BRACEWELL

May 8, 2024

VIA ELECTRONIC FILING

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

Re: New York State Electric & Gas Corporation, Docket No. ER24-___-000
Rochester Gas and Electric Corporation, Docket No. ER24-___-000
Request for Approval of Transmission Rate Incentives

Dear Acting Secretary Reese:

Pursuant to Sections 205 and 219 of the Federal Power Act ("FPA"),[1] Order No. 679,[2] and the Federal Energy Regulatory Commission's ("FERC" or "Commission") November 15, 2012, policy statement on transmission incentives,[3] New York State Electric & Gas Corporation ("NYSEG") and Rochester Gas and Electric Corporation ("RG&E") (collectively, "Applicants") respectfully request approval of certain transmission rate incentive treatments and corresponding changes to the relevant NYSEG and RG&E rate schedules.[4] The requested transmission rate incentive treatments are associated with transmission projects the Applicants are developing pursuant to New York State's efforts to increase transmission system "headroom" to support renewable energy development (the "Phase 2 Projects"). The New York State Public Service Commission ("NYPSC") approved the Applicants' Phase 2 Projects, along with projects that will

[1] 16 U.S.C. §§ 824d, 824s; *see* 18 C.F.R. § 35.35(d).

[2] *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 Fed. Reg. 43,294 (July 31, 2006), 2006–2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,222 ("Order No. 679"), *order on reh'g*, Order No. 679-A, 72 Fed. Reg. 1,152 (Jan. 10, 2007), 2006–2007 FERC Stats & Regs., Regs. Preambles ¶ 31,236 (2006) ("Order No. 679-A"), *order on reh'g*, Order No. 679-B, 119 FERC ¶ 61,062 (2007).

[3] *Promoting Transmission Investment through Pricing Reform*, 141 FERC ¶ 61,129 (2012) ("Incentives Policy Statement").

[4] The New York Independent System Operator, Inc. ("NYISO") is submitting this filing in FERC's eTariff system on behalf of the Applicants solely in the NYISO's role as the tariff administrator of the NYISO Open Access Transmission Tariff ("OATT"). The burden of demonstrating that the proposed tariff amendments are just and reasonable rests on the Applicants. 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 under the NYISO OATT. NYSEG's formula rate template is set forth in Section 6.19.6.2.2 of Attachment 1 to Rate Schedule 19 of the NYISO OATT. RG&E's formula rate template is set forth in Section 6.19.7.2.2 of Attachment 2 to Rate Schedule 19 of the NYISO OATT.

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be developed by other New York transmission owners, by its February 16, 2023, order ("Phase 2 Order").[5]

Specifically, the Applicants request authorization to (1) include 100% of prudently incurred Construction Work in Progress ("CWIP") in rate base for their Phase 2 Projects ("CWIP Incentive") and (2) recover 100% of prudently incurred costs associated with their investment in the Phase 2 Projects if such projects are abandoned or cancelled for reasons beyond the control of the Applicants ("Abandoned Plant Incentive") (collectively, the "Rate Incentives"). As discussed further below, this filing follows an NYPSC order authorizing the Applicants to seek CWIP recovery.[6] Section 3.3 of the Cost Sharing and Recovery Agreement ("CSRA") approved by the NYPSC requires a NYPSC order before a transmission owner may seek FERC authorization to include 100% CWIP in rate base.[7]

Applicants respectfully request that FERC grant the Rate Incentives, without further proceedings, consistent with FERC precedent. Relevant FERC precedent includes several recent FERC orders that have approved similar transmission incentive filings without further proceedings[8] and FERC's statement in Order No. 679 that it will resolve incentive rate filings on the paper submissions "whenever possible."[9] Applicants respectfully request an effective date of July 8, 2024, no later than the end of the 60-day notice period.

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[5] *Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*, Order Approving Phase 2 Areas of Concern Transmission Upgrades, N.Y. Pub. Serv. Comm'n, Case No. 20-E-0197 (Feb. 16, 2023) ("Phase 2 Order"). The Phase 2 Order is provided as Exhibit 1 to Attachment A.

[6] *Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*, Order Addressing Ratemaking for Areas of Concern Transmission Upgrades, N.Y. Pub. Serv. Comm'n, Case No. 20-E-0197, (Apr.19, 2024) ("Phase 2 CWIP Order"). The Phase 2 CWIP Order is provided as Exhibit 2 to Attachment A.

[7] *Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*, Order Accepting Compliance Filings, N.Y. Pub. Serv. Comm'n, Case No. 20-E-0197 (May 12, 2022). Section 3.3 of the CSRA provides that:

> [u]nless another period is approved by the NYPSC or [Long Island Power Authority's] Board of Trustees, as appropriate, the period of recovery for an Approved Transmission Project that is completed shall commence on the in-service date of the Approved Transmission Project (provided the Transmission Owner shall recover its cost of financing construction—the Allowance for Funds Used During Construction or "AFUDC") until the end of the useful life of the Approved Transmission Project. Recovery of Approved Transmission Project costs during construction— referred to as the Construction Work in Progress incentive or "CWIP" —shall be recoverable under this Agreement only if approved by the NYPSC. Costs of Approved Transmission Projects that are abandoned for reasons beyond the control of the Transmission Owner shall be recovered commencing on the date of abandonment.

[8] *See, e.g., Midcontinent Indep. Sys. Operator, Inc. and N. Ind. Pub. Serv. Co. LLC*, 184 FERC ¶ 61,034 (2023); *Otter Tail Power Co.*, 183 FERC ¶ 61,121 (2023); *Midcontinent Indep. Sys. Operator, Inc.*, 182 FERC ¶ 61,039 (2023); *NextEra Energy Transmission Sw., LLC*, 180 FERC ¶ 61,032 (2022).

[9] *See* Order No. 679 at P 79.

I. BACKGROUND

A. Applicants

Applicants are each a wholly-owned subsidiary of Avangrid, Inc. ("Avangrid"). NYSEG operates approximately 35,000 miles of electric distribution lines and 4,500 miles of electric transmission lines across more than 40% of upstate New York. It also operates more than 8,300 miles of natural gas distribution pipelines and 20 miles of gas transmission pipelines. It serves approximately 907,000 electricity customers and 270,000 natural gas customers. RG&E operates approximately 8,900 miles of electric distribution lines and 1,100 miles of electric transmission lines. It also operates approximately 10,600 miles of natural gas distribution pipelines and 105 miles of gas transmission pipelines. It serves approximately 385,900 electricity customers and 319,000 natural gas customers in a nine-county region in New York surrounding the City of Rochester. Avangrid is a leading sustainable energy company with $45 billion in assets and operations in 24 U.S. states. Avangrid is part of the Iberdrola Group. Iberdrola, S.A. is an energy pioneer with one of the largest renewable asset bases of any company in the world. Avangrid has two primary lines of business: Avangrid Networks, Inc. ("Avangrid Networks"), of which Applicants are a part, and Avangrid Renewables, LLC.

B. New York State Policy

On July 18, 2019, the Climate Leadership and Community Protection Act ("CLCPA") was signed into law.[10] The CLCPA established specific renewable and zero-emission energy targets for New York State to reduce carbon emissions from the electricity sector. Specifically, it provides that 70% of electricity be produced from renewables by 2030 and 100% of electricity be produced from zero-emissions resources by 2040.

Recognizing the need to enhance New York State's transmission infrastructure to support CLCPA goals, New York State enacted the Accelerated Renewable Energy Growth and Community Benefit Act[11] ("AREGCBA") on April 3, 2020. To achieve CLCPA targets, the AREGCBA requires the State to

> take appropriate action to ensure that: (i) new renewable energy generation projects can be sited in a timely and cost-effective manner that includes consideration of local laws concerning zoning, the environment or public health and safety and avoids or minimizes, to the maximum extent practicable, adverse environmental impacts; and (ii) renewable energy can be efficiently, and cost effectively injected

[10] N. Y. Laws 2019, ch. 106, § 1(12)(d); *see also* § 4(2) (codified, in part, at N.Y. Pub. Serv. Law § 66-p (2).

