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SUBMITTED VIA ELECTRONIC FILING

December 6, 2024

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

**Re: *New York Power Authority*
Tariff Revisions to Implement Declaratory Order for
Propel NY Project and Related Rate Attachment
Docket No. ER25-____-000**

Dear Secretary Reese:

Pursuant to section 205 of the Federal Power Act ("FPA")¹ and Part 35 of the Federal Energy Regulatory Commission's ("Commission" or "FERC") regulations,² the New York Power Authority ("NYPA") respectfully submits this filing to request acceptance of certain revisions to its transmission formula rate template ("Template") and implementation protocols ("Protocols," and together with the Template, "Formula Rate") found at Section 14.2.3 of Attachment H of the New York Independent System Operator, Inc. ("NYISO") Open Access Transmission Tariff ("OATT")³ consistent with the Commission's July 11, 2024 declaratory order granting NYPA's requests related to the development of the Propel NY Energy Alternate Solution 5 Project ("Propel NY").⁴ The July 11 Order granted NYPA its requested 75-basis point return on equity risk adder ("ROE Risk Incentive") for the Propel NY project cost recovery, conditioned upon a subsequent filing to implement the cost containment mechanism that NYPA requested. This application incorporates these provisions into NYPA's Formula Rate, plus seeks approval of a revised Attachment 2 to Rate Schedule 10 (Section 6.10.8) of the NYISO OATT to establish the Regulated Transmission Facilities Charge (or "facilities charge") for NYPA's portion of Propel NY. As a Public Policy Transmission Need ("PPTN") project selected by the NYISO, the rate mechanism for the recovery of NYPA's share of the Propel NY facilities charges is required to be specifically identified.

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 (Template), 14.2.3.2 (Protocols) (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.

⁴ *New York Power Auth.*, 188 FERC ¶ 61,022 (2024) ("July 11 Order").

NYPA also proposes some miscellaneous, non-substantive changes to the Template for consistency and clarity. Finally, NYPA requests certain waivers associated with this filing.⁵

Because this filing is consistent with the Commission's expectations for incorporating the ROE Risk Incentive and the cost containment mechanism into NYPA's Formula Rate as set forth in the July 11 Order, and because the proposed revised Attachment 2 to Rate Schedule 10 of the NYISO OATT follows the NYISO's procedure for specifying the facilities charge for a PPTN project, NYPA submits that these proposed tariff changes are just and reasonable. For these reasons, NYPA respectfully requests that the Commission accept the proposed changes without suspension or hearing, so that they may become effective after the end of the 60-day statutory notice period, or February 4, 2025.

I. BACKGROUND

A. NYPA and its Formula Rate

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).⁶ 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. Many of these facilities comprise backbone paths necessary for critical North-South and West-East energy transfers to down-state load. 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").⁷ At the start of NYISO operations, NYPA recovered its transmission costs through a stated rate included in the NYISO OATT. Through its Formula Rate first authorized by FERC in 2016, NYPA has determined its NTAC annual transmission revenue requirement and recovered its transmission costs accordingly.

⁵ As explained in Part IV below, due to its non-jurisdictional status under Part II of the FPA, NYPA respectfully requests waiver of the Commission's regulations, including the FERC-730 filing requirement.

⁶ 16 U.S.C. §§ 796(7) and 824(f).

⁷ NYISO OATT, § 14.2.2.

The Formula Rate also accommodates the recovery of specific transmission project costs,⁸ including those of Propel NY.

B. Propel NY Project Development

NYPA, together with New York Transco LLC (“NY Transco”), are the project developers of Propel NY. Through a competitive bid process, on June 13, 2023, the NYISO Board of Directors selected the NYPA and NY Transco’s Propel NY project submission as the more efficient or cost-effective transmission solution in response to the Long Island Offshore Wind Export PPTN to upgrade transmission facilities on Long Island and accommodate 3,000 MW of anticipated offshore wind generation.⁹

Propel NY is a \$2.8 billion electric transmission project, including new electric transmission lines, new substations, and existing substation upgrades, that will establish a continuous 345 kV path that greatly expands the deliverability of renewable generation from offshore to New York load centers. Propel NY will add three new 345 kV tie lines on New York’s Long Island: two between Shore Road and Sprain Brook, and one between East Garden City and Tremont. In accordance with the clean energy objectives of New York’s Climate Leadership and Community Protection Act (“CLCPA”), Propel NY will enable increased access to renewable generation resources, specifically offshore wind, and deliver clean energy to high-demand areas that rely predominately on fossil generation resources, especially during peak demand times. Propel NY will also effectuate the efficient transfer of power in the future, thereby providing optionality for resource planning and transmission expansion needed to achieve the CLCPA goals.¹⁰

