

**ATTACHMENT 4**

**EXHIBIT NO. CECONY-401**

**NY TRANSCO OCTOBER 27, 2023 TRANSMITTAL LETTER  
(DOCKET NO. ER24-232-000)**

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October 27, 2023

**VIA eTARIFF**

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

Re: ***New York Transco LLC***  
**Proposed Rate Recovery Mechanism for Propel NY Energy Project**  
**Docket No. ER24-\_\_\_\_-000**

Dear Secretary Bose:

Pursuant to sections 205 and 219 of the Federal Power Act (“FPA”),<sup>1</sup> Part 35 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) regulations,<sup>2</sup> Order No. 679,<sup>3</sup> and the Commission’s November 15, 2012 policy statement on transmission incentives,<sup>4</sup> New York Transco LLC (“Transco”) submits this request for (i) approval of the proposed cost allocation methodology associated with its investment in the Propel New York Energy Alternate Solution 5 Project (“Propel NY Energy Project” or “Project”); (ii) approval of the proposed cost containment mechanism for recovery of Included Capital Costs that was part of the Project solicitation submission; (iii) approval to establish a base return on equity (“ROE”) of 10.7% for the Propel NY Energy Project to be applied in the Transco formula rate set forth in Attachment DD (Section 36) of the New York Independent System Operator, Inc. (“NYISO”) Open Access Transmission Tariff (“OATT” or “Tariff”); (iv) approval of certain electric transmission rate incentive treatments for

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<sup>1</sup> 16 U.S.C. §§ 824d and 824s.

<sup>2</sup> 18 C.F.R. Part 35 (2022).

<sup>3</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 Fed. Reg. 43,294 (July 31, 2006) FERC Stats. & Regs. ¶ 31,222, *order on reh’g*, Order No. 679-A, 72 Fed. Reg. 1152 (Jan. 10, 2007) FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007).

<sup>4</sup> *Promoting Transmission Investment through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (“Policy Statement”).

The Honorable Kimberly D. Bose

October 27, 2023

Page 2

charges associated with its investment in the Propel NY Energy Project; and (v) acceptance of additional minor revisions to Rate Schedule 13 (Section 6.13) and Attachment DD (Section 36) of the NYISO OATT to include the Project as an eligible transmission asset for cost recovery purposes (“Application”).<sup>5</sup> In this Application, Transco also explains the manner in which it will develop the Project with its co-developer New York Power Authority (“NYPA”) and outlines a proposal to ensure that there is no duplicative recovery of Project costs.

The Propel NY Energy Project is a complex and multi-component \$2.7 billion<sup>6</sup> electric transmission project selected by the NYISO to fulfill state policy initiatives and address the need to bolster transmission capacity and reliability and reduce congestion in New York State. The Project will establish a 345 kilovolt (“kV”) electric transmission backbone on Long Island with three new bi-directional interties between Long Island and the statewide grid to improve reliability, create system redundancy and resiliency, and facilitate New York’s decarbonization goals by accommodating new clean energy generation interconnections and delivery of that energy to load centers in southeast New York.<sup>7</sup> The Project consists of new, high-voltage, completely underground and submarine electric transmission cables and four new transmission substations located in some of the most densely populated urban and suburban areas of the country – New York City, Long Island and Westchester County, New York. The Project represents one of the largest, if not the largest, non-merchant underground/submarine electric transmission development projects ever undertaken on the East Coast in terms of both circuit miles constructed and capital expenditure.

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<sup>5</sup> NYISO submits this filing in its role as Tariff Administrator. The burden of demonstrating that the proposed Tariff amendments are just and reasonable rests with Transco, the sponsoring party. NYISO takes no position on any substantive aspect of this filing at this time and reserves its right to subsequently file comments relating to this filing. Capitalized terms not defined herein shall have the meaning set forth in the NYISO OATT.

<sup>6</sup> As more fully discussed below, Transco is jointly developing the Propel NY Energy Project with NYPA and the final Project ownership percentages will be determined closer to Project completion in 2030. The initial estimate for Project costs included with the project submission, including the estimate for the costs of interconnecting the Project components with the existing transmission system and other third party Project-related costs, is \$2.7 billion. The Project will also require additional upgrades to existing transmission components that are expected to be completed by the current owners of those assets. Combined with these additional system upgrades, Transco and NYPA estimated total Project costs to be nearly \$3.0 billion, as compared to the NYISO independent consultant estimate of \$3.262 billion. This filing pertains solely to Transco’s recovery of costs for the Project based on its final ownership percentage of the Project, which for current planning purposes, is estimated to be \$2.2 billion. NYPA is expected to seek recovery of the costs for its ownership percentage consistent with its FERC-approved recovery mechanisms under the NYISO OATT and the incumbent transmission owners are anticipated to seek recovery of the costs associated with the required upgrades consistent with their respective FERC-approved recovery mechanisms and/or tariff requirements under the NYISO OATT.

<sup>7</sup> Clean energy resources include generation from downstate offshore wind facilities, upstate solar and terrestrial wind facilities, among others.

The Honorable Kimberly D. Bose

October 27, 2023

Page 3

The Project was selected by the NYISO Board of Directors from among nineteen initial project proposals as the more efficient or cost effective solution to a Public Policy Transmission Need initially identified by the New York State Public Service Commission (“NYPSC”).<sup>8</sup> Following a robust competitive solicitation process, conducted in accordance with the FERC-approved Public Policy Transmission Planning Process in the NYISO OATT,<sup>9</sup> the Project was determined to be the more efficient or cost effective solution by “enabling the delivery of renewable power required to meet state energy goals and relieving congestion while enhancing New York State’s already high standard of system reliability.”<sup>10</sup> The Project’s potential economic benefits alone are estimated to be as high as \$3.6 billion over 20 years.<sup>11</sup>

This Application consists of the necessary NYISO OATT changes in Rate Schedule 13 (Section 6.13) and Attachment DD (Section 36), to identify and define the Propel NY Energy Project as a project owned, in part, by Transco for which it is permitted rate recovery, and to include the cost allocation methodology and cost containment mechanism. Transco also includes a fully functioning workpaper, in Excel format as part of its proposed cost containment mechanism. This workpaper will verify that, as required by the NYISO OATT, the proposed alternative rate mechanism to implement the cost containment mechanism results in rate recovery that is equal to or better for ratepayers in the total long run revenue requirement for costs that exceed the cap on a present value basis. This Application also includes the support for the requested 10.7% base ROE value that would apply to the Project.<sup>12</sup>

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<sup>8</sup> The NYISO initially received nineteen project proposals from four different developers in response to its competitive solicitation, discussed *infra*. The NYISO determined that sixteen of those project proposals (from three different developers) were viable and sufficient solutions to the identified Public Policy Transmission Need and conducted its review for determining the more efficient or cost effective solution from those remaining sixteen options.

<sup>9</sup> NYISO Open Access Transmission Tariff (“OATT”), Attachment Y, Section 31.4.

<sup>10</sup> *NYISO Board of Directors’ Decision on Approval of Long Island Offshore Wind Export Public Policy Transmission Planning Report and Selection of Public Policy Transmission Project*, Executive Summary at 1 (June 13, 2023), Exh. No. TRANSCO-103 (“NYISO Board Decision”) contained within Attachment F to this filing. For a comprehensive summary of the reliability, production cost, capacity, and avoided cost benefits of the Project, as determined by the NYISO, *see* Exh. No. TRANSCO-500, Direct Testimony of John Tsoukalis at 14-16 (“Tsoukalis Testimony”) set forth within Attachment J hereto.

<sup>11</sup> NYISO, *Long Island Offshore Wind Export Public Policy Transmission Plan: A Report from the New York Independent System Operator* at 11 (June 13, 2023), Exh. No. TRANSCO-104 (“Long Island PPT Plan”) which is included within Attachment F.

<sup>12</sup> As discussed below, Transco entered into two settlement agreements accepted by the Commission in Docket No. ER15-572-000 that established a general, working formula rate for recovery of Transco transmission assets and project-specific base ROE values for the two electric transmission projects that Transco planned to own and maintain. For any future project, Transco must file a proposed

Finally, this Application includes a request for limited incentive rate treatments pursuant to Order No. 679, which are narrowly tailored to address the demonstrable risks and challenges of the Project. Specifically, Transco requests:

- i. Recovery of 100% of prudently incurred costs in the event the Project must be cancelled or abandoned for reasons beyond Transco's control ("Abandoned Plant Incentive");<sup>13</sup>
- ii. Inclusion of 100% of construction work in progress ("CWIP") in rate base during the development and construction phase of the Project ("CWIP Incentive");<sup>14</sup>
- iii. A 150 basis point adder to its base ROE component for its investment in the Project to compensate for the significant risks and challenges associated with the development of the Project ("Risks and Challenges Adder");<sup>15</sup> and
- iv. A 50 basis point adder to its base ROE component for its investment in the Project for Transco's voluntary participation in NYISO ("RTO Participation Adder").<sup>16</sup>

Transco asks that the requested incentive rate treatments be effective no later than December 26, 2023, the end of the statutory 60-day notice period.<sup>17</sup> As further described below, these requested incentives are narrowly tailored to the unique risks Transco will face in developing the Propel NY Energy Project. The Commission typically issues affirmative findings and rulings on incentive rate treatments in its orders and does not set incentive rate requests for hearing or settlement procedures. Should the Commission determine that it cannot initially approve any element of the Application without further procedures, Transco respectfully requests that the Commission approve the Abandoned Plant Incentive in its initial order on this filing, effective no later than December 26, 2023.

Transco also requests that the proposed changes to the NYISO OATT and approval of the requested base ROE value become effective on December 26, 2023, the end of the statutory 60-day notice period. Finally, Transco requests that the Commission determine the proposed cost allocation methodology (applying the default cost allocation methodology for Public Policy

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base ROE value with the Commission for approval and for use under the formula rate contained in NYISO OATT, Attachment DD.

<sup>13</sup> See 18 C.F.R. § 35.35(d)(1)(vi) (2022).

<sup>14</sup> See *id.* § 35.35(d)(1)(ii).

<sup>15</sup> See *id.* § 35.35(d)(1)(i) and (viii).

<sup>16</sup> See *id.* § 35.35(e).

<sup>17</sup> See *Transource Pennsylvania, LLC*, 184 FERC ¶ 61,091 at n. 5 (2023) (citing 16 U.S.C. § 824d(d)).

Transmission Projects as set forth in Section 31.5.5.4.3 of Attachment Y to the NYISO OATT) and the cost containment mechanism to be just and reasonable.

## I. BACKGROUND

### A. Description of Transco and Related Entities

#### 1. New York Transco, LLC

Transco is a New York limited liability company that develops high voltage bulk transmission facilities and maintains those projects under the functional and operational control of the NYISO.<sup>18</sup> Since Transco's inception, New York State has and continues to implement initiatives to encourage the development of clean energy to meet the New York "Clean Energy Standard" and the New York Climate Leadership and Community Protection Act ("CLCPA") requirements, and transmission facilities to support the State's goals are an integral part of that effort.<sup>19</sup> Transco's corporate objective is to plan, develop and own new high-voltage electric transmission projects designed to reduce energy prices for consumers, facilitate the growth of renewable generation resources, and provide long-term grid reliability and resiliency.<sup>20</sup> Transco is a transmission-owning member of NYISO and recovers its revenue requirements in accordance with the formula rate included in Attachment DD and the Transco Facilities Charge under Rate Schedule 13 of the NYISO OATT.

#### 2. New York Power Authority

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 definition of section 201(f) of the FPA.<sup>21</sup> It is engaged in the generation, transmission, and sale of electricity at wholesale and retail throughout New York and is a founding member of NYISO. As the largest state-owned power organization in the United States, NYPA has taken responsibility for constructing, owning, and maintaining over 1400 circuit miles of critical bulk power transmission lines and associated infrastructure throughout the State.

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<sup>18</sup> Transco is owned by the following affiliates of the "New York Transmission Owners": Consolidated Edison Transmission, LLC, Grid NY, LLC; Iberdrola USA Networks New York Transco, LLC; and Central Hudson Electric Transmission, LLC.

<sup>19</sup> *See generally* Exh. No. TRANSCO-100, Direct Testimony of Victor Mullin at 8 ("Mullin Testimony") as set forth in Attachment F.

<sup>20</sup> *Id.*

<sup>21</sup> 16 U.S.C. §§ 796(7) and 824(f).