[11] N.Y. Laws 2020, ch. 58, Part JJJ. Among other things, the AREGCBA directs the NYPSC to commence two proceedings to advance projects needed to meet the goals of the CLCPA: one proceeding is to focus on establishing "a distribution and local transmission capital plan" for each utility; and the second planning proceeding mandated under the AREGCBA relates to upgrades on the "bulk transmission" needed to meet CLCPA targets. AREGCBA §§ 7(3) and 7(4).

> into the state's distribution and transmission system for delivery to regions of the state where it is needed.[12]

Section 7 of the AREGCBA directs the New York Department of Public Service Staff ("DPS Staff"), in consultation with other parties,[13] to undertake a comprehensive study to identify "distribution upgrades, local transmission upgrades and bulk transmission investments that are necessary or appropriate to facilitate the timely achievement of CLCPA targets."[14] The AREGCBA further requires the NYPSC to commence a proceeding to "establish a distribution and local transmission capital plan for each utility in whose service territory the power grid study identified distribution upgrades and local transmission upgrades that the department determines are necessary or appropriate to achieve the CLCPA targets."[15]

Taken together, the CLCPA and the AREGCBA established ambitious renewable and zero-carbon energy goals for New York State, and, among other things, provided a vision and roadmap for how to expand New York's electric transmission system to enable the necessary expansion of clean energy in furtherance of such goals.

C. NYPSC Review and Approval

The May 14, 2020, NYPSC order in Case No. 20-E-0197 formally initiated one of the two proceedings required under the AREGCBA ("Initiating Order"), specifically to establish a distribution and local transmission capital investment plan for each utility.[16] The NYPSC directed New York utilities, including the Applicants, to submit a comprehensive report to the NYPSC on November 2, 2020 (the "2020 CLCPA Study"), which identified local transmission and distribution investments that the utilities propose. In the 2020 CLCPA Study, the utilities recommended dividing local transmission projects into phases. Phase 1 projects would be those responsive to the Initiating Order's discussion of "business as usual" transmission projects[17] that are projects already needed under existing planning criteria, but which also have the benefit of adding incremental headroom for renewable energy. Recovery of Phase 1 projects is through existing transmission and distribution rates, planned to start with the next NYPSC rate plan commencing May 2026. Phase 2 projects would include incremental transmission projects that

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[12] AREGCBA § 2(2).

[13] The AREGCBA specifically requires DPS Staff to consult with the New York State Energy Research and Development Authority ("NYSERDA"), the New York Power Authority ("NYPA"), the Long Island Power Authority ("LIPA"), the New York Independent System Operator, Inc. ("NYISO"), and the state's utilities. *See* AREGCBA § 7(2).

[14] *Id.*

[15] AREGCBA § 7(3).

[16] *Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*, Order on Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act, N.Y. Pub. Serv. Comm'n, Case No. 20-E-0197, at p. 3 (May 14, 2020) ("Initiating Order").

[17] *Id.* at p. 8.

are proposed primarily to increase transmission system headroom in support of renewable energy development.

On September 9, 2021, the NYPSC issued the 2021 Phase 2 Order.[18] In that order, the NYPSC identified specific "Areas of Concern" in New York "characterized by the presence of existing renewable generation that is already experiencing curtailments and a strong level of developer interest that exceeds the capability of the local transmission system."[19] To address the local transmission deficiencies in the Areas of Concern, the NYPSC ordered the Applicants, along with Central Hudson Gas & Electric Corporation ("Central Hudson") and Niagara Mohawk Power Corporation d/b/a National Grid ("Niagara Mohawk" or "National Grid"), to "consult with Department of Public Service Staff regarding presentation of a minimum of two options for each Area of Concern that identifies the most cost-effective Phase 2 upgrades on a dollar per megawatt basis, which shall be filed within 180 days of the issuance of this Order."[20]

Consistent with the 2021 Phase 2 Order, on March 8, 2022, the Applicants, joined by Central Hudson and National Grid, consulted with New York State Department of Public Service Staff ("DPS Staff") and submitted a joint petition for approval of Phase 2 local transmission projects designed to address the transmission system deficiencies identified in the 2021 Phase 2 Order. On February 16, 2023, the NYPSC issued the Phase 2 Order, which approved the Applicants' Phase 2 Projects.

On June 17, 2022, Consolidated Edison Company of New York, Inc. ("Con Edison"), Orange and Rockland Utilities, Inc. ("O&R"), Central Hudson, National Grid, and the Applicants (collectively, the "CSRA Parties") entered into the CSRA. The CSRA and the associated Rate Schedule 19 of the NYISO OATT memorialize the CSRA Parties' acknowledgment of their local transmission development obligations pursuant to the CLCPA and AREGCBA and that the costs of associated NYPSC-approved projects shall be shared on a statewide basis and recovered on a volumetric load-ratio basis. Consistent with the FPA, the CSRA contemplates that each of the CSRA Parties will develop and file with FERC formula rate templates to govern the cost recovery of NYPSC-approved projects. As relevant to this Application, Section 3.3 of the CSRA also specifies that the use of CWIP will not be permitted unless first sought and approved by both the NYPSC and FERC, and any abandoned plant incentive requires prior FERC approval. FERC approved the CSRA and the associated methodology on August 19, 2022.[21]

[18] *Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*, Order on Local Transmission and Distribution Planning Process and Phase 2 Project Proposals, N.Y. Pub. Serv. Comm'n, Case No. 20-E-0197, (Sept. 9, 2021) ("2021 Phase 2 Order").

[19] *Id.* at p. 34.

[20] *Id.* at Ordering Clause Number 6.

[21] *Consol. Edison Co. of N.Y., Inc., et al.*, 180 FERC ¶ 61,106 (2022).

On May 3, 2023, NYISO, on behalf of and at the request of the Applicants, filed proposed formula rates with FERC for the Applicants' Phase 2 Projects.[22] The Applicants' formula rates were accepted by a December 4, 2023, FERC order, subject to a final compliance filing (made on January 23, 2024) and potential refund pending determination of a FERC authorized ceiling return on equity ("ROE") through hearing and settlement procedures.[23]

As required by Section 3.3 of the CSRA, on October 12, 2023, the Applicants filed a petition with the NYPSC for approval to seek authorization from FERC for CWIP Incentive associated with the Applicants' Phase 2 Projects. On April 19, 2024, the NYPSC issued its order authorizing the Applicants to submit this filing.[24]

D. Applicants' Phase 2 Projects

As further detailed in the testimony of Mr. Alan Trotta, Senior Director of Transmission and Regional Energy Policy for Avangrid Networks, provided as Attachment A ("Trotta Testimony"), the Applicants' Phase 2 Projects include 33 local transmission projects approved by the NYPSC in its Phase 2 Order to support the achievement of New York's renewable energy policy goals while increasing reliability and reducing congestion.[25] In total, the Applicants' Phase 2 Projects represent approximately 300 miles of transmission line rebuilds, as well as major upgrades or rebuilds of nine substations and minor upgrades at several others. Furthermore, seven of the transmission circuits being rebuilt are at least 70 years old, and another ten are between 50 and 70 years old. Four of the substations being rebuilt are at least 93 years old, and two substations are being rebuilt in new locations outside of current flood plains. Detailed descriptions of the Applicants' Phase 2 Projects are provided as Exhibit 3 to Attachment A.

II. REQUESTED INCENTIVES

Per Order No. 679 and the Incentives Policy Statement, an applicant seeking incentive rate treatment is required to explain how the proposed rate treatment complies with Section 219 of the FPA and is required to demonstrate that the incentives are just and reasonable and not unduly discriminatory or preferential. To meet these requirements, the applicant is required to demonstrate:

> (1) the facilities "either ensure reliability or reduce the cost of delivered power by reducing congestion" (the "Project Need Test");

[22] NYSEG's formula rate template and associated protocols are set forth in Attachment 1 to Rate Schedule 19 of the NYISO OATT. RG&E's formula rate template and associated protocols are set forth in Attachment 2 to Rate Schedule 19 of the NYISO OATT.