The Propel NY project arises from the CLCPA, which the New York Public Service Commission declared constitutes a public policy requirement driving the need for transmission to increase the export capability for offshore wind generation from Long Island to the rest of New York State to ensure that the full output of offshore wind interconnected to Long Island can be delivered (*i.e.*, the Long Island Offshore Wind Export PPTN).¹¹ As indicated to the Commission, in its development of Propel NY with NY Transco, NYPA’s financial share will be between 15% and 30% of the total cost.¹²

II. TARIFF MODIFICATIONS ARISING FROM JULY 11 ORDER

The July 11 Order addressing both (1) the ROE Risk Incentive adder and (2) NYPA’s accompanying cost containment provisions, compel the instant filing. First, the order conditionally granted NYPA its requested 75-basis point ROE Risk Incentive for

⁸ See, for example, Schedule D2 of NYPA’s Template, lines 21, 37 and 53 (showing project-specific capital structure and cost of capital). NYPA’s Template is contained within Section 14.2.3.1 of Attachment H to the NYISO OATT.

⁹ See July 11 Order at P 7

¹⁰ *Id.* at P 3.

¹¹ *Id.* at P 6.

¹² *Id.* at P 4.

Propel NY, explaining that NYPA met the four criteria under the Commission's transmission incentives policy needed to receive such an incentive.¹³

FERC explained that as to the first criterion, NYPA demonstrated that the proposed project faces risks and challenges that would not be addressed by either its base ROE or other risk-reducing incentives. In particular, FERC noted that Propel NY will unlock location constrained generation resources with limited or no access to the wholesale electricity markets and the project will connect more than 3,000 MW of offshore wind generation to southeast New York.¹⁴

As to the second criterion, FERC noted that NYPA took appropriate steps and used appropriate mechanisms, including the attainment of the abandoned plant incentive, to minimize risk during project development.¹⁵ Third, the Commission stated that Propel NY was evaluated against competing alternatives in NYISO's regional Public Policy Transmission Planning Process.¹⁶ Fourth, and finally, FERC held that NYPA met the criterion to control transmission development costs and provide transparency regarding the application of incentives beyond initial cost estimates. The July 11 Order noted with approval that NYPA's proposed cost containment mechanism would

prohibit[] NYPA from recovering 20% of the Propel NY Project costs that exceed the project cost estimate (except for amounts attributable to certain "excusing conditions" in NYISO OATT section 6.10.6.2), thereby limiting application of the ROE Risk Incentive and reducing total recovery of Propel NY Project costs.¹⁷

To effectuate the Commission's holdings, NYPA requests the addition of a new footnote #6 to Schedule D2 ("Project Specific Capital Structure and Cost of Capital") of the Template to indicate that the "cost rate" used to calculate the Propel NY revenue requirement will include the 75-basis point ROE Risk Incentive approved in Docket No. EL24-108, the assigned docket for the July 11 Order.¹⁸ This new footnote also commits NYPA to calculating impacts of the cost containment mechanism, and would read as follows:

¹³ See generally *id.* at PP 33-39.

¹⁴ *Id.* at P 35.

¹⁵ *Id.* at P 36.

¹⁶ See *id.*

¹⁷ *Id.*

¹⁸ In conjunction with footnote #6, Schedule D2 would also include new rows to accommodate the Propel NY capital structure. Due to Propel NY's status as a specific project under the Formula Rate, NYPA also proposes Template modifications to include Propel NY on the Transmission Revenue Requirement Summary tab, Schedule F1 (Project Revenue Requirement Worksheet), Schedule F3 (Project True-Up), Workpaper BJ (Individual Projects - Plant in Service and Depreciation) and Workpaper BJ (Support). Finally, NYPA also requests two minor unrelated changes to the Template. NYPA proposes to add the Smart Path Connect project to Schedule F3 to separately show its True-Up amount (currently included in the NTAC True-Up amount), and to consistently identify the Smart Path Connect project on Schedule F1, which currently shows that project's revenue requirement.