## **B. NYISO Public Policy Transmission Planning Process and New York State Requirements**

The Public Policy Transmission Planning Process (“PPTPP”) is the process by which the NYISO: (i) solicits needs for transmission driven by Public Policy Requirements; (ii) evaluates all Public Policy Transmission Projects and Other Public Policy Transmission Projects proposed to address a Public Policy Transmission Need (“PPTN”) identified by the NYPSC; (iii) may select the more efficient or cost effective Public Policy Transmission Project that is then eligible for cost allocation under the NYISO Tariff; and (iv) for any selected solutions, designates a Designated Entity to be responsible for developing the Designated Public Policy Project.<sup>22</sup> The PPTPP was developed in consultation with NYISO stakeholders and the NYPSC, and was approved by the Commission under Order No. 1000<sup>23</sup> as fully described in Section 31.4 of Attachment Y in the NYISO OATT.<sup>24</sup>

Since the establishment of the New York “Clean Energy Standard” and enactment of the New York CLCPA<sup>25</sup> in 2019, NYISO has stressed that extensive transmission investments will be necessary to deliver renewable energy across the state to consumers and address new constraints that appear across the electric system resulting from significant new resource additions.<sup>26</sup> This includes the necessity of reinforcing the Long Island bulk electric transmission system to deliver renewable resources.<sup>27</sup>

In accordance with the requirement in the NYISO Tariff, NYISO opened a 60-day period inviting stakeholders and interested parties to submit proposed transmission needs that are being driven by Public Policy Requirements for which transmission solutions should be requested, and

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<sup>22</sup> NYISO OATT, Attachment Y Sections 31.1, 31.4 and 31.5.

<sup>23</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, III FERC Stats. & Regs., Regs. Preambles ¶ 31,323 (2011), *order on reh’g and clarification*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *pets. for review denied sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (per curiam); *see also New York Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059 (2013), *order on reh’g*, 151 FERC ¶ 61,040 (2015) (“Order No. 1000”).

<sup>24</sup> *See New York Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059 (2013); *order on reh’g and compliance*, 148 FERC ¶ 61,044 (2014); *order on reh’g and compliance*, 151 FERC ¶ 61,040 (2015).

<sup>25</sup> CLCPA, §§ 2(1)(a) and 7(a); N.Y. Energy Conservation Law § 75-0107(1); N.Y. Public Service Law (“P.S.L.”) § 66-p(2), (5).

<sup>26</sup> *2023 Power Trends Report* reference to 2021-2040 System & Resource Outlook (Aug.14, 2023), available at <https://www.nyiso.com/documents/20142/2223020/2023-Power-Trends.pdf/7f7111e6-8883-7b10-f313-d11418f12fbf?t=1695216768104>.

<sup>27</sup> NYISO Board Decision at 1.

The Honorable Kimberly D. Bose

October 27, 2023

Page 7

evaluated and filed the proposed needs with the NYPSC on October 9, 2020.<sup>28</sup> On November 18, 2020, the NYPSC published the proposed needs in the State Register for comments in accordance with the State Administrative Procedure Act.<sup>29</sup> On February 3, 2021, Long Island Power Authority (“LIPA”) filed its determination with the NYPSC that a Public Policy Requirement exists with respect to the Long Island Transmission District.<sup>30</sup>

In response to the comments filed on proposed transmission needs, on March 19, 2021, the NYPSC issued an order identifying the Long Island Offshore Wind Export Public Policy Transmission Need (“Long Island PPTN”) and called for NYISO to solicit potential solutions to satisfy that need.<sup>31</sup> The NYISO formally opened a project solicitation on August 12, 2021, with submissions due on October 11, 2021.<sup>32</sup> Nineteen project proposals were submitted by four different developers in response to the solicitation.

The NYISO Tariff allows the NYPSC to include additional criteria to assist NYISO in the evaluation of transmission solutions and non-transmission projects. For the Long Island PPTN, the NYPSC directed the NYISO to ensure that “no transmission security violations, thermal, voltage or stability, would result under normal and emergency operating conditions.”<sup>33</sup> The NYPSC also mandated that the NYISO ensure “that the system would be maintained in a reliable manner.”<sup>34</sup>

The NYISO’s review included a Viability and Sufficiency Assessment to screen each project proposal for its ability to satisfy Tariff standards and meet certain criteria.<sup>35</sup> Under these criteria, NYISO evaluated a project’s ability to facilitate the full output of at least 3,000 MW of offshore wind from Long Island while maintaining reliability, and to resolve constraints on bulk electric system facilities that are significantly impacted by Long Island offshore wind under summer peak and light load conditions.<sup>36</sup>

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<sup>28</sup> Mullin Testimony at 12.

<sup>29</sup> *Id.*

<sup>30</sup> New York State Public Service Commission, Case Nos. 20-E-0497 and 18-E-0623, Order Addressing Public Policy Requirements for Transmission Planning Purposes (March 19, 2021) at 3, Exh. No. TRANSCO-101 (“NYPSC PPTN Order”), which is included as part of Attachment F to this filing.

<sup>31</sup> NYPSC PPTN Order.

<sup>32</sup> NYISO, Long Island Offshore Wind Export Public Policy Transmission Need Project Solicitation Letter (Aug. 12, 2021), Exh. No. TRANSCO-102 (“Project Solicitation Letter”).

<sup>33</sup> Mullin Testimony at 13 (quoting NYPSC PPTN Order at 24).

<sup>34</sup> *Id.*

<sup>35</sup> The NYISO undertook a detailed evaluation of each viable and sufficient transmission proposal with the assistance of its independent consultant, Substation Engineering Company.

<sup>36</sup> Exh. No. TRANSCO-200, Direct Testimony of Paul Haering at 21 (“Haering Testimony”) as set forth in Attachment G to this filing.

After reviewing each project, NYISO staff, with input from the New York State Department of Public Service, NYPSC, and stakeholders, recommended the selection of the Propel NY Energy Project as the more efficient or cost effective solution in response to the Long Island PPTN. The recommendation noted the Propel NY Energy Project’s ability to “reduce congestion and help service Long Island load as the generation mix continues to change in response to public policies identified by New York State, all in an efficient and cost-effective manner.”<sup>37</sup> On June 20, 2023, the NYISO Board of Directors announced that it selected the Propel NY Energy Project as the more efficient or cost effective solution in response to the Long Island PPTN.<sup>38</sup>

## **II. Description of Propel NY Energy Project**

The Propel NY Energy Project is a multifaceted electric transmission project consisting of the development of underground and submarine high-voltage electric transmission lines and four new transmission substations in some of the most densely-populated areas of the country, stretching from Nassau and Suffolk Counties on Long Island, through Queens to the Bronx in New York City and into Westchester County as well.<sup>39</sup> Each segment of the Project is necessary to bolster the resiliency and reliability of the bulk power system and to facilitate the deliverability of offshore wind generation to load centers throughout the state.

Specifically, the Project will establish a 345 kV backbone on Long Island extending from the East Garden City substation to the Tremont substation in the Bronx, in New York City; north through a new substation at Shore Road and extending to the existing Sprain Brook substation in Westchester County; and, several paths across Nassau and Suffolk Counties, Long Island.<sup>40</sup> In total, the Project includes four new electric transmission substations and approximately 304 circuit miles of transmission line consisting of 230 circuit miles of new underground 345 kV transmission line, 34 circuit miles of new underground 138 kV transmission line, and 40 circuit miles of new submarine 345 kV transmission line all within densely populated and congested areas of New York.

The Project components include:

- An underground 345 kV tie line with a phase angle regulator (“PAR”) from the existing NYPA East Garden City 345 kV substation interconnected to the existing Consolidated Edison Company of New York, Inc. (“Con Ed”) Tremont 345 kV

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<sup>37</sup> NYISO Board Decision at 6.

<sup>38</sup> Long Island PPT Plan at 6.

<sup>39</sup> See Schematic of Project, Exh. No. TRANSCO-201, which is included as part of Attachment G.

<sup>40</sup> See Haering Testimony at 6-7.

substation. The existing Tremont 345 kV substation is to be expanded to accommodate the interconnection of the new circuit.

- A new Shore Road 345 kV substation with a 345/138 kV transformer in series with a 138 kV PAR to connect to the existing LIPA Shore Road 138 kV substation.
- Two single underground and submarine 345 kV tie lines, each with a PAR, from the new Shore Road 345 kV substation interconnected to the existing Con Edison Sprain Brook 345 kV substation with a new transition station at New Rochelle. The existing Sprain Brook 345 kV substation is to be expanded to accommodate the interconnection of new circuits.
- An underground 345 kV line from the new Shore Road 345 kV substation to the NYPA East Garden City 345 kV substation.
- A new Ruland Road 345 kV substation with three 345/138 kV transformers to connect to the existing LIPA Ruland Road 138 kV substation.
- An underground 345 kV line from the new Ruland Road 345 kV substation to the new Shore Road 345 kV substation.
- An underground 345 kV line from the NYPA East Garden City 345 kV substation to the proposed Barrett 345 kV substation.
- An underground 138 kV line with a PAR from the existing LIPA Syosset 138 kV substation to the existing Shore Road 138 kV substation.

The Propel NY Energy Project will provide a wide range of benefits to the New York State grid. As part of its evaluations of projects in response to the Long Island PPTN, the NYISO estimated the Project will result in significant production cost savings, reliability and capacity benefits, avoided capital costs, emissions reductions, and decreases in congestion across the region. Notably, such analysis calculated that the project would result in production cost savings of approximately \$3.6 billion over a twenty-year period.<sup>41</sup> When taken together, all of the Project segments reduce anticipated congestion and provide additional reliability and resiliency benefits to New Yorkers.

The Project also brings substantial environmental and congestion relief benefits as it will result in up to 8.06 billion tons of CO<sub>2</sub> emissions avoided over a twenty-year period on a statewide

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<sup>41</sup> Long Island PPT Plan at 11.

basis.<sup>42</sup> In evaluating the Project as part of the PPTPP for the Long Island PPTN, the NYISO has determined the Project will relieve transmission congestion and provide a myriad of additional economic and performance benefits including, but not limited to, increasing operational flexibility, improving transmission system resiliency, reducing emissions from curtailments due to transmission system congestion, and satisfying New York state policy objectives.<sup>43</sup> The Project establishes a new 345 kV transmission backbone on Long Island that does not currently exist above the 138 kV level. Ultimately, the Project is a necessary component to meet the requirements established by the New York CLCPA.

### **III. SUMMARY OF REQUESTED ACTIONS**

#### **A. Revisions to NYISO OATT**

Transco requests that the Commission accept for filing the following revisions to the Transco cost recovery provisions under the NYISO OATT:

##### **1. Revisions Necessary to Implement the Cost Allocation Methodology**

Transco proposes to allocate the costs of the Propel NY Energy Project to all load serving entities in New York State on a volumetric load-ratio share basis, as preferred by the NYPSC in a May 16, 2022 order, and consistent with the default cost allocation methodology for Public Policy Transmission Projects accepted by the Commission as set forth in Section 31.5.5.4.3 of Attachment Y to the NYISO OATT.<sup>44</sup> As explained in Mr. Victor Mullin's testimony, the NYPSC established that the cost allocation formula associated with the Long Island PPTN should be based on a statewide volumetric load-ratio share basis because the Propel NY Energy Project will help achieve New York State renewable goals as identified by the CLCPA, and will provide considerable benefits to electric customers throughout the state.<sup>45</sup> This cost allocation methodology ensures that all costs for the Project will be recovered solely from New York ratepayers.

In order to effectuate the cost allocation methodology, Transco proposes to include a new Section 36.2.1.3 in Attachment DD of the NYISO OATT to reflect the NYPSC decision on a cost allocation methodology for the Project using a load ratio share basis, calculated volumetrically based on Actual Energy Withdrawals by all Load Serving Entities serving load in the New York

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<sup>42</sup> *Id.* at 58.

<sup>43</sup> NYISO Board Decision at 6.

<sup>44</sup> *See* NYPSC, Case Nos. 20-E-0497 and 18-E-0623, Order on Petitions for Rehearing (May 16, 2022), Exh. No. TRANSCO-105 ("Rehearing Order").

<sup>45</sup> *Id.* at 26-27; *see also* Mullin Testimony at 23. Specifically, the NYPSC directed use of the Commission-approved default cost allocation methodology for Public Policy Transmission Projects as set forth in Section 31.5.5.4.3 of Attachment Y to the NYISO OATT.

Control Area. Transco also proposes to include a new Section 6.13.3.4.3 in Rate Schedule 13 of the NYISO OATT that includes the arithmetic calculation NYISO will employ to calculate the applicable Project-related Transco Facilities Charge (“TFC”) for each Responsible Load Serving Entity consistent with the cost allocation methodology included in Section 36.2.1.3.<sup>46</sup>

## **2. Revisions Necessary to Implement the Cost Containment Mechanism**

Transco requests approval of the cost containment mechanism that it will utilize to forego recovery of potential cost overruns for Included Capital Costs<sup>47</sup> consistent with the 80/20 soft cost cap proposal included with its project submission. Transco proposes to include a new Note G in Attachment 4 of its Formula Rate (as set forth in Section 36.3.1.1 of Attachment DD to the NYISO OATT) to memorialize its obligation to reduce its allowable revenue requirement recovery by the amount equal to its share of the 20% cost overrun, subject to certain excusing conditions. Transco also proposes to include an additional sentence in Section 6.13.2 of Rate Schedule 13 that pertains to Transco’s commitment to adhere to the requirements of Section 6.10.6 of Rate Schedule 10 to the NYISO OATT for any transmission project for which Transco has proposed to limit its allowable cost recovery consistent with a Cost Cap mechanism, unless otherwise permitted by FERC.