[23] *N.Y. State Elec. & Gas Corp., et al.*, 185 FERC ¶ 61,164 (2023).

[24] *Supra* note 6.

[25] Trotta Testimony, Attachment A at 6.

(2) there is a nexus between the incentive sought and the investment and the total package of incentives sought is tailored to address the demonstrable risks or challenges faced by the applicant in undertaking the project (the "Nexus Test"); and

(3) the resulting rates are just and reasonable.[26]

As noted above, the Applicants are requesting approval for two incentive-based rate treatments authorized under Order No. 679 for the Applicants' Phase 2 Projects, (i) the CWIP Incentive and (ii) the Abandoned Plant Incentive.[27] The Applicants are not seeking an ROE incentive adder. The Applicants' planned investment in their Phase 2 Projects complies with FERC's requirements for these incentives and satisfies the standards of Order No. 679.

A. The Phase 2 Projects Ensure Reliability and Reduce Congestion

The Applicants satisfy the Project Need Test because the NYPSC concluded that the projects were necessary to ensure reliability and reduce congestion when it approved the Applicants' Phase 2 Projects. In Order No. 679, FERC established a rebuttable presumption that the Project Need Test is satisfied if the transmission project requesting incentives resulted from "a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion," the proposed project is located in a National Interest Electric Transmission Corridor, or "where a project has received construction approval from an appropriate state commission or state siting authority."[28] FERC also clarified in Order No. 679 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."[29] Order No. 679-A further clarified that FERC would require applicants to show that the state process relied upon to meet the Project Need Test reasonably determined the project is necessary to ensure reliability and reduce congestion.[30] Specifically, an applicant seeking to invoke the rebuttable presumption is required to explain how the applicable process, in fact, considered whether the project ensures reliability or reduces congestion.[31]

1. Project Need Was Established by the NYPSC

As further described by Mr. Trotta in Attachment A, the Applicants' Phase 2 Projects were selected and approved for construction through the NYPSC's process pursuant to AREGCBA, following extensive transmission analysis and evaluation.[32] The NYPSC is charged by state law

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[26] *See* 18 C.F.R. § 35.35(d); *see also supra* n.3.

[27] Order No. 679 at PP 115-122 (CWIP Incentive), PP 163-167 (Abandoned Plant Incentive).

[28] *Id*. at P 58.

[29] *Id*. at P 54.

[30] Order No. 679-A at P 5.

[31] Order No. 679-A at P 49.

[32] Trotta Testimony, Attachment A at 4-6.

with setting rates, approving new utility infrastructure projects, and ensuring New York's utilities provide adequate service. Thus, it is the relevant state commission for purposes of the construction approval associated with the Applicants' Phase 2 Projects.[33] Through the Phase 2 Order, the NYPSC approved "the upgrades needed to resolve all curtailments in the Northern New York and the Capital regions, and the upgrades identified for the Limited Curtailment Option for the Southern Tier area."[34] In approving the Applicants' Phase 2 Projects for construction, the NYPSC expressly considered whether those projects would ensure reliability or reduce congestion. Indeed, ensuring reliability and reducing congestion were among the "fundamental objective[s]" of the NYPSC's Areas of Concern process.[35] The NYPSC further explained in its order:

> Here, faced with balancing generation and transmission costs, under legislatively-based renewable energy mandates, *we find that addressing the congestion by investing in transmission infrastructure is likely the better choice from the ratepayer perspective*. This investment will maximize the public investment already made in renewable generation by *increasing the amount of renewable energy that can be delivered* and will also make the NYSERDA procurement program more competitive in the future, by largely *eliminating curtailment risk premiums*.[36]

Finally, after noting the 50-90 years age of some of the facilities to be replaced by the Applicants' Phase 2 Projects, the NYPSC found that "the resulting replaced facilities will improve

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[33] Although the Applicants' Phase 2 Projects are also subject to additional New York State permitting processes pursuant to Article VII, it is the NYPSC's review and construction approval – as memorialized in the Phase 2 Order – that conducted the reliability and congestion assessment relevant to the Section 219 criteria. New York Public Service Law, Chapter 48, Article VII, Siting of Major Utility Transmission Facilities. Therefore, it is the NYPSC's construction approval that is relevant to this analysis.

[34] Phase 2 Order at p. 34; Trotta Testimony, Attachment A at 8-10; *contra Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*, Order on Priority Transmission Projects, N.Y. Pub. Serv. Comm'n, Case No. 20-E-0197, p. 25 (Oct. 15, 2020) ("PTP Order") ("Thus, we conclude that [Niagara Mohawk's Northern New York] Project is 'needed expeditiously.'"); *Niagara Mohawk Power Corp.*, 178 FERC ¶ 61,173, at P 25 (2022) ("[t]he Project does not qualify for the Order No. 679 rebuttable presumption that it satisfies the Section 219 criteria, because it has neither been approved in a regional planning process, nor received state construction approval. Although Niagara Mohawk argues that the designation of the Project as a Priority Project by the New York Commission should qualify the Project for the rebuttable presumption, we find that Niagara Mohawk did not demonstrate that this process considered whether the Project ensures reliability or reduces the cost of delivered power by reducing the cost of congestion, as contemplated by Section 219 and Order No. 679."). In contrast to the NYPSC's PTP Order, which did not provide construction approval or consider reliability and congestion, the Phase 2 Order explicitly approved the construction of the Applicants' Phase 2 Projects and evaluated their contribution to reliability and congestion.

[35] *See* Phase 2 Order, App'x at p. 1 ("The fundamental objective for the Areas of Concern [] is to develop and construct local transmission upgrades to reduce congestion and, therefore, improve deliverability . . . ."); *see also* Phase 2 Order at p. 32 ("The AOC Projects . . . are intended to mitigate deliverability violations caused by thermal overloads and low voltage violations, which would otherwise lead to curtailment of renewable generator outputs."); Trotta Testimony, Attachment A at 8-10.

[36] Phase 2 Order at p. 43 (emphasis added).

both reliability and resiliency of the system."[37] Therefore, both the Phase 2 Order and its supporting technical analysis make clear that reliability enhancement and curtailment reduction informed the NYPSC's decision to approve the construction of the Applicants' Phase 2 Projects. Accordingly, the rebuttable presumption of the Project Need Test is satisfied, and the Applicants' Phase 2 Projects satisfy the Project Need Test.

2. Independent Analyses Also Demonstrate Project Need for the Applicants' Phase 2 Projects

In addition to the rebuttable presumption of Project Need Test established by the NYPSC's Phase 2 Order, independent analyses demonstrate that the Applicants' Phase 2 Projects ensure reliability and reduce the cost of delivered power by reducing congestion. Therefore, even in the absence of the rebuttable presumption established above, the Applicants' Phase 2 Projects satisfy the Project Need Test.[38]

As an initial matter, NYISO's 2019 Congestion Assessment and Resource Integration Study ("2019 CARIS Study") analyzed system conditions under several expected future scenarios, including a sensitivity study that assumed renewables deployment that aligns with New York's CLCPA mandates.[39] This sensitivity study identified high levels of congestion, and associated curtailments of wind and solar generation, in the southern tier region of New York State where the Applicants' Phase 2 Projects are sited. More specifically, the 2019 CARIS Study found:

> In general, the wind and solar generation in this pocket experience high levels of curtailments, and the transmission facilities in this pocket show high levels of congested hours. This congestion results mainly from the lack of strongly interconnected bulk power transmission facilities near injection points, and the 115 kV network was not designed for large power transfers.[40]

Based on these findings, the NYPSC directed utilities serving certain areas to propose "cost-effective upgrades that would relieve the congestion limiting existing renewable generation and improve the deliverability of the renewable generation expected to develop in those parts of the State."[41] The sponsoring utilities identified deliverability violations under limited curtailment and no curtailment scenarios, then developed and proposed specific projects "to coincide with each planning scenario studied to provide sufficient headroom to meet the deliverability requirements of the renewable generators modeled."[42] The proposed projects, which included the Applicants' Phase 2 Projects, focused on enhancing reliability and reducing constraints in areas characterized

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[37] Phase 2 Order, App'x at pp. 14, 34.