The Propel NY Project cost containment impacts, if any, will be computed on a workpaper and provided as supporting documentation for each applicable Annual Update, consistent with the Commission's Order dated 07/11/24 in Docket No. EL24-108. The ROE listed in Col (2) for the Propel NY Project consists of a 75 basis point ROE Risk Adder per the Commission's approval in Docket No. EL24-108 added to the 9.45% ROE applicable to NYPA's other transmission assets. See Schedule D1 and Project 1, above.

The requested Template changes are included in Attachments A and B to this application.

Because the approval of the ROE Risk Incentive was conditioned upon NYPA proposing and the Commission accepting NYPA's filing to implement its cost containment mechanism,¹⁹ NYPA also requests the adoption of a new Section 14.2.3.2.11 of the Protocols to effectuate the cost containment mechanism for Propel NY that the Commission endorsed in the July 11 Order.²⁰

Proposed Section 14.2.3.2.11 (at subsection C) ensures that NYPA shall not recover 20% of any amount of its financial ownership share of the "Included Capital Costs" that exceed NYPA's financial ownership share of the cost cap, except for amounts attributable to certain excusing conditions permitted by Section 6.10.6.2 of Rate Schedule 10 to the NYISO OATT.²¹ Section 14.2.3.2.11 also contains definitions to administer the cost containment (subsection A) for NYPA's share of Propel NY, a description of the applicable incentive adders (subsection B) and a commitment that the total ROE inclusive of adders is bounded by the upper zone of reasonableness of NYPA's base ROE (subsection D). The requested changes to the Protocols, *i.e.* a new Section 14.2.3.2.11, are included in Attachments A and B to this application.²²

For the reasons stated, both the revisions to the Template and to the Protocols should be deemed by the Commission as just and reasonable, and be permitted to go into effect 60 days from the date of this application (February 4, 2025).

¹⁹ July 11 Order at 37 & n.63 ("While we grant the requested ROE Risk Incentive, we note NYPA's commitment to propose in a future filing its cost containment mechanism for the Propel NY Project . . . NYPA should propose such changes pursuant to FPA section 205.") (cleaned up).

²⁰ NYPA's Protocols are set forth in Section 14.2.3.2 of Attachment H to the NYISO OATT.

²¹ The "excusing conditions" proviso is located at subsection A.5 in the definitions.

²² NYPA also proposes to relocate the contents of certain existing footnotes in the Protocols to the main body of the text to address concerns identified by the Commission in a notice issued September 6, 2017 in Docket No. RM01-5-000 regarding use of footnotes in tariff records (see Sections 14.2.3.2.2(d)(iv), 14.2.3.2.3(b)(vi), and 14.2.3.2.3(b)(ix)).

III. REVISED NYISO OATT RATE ATTACHMENT

As noted above, NYPA seeks necessary revisions to the existing Attachment 2 to Rate Schedule 10 of the NYISO OATT to accommodate the facilities charge applicable to NYPA's portion of Propel NY.

The current Attachment 2 to Rate Schedule 10 identifies the Regulated Transmission Facilities Charge for the "NYPA Portion of Segment A of the AC Transmission Public Policy Transmission Need Projects,"²³ a prior PPTN project of NYPA. NYPA's proposal would revise Attachment 2 to apply generally to any NYPA project subject to a Regulated Transmission Facilities Charge rate mechanism, and include new language to (i) provide background on the Propel NY selection by the NYISO Board of Directors; (ii) indicate where the Propel NY revenue requirement for NYPA is stated in the Template including the stipulation that there is no duplicative recovery of costs as between the Propel NY revenue requirement and any other NYPA revenue requirement recovered under the NYISO OATT; and (iii) indicate that NYPA's cost allocation for Propel NY is on a load-ratio share basis, *i.e.* "in accordance with Section 31.5.5.4.3 of Attachment Y to the ISO OATT, calculated volumetrically based on Actual Energy Withdrawals by all Load Serving Entities, but excluding Withdrawal Billing Units for Exports and Wheels Through." This is consistent with the Commission-approved cost allocation used for NY Transco's financial ownership share of Propel NY, which reflects the default cost allocation method for PPTN projects as set forth in Section 31.5.5.4.3 of Attachment Y to the NYISO OATT.²⁴

NYPA discussed with NYISO staff the potential manner for revising its current Attachment 2 to Rate Schedule 10 to accommodate facilities charge for NYPA's portion of Propel NY. Because the proposed revisions explain the pertinent information about the Propel NY facilities charge in an orderly manner, the revisions to Attachment 2 of Rate Schedule 10 should also be accepted by the Commission as just and reasonable and be permitted to go into effect 60 days from the date of this application, *i.e.* February 4, 2025. The changes to Attachment 2 of Rate Schedule 10 are included in Attachments C and D to this application.