Transco has also developed a workpaper (titled “Propel NY Energy Project Cost Containment Verification Workpaper”) that will include the necessary information for it and any interested stakeholder to confirm that the ROE reductions applicable to the recovery of costs above the cost estimate are sufficient to reduce Transco’s recovery of Included Capital Cost overruns to a level that results in the same or greater benefits to ratepayers as would be accomplished if Transco were to simply write-off that amount.<sup>48</sup>

## **3. Other Tariff Revisions**

Transco proposes to add the Project as an eligible project in Sections 6.13.1 of Rate Schedule 13 and 36.1.1 of Attachment DD to the NYISO OATT for cost recovery under the TFC.<sup>49</sup>

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<sup>46</sup> See Section V.A, *infra*.

<sup>47</sup> Unless otherwise specified, capitalized terms have the meaning attributed to it in the NYISO Tariff.

<sup>48</sup> See Section V.B, *infra*.

<sup>49</sup> See Section V.C, *infra*.

## **B. Incentive Rate Treatments**

Transco requests that the Commission approve the following incentive rate treatments for its interest in the Project:

1. Recovery of prudently incurred costs in the event the Project must be abandoned for reasons outside the reasonable control of Transco (Abandoned Plant Incentive).
2. Inclusion of 100% CWIP in rate base during the development and construction phase of the Project (CWIP Incentive).
3. A 150 basis point adder to its base ROE component for its investment in the Project to compensate for the significant risks and challenges associated with the development of the Project (Risks and Challenges Adder).
4. A 50 basis point adder to its base ROE component for its investment in the Project for RTO participation (RTO Participation Adder). Transco is a transmission-owning member of NYISO and will transfer functional control of the Project to NYISO once the Project is placed in service.

As described herein, Transco has met the Commission's standards for approval of the requested incentive rate treatments. The Project was included in the Long Island Offshore Wind Export Public Policy Transmission Plan developed by the NYISO as part of its FERC-approved regional transmission planning process. As explained in the testimony of Mr. Mullin, because the Project has been approved in a fair and open regional planning process that considers and evaluates projects to address reliability and/or congestion, the Project meets the rebuttable presumption that it either ensures reliability or reduces the cost of delivered power by reducing transmission congestion.

Each of the incentive rate treatments requested herein is necessary to mitigate the demonstrable risks and challenges Transco faces in developing the Project. Transco has narrowly tailored the package of incentives to address these risks and challenges and the package reflects the significant regional benefits the Project will provide once placed in service.

## **C. Base Return on Equity**

Transco requests approval of a base ROE value of 10.7% for the Project. The base ROE is supported by the analysis and testimony of Mr. Adrien McKenzie, which is attached as Exhibit No. TRANSCO-600. As explained by Mr. McKenzie, the requested base ROE of 10.7% is well within the composite zone of reasonableness of 8.43% - 13.23%.

#### IV. CONTENTS OF FILING

In addition to this filing letter, which provides a detailed description of the Project and support for the approvals requested herein, this filing contains the following components:

- Attachment A: Redline revisions to Attachment DD (Section 36) of the NYISO OATT with proposed revisions to include the Project as an eligible project for cost recovery; incorporate the cost allocation methodology in Section 36.2.1.3; and the cost containment mechanism;
- Attachment B: Clean version of Attachment DD (Section 36) of the NYISO OATT;
- Attachment C: Redline revisions to Rate Schedule 13 (Section 6.13) of the NYISO OATT to include the Project as an eligible project for cost recovery, and a new Section 6.13.3.4.3 that includes the arithmetic calculation NYISO will employ to calculate the TFC for each Responsible Load Serving Entity consistent with the cost allocation methodology included in Section 36.2.1.3 of Attachment DD to the NYISO OATT;
- Attachment D: Clean version of Rate Schedule 13 (Section 6.13) of the NYISO OATT;
- Attachment E: Excel spreadsheet of the Propel NY Energy Project Cost Containment Verification Workpaper;
- Attachment F: Direct Testimony and Supporting Exhibits of Mr. Victor Mullin (introduction of other witnesses; corporate structure; description of NYPA development partnership; description of the NYISO's PPTPP for the Long Island PPTN; summary of benefits and costs of the Project; description of incentive rate treatments; description of cost allocation methodology.) (Exhibit Nos. TRANSCO-100 through TRANSCO-105);
- Attachment G: Direct Testimony and Supporting Exhibits of Mr. Paul Haering (technical description of the Project; description of Project risks; description of benefits and costs; description of NYISO solicitation process) (Exhibit Nos. TRANSCO-200 through TRANSCO-203);
- Attachment H: Direct Testimony and Supporting Exhibits of Mr. Robert Caso (description of financial risks; appropriateness of incentives; cost

cap mechanism; accounting treatment and depreciation rates) (Exhibit Nos. TRANSCO-300 and TRANSCO-301);

Attachment I: Direct Testimony of Mr. Stephen Cole-Hatchard, Jr. (technical description of the Project; construction risks) (Exhibit No. TRANSCO-400);

Attachment J: Direct Testimony of Mr. John Tsoukalis (description of financial and development risks; support for requested CWIP treatment and ROE adders) (Exhibit Nos. TRANSCO-500 and TRANSCO-501); and

Attachment K: Direct Testimony and Supporting Exhibits of Mr. Adrien McKenzie (base return on equity methodology and reasonableness of RTO Participation and Risks and Challenges Adders) (Exhibit Nos. TRANSCO-600 through TRANSCO-612).

## **V. TRANSCO'S INVESTMENT IN THE PROJECT QUALIFIES FOR INCENTIVE RATE TREATMENTS**

In this Application, Transco is requesting four incentive rate treatments: (1) Abandoned Plant Incentive; (2) CWIP Incentive; (3) 150 basis point Risks and Challenges Adder; and (4) 50 basis point RTO Participation Adder. The requested incentives satisfy Commission precedent and Order No. 679.

FPA section 219 directs the Commission to establish incentive-based rate treatments that promote further investment in electric transmission infrastructure, such as an ROE sufficient to attract new investment.<sup>50</sup> In response to this directive, the Commission issued Order No. 679 allowing applicants to request incentive rate treatment for transmission infrastructure projects that “ensure reliability or reduce the cost of delivered power by reducing transmission congestion.”<sup>51</sup> Pursuant to Order No. 679, an applicant may request a variety of incentives including, but not limited to, cost recovery associated with abandoned plant, inclusion of all prudently-incurred transmission-related CWIP in rate base, and an ROE sufficient to attract capital that will encourage new investment in energy infrastructure projects.

An applicant seeking rate incentives pursuant to Order No. 679 must demonstrate that the facilities for which it seeks incentives meet the threshold requirement of FPA section 219 that the proposed transmission project will “either ensure reliability or reduce the cost of delivered power

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<sup>50</sup> 16 U.S.C. § 824s(b)(2).

<sup>51</sup> Order No. 679 at P 76.

by reducing transmission congestion.”<sup>52</sup> The Commission established a rebuttable presumption that this standard is met 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” as well as if 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.”<sup>53</sup> Next, an applicant must demonstrate that there is a nexus between the incentive sought and the investment being made, and that the total package of incentives requested is tailored to address the demonstrable risks or challenges faced by the applicant (also referred to as the “nexus test”).<sup>54</sup> Finally, the applicant must demonstrate that the resulting rates are just and reasonable.

As discussed herein, the requested incentive rate treatments satisfy the standards of FPA section 219, Order No. 679 and the Policy Statement, and are therefore just and reasonable. The requested incentives are being sought on the basis that (1) the Project will ensure reliability and reduce the cost of delivered power by reducing transmission congestion; (2) the “nexus” test has been satisfied; and (3) the resulting rates are just and reasonable.

**A. The Project Need was Determined by the NYPSC and the Project is Included in the NYISO Transmission Plan, and Thus Qualifies for the Rebuttable Presumption Under Order No. 679**

As described above, under Order No. 679, there is a rebuttable presumption that a project approved during a fair and open regional planning process that evaluates projects for reliability or congestion, or a project approved by an appropriate state commission or siting authority is eligible for incentives.<sup>55</sup> In Order No. 679, the Commission recognized the benefit and value of regional planning given that regional planning processes “can help determine whether a given project is needed, whether it is the better solution, and whether it is the most cost-effective option in light of other alternatives.”<sup>56</sup> The Commission 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.”<sup>57</sup> As described in Mr. Mullin’s testimony, the Propel NY Energy Project qualifies for Order No. 679’s rebuttable

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<sup>52</sup> *Id.* at P 76.

<sup>53</sup> *Id.* at P 58.

<sup>54</sup> Policy Statement at P 10 (The Commission determined that it will “analyze the need for each individual incentive, and the total package of incentives” to determine whether the “total package of incentives requested is tailored to address demonstrable risks and challenges.”).

<sup>55</sup> Order No. 679 at P 58.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at P 54.

The Honorable Kimberly D. Bose

October 27, 2023

Page 16

presumption because the Project was selected through the NYISO's PPTPP, a Commission-approved open and transparent regional transmission planning process, which found that the Project will ensure reliability and lower the cost of delivered power by reducing transmission congestion.<sup>58</sup>

NYISO's PPTPP is a fair and open planning process that evaluates potential projects for congestion and reliability and determines whether a project is the more efficient or cost-effective solution. The assumptions, inputs, methodologies, and results of NYISO's analysis are published in the Public Policy Transmission Planning Report.<sup>59</sup>

As part of its evaluation, the NYISO conducted a Viability & Sufficiency Assessment to determine whether the Project is capable of satisfying the minimum criteria of the Long Island PPTN analysis. NYISO determined that the Propel NY Energy Project is a viable and sufficient solution to address the identified need on Long Island.<sup>60</sup>

The NYISO undertook a detailed evaluation of each viable and sufficient transmission proposal to determine the more efficient or cost-effective solution. This assessment considered the Project's capital cost estimate, voluntary cost cap, cost per MW ratio, expandability, operability, performance, production cost, property rights, routing, and development schedule, and other metrics such as production cost savings, capacity savings (including avoided cost savings), locational based marginal price savings, emissions savings, and congestion. NYISO also considered whether the Project would enable greater levels of clean energy delivery from Long Island to the rest of New York.<sup>61</sup>

The NYISO issued the Long Island Offshore Wind Export Public Policy Transmission Plan on June 13, 2023, which includes the NYISO Board decision selecting the Propel NY Energy Project as the more efficient or cost-effective solution in response to the Long Island PPTN. Among other significant findings, Long Island Offshore Wind Export Public Policy Transmission Plan noted that the NYISO's analyses determined that the Project:

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<sup>58</sup> Mullin Testimony at 18; *see also* NYISO Board Decision at 6 (“Finally, the Board has concluded that . . . the [Project] will relieve transmission congestion and provide a myriad of additional economic and performance benefits such as, but not limited to, increased operational flexibility, improved system resiliency, reduced emissions from curtailments due to transmission system congestion, and the policy objectives on the part of New York State.”).

<sup>59</sup> Long Island PPT Plan.

<sup>60</sup> NYISO, *Long Island Offshore Wind Export Public Policy Transmission Need Viability & Sufficiency Assessment*, (Apr. 5, 2022), Exh. No. TRANSCO-203 (“NYISO Viability Assessment”).

<sup>61</sup> Haering Testimony at 21.

- Adds a strong 345 kV backbone to the Long Island transmission system that not only allows the delivery of offshore wind power but also will effectuate the efficient transfer of power in the future;
- Provides effective operability under a variety of outage conditions;
- Provides low cost per MW for transfer capability, expandability, and operating range;
- Provides consistent economic benefits across various future scenarios;
- Although not required for the Long Island PPTN, partially relieves the congestion on the Barrett-Valley Stream 138 kV path within Long Island; and
- Provides potential economic benefits, estimates to be as high as \$3.6 billion over 20 years.<sup>62</sup>

The Project was selected as the more efficient or cost-effective solution to satisfy the Long Island PPTN for cost allocation purposes. Accordingly, the approval of the Propel NY Energy Project through the NYISO's PPTPP satisfies the requirements for the rebuttable presumption.

#### **B. The Project is Needed to Maintain Reliability and Reduce Congestion**

Notwithstanding the rebuttable presumption, the Propel NY Energy Project satisfies the requirements of FPA section 219. Where an applicant does not meet the standards for a rebuttable presumption, they may still qualify for incentives upon demonstrating that the project is needed to maintain reliability and reduce congestion.<sup>63</sup>

Congestion has been identified and studied in multiple areas of New York State in the course of NYISO's transmission planning. In NYISO's 2019 Congestion Assessment and Resource Integration Study ("CARIS"), NYISO identified that the large amount of renewable energy anticipated to come online and needed to achieve the 70x30 policy goals under the CLCPA will lead to significant transmission constraints.<sup>64</sup>

As described above, and included in the testimonies of Mr. Haering and Mr. Mullin, the Project will provide reliability benefits and decrease congestion. Specifically, the Project will

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<sup>62</sup> Long Island PPT Plan at 11.

<sup>63</sup> Order No. 679 at P 57.

<sup>64</sup> NYISO, *2019 CARIS Report: Congestion Assessment and Resource Integration Study*, at 10-11 (July 2020), available at <https://www.nyiso.com/documents/20142/2226108/2019-CARIS-Phase1-Report-Final.pdf>.