[38] Order No. 679 at P 57.

[39] NYISO 2019 Congestion Assessment and Resource Integration Study, at p. 65 (July 2020), https://www.nyiso.com/documents/20142/2226108/2019-CARIS-Phase1-Report-Final.pdf.

[40] *Id.* at p. 97.

[41] Phase 2 Order at p. 6 (internal citation omitted).

[42] *Id.*

by the presence of existing renewable generation already experiencing curtailments and a strong level of developer interest that exceeds the capability of the local transmission system.[43] Specifically, the NYPSC stated that Applicants' projects would "transform the Southern Tier Region from one that would experience significant curtailment risk to one that would experience virtually no curtailment risk . . . ."[44] In sum, the Applicants' Phase 2 Projects were developed with the express purpose of addressing congestion, increasing the deliverability of power, and reducing curtailment risk premiums as identified through the NYISO's economic planning process. Therefore, the Applicants' Phase 2 Projects should fit squarely within FERC's description of projects meeting the Project Need Test.

B. The Rate Incentives Sought Address the Risks and Challenges Faced by the Applicants in Developing the Applicants' Phase 2 Projects

An applicant seeking rate incentives is required to demonstrate a "nexus" between the incentives requested and the investment being made. FERC has explained that the Nexus Test is fact-specific and is evaluated on a case-by-case basis.[45] An applicant satisfies the Nexus Text when it demonstrates that the total package of incentives being sought are "tailored to address the demonstrable risks or challenges faced by the applicant."[46]

The Applicants are making significant investments in New York's clean energy future, and the Applicants' Phase 2 Projects are incremental to the already substantial planned investment in transmission infrastructure, including the Applicants' planned CLCPA Phase 1 transmission investments. The annual investment in the Phase 2 Projects for NYSEG is projected to be approximately $198 million through 2024, $154 million in 2025, and $237 million in 2026[47] as compared to 5-year annual average transmission plant additions of around $102 million from 2019-2023.[48] For NYSEG, the total gross transmission plant in service was $1.8 billion as of December 31, 2023.[49] Therefore, the capital cost of NYSEG's Phase 2 Projects alone is about 20% higher than the total cost of all NYSEG transmission gross plant in service as of December 31, 2023. The annual investment in CLCPA Phase 2 transmission for RG&E is projected to be approximately $5 million in 2024, $4 million in 2025, and $4 million in 2026[50] as compared to the 5-year annual average transmission plant additions of around $103 million in 2019-2023.[51] For RG&E, the total

[43] Phase 2 Order at p. 5.

[44] Phase 2 Order, App'x at p. 31.

[45] Incentives Policy Statement at P 6.

[46] Order 679-A at P 27.

[47] When accounting for both CLCPA Phase 1 and Phase 2 transmission projects, NYSEG's combined annual investment is projected to be in excess of $340 million through 2024, $350 million in 2025, and $440 million in 2026.

[48] NYSEG FERC Form 1 filings from 2019-2023, pp. 204-207, line 58(c).

[49] NYSEG 2023 FERC Form 1, pp. 204-207, line 58(g).

[50] RG&E has no Phase 1 investments.

[51] RG&E FERC Form 1 filings from 2019-2023, pp. 204-207, line 58(c).

gross transmission plant in service was $1.5 billion as of December 31, 2023.[52] This is an unprecedented level of capital investment that the Applicants will need to fund.

The magnitude of the necessary investment in CLCPA-related transmission over the next few years will exacerbate the cash flow and credit metrics challenges facing each Applicant, which, if left unchecked, will increase the cost of debt for customers. The approved Phase 2 Projects, which represent an estimated $2.093 billion of investment by NYSEG and $157 million of investment by RG&E, includes several large projects with long development and construction schedules, all being developed simultaneously with the Phase 1 transmission projects. Although capital will be committed in the near term, cost recovery will not commence until the projects enter commercial operation under traditional ratemaking treatment, with higher overall costs to customers via the inclusion of Allowance for Funds Used During Construction ("AFUDC"). At the scale contemplated for the Phase 2 transmission investments, the Applicants anticipate reaching a point in the next few years where NYSEG and RG&E will have outlaid approximately $350 million[53] and $10 million, respectively, in net capital expenditures for plant additions that are not yet in service, and thus, not generating any cash flow under the traditional approach. The Rate Incentives help mitigate these risks, and each requested incentive is tailored to address specific dimensions of these risks.

1. The CWIP Incentive Is Tailored to Mitigate the Risks and Challenges Associated with the Development of the Applicants' Phase 2 Projects

The inclusion of 100% CWIP in rate base for the Applicants' Phase 2 Projects will provide a measure of financial relief to Applicants, who are expending an unprecedented amount of capital in furtherance of New York's transmission policy goals. FERC has stated that "this rate incentive treatment will advance the goals of Section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow, thereby reducing the pressure on an applicant's finances caused by investing in transmission projects."[54]

It will be harmful to the Applicants' cash flows and credit metrics to utilize AFUDC for capitalization of all the capital costs for both Phase 1 and Phase 2 transmission. The Applicants' cash flows and credit metrics are already under pressure, and the exclusive use of AFUDC for capitalization of these significant investments will cause further pressure and put the Applicants' investment grade credit ratings at risk.[55] As shown in Figure 1 below, NYSEG's Cash from Operations less Changes in Working Capital / Debt ("CFO pre-WC/Debt") metric has already been below the expected range for investment grade ratings from 2020-2022, falling to 2.3% by year-

[52] RG&E 2023 FERC Form 1, pp. 204-207, line 58(g).

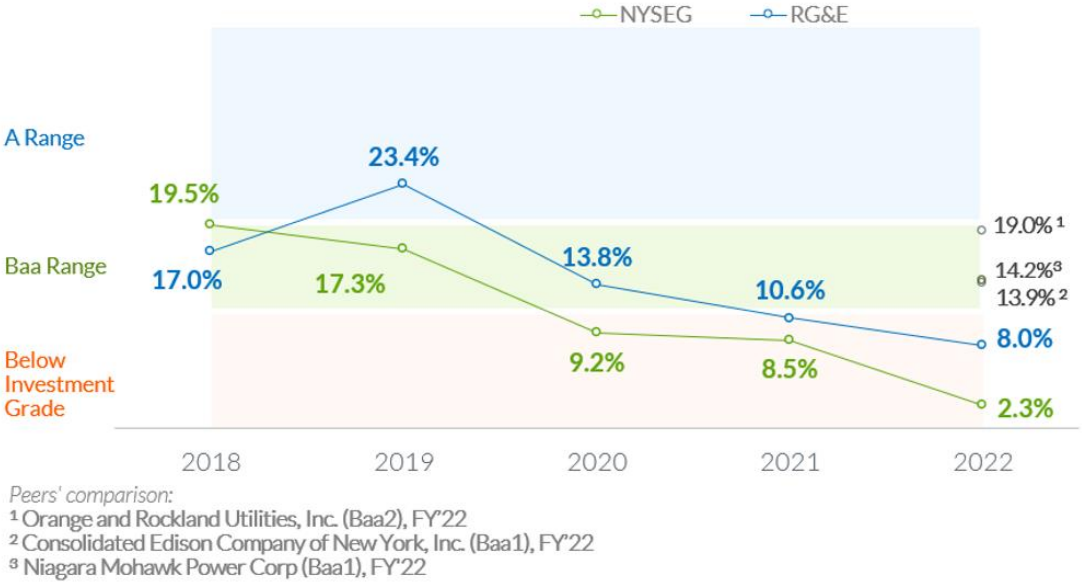
[53] For NYSEG, the total transmission investments across CLCPA Phase 1 and Phase 2 projects are approximately $700 million. RG&E has no Phase 1 investments.