IV. 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 Parts II and 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

²³ See NYISO OATT, § 6.10.8, Attachment 2.

²⁴ See *New York Transco LLC*, 185 FERC ¶ 61,222 at PP 9, 20 (2023) (accepting proposed cost allocation for NY Transco's share of Propel NY; to be incorporated in a new Section 36.2.1.3 of Attachment DD to the NYISO OATT).

Section 35.13 of the Commission's regulations.²⁵ Accordingly, NYPA's request for exemption from such filing requirements is appropriate.

NYPA also requests waiver from filing, or clarification that as a non-jurisdictional utility it is exempt from filing, FERC-730 annual reports that pertain to "*public utilities* that have been granted incentive rate treatment for specific transmission projects." 18 C.F.R. § 35.35(h) (emphasis added). NYPA makes this request because it has received inconsistent instructions from the Commission on the need for NYPA to file these reports. In two recent orders also related to Propel NY incentives, NYPA was instructed to file FERC-730 annual reports,²⁶ whereas in other recent incentive orders that instruction did not appear. For example, the July 11 Order, a Propel NY incentive order itself, did not include the FERC-730 requirement. Nor did the Commission do so in either of its NYPA incentive orders for the Smart Path Connect Project in 2022,²⁷ or for the AC Transmission Project in 2019.²⁸ Potentially, the recent inclusion of the FERC-730 instruction to NYPA in the incentive orders noted may have been in error.

Due to NYPA's status as a non-jurisdictional utility under Part II of the FPA, which has exempted NYPA from compliance with Section 35.13 of the Commission's regulations, an exemption from the FERC-730 reporting requirement is merited. First, as corporate municipal instrumentality and a political subdivision of a state, and *not* a public utility, NYPA is expressly exempt from the regulation. Second, subpart (3) of Section 35.35(h) states that the Commission may waive the FERC-730 requirement for good cause. NYPA respectfully requests clarification that the FERC-730 annual filing requirement does not apply, or if necessary, waiver of this provision as it is a state instrumentality within the definition of section 201(f) of the FPA, and thus exempt from the requirements of Section 35.35(h) which also resides under Part II of the FPA.

V. DOCUMENTS SUBMITTED WITH THIS FILING

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

- This transmittal letter;
- Attachment A – Clean version of the proposed revisions to NYPA's Template and Protocols in the NYISO OATT;²⁹

²⁵ See, e.g., *N.Y. Indep. Sys. Operator, Inc., N.Y. Power Auth.*, 180 FERC ¶ 61,004 at P 55 (2022) (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 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).

²⁶ See *N.Y. Power Auth.*, 188 FERC ¶ 61,070 at P 40, n.26 (2024) (abandonment incentive for East Garden City substation project, a "Public Policy Transmission Upgrade" related to Propel NY); *N.Y. Power Auth.*, 185 FERC ¶ 61,102 at P 23, n.47 (2023) (abandonment incentive).

²⁷ 180 FERC ¶ 61,004.

²⁸ *N.Y. Power Auth.*, 169 FERC ¶ 61,125 (2019).

²⁹ As to the Template specifically, a clean version of it in native excel format that reflects the proposed changes is also being submitted with this filing.

- Attachment B – Redline version of the proposed changes to NYPA's Template and Protocols in the NYISO OATT;
- Attachment C – Clean version of the proposed revisions to Attachment 2 to Rate Schedule 10 of the NYISO OATT; and
- Attachment D – Redline version of the proposed revisions to Attachment 2 to Rate Schedule 10 of the NYISO OATT.

VI. 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.

VII. 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 2010.³⁰

³⁰ 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.

VIII. CONCLUSION

For the reasons set forth above, the requested Formula Rate Template and Protocol modifications are just and reasonable. Similarly, NYPA submits that the revised Attachment 2 to Rate Schedule 10 of the NYISO OATT is also just and reasonable. For these reasons, NYPA respectfully requests that these changes be accepted without suspension or hearing and be permitted to go into effect at the end of the statutory 60-day notice period (February 4, 2025).

Respectfully submitted,

s/Gary D. Levenson

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Attachments A – D.