The Honorable Kimberly D. Bose

October 27, 2023

Page 18

increase export capability and access to clean energy and offshore wind generation from Long Island to southeast New York.<sup>65</sup> The Project's added transfer capacity and upgrades to the transmission infrastructure serving Long Island will reduce the number of curtailments from offshore wind resources. The energy produced through reduced curtailment of offshore wind resources can then be used to offset more expensive generation to meet New York State's energy demand, resulting in production cost savings. Production cost savings are also created by offsetting high-cost energy imports from neighboring regions with lower cost New York-based generation that was previously inaccessible due to transmission congestion. The Project is designed to increase export capability from Long Island to southeast New York, and help alleviate major congestion impacts by ensuring access to offshore wind generation to the rest of the state.<sup>66</sup> The Project will significantly reduce congestion in Long Island and southeast New York. Further, the Project will improve the reliability of the transmission system in Long Island by upgrading several existing facilities to be able to connect more than 3,000 MW of offshore wind generation to southeast New York.

Moreover, the NYISO Board of Directors decision notes that the Propel NY Energy Project “*will relieve transmission congestion and provide a myriad of additional economic and performance benefits such as, but not limited to, increased operational flexibility, *improved transmission system resiliency*, reduced emissions from curtailments due to transmission system congestion, and the policy objectives on the part of New York State.*”<sup>67</sup>

Therefore, if the Commission does not determine that the Project qualifies for Order No. 679's rebuttable presumption, the Commission should determine that the Project is nonetheless eligible for transmission rate incentives under Order No. 679.

**C. There is a Nexus Between the Incentive Rate Treatments Sought and the Risks and Challenges Faced by Transco in Developing the Project**

Transco's request for incentive rate treatments for its investment in the Propel NY Energy Project is consistent with section 219 of the FPA, Order No. 679, as well as Commission policy and precedent. An applicant seeking rate incentives under Order No. 679 must demonstrate that there is a “nexus” between the incentives requested and the investment being made. That is, the applicant must show that there is a rational relationship between the requested incentives and the proposed project.<sup>68</sup> The Commission explained that this test is fact-specific and reviews each

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<sup>65</sup> Long Island PPT Plan at 7.

<sup>66</sup> *Id.* at 11.

<sup>67</sup> *See* Mullin Testimony at 18 (citing NYISO Board Decision at 6).

<sup>68</sup> *See* Order No. 679 at P 48; Order No. 679-A at P 16. The Commission has emphasized that, to meet the nexus requirement, the applicant does not need to satisfy a “but for” test and show that the projects would not be built without the incentives.

application on a case-by-case basis.<sup>69</sup> An applicant demonstrates there is a nexus when the incentives requested are “tailored to address the demonstrable risks or challenges faced by the applicant.”<sup>70</sup> In Order No. 679-A, the Commission also explained that, in determining whether an applicant has met the nexus test, it will examine “the total package of incentives being sought, the inter-relationship between any incentives, and how any requested incentives address the risks and challenges faced by the Project.”<sup>71</sup> Accordingly, Transco first explains the significant risks and challenges that it will face in developing the Project. Then, Transco explains how each of the four requested incentive rate treatments independently address those risks and challenges.

### **1. Transco Will Face Considerable Challenges in Developing the Project**

The Propel NY Energy Project represents one of the largest, if not the largest, non-merchant underground and submarine electric transmission development projects on the East Coast in terms of both circuit miles constructed and capital expenditure.<sup>72</sup> Transco will face numerous financial, regulatory, and execution challenges during the development of the Project.<sup>73</sup>

#### **a. Financial Risks**

The Propel NY Energy Project has a total capital cost estimate of \$2.7 billion. Currently, Transco’s development partner, NYPA, is authorized to contribute \$500 million to the Project with an opportunity to increase its ownership percentage to no more than 30%. Accordingly, Transco will invest approximately between \$1.89 – \$2.2 billion to complete project development and construction.<sup>74</sup> Mr. Robert Caso testifies that it will be a complex task to raise the capital required to develop the Project.<sup>75</sup>

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<sup>69</sup> Incentives Policy Statement at P 6.

<sup>70</sup> Order 679-A at P 27.

<sup>71</sup> *Id.* at P 21.

<sup>72</sup> *See* Mullin Testimony at 3.

<sup>73</sup> Transco clarifies that the incentive rate treatments requested here are limited to Transco and its investment in the Project. The incentive rate treatments will not apply to NYPA for its investment in the Project. NYPA has filed for the abandoned plant incentive in Docket No. EL23-96-000 and may request additional incentive rate treatments in subsequent proceedings.

<sup>74</sup> As noted, *supra*, for planning purposes, Transco is currently estimating an investment share of \$2.2 billion.

<sup>75</sup> Exhibit No. TRANSCO-300, Direct Testimony of Robert Caso at 14 (“Caso Testimony”), which is contained within Attachment H to this filing.

Transco's anticipated capital contribution for the Project is over twice the amount of the investments that Transco has in its existing portfolio of transmission projects.<sup>76</sup> Transco's cash flow from current operations, therefore, is not expected to satisfy the necessary capital investment needs for the Project and Transco could suffer from cash flow interruptions and, as a result, poor financial metrics.<sup>77</sup> The long development timeline for the Project will require many years of significant capital expenditures where the cash outflows will exceed Transco's internal operating cash flow.<sup>78</sup>

Mr. Caso explains that the ratio of cash flow from operations to capital expenditures is an important credit indicator.<sup>79</sup> Committed capital expenditures that are far in excess of internal cash flow from operating activities is viewed as a source of liquidity risk and weak credit.<sup>80</sup> Transco also faces significant uncertainty in terms of obtaining all the necessary local permitting and regulatory approvals to develop the project.<sup>81</sup> Moreover, the seven-year development cycle and the long lead time for equipment, risk of cost escalation and ability to obtain the necessary labor and raw materials, are all key risk factors that increase the risk profile of Transco, which has a negative impact on Transco's creditworthiness, making it more difficult and costlier to raise capital, debt and equity.<sup>82</sup>

Lenders will consider whether a developer is experienced with a good operating track record and strong credit quality, and whether the project itself has an appropriate capital structure and financial returns needed to meet its contractual obligations.<sup>83</sup> The investor community generally demands higher rates of return on larger infrastructure projects due to inherent risks from long planning horizons and complex permitting processes, as discussed herein.<sup>84</sup> Without incentives that materially improve Transco's operating cash flow during the significant capital needs, its borrowing costs are likely to be higher, and without an appropriate regulatory framework, Transco may be forced to accept unfavorable borrowing terms.

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<sup>76</sup> *Id.* Transco currently has roughly \$180,000,000 of plant in-service for the TOTS projects and \$650,000,000 for the AC Transmission Projects.

<sup>77</sup> *See* Tsoukalis Testimony at 24 (Projects with very large construction costs and longer construction periods "can create outsized financial risk for the utility during the construction period, potentially resulting in lower credit ratings and higher cost of capital.").

<sup>78</sup> Caso Testimony at 18.

<sup>79</sup> *Id.* at 16.

<sup>80</sup> *Id.*

<sup>81</sup> *See generally*, Haering Testimony; Exh. No. TRANSCO-400, Direct Testimony of Stephen Cole-Hatchard, Jr. ("Cole-Hatchard Testimony"), as set forth in Attachment I to this filing.

<sup>82</sup> Caso Testimony at 14.

<sup>83</sup> *Id.*

<sup>84</sup> Tsoukalis Testimony at 30.

In addition, for the first time in the NYISO's PPTPP, Transco and NYPA have utilized the cost cap provisions in Section 31.4.5.1.8 of Attachment Y to the NYISO OATT. These provisions allow developers to submit a voluntary hard or soft Cost Cap proposal with its project submission that covers its Included Capital Costs. In its project submission, Transco and NYPA proposed a soft cost cap of 80/20 whereby Transco, NYPA and ratepayers would share in the risk that actual Project costs for the NYISO OATT-defined Included Capital Costs are above the estimated costs.<sup>85</sup> Under an 80/20 soft cost cap, Transco and NYPA are jointly responsible for twenty percent (20%) of the amount that the actual costs exceed the estimate.

While the cost containment mechanism makes cost savings due to the project more certain for ratepayers, it exposes the project developers to significant financial risk.<sup>86</sup> Transco and NYPA included a 2% escalation factor to the Included Capital Cost estimate in its proposal to account for increases in materials and labor costs. However, the 2% escalation factor is considerably lower than contemporaneous inflation rates exposing Transco to significant additional financial risk.<sup>87</sup> Each of the development risks identified below could lead to development delays and cost increases which would jeopardize Transco's ability to recover otherwise prudently incurred Project costs.<sup>88</sup>

#### **b. Permitting Risks**

There are several known permitting risks associated with the development of the Project. The Propel NY Energy Project will require the construction of four new transmission substations, 260 circuit miles of new underground cables, and 40 circuit miles of new submarine cables, all through populous areas of western Long Island and New York City. Transco is still determining the precise regulatory and environmental requirements and authorizations it will need, but Transco has developed a preliminary list of agencies that will likely have a certain level of involvement.<sup>89</sup>

- U.S. Army Corps of Engineers
- U.S. Fish and Wildlife Service

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<sup>85</sup> Transco and NYPA also included a 2% escalation factor on its estimated costs.

<sup>86</sup> Tsoukalis Testimony at 5.

<sup>87</sup> *Id.* at n.14 (Mr. Tsoukalis compares the escalation factor against inflation for a defined period of time and finds: "Escalation of 2% per year over 20 months yields an increase of roughly 3.4%, approximately one third the rate of inflation from October 2021 to June 2023").

<sup>88</sup> *Id.* at 46.

<sup>89</sup> Haering Testimony at 9-10.

- New York State Office of Parks, Recreation & Historic Preservation
- U.S. Environmental Protection Agency
- U.S. Coast Guard
- National Park Service
- Federal Aviation Administration
- New York State Public Service Commission
- New York State Department of Transportation
- New York State Department of Environmental Conservation
- New York State Department of State
- Long Island Rail Road
- Metro North Railroad<sup>90</sup>

Given the number of permits and reviewing agencies, the development process and timing will be complicated. Transco and NYPA will need to coordinate with multiple state, local and federal agencies and apply for several permits at the same time in order to meet the tight development time frames set for the Project.<sup>91</sup> While Transco may be able to manage short permitting delays through construction sequencing, Transco will need all necessary permits at the same time to facilitate equipment and material procurement, timely delivery of materials and hiring of work crews to complete the Project as planned.<sup>92</sup>

Due to the Project's location, Transco anticipates many obstacles to obtaining the required permits needed for Project development. As described by Mr. Haering, Transco will likely receive

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<sup>90</sup> In addition, several other stand-alone permits may be needed, including: New York State Department of Environmental Conservation State Pollution Discharge Elimination System General Permit for Stormwater Discharge During Construction Activities; Utility Work Permit from the New York State Department of Transportation; Coastal Consistency Certificate from the New York State Department of State; and historic and archaeological clearances from the New York State Historic Preservation Office/New York Office of Parks, Recreation and Historic Preservation.

<sup>91</sup> Haering Testimony at 11.

<sup>92</sup> *Id.*

The Honorable Kimberly D. Bose

October 27, 2023

Page 23

opposition in its permit application proceedings, including for the siting approvals required under Article VII of the New York Public Service Law (“PSL”).<sup>93</sup> Under Article VII, the Project qualifies as a “major utility transmission facility,”<sup>94</sup> and requires a Certificate of Environmental Compatibility and Public Need (“Certificate”) and an approved Environmental Management and Construction Plan (“EM&CP”) before Project construction may begin. The intent of the EM&CP is to minimize environmental impacts during construction and operation of the transmission facility. Article VII requires the NYPSC to conduct a full environmental, public health, and safety impact review of the siting, design, construction, and operation of all major transmission facilities in New York State, as well as determine the need for the Project.<sup>95</sup> The NYPSC has broad authority and discretion to impose in the Certificate any terms, conditions, limitations, or modifications of the proposed project that it deems appropriate.<sup>96</sup> These Certificate conditions can include facility location requirements, construction activity restrictions, required environmental or agricultural inspections, and applicant reporting requirements to regulators.

Given the Project’s large scope, affected landowners, elected officials, and other stakeholders are likely to participate. Moreover, the offshore wind projects themselves have experienced delays caused by opposition efforts. Although the Project is not an offshore wind project, the Project facilitates the connection and deliverability of the offshore wind that is planned, and the Project may therefore be subject to additional public scrutiny. As noted, the Project does more than simply facilitate this generation as it bolsters Long Island’s transmission backbone and offers many additional reliability and resiliency benefits that benefit the state as a whole.

In accordance with Article VII, there will be significant public consultation before Transco can proceed with construction. Transco may be subject to an administrative evidentiary hearing upon filing an Article VII application, providing an additional forum for public scrutiny. If the Project is challenged, Transco could be subjected to adjudicatory processes that could take months or years and result in significant construction delays.<sup>97</sup>

In addition to meeting the Article VII requirements, prior to construction, the Project will need to apply to the U.S. Army Corps of Engineers (“USACE”) for Sections 10 and 404 permits for wetlands and waterbody crossings which, may pose increased risk to the project. There is a risk that the USACE permits could be delayed or denied due to these regulatory compliance requirements.