[54] *See, e.g., Midcontinent Indep. Sys. Operator, Inc. and N. Ind. Pub. Serv. Co. LLC*, 184 FERC ¶ 61,034, at P 39; *PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.*, 135 FERC ¶ 61,229 (2011); *see also PPL Elec. Utils. Corp. and Pub. Serv. Elec. and Gas Co.*, 123 FERC ¶ 61,068, at P 43 (2008), *reh'g denied*, 124 FERC ¶ 61,229 (2008).

[55] Direct Testimony of Andrea Vanluling and Michael Panichi, Attachment C at 3-6 ("Vanluling and Panichi Testimony").

end 2022, substantially less than in-state peer companies O&R, Con Edison, and National Grid, which have CFO pre-WC/Debt ratios ranging from roughly 14% to 19%. Similarly, RG&E's CFO pre-WC/Debt has also been below investment grade for 2021-2022.

Figure 1



Ratings agencies have referred to NYSEG's financial metrics as extremely weak, referring to NYSEG's ratio of CFO pre-WC/Debt of approximately 5% as being among the lowest in the industry.[56] Ratings agencies have similarly characterized RG&E's financial metrics as extremely weak.[57] Granting the inclusion of 100% CWIP for the Applicants' Phase 2 Projects will help mitigate the additional pressure on the Applicants' cash flows and credit metrics caused by the NYPSC-approved incremental $2.093 billion of NYSEG investment and $157 million of RG&E investment and mitigate against a downgrade in each Applicants' credit rating.

Furthermore, the allowance of CWIP benefits customers by avoiding the buildup of large AFUDC balances, which then compound in rates over the life of the investment.[58] By replacing

[56] Moody's NYSEG Credit Opinion dated January 19, 2024, at 1. Similar language is also found in the Moody's RG&E Credit Opinion dated January 19, 2024, at 1; *see also* Vanluling and Panichi Testimony, Attachment C at 5-6.

[57] Moody's RG&E Credit Opinion dated January 19, 2024, at 1; *see also* Vanluling and Panichi Testimony, Attachment C at 5-6.

[58] Actual experience with a large project developed by a utility affiliate of the Applicants, the Maine Power Reliability Program ("MPRP") developed by Central Maine Power Company ("CMP"), demonstrates in practice how customers experience substantial savings from the use of CWIP. Commenced in 2010 and predominantly completed in 2016, the $1.4 billion MPRP was the largest transmission construction project ever undertaken in Maine, more than quadrupling CMP's transmission plant in service, with the construction of four new 345 kV substations, one new 115 kV substation, and related facilities linked by approximately 440 miles of new transmission lines. Similar to the circumstances currently facing the Applicants, CMP's ability to include 100% of CWIP in its rate base was necessary because of the size, capital-intensive nature, and time needed to construct the MPRP. The inclusion of 100% CWIP reduced the cost of the project by an estimated $150 million, minimized the risk to the project of cash flow constraints,

AFUDC with CWIP, once the Applicants' Phase 2 Projects are placed in service, the Applicants' return on investment for the life of the plant will only be calculated on the actual cost of the projects, excluding any non-cash carrying charges for AFUDC balance accrued during construction.[59] This will substantially reduce the total cost of the Applicants' Phase 2 Projects, and customer savings will persist through the life of the investment until it is fully depreciated. Allowing the inclusion of CWIP in the Applicants' rate base will also assist in obtaining favorable financing, which directly benefits customers via lower overall debt costs ultimately borne by customers.[60] Finally, allowing the inclusion of CWIP in the Applicants' rate base can help reduce rate shock by smoothing out the eventual, significant increase in rate base that would exist in a short timeframe under traditional capital investment cash recovery treatment.[61]

The Applicants estimate that project capital costs will be reduced by $173 million for NYSEG and $15 million for RG&E, for a total of $188 million in reduced capital costs, if capital outlays are recovered via CWIP instead of AFUDC.[62] This is due to the avoidance of incurring AFUDC carrying costs, which are placed into project capital costs and recovered as depreciation expense over the accounting life of the assets. As such, once the Applicants' Phase 2 Projects enter service, customer rates will continuously be lower over the subsequent decades if supported by CWIP than if paid for by AFUDC. As illustrated in Exhibits 6 and 7 to Attachment C, the total savings for CWIP relative to AFUDC in terms of revenue requirements for NYSEG are $270 million on a nominal basis and $109 million on a real dollar basis. As for RG&E, the total savings for CWIP relative to AFUDC in terms of revenue requirements are $28 million on a nominal basis and $11 million on a real dollar basis.[63]

The use of CWIP will support the Applicants' ability to obtain more favorable financing when financing their Phase 2 Projects and better position the Applicants from a credit metrics standpoint, which will help avoid an unnecessary credit downgrade. With AFUDC, the Applicants face significant cash flow challenges that could result in a downgrade of debt ratings. The Applicants estimate a one-level downgrade (i.e., to BBB+/Baa2) for either of NYSEG or RG&E would increase debt financing costs for customers by 14 basis points, while a two-notch downgrade for either of NYSEG or RG&E to low investment grade would increase debt financing costs for customers by 64 basis points. This is an additional cost for the Applicants' Phase 2 Projects due to increased debt risk for the Applicants, estimated at $2.3 million for a one-notch downgrade or $10 million for a two-notch downgrade,[64] that will be passed on to customers if the Applicants

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and reduced "rate shock" for customers in New England by replacing non-cash AFUDC with cash earnings and spreading the impact of new plant additions over the entire construction period. The MPRP project is an example of how the allowance of 100% CWIP in rate base can be a win-win for transmission owners and customers.

[59] *See* Vanluling and Panichi Testimony, Attachment C at 8-12.

[60] *Id*. at 13-15.

[61] *Id*. at 15.

[62] *Id*. at 8, Exhibit 2.

[63] *Id*. at 13-14. Additionally, 2% is the social discount rate utilized by New York in its calculation of the social cost of carbon.

[64] *Id*. at 7. Assuming 14 or 64 basis points are added to the debt rate of the weighted average cost of capital.

were to use AFUDC instead of CWIP.[65] These estimated costs are for each of the Applicants' Phase 2 investments only. Because the increase in debt financing costs would affect the Applicants more broadly than just Phase 2 investments, total customer costs associated with a downgrade would be substantially higher for both NYSEG and RG&E.

The CWIP Incentive sought in this filing is consistent with other transmission incentives authorized for similar transmission projects in New York. FERC granted the New York Transco LLC ("New York Transco") a 100% CWIP incentive for the Edic to Pleasant Valley 345 kV line project, with the segment of the project awarded to New York Transco now known as the New York Energy Solution (a/k/a Segment B).[66] In its April 2, 2015, Order, FERC stated, "We find that allowing NY Transco to include 100 percent of CWIP in rate base 'removes a disincentive to construction of transmission, which can involve very long lead times and considerable risk to the utility that the project may not go forward.'"[67] FERC elaborated further on the value of the CWIP incentive, stating:

> The cost and lengthy construction period involved in completing these projects will strain NY Transco's cash flow and put upward pressure on NY Transco's ability to finance construction. Granting the CWIP incentive will help ease this pressure and reduce project cost by providing upfront certainty, improved cash flow, and reduced borrowing costs as NY Transco moves forward with each project. Inclusion of CWIP in rate base "balance[s] the need for companies to recover carrying costs in a timely manner with the Commission's cost responsibility principle, while reducing the rate impacts of new transmission projects on customers."[68]

Similarly, the New York Power Authority ("NYPA") has also received the 100% CWIP incentive for its approximately $281 million portion of the "Segment A" of the Edic to Pleasant Valley transmission solution.[69] Even more recently, National Grid received FERC authorization for 100% CWIP in rate base for the Smart Path Connect Project in Northern New York.[70]

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[65] *See* Vanluling and Panichi Testimony, Attachment C at 6-7.

