, a 10%

¹⁹ *Id.* at 7.

²⁰ *Id.* at 7-8.

²¹ Order No. 898, *Accounting and Reporting Treatment For Certain Renewable Assets*, 183 FERC ¶ 61,205 (2023).

depreciation rate is proposed as these assets are similar to general communications assets, reflecting a 10-year life.²²

Because these assets are now recognized as depreciable transmission assets under the FERC Uniform System of Accounts, and because NYPA's proposed depreciation rates for these accounts are consistent with its existing depreciation rates for similar equipment, this proposal should be accepted by the Commission as just and reasonable.

III. Documents Submitted with this Filing

NYPA submits the following in support of this Formula Rate tariff filing:

- This transmittal letter;
- Attachment A – Clean version of the proposed revisions to the NYISO OATT;²³
- Attachment B – Redline version of the proposed changes to the NYISO OATT discussed above; and
- Attachment C – Prepared direct testimony and exhibits of Vincent Zuccarelli, Exhibit Nos. NYP-100 and NYP-101.

IV. Persons Served

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

V. Request for Waivers

To the extent necessary to permit these tariff modifications to become effective as requested herein, NYPA requests that the Commission waive any and all requirements under Part 35 of the Commission's regulations (and any other applicable regulations) not addressed by the materials described in Part III of this filing. It is the established practice of the Commission to exempt non-jurisdictional municipal utilities such as NYPA from paying applicable filing fees and from compliance with Section 35.13 of the Commission's regulations.²⁴ Accordingly, NYPA's request for exemption from such filing requirements is appropriate.

²² Zuccarelli at 8.

²³ A clean version of the formula rate template in native excel format that reflects the proposed changes is also being submitted with this filing.

²⁴ See, e.g., *N.Y. Indep. Sys. Operator, Inc., N.Y. Power Auth.*, 180 FERC ¶ 61,004 at P 55 (2023) (granting NYPA's requested waiver of section 35.13 of the Commission's regulations because NYPA is not subject to the Commission's regulatory filing requirements); *N.Y. Indep. Sys. Operator, Inc.*, 154

VI. Communications

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

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NYPA respectfully requests that the individuals identified above with an asterisk be placed on the Commission's official service list in this proceeding and be designated for service pursuant to Rule 2010.²⁵

VII. Conclusion

For the reasons set forth above, and in the testimony and exhibits of Mr. Zuccarelli, the requested Formula Rate Template modifications are just and reasonable and the Commission should issue an order no later than Friday, June 28, 2024, which is

FERC ¶ 61,268 at PP 69-70 (2016) (same); *N.Y. Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,240 at PP 36-37 (2012) (same).

²⁵ Pursuant to the Commission's Rules and Regulations, 18 C.F.R. § 385.101(e), NYPA requests waiver of Rule 203(b)(3), in order to permit more than two persons to be included on the service list.

following the end of the statutory 60-day notice period, to permit them to go into effect on July 1, 2024, as requested.

Respectfully submitted,

s/Gary D. Levenson

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Attachments A – C.