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<sup>93</sup> *Id.* at 10-11.

<sup>94</sup> Major electric transmission facilities are lines with a design capacity of 100 kV or more extending for at least 10 miles, or 125 kV and over, extending a distance of one mile or more.

<sup>95</sup> The NYPSC’s March 12, 2021 PPTN order satisfies this need determination.

<sup>96</sup> P.S.L. § 121; *see also In re Cty. of Orange v. Pub. Serv. Comm’n of N.Y.*, 353 N.Y.S.2d 916 (1974), modified, 37 N.Y.2d 762 (1975).

<sup>97</sup> P.S.L. § 121.

To minimize costs and environmental impacts, Transco and NYPA proposed to develop the majority of the Project within existing public rights-of-way. However, the configuration of the Project will nonetheless require Transco to engage in good faith negotiations with some third-party property owners to obtain certain property rights necessary to construct the Project as proposed. Although NYPA has experience in negotiating and obtaining easements, it is possible that NYPA's efforts to obtain the rights-of-way may result in disputes or challenges that could, at a minimum, jeopardize the Project's in-service date or require material modification to the Project as proposed. For the Project to be in-service by its target in-service date, cooperation by these landowners is necessary. To the extent the Project must be modified as a result of any of these processes, the Project could be significantly delayed or could be jeopardized entirely.

Additionally, the Project's preferred route will rely on construction in eight different parkland areas controlled by a variety of local governments.<sup>98</sup> In New York, parkland cannot be conveyed without prior authorization from the State of New York in the form of legislation approved by both houses of the State Legislature and enacted into law by the Governor.<sup>99</sup> Once a developer requests parkland alienation, the local affected government needs to complete a multistep process that includes an environmental impact review to request that the governor, state assembly, and state senators adopt and pass a bill authorizing alienation. Even after the state government passes a park alienation bill, in certain circumstances, a federal parkland conversion process is required when the parkland has previously received federal funding assistance. This is the case for the construction needed at one location, Alley Pond Park in the New York City borough of Queens. Mr. Haering fully outlines the processes for parkland alienation in his testimony.<sup>100</sup>

As explained in Mr. Haering's testimony, it would be nearly impossible to find an alternative to the parkland areas because land acquisition is limited by commercial development and shoreline limitations.<sup>101</sup> In the event that Transco cannot access all of the parkland areas in a timely fashion, it may not be able to meet the required in-service date, which may ultimately prevent Transco from proceeding with Project development.

These processes are particularly risky due to their time intensive nature and the fact that Transco will need to obtain several permits at one time. At an expedited rate, the permitting

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<sup>98</sup> See Haering Testimony at 11-12. These include certain parklands known as Alley Pond Park, Francis Lewis Park, Ferry Point Park, and Oakland Lake Wildflower Meadow Preserve, all located in the City of New York; the City of New Rochelle's Hudson Park & Beach; as well as Chester Heights Park and Parkway Oval, both located in the Town of Eastchester; and the Bronx River Parkway Reservation owned by the County of Westchester.

<sup>99</sup> See *id.*

<sup>100</sup> *Id.* at 12-13. See also Tsoukalis Testimony at 36-37.

<sup>101</sup> Haering Testimony at 11.

processes may take between 18 to 24 months to accomplish – a process that will be particularly difficult given the fact that Transco will need to apply for several permits during overlapping timeframes.<sup>102</sup> The New York state legislature only meets between January and June each year and if Transco does not submit its proposals within that timeframe, then it will need to wait until the next legislative session.<sup>103</sup> This delay may be even more prolonged by the fact that local approvals may expire and must be re-obtained if the State Legislature fails to act within the session. Under this timeframe, Transco is at further risk of facing opposition through litigation or public pressure campaigns.<sup>104</sup> Additionally, support from state leadership is not guaranteed, especially with the two-year term limits for New York State and local leaders.<sup>105</sup> Even if New York State and local leaders support the Project, they may be replaced by an official who does not support the Project in the same way. Or, as recently happened, the Governor could ultimately veto any legislation passed by the Legislature.<sup>106</sup> In her veto, Governor Hochul specifically identified the parkland alienation provisions included in the bill and the local community’s opposition as a justification for the veto.<sup>107</sup> In an effort to mitigate this risk, Transco and NYPA began the process of community outreach well before the Project was selected in June 2023<sup>108</sup> and continues to engage with community groups, elected officials, and other interested parties, but there is no guarantee that Transco and NYPA will be successful in satisfying the demands of all affected communities throughout the development area.<sup>109</sup>

Finally, The Project will traverse four identified disadvantaged communities,<sup>110</sup> including New Rochelle in Westchester County, Hempstead and Rockville Center in Nassau County, and areas in Bronx County in New York City.<sup>111</sup> In determining the best route for the Project, Transco and NYPA reviewed maps of environmental justice (“EJ”) communities in the area and reduced

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<sup>102</sup> *Id.* at 15.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 15-16.

<sup>106</sup> *See* Haering Testimony at 15-16; Tsoukalis Testimony at 36-37; Veto #37, Letter to the Senate, (October 20, 2023) (vetoing a Bill that included language that would authorize the alienation of parkland in Long Beach, Nassau County for the development of an offshore wind facility).

<sup>107</sup> *Id.* (Governor Hochul stated that “it is incumbent on renewable energy developers to cultivate and maintain strong ties to their host communities throughout the planning, siting, and operation of all large-scale projects.”)

<sup>108</sup> Haering Testimony at 16.

<sup>109</sup> In his testimony, Mr. Tsoukalis determines that Governor Hochul’s veto is “likely to delay the project and potentially cause design changes or add other costs to the project.” Tsoukalis Testimony at 37.

<sup>110</sup> NYSERDA, *Disadvantaged Communities*, <https://www.nyserda.ny.gov/ny/Disadvantaged-Communities>.

<sup>111</sup> Haering Testimony at 16.

The Honorable Kimberly D. Bose

October 27, 2023

Page 26

impacts the Project would have on EJ communities to the greatest extent possible. Although Transco sought to reduce impact on these communities, given the Project's linear nature, development within certain EJ communities is unavoidable. Transco expects to leverage NYPA's EJ team to engage labor, advocates, organizations, and elected officials who represent the neighborhoods along the route. However, as noted in Mr. Tsoukalis' testimony, several infrastructure projects in southern New York have been delayed or cancelled on EJ grounds in the past five years.<sup>112</sup>

As described above, the Project has significant permitting and siting risks. Any delay in this project element could result in delays in the construction schedule and increase costs in the development of the Project.

### **c. Scheduling Risks**

The Project involves 88 miles of excavation work in densely populated urban and suburban areas. As a result, Transco will encounter scheduling and execution risks that may impact the timely execution of the Project. These risks are further described below and in Mr. Stephen Cole-Hatchard, Jr.'s testimony.<sup>113</sup>

First, Transco will need to comply with local ordinances concerning noise, light, and work hour restrictions. Although Transco will receive an approved work schedule including active work hours from the NYPSC as part of the Article VII permit authorization, it may receive work stipulations from New York City, respective counties, and other neighborhoods or bodies that differ from the NYPSC schedule.<sup>114</sup> Generally, in these areas, work hours are limited to 8:00 am to 5:00 pm, or near this window. These restrictions may delay construction and require that Transco obtain additional labor or expenses to complete construction on time.

Transco will also encounter obstacles given the condensed construction timeline. Transco needs to place 304 circuit miles of transmission line within the four-year construction period. Typically, production rates for electric transmission construction are approximately 75 feet per day. For a project of this scope, multiple crews will need to work simultaneously at different locations to meet the in-service date.<sup>115</sup>

Because the majority of construction will be completed underground, the construction crews will need to restore all work areas with steel plates to allow for ordinary road usage during

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<sup>112</sup> Tsoukalis Testimony at 40-42.

<sup>113</sup> See Cole-Hatchard Testimony at 7-9.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

non-working hours and remove those plates each day before continuing work.<sup>116</sup> Mr. Cole-Hatchard, Jr. estimates that area preparation will take at least four hours a day with two hours for set up and two hours for restoration.<sup>117</sup> He also explains that it will be challenging to ensure that the crews have overlapping hours because often times, the permitted work hours between midblock segments and the immediately adjacent intersections have different work hours, and they are not necessarily aligned due to traffic conditions.<sup>118</sup> Ideally, the crews work in an assembly line with excavation crews performing their work while other crews install pipe, with restoration crews performing backfill operations within a few days.<sup>119</sup>

Transco may also encounter challenges with staging during construction. Construction activities will require the use of heavy machinery and materials capable of accommodating nearly 264 miles of terrestrial electric transmission cable that must be specially ordered in 2,000-foot long segments.<sup>120</sup> Each reel of cable weights at least 20 tons and the Project will require at least 700 individual reels.<sup>121</sup> Given the tremendous weight of a considerable amount of cable, Transco's construction crews may struggle to find an adequate storage space for holding materials and machinery each day and night.<sup>122</sup>

With regard to labor, Transco will need to hire highly specialized crews to complete construction. As explained by Mr. Cole-Hatchard, Jr., some of the local utilities in the area and wind generation developers are in need of workers with similar skillsets, thus potentially making it more difficult for Transco to find labor.<sup>123</sup> Mr. Tsoukalis also identifies the availability of skilled labor as an extraordinary risk associated with the development of the Project.<sup>124</sup>

This uncertainty is further heightened by the Jones Act, which may limit the number of vessels that can support the installation of the submarine cable across the Long Island Sound.<sup>125</sup> As explained by Mr. Tsoukalis, due to the need for the Project "to lay extensive submarine cable,

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<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 9.

<sup>124</sup> Tsoukalis Testimony at 42 ("The growth in the deployment of offshore wind worldwide has led to significant supply chain constraints associated with sourcing materials and labor for transmission and submarine cable needed to connect renewable resources to the grid.").

<sup>125</sup> Tsoukalis Testimony at 37-38.

[Jones Act restrictions] on the use of foreign vessels adds potential risk and complication in finding a contractor to install the submarine cable.”<sup>126</sup>

**d. Procurement Risks**

With the continuance of global supply chain issues, Mr. Cole-Hatchard, Jr. anticipates supply chain shortages on the equipment and construction materials needed to complete the Project.<sup>127</sup> Although Transco and NYPA have already solicited offers from suppliers to mitigate these risks, their options are limited due to the need to order 264 miles of terrestrial electric transmission cable in specifically manufactured 2,000-foot long segments.<sup>128</sup> The acquisition of submarine cables is just as challenging – especially given that lead times could be as long as 7 years.<sup>129</sup> Similar to terrestrial cables, there is a limited pool of vendors capable of producing submarine cable at the 345 kV class.<sup>130</sup> This key sourcing limitation is confirmed by Mr. Tsoukalis.<sup>131</sup> All potential vendors are overseas and will need to ship that material to the Project site. In order to transport these cables, certain vessels are required and there is no guarantee that the vessels will be available when the cable is ready for delivery.<sup>132</sup>

Further, the Project requires PARs to be installed at various points of the system.<sup>133</sup> Because only a handful of manufacturers can supply the necessary PARs, Transco plans to order from multiple vendors and ship the equipment on different vessels to mitigate delivery risks.<sup>134</sup> It is important that the PARs and transmission cables arrive when the crews are prepared to install the equipment.<sup>135</sup> If they are delayed that will further exacerbate the staging issues described above.

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<sup>126</sup> *Id.*

<sup>127</sup> Cole-Hatchard Testimony at 9.

<sup>128</sup> *Id.* at 8-9

<sup>129</sup> *Id.* at 9.

<sup>130</sup> *Id.*

<sup>131</sup> Tsoukalis Testimony at 43 (“The market for submarine cable for electricity transmission is concentrated, with only five key players, ABB Ltd, Siemens AG, Prysmian SpA, NKT A/S, and Nexans SA. Market concentration is due to high barriers of entry from the high capital cost associated with developing uniquely designed cable manufacturing facilities, having a well-trained stable and highly skilled workforce, and access to wharves capable of accommodating large deep sea cable-laying vessels.”).

<sup>132</sup> *Id.* See also Cole-Hatchard Testimony at 10.

<sup>133</sup> Cole-Hatchard Testimony at 9-10.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

**e. Geotechnical Risks**

Constructing terrestrial and submarine cables is inherently more risky than installing overhead transmission. Mr. Cole-Hatchard, Jr. explains that one of the biggest risks with installing underground cables is unexpectedly discovering underground obstructions.<sup>136</sup> Although Transco will rely on engineered drawings and information requests to the utilities in the area, the extent of the underground obstructions will not be known until the area is actually excavated.<sup>137</sup> Some locations may require advanced relocation work to move existing underground facilities belonging to other infrastructure owners out of the way.<sup>138</sup> Transco's crews will have to prioritize methodologies to not disrupt any water, sewage, gas, or electric lines within the streets of the Project area.<sup>139</sup>

As described earlier, the transmission cable will be specially manufactured in 2,000-foot long segments. The cable is being manufactured in this manner to allow for the placement of a manhole in the streets every 2,000 feet for efficient construction.<sup>140</sup> In the event the necessary space to accommodate the manholes is not available due to the existence of other utility infrastructure, Transco may need to coordinate with those utilities to move their facilities or plan to relocate the manholes.<sup>141</sup> Although Transco will attempt to avoid such infrastructure, the available information and maps may not be completely accurate given the number of infrastructure that has been placed underground over the past 100 years.