[66] *N.Y. Indep. Sys. Operator, Inc., et al.*, 151 FERC ¶ 61,004 (2015).

[67] *Id*. at P 80 (*quoting* Order No. 679 at P 117).

[68] *Id*. at P 81 (*citing DATC Midwest Holdings, LLC*, 139 FERC ¶ 61,224, at P 56 (2012); *MidAmerican Energy Co.*, 137 FERC ¶ 61,250, at P 53 (2011); *Bos. Edison Co.*, 109 FERC ¶ 61,300, at P 31 (2004)).

[69] *N.Y. Power Auth.*, 169 FERC ¶ 61,125, at P 26 (2019) ("We find that NYPA has shown a nexus between the CWIP Incentive and its investment in Segment A. We further find that authorizing 100 percent CWIP recovery for Segment A will enhance NYPA's cash flow, reduce interest expenses, assist it with obtaining favorable financing, and improve the coverage ratios used by rating agencies to determine NYPA's credit quality by replacing non-cash AFUDC with cash earnings. These factors are comparable to those that the Commission has taken into consideration in authorizing the inclusion of CWIP in rate base for other utilities.").

[70] *N.Y. Indep. Sys. Operator, Inc., et al.*, 184 FERC ¶ 61,059, at P 31 (2023) ("We find that Niagara Mohawk has shown a nexus between the proposed CWIP Incentive and its investment in the Project. Niagara Mohawk's share of the Project is expected to cost $535 million, which is a significant increase from its budgeted transmission capital investment project average of under $20 million. The record indicates the costs of completing this Project will increase

The transmission investments in New York that have included 100% CWIP in rate base are relatively small compared to the $2.093 billion of NYSEG investment and $157 million of RG&E investment authorized in the Phase 2 Order. Accordingly, the cash flow and financing needs FERC has acknowledged are well-addressed by CWIP are even more acute for the Applicants than they were for New York Transco, NYPA, or National Grid.

In accordance with Order No. 679, developers seeking the CWIP incentive are required to propose accounting procedures to ensure that the developer does not recover both AFUDC and corresponding amounts of CWIP in rate base.[71] As detailed in the testimony of Ms. April Theberge, Vice President of Accounting and Process for Avangrid, and Ms. Angela Bassano, Senior Director of Business Performance in the Energy Strategy, Policy & Transformation Team for Avangrid Networks, provided as Attachment D ("Theberge and Bassano Testimony"), the Applicants will each implement accounting controls to ensure that they do not accrue AFUDC on CWIP for the Applicants' Phase 2 Projects during any period when the CWIP incentive is in effect. Ms. Theberge and Ms. Bassano explain how the Applicants have each created new program codes in their SAP accounting systems, and all new capital orders for the Applicants' Phase 2 Projects will be tagged with this unique program code.[72] All capital orders tagged with the program code will be assigned an interest profile that prohibits the calculation of AFUDC on the capital assets.[73] Ms. Theberge and Ms. Bassano also explain that in accordance with the FERC Uniform System of Accounts, CWIP balances are typically subject to AFUDC, which increases the asset balance for the cost of funds used during construction in FERC Account 107. Ms. Theberge and Ms. Bassano point out that the use of the program code and interest profile discussed above will prevent the Applicants' SAP accounting system from calculating AFUDC on the tagged assets and will thus prevent double recovery of capitalization costs (i.e., both AFUDC and CWIP).[74]

FERC also requires that developers requesting the CWIP incentive make an annual filing with FERC.[75] Each Applicant will submit, as required, a CWIP report as part of its annual update process established in its respective formula rate implementation protocols that will provide

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risk in Niagara Mohawk's finances. We find that granting the CWIP Incentive will help ease this risk by providing upfront certainty, improved cash flow, and reduced interest expense as Niagara Mohawk proceeds with the Project. The Commission has, in prior cases, found that such incentives are appropriate in circumstances similar to Niagara Mohawk's.").

[71] *See Constr. Work in Progress for Pub. Utils.; Inclusion of Costs in Rate Base*, Order No. 298, FERC Stats. & Regs. ¶ 30,455, (cross-referenced at 23 FERC ¶ 61,224), *order on reh'g*, Order No. 298-B, FERC Stats. & Regs. ¶ 30,524 (cross-referenced at 25 FERC ¶ 61,375) (1983); *see also So. Cal. Edison Co.*, 161 FERC ¶ 61,107, at PP 32, 35 (2017).

[72] Theberge and Bassano Testimony, Attachment D at 4-6.

[73] *Id.*

[74] *Id.* at 5-6.

[75] 18 C.F.R. § 35.35(h) (requiring annual reports on form FERC-730 excluding projects with a projected cost of less than $20 million).

information regarding project construction and service statuses.[76] A semi-annual reporting requirement is also required as part of the Phase 2 CWIP Order.

2. The Applicants' Abandoned Plant Incentive Requests are Tailored to Mitigate the Risks and Challenges Associated with the Development of the Applicants' Phase 2 Projects

The Abandoned Plant Incentive requested herein is a request tailored to mitigate the regulatory risks associated with the Applicants' investments in their Phase 2 Projects if those projects are abandoned for reasons beyond the Applicants' control. In Order No. 679, FERC found that abandonment cost recovery is an effective means to reduce risk of non-recovery of costs and promote transmission development.[77] FERC further noted that the abandoned plant incentive is less of an incentive and "is perhaps more properly characterized as reducing a regulatory barrier."[78] The Abandoned Plant Incentive is appropriate for the Applicants' Phase 2 Projects because these projects each independently face significant regulatory, permitting, procurement, project-on-project, and execution risks that could result in the projects' cancellation for reasons beyond the Applicants' control.

As an initial matter, the Applicants' Phase 2 Projects are subject to notable project-on-project risk in the sense that they will (1) require extensive coordination between Applicants and neighboring utilities over whom Applicants have no operational control, and (2) depend on the deployment of a high volume of new renewable generation resources. As discussed further in the testimony of Mr. James Yeske Jr., Senior Director of Integrated Projects for Avangrid Networks, provided as Attachment B ("Yeske Testimony"), utility-scale construction projects are necessarily sequential, requiring careful planning around how outages and construction processes affect other resources.[79] Mr. Yeske explains that most of the Applicants' Phase 2 Projects are within close proximity to each other and are expected to be built on an accelerated timeline, in order to meet New York's CLCPA goals. He also notes that the Applicants' Phase 2 Projects must be constructed in areas with a high interest in renewable generation development, and the interconnection work done in parallel with construction will likely cause unique sequencing issues.[80] Mr. Yeske notes that the Abandoned Plant Incentive would also protect Applicants from prospective changes in actual resource development, such as a determination by the NYPSC that the Applicants' Phase 2 Projects are no longer necessary due to unanticipated trends regarding

[76] NYSEG's formula rate implementation protocols are set forth in Section 6.19.6.2.1 of Attachment 1 to Rate Schedule 19 of the NYISO OATT. RG&E's formula rate implementation protocols are set forth in Section 6.19.7.2.1 of Attachment 2 to Rate Schedule 19 of the NYISO OATT.

[77] Order No. 679 at P 163.

[78] *Id*. at P 28.

[79] Yeske Testimony, Attachment B at 2, 8.

[80] *Id*. at 8.

generation resource development in New York (i.e., less renewable resource growth than anticipated).[81]

Mr. Yeske's testimony also describes how the concentration of projects to be built pursuant to the AREGCBA Phase 2 process is likely to exacerbate already extant supply chain and procurement challenges. The Applicants' Phase 2 Projects involve construction on an expedited timeline, in construction-crowded areas, in a way that increases project-on-project and supply chain risks. As Mr. Yeske explains, inflationary pressures and supply chain constraints have placed significant strain on new project development across the energy sector.[82] He also notes that competition for labor, materials, and construction resources will be significantly heightened during the Applicants' Phase 2 Projects construction.[83]

Additionally, Mr. Yeske describes how the Applicants' Phase 2 Projects are subject to significant siting and permitting processes, which may need to be completed for as many as ten groups of sub-projects. Based on the current development plan, the Applicants' Phase 2 Projects will likely require permits from the following regulatory bodies: U.S. Army Corps of Engineers, New York State Department of Transportation, New York State Department of Environmental Conservation, New York State Department of Public Service, and the Federal Aviation Administration.[84] Engagement with and coordination among these entities is a complex and time-consuming process. Furthermore, Mr. Yeske notes that new and expanded right of ways will be needed in areas where the Applicants have only "pole rights." Securing these new and expanded right of ways may involve extended negotiations with municipalities and landowners, as well as other stakeholder engagement involving affected customers and non-governmental organizations.

Mr. Yeske also explains that at least one of the projects will involve parkland alienation. As further described by Mr. Yeske, parkland alienation is a complex and time-consuming process subject to review and approval at several levels of state government.[85] Recent projects that also required parkland alienation have been met with local opposition and ultimately vetoed by the New York State Governor, which has created material challenges for those projects.[86]

While siting and permitting are foundational to any project's success, these activities represent particular risks in the context of the accelerated timelines and development-intensive areas associated with the Applicants' Phase 2 Projects. The Abandoned Plant Incentive provides appropriate protection for each of the Applicants, given the risks and challenges presented by the complex siting, permitting, construction, and stakeholder coordination challenges presented by the Applicants' Phase 2 Projects.

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[81] *Id.*

[82] *Id.* at 5.

[83] *Id.*

[84] *Id.* at 6.

[85] *Id.* at 7.

[86] *Id.* at 7-8.

Also, and significantly, because the Applicants' Phase 2 Projects are being developed as a result of the AREGCBA state process, they are subject to the AREGCBA-specific risks outlined above. FERC has long acknowledged that the abandoned plant incentive is appropriate for projects at risk of abandonment due to policy and market charges that render the project unnecessary or imprudent.[87] New York's chosen public policy regarding transmission development processes or need (i.e., the AREGCBA process) could change at any point in response to rapidly evolving generation development trends and other state policy considerations.

As described by Mr. Yeske, granting the requested Abandoned Plant Incentive will help to mitigate the risk that Applicants cannot recover prudently incurred costs associated with project development, in the event the Applicants' Phase 2 Projects are cancelled for reasons beyond the Applicants' control. For these reasons, the Abandoned Plant Incentive requested herein is tailored to the demonstrable risks and challenges of the Applicants' Phase 2 Projects.

3. The Total Package of Incentives is Tailored to the Demonstrable Risks and Challenges of the Applicants' Phase 2 Projects

Order No. 679 requires that an applicant demonstrate that the total package of incentives is tailored to a project's specific risks and challenges.[88] FERC examines whether "the interrelationship between any incentives, and how any requested incentives address the risks and challenges faced by the project."[89] The CWIP Incentive and Abandoned Plant Incentive each mitigate different types of risks associated with the Applicants' Phase 2 Projects. The CWIP Incentive addresses cash flow deficiencies and is necessary for a project development undertaking of this scope, given the significant funding and capital outlay that will be required during the development and construction phases for each of NYSEG and RG&E. The CWIP Incentive also protects the Applicants and their ratepayers by mitigating the impact of significant capital expenditures, providing assurances to creditors, and ultimately reducing the cost of debt for each of NYSEG and RG&E. The Abandoned Plant Incentive mitigates the risk of non-recovery of Applicants' costs associated with regulatory, project-on-project, construction, and permitting risks that could cause project abandonment for reasons beyond the Applicants' control. Accordingly, the total package of incentives requested is tailored to the demonstrable risks and challenges of the Applicants' Phase 2 Projects.

C. The Rate Incentives Sought Will Not Result in Unjust or Unreasonable Rates

Pursuant to Order No. 679, the applicant is required to demonstrate that the proposed rate treatment is just and reasonable and not unduly discriminatory or preferential under Section 205 of the FPA.[90] The requested incentives will not adversely affect Applicants' rates for the following reasons. First, the CWIP Incentive does not affect the Applicants' level of recovery, only the

[87] *See, e.g., Ameren Serv. Co.*, 135 FERC ¶ 61,142, at P 59 (2011).

[88] Order No. 679-A at 27.

[89] *Id.* at PP 6, 21, 27; *see also* Incentives Policy Statement at P 7.

[90] 18 C.F.R. § 35.35(d)

timing of such recovery.[91] The CWIP Incentive allows applicants to include CWIP in rate base during the development and construction phases of the Applicants' Phase 2 Projects. It provides benefits to NYSEG and RG&E customers by reducing "rate shock" that occurs when the costs of transmission project investment are recovered once the Applicants' Phase 2 Projects are placed in service. Because costs are recovered early and on a rolling basis, Applicants will experience an increase in cash flow over time and have lower borrowing costs, which should ultimately reduce the interest that would compound customer rates.

Second, granting the Abandoned Plant Incentive will not influence NYSEG and RG&E recoveries pursuant to Rate Schedule 19 of the NYISO OATT until they seek recovery for abandoned plant costs. The Abandoned Plant Incentive allows an applicant to seek recovery of prudently incurred costs in a future rate proceeding and, in this instance, would only permit recovery in the event the Applicants' Phase 2 Projects are cancelled for reasons beyond the Applicants' control. Thus, the Abandoned Plant Incentive will not influence the Applicants' rates pursuant to Rate Schedule 19, unless and until either of the Applicants submit a Section 205 filing to FERC seeking to recover abandoned plant costs. FERC has previously found that both the Abandoned Plant Incentive and CWIP Incentive are just and reasonable under Section 205 of the FPA.[92]

III. TARIFF REVISIONS TO IMPLEMENT RATE INCENTIVES

The NYSEG and RG&E formula rate templates will need to be modified to incorporate CWIP in rate base and allow for abandoned plant recovery should the Commission grant the requested incentives to NYSEG and RG&E.[93] As detailed in the testimony of Ms. Theberge and Ms. Bassano, provided as Attachment D, the modification to include CWIP in rate base can be seen in line 23 of the respective formula rate templates provided as Exhibits 1 and 3 to Attachment D. Further, as also explained by Ms. Theberge and Ms. Bassano, the modifications to allow for Abandoned Plant Recovery for authorized projects in rate base are detailed on Exhibits 1 and 3 to Attachment D, line 24, titled "Abandoned Plant," as well as transmission depreciation expense on Exhibits 1 and 3 to Attachment D, line 54, labeled "Amortization of Abandoned Plant." The respective formula rate implementation protocols for NYSEG and RG&E would not require any changes to implement the requested Rate Incentives.

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[91] Order No. 679-A at P 38.

[92] *See, e.g., NextEra Energy Transmission MidAtlantic Ind., Inc., et al.*, 186 FERC ¶ 61,052 (2024); *Midcontinent Indep. Sys. Operator, Inc., et al.*, 186 FERC ¶ 61,029 (2024); *Dairyland Power Coop., et al.*, 185 FERC ¶ 61,242 (2023).

[93] NYSEG's formula rate template is set forth in Section 6.19.6.2.2 of Attachment 1 to Rate Schedule 19 of the NYISO OATT. RG&E's formula rate template is set forth in Section 6.19.7.2.2 of Attachment 2 to Rate Schedule 19 of the NYISO OATT. The proposed revisions to the NYISO OATT to implement the requested Rate Incentives are set forth in Attachments E and F. In addition, clean versions of the updated formula rate templates in their native excel format are included with this submittal.