Submarine cables are also difficult to install. In addition to the labor and procurement issues described above, submarine cable will be installed in the waters of the Long Island Sound and will need to cross over and under pre-existing critical facilities.<sup>142</sup> This will require coordination with the utilities that own the preexisting cable. According to Mr. Cole-Hatchard, Jr., there is always a risk of inadvertent damage to the existing infrastructure during installation.<sup>143</sup>

The Project will also require the use of advanced technology, such as horizontal directional drilling ("HDD") for the crossing of the East River near the Whitestone Bridge. Transco will need to drill 6,000 feet of pipe throughout the underwater path. Mr. Tsoukalis explains this 6,000-foot long segment is one of the longest segments of transmission cable ever laid in North America using

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<sup>136</sup> *Id.* at 10-11.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at 11-12.

<sup>143</sup> *Id.*

The Honorable Kimberly D. Bose

October 27, 2023

Page 30

HDD.<sup>144</sup> Given the location, it will be difficult to establish the required 6,000 feet of space for the HDD setup that is required on both sides of the drill location.<sup>145</sup> The required installation setup could require reengineering, and cause delays and cost increases. HDD will also occur at the eight landfalls for the submarine crossing of the Long Island Sound that are each in highly congested areas, which are the same areas requiring parkland alienation legislation, discussed above.<sup>146</sup>

Therefore, there are many risks and challenges associated with the development of the Propel NY Energy Project. Transco and NYPA will comply with all state and local ordinances and take precautionary measures to mitigate these risks and challenges as further described below.

**2. The Requested Incentives Will Each Address Demonstrable Risks and Challenges in Developing the Project**

**a. The Abandoned Plant Incentive is Tailored to Mitigate the Risks and Challenges Associated with Development of the Propel NY Energy Project**

Transco requests the ability to recover 100% of prudently incurred costs if the Project is abandoned, in whole or in part, due to reasons outside Transco's control. The Abandoned Plant Incentive is tailored to mitigate the regulatory risks associated with Transco's investment in the Project if it is abandoned for reasons beyond Transco's control. In Order No. 679, the Commission found that abandonment cost recovery is an effective means to reduce risk of non-recovery of costs and promote transmission development.<sup>147</sup> The Commission further noted that the Abandoned Plant Incentive is less of an incentive and "is perhaps more properly characterized as reducing a regulatory barrier."<sup>148</sup>

The Commission recognized that the risks associated with acquiring rights-of-way and obtaining approval from local jurisdictions for projects proposed in densely populated areas as sufficient to support the Abandoned Plant Incentive nexus.<sup>149</sup> As stated above, the Project faces significant financial, regulatory, permitting and execution risks and other requirements that may result in the Project being cancelled for reasons beyond Transco's control.

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<sup>144</sup> Tsoukalis Testimony at 38 ("The longest HDD transmission cable project ever completed in North America is the Bergen Linden Corridor Underground project, a 6,600 feet underground crossing of the Newark Bay that cost \$1.2 billion to complete").

<sup>145</sup> Cole-Hatchard Testimony at 12-13.

<sup>146</sup> *Id.* at 13.

<sup>147</sup> Order No. 679 at P 163.

<sup>148</sup> *Id.* at P 28.

<sup>149</sup> *LS Power Grid Ca., LLC*, 182 FERC ¶ 61,201, at P 24 (2023).

The Honorable Kimberly D. Bose

October 27, 2023

Page 31

Furthermore, the Commission has previously granted the Abandoned Plant Incentive for projects at risk of abandonment due to policy and market changes rendering the project unnecessary.<sup>150</sup> Project development will last seven years. Within that time, the Project could be deemed unnecessary or no longer viable due to changes in policy, legislation, the economy, and changes to federal and/or state regulatory processes. For instance, as stated by Mr. Mullin, the NYPSC could determine the Project is no longer needed to meet the Long Island PPTN or the NYISO could terminate the Project in accordance with the terms of the NYISO OATT or the Development Agreement.<sup>151</sup>

While the Abandoned Plant incentive was initially established to encourage transmission development by reducing the risk of non-recovery of costs,<sup>152</sup> expert witness Mr. Tsoukalis demonstrates that the incentive rate treatment can also help to reduce project costs.<sup>153</sup> Financial markets will demand a higher cost of debt if utilities are denied the ability to recover prudently incurred investments abandoned due to circumstances outside their control.<sup>154</sup> The primary benefit of the Abandoned Plant Incentive is that construction lenders will be more likely to proceed with financing knowing they can be repaid if abandonment occurs for reasons outside of the developer's control.<sup>155</sup> Upfront assurances that costs can be recovered in the event of abandonment are particularly important when it comes to expenses that must be incurred well in advance of construction. Lenders will be hesitant to support such expenditures, which will be quite large, absent reasonable assurance that they will be able to recover those investments if events beyond Transco's control interfere with the Project going forward.<sup>156</sup>

For these reasons, Transco requests authorization to recover 100% of prudently-incurred costs in the event the Project is abandoned or canceled for reasons beyond Transco's control.

**b. The CWIP Incentive is Tailored to Mitigate Financial Risk**

Transco is requesting 100% CWIP recovery for the Propel NY Energy Project. The CWIP Incentive allows for the recovery of financing costs for large transmission investments during the construction period instead of delaying cost recovery until the Project is operational.<sup>157</sup> The Commission has stated that "this rate incentive treatment will advance the goals of section 219 by

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<sup>150</sup> See *Ameren Serv. Co.*, 135 FERC ¶ 61,142, at P 59 (2011).

<sup>151</sup> See Mullin Testimony at 20.

<sup>152</sup> Order No. 679 at P 163.

<sup>153</sup> Tsoukalis Testimony at 27.

<sup>154</sup> *Id.*

<sup>155</sup> See Caso Testimony at 19.

<sup>156</sup> *Id.* at 20.

<sup>157</sup> Policy Statement at P 12.

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."<sup>158</sup>

As explained by Mr. Caso and Mr. Tsoukalis, the CWIP Incentive improves cash flows during the construction period.<sup>159</sup> Transco's investment in the Propel NY Energy Project requires a capital expenditure of approximately \$1.89 – \$2.2 billion over at least seven years. Transco's current total investment in its transmission assets is roughly \$830 million between two projects and the capital expenditure needs for the Project would create significant pressure on the cash flows of Transco.<sup>160</sup> Having more cash flow from operations during years of very high capital expenditures would reduce Transco's exposure to the risks of capital market financing.<sup>161</sup> Mr. Tsoukalis agrees and determines that the CWIP Incentive "may reduce the overall cost of a new transmission project and provide higher benefits to customers . . . as cash flows received during construction may improve the credit metrics of the project developer and lead to lower overall financing costs for the project."<sup>162</sup>

Further, inclusion of CWIP in ratebase is "desirable for customers because it avoids significant overnight rate increases, and results in lower rates once the project is in service."<sup>163</sup> In his testimony, Mr. Tsoukalis constructs a hypothetical example to reflect the potential for rate shock if the investment capital is rate based following completion of construction. In his example, Mr. Tsoukalis assumes a \$2.1 billion project with a seven-year development and construction timeframe and capital investments equal to \$300 million in each year of construction. Mr. Tsoukalis also assumes a 50% debt, 50% equity capital structure and cost of debt, after tax cost of equity and income tax rates. In his illustrative example, the revenue requirement jumps from \$0 in 2030 to roughly \$390 million in 2031 if project costs are booked to AFUDC, compared to a gradual increase from \$0 to roughly \$280 million over a seven-year period under the 100% CWIP in ratebase treatment. In addition, his example results in \$2.9 billion added to rate base after the project is placed in service using AFUDC, as compared to the \$2.1 billion added to ratebase with the CWIP treatment.<sup>164</sup>

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<sup>158</sup> See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 184 FERC ¶ 61,034, at P 39 (2023); *PJM Interconnection, L.L.C. & Pub. Serv. Elec. and Gas Co.*, 135 FERC ¶ 61,229 (2011); see also *PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068, at P 43 (2008), *reh'g denied*, 124 FERC ¶ 61,229.

<sup>159</sup> See Tsoukalis Testimony at 18; Caso Testimony at 19.

<sup>160</sup> Caso Testimony at 15.

<sup>161</sup> Caso Testimony at 18; Tsoukalis Testimony at 14.

<sup>162</sup> Tsoukalis Testimony at 20.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.* at 22-23.

Finally, because the present value of receiving cash flow sooner under CWIP in ratebase treatment is lower than the present value of delayed cash flows under the traditional AFUDC treatment, fewer dollars need to be collected from customers over the life of the project to provide the same return on investment to equity investors in the project.<sup>165</sup> Therefore, by not capitalizing costs during construction, the resulting rate will be lower than that of an identical project constructed with an AFUDC-based recovery, thus preventing “rate shock” for customers.

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.<sup>166</sup> Transco and NYPA each plan to include its respective capital expense in separate company accounts. If the CWIP Incentive is approved for Transco, Transco will include its capital expense in a CWIP account and remove any amount from an AFUDC account. As part of the joint development of the Project, Transco and NYPA will engage a third party project accountant that will be responsible for tracking Project costs and ensuring all Project costs are appropriate and the amount that each party is responsible for consistent with its ownership share. Transco and NYPA will review the amounts recorded by each on a monthly basis so that there is no duplicative accounting of Project costs.<sup>167</sup>

The Commission also requires that developers requesting the CWIP incentive make an annual filing with the Commission. Transco will submit a CWIP Report as part of its Annual Update process in its Formula Rate Implementation Protocols (as set forth in Section 36.3.1.2 of Attachment DD to the NYISO OATT) that will provide information regarding project construction and service statuses.<sup>168</sup>

**c. The Risks and Challenges Adder is Tailored to Mitigate the Significant Risks and Challenges of Building a Multi-Faceted Transmission Project in One of the Densest Areas in the Country**

Given the substantial risks and challenges Transco will face while developing the Propel NY Energy Project, as well as the significant benefits that will result from the Project, Transco requests a 150 basis point Risks and Challenges Adder. Under the Incentives Policy Statement, an applicant must: (1) demonstrate that the proposed project faces risks and challenges that are not

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<sup>165</sup> *Id.* at 20.

<sup>166</sup> 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).

<sup>167</sup> Caso Testimony at 12.

<sup>168</sup> Transco has submitted similar yearly CWIP reports for its recovery of CWIP associated with the AC Transmission Project.

either already accounted for in the applicant's base ROE or addressed through risk-reducing incentives;<sup>169</sup> (2) demonstrate that it is taking appropriate steps and using appropriate mechanisms to minimize risks during project development;<sup>170</sup> 3) demonstrate that alternatives to the project have been, or will be considered in either a relevant transmission planning process or another appropriate forum; and, 4) explain whether the application of the incentive ROE is limited to a cost estimate.

**i. The risks and challenges are not already accounted for in the base ROE or other risk-reducing incentives.**

In the Policy Statement, the Commission declined to specifically identify project characteristics or risks and challenges that would merit an incentive ROE and, instead, allows applicants the flexibility necessary to demonstrate why the project merits the incentive.<sup>171</sup> The Commission did explain that projects may merit a Risks and Challenges Adder if they, for example, relieve chronic or severe grid congestion, unlock location constrained resources that had no access to the wholesale markets, or apply new technologies that allow for more reliable and efficient usage of the facilities.<sup>172</sup> The Propel NY Energy Project merits a Risks and Challenges Adder under the circumstances described herein.

First, in its selection of the Project, the NYISO's evaluation determined that the Propel NY Energy Project will relieve congestion on the transmission grid by unlocking constrained wind generated energy on Long Island to areas of southeast New York in a cost effective manner.<sup>173</sup> In particular, the NYISO Board of Directors decision notes that the Propel NY Energy Project "will relieve transmission congestion and provide a myriad of additional economic and performance benefits such as, but not limited to, increased operational flexibility, improved transmission system resiliency, reduced emissions from curtailments due to transmission system congestion, and the policy objectives on the part of New York State."<sup>174</sup> This is the very type of demonstrable consumer benefits the Commission identified: the Project makes the New York transmission grid "more efficient, reliable and cost-effective."<sup>175</sup>

Further, Transco has identified the significant risks and challenges in developing the project, including the financial, permitting, regulatory, and construction risks. The Project is one

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<sup>169</sup> Policy Statement at P 20.

<sup>170</sup> *Id.* at P 24.

<sup>171</sup> *Id.* at P 17.

<sup>172</sup> *Id.*

<sup>173</sup> Haering Testimony at 21-22.

<sup>174</sup> NYISO Board Decision at 6.

<sup>175</sup> Policy Statement at P 22.

The Honorable Kimberly D. Bose

October 27, 2023

Page 35

of the largest underground and submarine transmission projects undertaken in terms of circuit miles and investment needs all within one of the most densely populated areas in the country. Mr. Tsoukalis testifies that large infrastructure projects carry extraordinary risks and “evidence from credit rating agencies indicates that the investor community demands higher rates of return on larger infrastructure projects.”<sup>176</sup>

Mr. Cole-Hatchard, Jr. testifies that the Propel NY Energy Project is a single project solution required to meet a PPTN by a required in-service date that would otherwise be developed over a 10 to 20-year timeframe if pursued under normal utility planning processes.<sup>177</sup> Addressing the Long Island PPTN will require development of one of the most challenging, complicated electric transmission project solutions. Transco has decided to pursue difficult, large-scale infrastructure projects that provide the greatest benefits to consumers.

The base ROE component does not address the significant risks and challenges identified above. In his testimony, Mr. McKenzie supports the addition of a 150 basis point adder to the base ROE component.<sup>178</sup> Mr. McKenzie provides:

Accelerating the shift towards decarbonization requires investment in critical transmission infrastructure to enable access to renewable resources. Insufficient transmission capacity is widely seen as a critical challenge to enhance grid reliability and enable cost-effective integration of clean energy. Ambitious goals to reduce carbon emissions have been established at the state and federal level and state, but as the DOE noted, “Multiple pathways exist for the United States to meet these clean energy goals, but all require upgrading and expanding the Nation’s transmission infrastructure.”<sup>179</sup>

To accommodate the scale of power transfers required to fulfill these objectives, transmission owners must do more than simply maintain existing systems to perform the function for which they were originally designed; rather, they are being directed to literally redesign their transmissions systems. Thus, transmission

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<sup>176</sup> Tsoukalis Testimony at 31 (“These billion dollar large-scale infrastructure projects, like the Propel NY Energy Project, are considered inherently risky due to long planning horizons and complexities that typically involve multiple public and private stakeholders and may impact millions of people.”)

<sup>177</sup> Cole-Hatchard Testimony at 6.

<sup>178</sup> Exh. No. TRANSCO-600, Direct Testimony of Adrien McKenzie at 16-18 (“McKenzie Testimony”).

<sup>179</sup> United States Department of Energy, Notice of Intent, *Building a Better Grid Initiative to Upgrade and Expand the Nation’s Electric Transmission Grid to Support Resilience, Reliability, and Decarbonization*, at 3-4 (Jan. 11, 2022), available at [https://www.energy.gov/sites/default/files/2022-01/Transmission%20NOI%20final%20for%20web\\_1.pdf](https://www.energy.gov/sites/default/files/2022-01/Transmission%20NOI%20final%20for%20web_1.pdf) (“DOE Building a Better Grid Initiative NOI”).

owners, including Transco and other members of NYISO, will commit billions of dollars of new capital to upgrade and expand the existing transmission grid. Early on, the DOE noted the importance of regulatory policies in supporting economic rewards that stimulate investment in new transmission:

The economic rewards from improving the transmission system must be greater than the rewards from maintaining the status quo or decreasing the system's ability to reliably support fair and efficient competitive wholesale markets. ...The key to spurring new transmission investment lies in ensuring that the rewards offered by this system of regulation are commensurate with the risks of undertaking these investments and finding innovative approaches to align costs and benefits.<sup>180</sup>

Transmission projects such as the Project require enormous, upfront investments, and as the DOE recently reiterated, “Financial risk poses a significant barrier to pursuing large scale, multi-region transmission projects.”<sup>181</sup> And while Federal tax incentives continue to pull capital toward clean generation, there are no comparable tax incentives for transmission infrastructure development. Given the benefits of an expanded grid and the significant new investment in transmission infrastructure that is generally deemed necessary to meet established policy goals, it is reasonable to establish an ROE for new transmission investments that incorporates additional incentives beyond the base ROE.<sup>182</sup>

In his expert testimony, Mr. Tsoukalis agrees:

[T]he Risks and Challenges Adder is intended to help attract investment in beneficial transmission projects. A utility’s allowed ROE is established to be commensurate with other enterprises having corresponding risks. Therefore, the allowed ROE accounts for the risks of utility’s operations and investments, but does not necessarily account for extraordinary risks associated with specific capital investments. The Risks and Challenges Adder accounts for risks related to the transmission project that beyond the ordinary risks of the utility’s operations and investments that are accounted for in the allowed ROE. The incentive accounts for these project-specific extraordinary risks by allowing the utility to earn a higher return on the investment made in the project.<sup>183</sup>

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<sup>180</sup> U.S. Department of Energy, *National Transmission Grid Study* (May 2002), available at [https://www.ferc.gov/sites/default/files/2020-04/transmission-grid\\_0.pdf](https://www.ferc.gov/sites/default/files/2020-04/transmission-grid_0.pdf).

<sup>181</sup> DOE Building a Better Grid Initiative NOI at 10.

<sup>182</sup> McKenzie Testimony at 18.

<sup>183</sup> Tsoukalis Testimony at 28.

In conclusion, Mr. Tsoukalis determines: “The regulatory, supply chain, construction, development, and financial risks highlighted in my testimony... demonstrate that the Propel NY Energy Project is an extraordinarily risky project creating uniquely large financial risks for NY Transco. These risks not only support NY Transco’s application for the Risks and Challenges ROE Adder, but they support the application for the CWIP Incentive... and the Project Abandonment Incentive.”<sup>184</sup>

Nor are the significant risks and challenges mitigated by the other risk-reducing incentives. The CWIP Incentive, while instrumental in ameliorating near term cash flow shortages, by itself does not entirely mitigate this risk. The capital expenditures Transco will be expected to fund during the development and construction periods are significant and CWIP recovery is not expected to fully compensate for those necessary outlays. Further, Transco will be seeking debt financing during a very unsettled time in the financial markets with the threat of a global recession. Current market metrics may be a factor in the ability for Transco to finance what will be significantly larger amounts than its current in-service investment for which it is currently recovering in rates.

**ii. Transco has taken and is taking appropriate steps to minimize risks during project development.**

The developer needs to demonstrate that it has adopted measures to mitigate risks during project development.<sup>185</sup> One measure associated with mitigating siting, environmental, and diversifying financial risks, is a joint ownership arrangement.<sup>186</sup> Here, Transco collaborated with NYPA to propose, develop, and construct the Project. This arrangement combines two utilities’ experience with in-state competitive transmission development. Each developer will be responsible for financing its share of the Project.

Also, as described above and in Mr. Cole-Hatchard, Jr.’s testimony, Transco will implement best practices and mitigation measures to reduce the risks associated with Project development. Transco has solicited multiple vendors and plans to solicit more to ensure that the specialized materials needed for the Project arrive at the construction sites on time.<sup>187</sup> Transco will coordinate with existing utilities, NYISO, New York City, and each local government to plan outages and map out existing infrastructure to avoid accidents and prepare to move existing

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<sup>184</sup> *Id.* at P 45-46.

<sup>185</sup> *New York Indep. Sys. Operator, Inc.*, 171 FERC ¶ 61,159, at P 34 (2020) (citing Incentives Policy Statement at PP 20-30).

<sup>186</sup> Incentives Policy Statement at P 24.

<sup>187</sup> Cole-Hatchard Testimony at 9.

infrastructure in advance when necessary.<sup>188</sup> Additionally, Transco will employ as many crews as practicable to ensure that the Project is timely built given all of the restrictions presented in the construction areas.<sup>189</sup>

Transco and NYPA also intend to utilize NYPA’s Environmental Justice team to address any issues that arise in the development of the Project in EJ communities. Transco expects to leverage NYPA’s EJ team to engage labor, advocates, organizations, and elected officials who represent all of the neighborhoods along the route.<sup>190</sup> Transco’s goal is full engagement and involvement of communities that will build trust and address environmental, economic, and social impacts and opportunities.<sup>191</sup> In fact, Transco began this process long before selection of the Project pursuant to the NYISO’s PPTPP – Transco has engaged leaders in Nassau County to educate them on the Project and its consumer benefits, which has allowed the Project team to form relationships with affected communities. Therefore, Transco is committed to reducing the risks and challenges related to Project development.

**iii. Alternatives to the Project have been considered as part of the NYISO PPTPP.**

The developer needs to demonstrate that alternatives to the proposed project have been or will be considered in the relevant transmission planning process.<sup>192</sup> The developer can show that the project was considered and compared with other transmission projects in an Order No. 890- or Order No. 1000-compliant transmission planning process, or considered by a local regulatory body such as a state public utilities commission.

As previously discussed, the Project was selected after being evaluated alongside 18 other projects per the NYISO’s PPTPP. In addition, the Project solicitation letter issued by the NYISO on August 12, 2021 specifically solicited “Public Policy Transmission Projects and Other Public Policy Projects to address the Long Island Offshore Wind Export Public Policy Transmission Need for evaluation in the NYISO’s Public Policy Transmission Planning Process.”<sup>193</sup> “Other Public Policy Project” is defined by the NYISO OATT as: “A non-transmission project or a portfolio of transmission and non-transmission projects proposed by a Developer to satisfy an identified Public

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<sup>188</sup> *Id.* at 13-14.

<sup>189</sup> *Id.* at 8-9.

<sup>190</sup> Haering Testimony at 17.

<sup>191</sup> *Id.*

<sup>192</sup> Incentives Policy Statement at P 26

<sup>193</sup> *See* Project Solicitation Letter at 1.

Policy Transmission Need.”<sup>194</sup> NYISO’s PPTPP is an Order No. 1000-compliant transmission process that compares projects against one another or other non-transmission alternatives.

**iv. Transco’s cost containment mechanism reduces the applicability of ROE risk adders.**

Finally, the developer must provide an explanation of whether the applicant is committed to limiting the application for the ROE risk adder to a cost estimate.<sup>195</sup> As described more fully below, Transco and NYPA have committed to a soft Cost Cap mechanism whereby Transco and NYPA will assume the risk for 20% of the Included Capital Costs that exceed the cost estimate, plus a 2% escalation factor. In other words, under this proposal Transco and NYPA are precluded from recovering through rates or any other mechanism 20% of otherwise prudently incurred Included Capital Costs above the estimate. Rather than simply reducing its allowable return *on* its investment, Transco and NYPA have agreed to forego recovery *of and on* its investment in the amount of 20% of Included Capital Costs above the estimate.

To implement the cost containment mechanism, Transco has elected to craft an alternative rate mechanism that reduces the effective ROE on the amount in excess of the soft Cost Cap that achieves a rate recovery reduction that, as required by the NYISO OATT, is equal to or better for ratepayers in the total long run revenue requirement on a present value basis for the Project compared to that which would be achieved if Transco were to simply write off the 20% amount. That proposal is explained in detail below.

Moreover, projects in which the utility has restrictions on the portion of potential cost overruns that can be passed through to ratepayers are additionally risky for utilities because they provide ratepayers protection against a share of cost increases, making the ROE risk adders increasingly important for attracting capital to projects with cost sharing arrangements.<sup>196</sup>

**v. The Risks and Challenges Adder is appropriate.**

Transco requests a 150 basis point adder to its ROE based on the many risks and challenges associated with developing this Project. As stated above, Transco will face financial, regulatory, siting, and execution risks and challenges not accounted for in its base ROE or fully addressed by other incentives. These risks are unique to this Project as demonstrated by the Project’s total cost estimate of \$2.8 billion, seven-year construction period, and construction of underground cables in highly populated areas of New York. Without an ROE reflective of these challenges, Transco could suffer from significant cash flow interruptions interfering with its ability to invest in this Project and future projects. The Project still requires state and local approval before commencing

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<sup>194</sup> NYISO OATT, Attachment Y, Section 31.1.1.

<sup>195</sup> Incentives Policy Statement at P 28.

<sup>196</sup> Tsoukalis Testimony at 11-12.

construction and is subject to protests from landowners and other stakeholders. Once approved for construction, the Project may face execution challenges such as material procurement, supply chain disruptions, construction risks and many other challenges discussed above. The Risks and Challenges Adder requested here is appropriate to address those risks. Moreover, the Project results in significant customer benefits including reliability and resiliency benefits,<sup>197</sup> production cost benefits,<sup>198</sup> and avoided capital costs.<sup>199</sup>

**d. The RTO Participation Adder Incentive is Appropriate**

Consistent with Section 219(c) of the FPA, Order No. 679, and Commission precedent, Transco requests a 50 basis point adder to its base ROE for its continued participation in the NYISO, which is a Commission-approved ISO. In Order No. 679, the Commission stated it would approve, when justified, ROE adders when a utility joins or maintains RTO/ISO membership.<sup>200</sup> The Commission explained that the ROE adder for RTO/ISO participation is consistent with the purposes of section 219 of the FPA and is intended to promote ongoing participation in transmission organizations.<sup>201</sup> A “utility is presumed eligible for an RTO incentive ‘if it can demonstrate that it has joined an RTO, ISO, or other Commission-approved “Transmission Organization,” and that its membership is on-going’ and need not provide additional justification as to the necessity or benefits of the incentive.”<sup>202</sup> Provided that membership is voluntary and not mandated by state law, entities that join or have already joined an RTO, ISO, or Commission-approved transmission organization are eligible for this incentive.<sup>203</sup> As long as the ROE is within the ROE zone of reasonableness after applying the RTO adder, the Commission routinely approves

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<sup>197</sup> *Id.* at 14 (citing Long Island PPT Plan at 45-65).