IV. ADVANCED TECHNOLOGY STATEMENT

Pursuant to Order No. 679, Applicants are required to submit a statement describing any advanced technologies considered for their Phase 2 Projects, along with an explanation if advanced technologies will not be utilized. 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."[94]

As part of the design and evaluation process of their Phase 2 Projects, the Applicants considered solution component alternatives to incorporate advanced technology where feasible. Based on this analysis, the Applicants anticipate implementing various advanced technologies on its projects. Specifically, NYSEG is employing dynamic volt-ampere reactive ("VAR") compensation units (static synchronous compensator or static VAR compensators) at certain substations and advanced flow control devices (i.e., "Smart Valve") near certain substations. NYSEG is also utilizing modular equipment and underground cables. Both NYSEG and RG&E are utilizing other advanced technologies such as optical ground wires, micro-processor protective relays, digital fault recorders, and fiber optic technologies. Both Applicants are also implementing IEC 61850 protocols by outfitting substations with fiber optic cables and transitioning to digital control. The advanced technologies that will be implemented by NYSEG satisfy the standards set forth in Order No. 679 and Section 219 because they will increase the capacity, efficiency, and reliability of the Applicants' Phase 2 Projects and the broader transmission system.[95] The Applicants will emphasize good utility practice and efficient engineering design and construction practices in developing the Applicants' Phase 2 Projects.

V. COMMUNICATIONS

All communications and service related to this filing should be directed to the following:

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[94] Incentives Policy Statement at P 23.

[95] 42 U.S.C. § 16422(a); *see also Improvements to Generator Interconnection Procedures and Agreements*, Order No. 2023, 184 FERC ¶ 61,054, at 1578 (2023), *order on reh'g*, Order No. 2023-A, 185 FERC ¶ 61,063 (2023) (recognizing, among other technologies, static synchronous compensators, static VAR compensators, advanced power flow control devices as alternative transmission technologies that transmission providers are encouraged to evaluate).

VI. INFORMATION REQUIRED BY FERC'S REGULATIONS AND REQUEST FOR WAIVERS

A. Documents Submitted with this Filing (Section 35.13(b)(1))

In addition to this filing letter, which provides a detailed description of the Applicants' Phase 2 Projects and the support for the Rate Incentives requested herein, this filing contains the following components:

Attachment A	Direct Testimony and Exhibits of Alan Trotta
Attachment B	Direct Testimony of James Yeske
Attachment C	Direct Testimony and Exhibits of Andrea Vanluling and Michael Panichi
Attachment D	Direct Testimony and Exhibits of April Theberge and Angela Bassano
Attachment E	Redline Revisions to Formula Rate Templates (Section 6.19.6.2.2 of Attachment 1 to Rate Schedule 19 of the NYISO OATT for NYSEG and Section 6.19.7.2.2 of Attachment 2 to Rate Schedule 19 of the NYISO OATT for RG&E)
Attachment F	Clean Version of Formula Rate Templates (Section 6.19.6.2.2 of Attachment 1 to Rate Schedule 19 of the NYISO OATT for NYSEG and Section 6.19.7.2.2 of Attachment 2 to Rate Schedule 19 of the NYISO OATT for RG&E)
Attachment G	Protective Agreement

The Applicants request that Exhibit 5 to Attachment C be granted privileged treatment pursuant to 18 CFR § 388.112. Exhibit 5 to Attachment C contains credit opinions from S&P and Moody's, which are subscription services and, therefore, the credit opinions are not available to the general public.

B. Effective Date (Section 35.13(b)(2))

Should the Commission grant the NYSEG and RG&E request for the requested incentives, the Applicants respectfully request that the Commission issue an order by July 8, 2024 accepting the proposed formula rate template changes to implement the requested Rate Incentives effective July 8, 2024. Doing so will allow the Applicants to implement the necessary tariff revisions for the January 1, 2025, recovery period. As noted above, these requested incentives are narrowly tailored to the unique risks the Applicants will face in developing their Phase 2 Projects. FERC

typically issues affirmative findings and rulings on incentive rate treatments in its orders and does not typically set incentive rate requests for hearing or settlement procedures.[96]

C. Service (Section 35.13(b)(3))

The Applicants have served a copy of this filing electronically on the NYPSC and on the NYISO. The Applicants have 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 the Applicants 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.

D. Description of the Rate Filing (Section 35.13(b)(4))

The basis for the requested Rate Incentives is described above in Section II.

E. Statement of Reasons for the Rate Filing (Section 35.13(b)(5))

See Section II above.

F. Requisite Agreements (Section 35.13(b)(6))

Pursuant to Section 3.3 of the CSRA, the Applicants sought and received authorization from the NYPSC to seek the CWIP Incentive. The Phase 2 CWIP Order is provided as Exhibit 2 to Attachment A. No prior authorization is necessary for the Applicants requested Abandoned Plant Incentive.

G. Statement Regarding Illegal, Duplicative, or Unnecessary Costs (Section 35.13(b)(7))

None of the costs relating to this filing have been alleged in any administrative or judicial proceeding to be illegal, duplicative, or unnecessary costs that are demonstrably the product of discriminatory practices.

H. Cost of Service and Revenue Information to Support Filing and Request for Waiver

The Applicants believe that Section II, above, provides sufficient information for FERC to authorize the requested Rate Incentives. Applicants respectfully requests waiver of Sections 35.13(h)(38), 35.25(c)(4), and 35.25(g) of FERC's regulations. Section 35.13(h)(38) requires an applicant to submit Statement BM that describes 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. FERC has recognized that Statement BM

[96] *See* Order No. 679 at P 79 ("Additionally, in further facilitating these goals, the Commission does not intend to routinely convene trial-type, evidentiary hearings to review either a comprehensive or a single-issue Section 205 filing but will attempt to render a decision based on the paper submissions whenever possible.").

was designed primarily for CWIP associated with new generation and has waived the requirement to submit Statement BM for utilities that have transmission formula rates.[97] Consistent with this, Applicants request waiver of this requirement because it has a Commission-approved formula rate.

Section 35.25(c)(4) requires the development of forward-looking allocation ratios and an evaluation of potential anticompetitive effects of CWIP recovery, including "price squeeze" and "double whammy" concerns. Section 35.25(g) requires an applicant to provide additional information regarding the potential anticompetitive impacts of CWIP recovery, including the proposed CWIP levels in wholesale and retail rates. FERC should grant the requested waivers consistent with its determination with regard to CWIP in Order No. 679, finding that "because we do not view the 'double whammy' to be a concern in the transmission context, we grant [the] request and waive the requirement in 18 C.F.R. § 35.25(c)(4) as it pertains to preventing double whammy with regard to CWIP associated with new investment in transmission."[98] Applicants have provided information to fully support their requested CWIP Incentive, including how the use of CWIP, as opposed to AFUDC, will reduce rate shock.[99] While the Applicants have provided information regarding its request for the CWIP Incentive that should satisfy the regulations, the Applicants respectfully request waiver to the extent necessary. FERC has waived these requirements for other rate incentive applicants,[100] and the Applicants respectfully request waiver of any additional requirements of Sections 35.25(c)(4) and 35.25(g).

To the extent FERC's regulations in 18 C.F.R. Sections 35.13(a), (c), (d), or (h) would require any additional information, the Applicants respectfully request waiver of such requirements.

[97] *See The Dayton Power and Light Co.*, 172 FERC ¶ 61,140 at P 74 (2020).

[98] Order No. 679 at P 119.

[99] *See supra* Section II.B.1; Vanluling and Panichi Testimony, Attachment C at 13-15.

[100] *See, e.g., N.Y. Indep. Sys. Operator, Inc., et al.*, 184 FERC ¶ 61,059, at P 29.

VII. CONCLUSION

For the foregoing reasons, the Applicants respectfully request that FERC issue an order authorizing the requested Rate Incentives without suspension or hearing, effective July 8, 2024.

Respectfully Submitted,

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