<sup>198</sup> *Id.* at 15 (“As a result, over a 20-year period the Propel NY Energy Project is estimated to provide between \$104 million and \$609 million (in real 2022 dollars) in production cost savings for customers.”) (citing Long Island PPT Plan at 47).

<sup>199</sup> *Id.* at 16 (“The Propel NY Energy Project is expected to improve resource adequacy by reducing the NYCA LOLE by about 0.046 event days per year, which results in an annual capacity benefit of between \$106 million and \$114 million (in 2022 real dollars), by reducing downstate capacity requirements.”) (citing Long Island PPT Plan at 61).

<sup>200</sup> Order No. 679 at P 326.

<sup>201</sup> *Cal. Pub. Util. Comm’n v. FERC*, 879 F.3d 966, 974 (9th Cir. 2018) (citing Order No. 679-A, 117 FERC ¶ 61,345 at P 86).

<sup>202</sup> *New York Indep. Sys. Operator Inc.*, 151 FERC ¶ 61,004, at P 90 (2015) (quoting Order No. 679 at P 327).

<sup>203</sup> *Id.*; *The Dayton Power & Light Co.*, 176 FERC ¶ 61,025 (2021) (denying entity’s requested RTO adder because its membership with PJM was not voluntary but rather compelled by Ohio law).

The Honorable Kimberly D. Bose

October 27, 2023

Page 41

this incentive.<sup>204</sup> Additionally, the Commission has already applied the RTO Participation adder to other transmission developers in New York.<sup>205</sup>

Transco is eligible for the 50 basis point RTO Adder. Transco is a voluntary member of NYISO and has been a member since 2016. New York law does not mandate transmission organization participation giving Transco the right to choose to be part of NYISO.<sup>206</sup>

Transco is not seeking to apply the RTO Participation Adder to any project other than the Propel NY Energy Project. Specifically, the RTO Participation Adder will not be generally applied under the Transco Formula Rate (as set forth in Attachment DD of the NYISO OATT) and will not apply to Transco's investment in the TOTS and New York Energy Solution projects.<sup>207</sup>

### **3. The Total Package of Incentives is Tailored to the Demonstrable Risks and Challenges of the Propel NY Energy Project.**

Order No. 679 requires that the applicant demonstrate that the total package of incentives is tailored to the Project's specific risks and challenges.<sup>208</sup> The Commission examines whether "the interrelationship between any incentives, and how any requested incentives address the risks and challenges faced by the project."<sup>209</sup>

The Abandoned Plant Incentive will mitigate the risk of non-recovery of costs associated with project development in the event that the Propel NY Energy Project is cancelled for reasons beyond Transco's control. In the absence of this incentive, the risk can impede efforts to secure

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<sup>204</sup> *AEP Appalachian Transmission Co.*, 130 FERC ¶ 61,075, at P 21 (2010), *order on reh'g*, 135 FERC ¶ 61,066 (2011); *Am. Elec. Power Serv. Corp.*, 124 FERC ¶ 61,306, at P 30 (2008).

<sup>205</sup> *See, e.g., LS Power Grid NY Corp.*, 171 FERC ¶ 61,159 (2020); *NextEra Energy Transmission N.Y., Inc.*, 161 FERC ¶ 61,138 (2017). Both NextEra and LS Power ultimately entered into settlement agreements that removed the RTO Participation Adder from their formula rate recovery. Both settlements included other ROE incentive adders for the risks and challenges associated with project development and project benefits.

<sup>206</sup> *NextEra Energy Transmission N.Y., Inc.*, 162 FERC ¶ 61,186, at P 6 (2018) (finding that a transmission provider "voluntarily" chooses to pursue transmission projects in NYISO and that turning over control of transmission facilities to NYISO is "simply the final step in the process" that a transmission provider "voluntarily began when it chose to pursue projects through the competitive process.").

<sup>207</sup> Transco was originally awarded an RTO Participation Adder in Docket No. ER15-572-000, but agreed in two separate settlements to remove the RTO Participation Adder and replaced it with ROE incentive adders that addressed the consumer benefits and risks and challenges with developing the projects.

<sup>208</sup> Order No. 679-A at 27.

<sup>209</sup> *Id.* at PP 6, 21, 27; *see also* Policy Statement at P 7.

financing for the Project. The CWIP Incentive is not a substitute for the Abandoned Plant Incentive – these incentives address different types of risk. The CWIP Incentive addresses cash flow deficiencies and is necessary for a Project of this scope given the significant funding and capital outlays that will be required during the development and construction phases.

The RTO Participation Adder is designed to promote the participation in and transfer of functional control of the Project to a Commission-approved RTO. Transco is a voluntary member of NYISO and will transfer functional control of the Project to NYISO when the facilities are placed in service.

The Risks and Challenges Adder will address the risks not adequately covered by the Abandoned Plant Incentive, CWIP Incentive, or base ROE level. This incentive is merited for significantly large projects that unlock location-constrained generation resources and that relieve anticipated severe and chronic congestion.

The Commission has awarded ROE adders for risks and challenges associated with project development. For example, the Commission awarded a 100 basis point ROE adder for Transource Missouri's development of the Sibley-Nebraska transmission project.<sup>210</sup> That ROE incentive adder was supported in part by the fact that it required two crossings of the Missouri River and other developmental challenges.<sup>211</sup> However, that project did not face the development challenges Transco faces with the development of the Project. The Project also requires two water crossings, namely, the East River and Long Island Sound, but Transco is required to obtain legislation in New York for parkland alienation in order to effectuate those water crossings. Moreover, the Project is entirely underground and submarine, whereas the Transource Missouri project was entirely above ground.

Similarly, the Commission granted NYPA a 50 basis point ROE adder for the risks and challenges associated with the development of another CLCPA project, the SMART Path Connect Project.<sup>212</sup> NYPA explained in its filing that it would face permitting and siting risks, such as obtaining Article VII Certification from the NYPSC.<sup>213</sup> The Project also was subject to risks associated with material procurement, labor shortages, and construction.<sup>214</sup> The Smart Path Connect Project consisted of rebuilding 100 linear miles of overhead existing transmission line within existing rights-of-way in upstate New York. Here, Transco is developing one of the largest underground and submarine transmission projects in, arguably, the most densely populated area in the country.

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<sup>210</sup> *Transource Missouri, LLC*, 141 FERC ¶ 61,075 (2012).

<sup>211</sup> *Id.*

<sup>212</sup> *See N.Y. Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,004 (2022).

<sup>213</sup> *Id.* at P 30.

<sup>214</sup> *Id.*

By any comparable measure, the Project has significantly greater risks and challenges than any other project the Commission has awarded ROE risk and challenges adders to in the past. As discussed above, the incentive rate treatments requested herein are narrowly tailored to the Project's demonstrable risks and challenges. However, should the Commission determine that it cannot initially approve any element of the Application without further procedures, Transco respectfully requests that the Commission approve the Abandoned Plant Incentive in its initial order on this filing to authorize Transco to recover 100% of prudently incurred costs in the event the Project must be cancelled or abandoned for reasons beyond Transco's control.

#### **D. The Resulting Rates are Just and Reasonable.**

Under Order No. 679, the applicant must demonstrate that the proposed rate treatment is just and reasonable and not unduly discriminatory or preferential under section 205 of the FPA.<sup>215</sup> The requested incentives will not adversely affect Transco's rates for the following reasons. First, granting the Abandoned Plant Incentive will not influence the current rates, which are just and reasonable. The Abandoned Plant Incentive allows an applicant to seek recovery of prudently-incurred costs in a future rate proceeding and only permits recovery in the event the Project is cancelled for reasons beyond Transco's control. Thus, the Abandoned Plant Incentive will not influence Transco's rates, unless and until Transco submits a section 205 filing to recover Abandoned Plant costs.

Second, the CWIP Incentive does not affect Transco's level of recovery, only its timing of recovery.<sup>216</sup> The CWIP Incentive allows applicants to include CWIP in ratebase during the development and construction phases of the Project. It provides benefits to consumers by reducing "rate shock" that occurs when the costs of the transmission project are recovered once the Project is placed in service. Because costs are recovered early, applicants experience increases in cash flow and have lower borrowing costs, which ultimately reduce interest that would compound customer rates. The Commission has previously found that both the Abandoned Plant and CWIP incentives are just and reasonable under section 205 of the FPA.<sup>217</sup>

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<sup>215</sup> 18 C.F.R. § 35.35(d) (2022).

<sup>216</sup> Order No. 679-A at P 38.

<sup>217</sup> See, e.g., *American Electric Power Service Corp.*, 116 FERC ¶ 61,059, at P 55 (2006), *order denying reh'g*, 118 FERC ¶ 61,041 (2007) (allowing recovery of 100 percent CWIP); *Allegheny Energy, Inc.*, 116 FERC ¶ 61,058, at P 74 (2006), *order on reh'g*, 118 FERC ¶ 61,042 (2007); *American Transmission Co., L.L.C.*, 105 FERC ¶ 61,388, at P 27 (order establishing hearing and settlement judge procedures concerning, inter alia, the company's proposal for recovery of 100 percent CWIP), *order dismissing reh'g and approving settlement*, 107 FERC ¶ 61,117 (2004); *Boston Edison Co.*, 109 FERC ¶ 61,300 (2004), *order on reh'g*, 111 FERC ¶ 61,266 (2005) (recovery of 50 percent CWIP); *Southern California Edison Co.*, 112 FERC ¶ 61,014, at P 58-61, *reh'g denied*, 113 FERC ¶ 61,143, at P 9-15 (2005) (granting recovery of 100 percent of prudently incurred abandoned or cancelled plant costs); *New England Power Co.*, Opinion No. 295, 42 FERC ¶ 61,016, at 61,068, 61,081-83 (recovery of 50 percent

Finally, the RTO Participation Adder and Risks and Challenges Adders result in just and reasonable rates. Under the Commission's policies governing incentive-based ROEs, the total ROE of a utility including the impact of an incentive must fall within the zone of reasonableness.<sup>218</sup> Mr. McKenzie supports a composite zone of reasonableness of 8.43% - 13.23%. The requested incentive-based ROE of 12.70% falls below the 13.23% upper end of the composite zone of reasonableness indicated by Mr. McKenzie's analysis.

## **VI. THE PROPOSED REVISIONS TO THE NYISO TARIFF ARE JUST AND REASONABLE**

### **A. Revisions Necessary to Implement the Cost Allocation Methodology**

Transco proposes to allocate the costs of the Propel NY Energy Project to all load serving entities in New York State on a volumetric load-ratio share basis in line with NYPSC's May 16, 2022 decision that directed use of the Commission-approved default cost allocation methodology for Public Policy Transmission Projects as set forth in Section 31.5.5.4.3 of Attachment Y to the NYISO OATT.<sup>219</sup> As explained in Mr. Mullin's testimony, the NYPSC established that the cost allocation formula associated with the Long Island PPTN should be based on a statewide volumetric load-ratio share basis because the Propel NY Energy Project will help achieve New York State renewable goals as identified by the CLCPA, and will provide considerable benefits to electric customers throughout the state.<sup>220</sup>

The Commission previously approved this cost allocation mechanism for New York State projects needed to meet the CLCPA goals.<sup>221</sup> In those proceedings, the Commission found that volumetric load sharing was commensurate with the benefits of the project because the project was determined to be necessary to meet New York State law requirements.<sup>222</sup> The rationales espoused

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of prudently incurred cancelled plant costs), *order on reh'g*, 43 FERC ¶ 61,285 (1988); *Public Service Co. of New Mexico*, 75 FERC ¶ 61,266, at 61,859 (1996), *order approving settlement*, 87 FERC ¶ 61,040 (1999) (50 percent recovery of cancelled plant costs).

<sup>218</sup> See, e.g., Order No. 679 at P 93.

<sup>219</sup> See Rehearing Order.

<sup>220</sup> *Id.* at 26-27.

<sup>221</sup> *N.Y. Indep. Sys. Operator, Inc.*, 184 FERC ¶ 61,059, at P 47 (2023) (accepting proposal to implement a statewide cost allocation on a volumetric load-ratio share basis for a project selected by the NYPSC to meet New York State public policy goals); *Consol. Edison Co. of N.Y.*, 180 FERC ¶ 61,106 at PP 3, 48-50 (2022) (accepting proposal to implement a statewide cost allocation on a volumetric load-ratio share basis for local transmission upgrades selected by the NYPSC to meet New York State public policy goals).

<sup>222</sup> *Id.*

by the Commission in those orders apply with equal force here. Like the projects in those proceedings, NYPSC found that the Propel NY Energy Project is necessary to achieve the CLCPA's goals. Therefore, cost allocation for the Propel NY Energy Project should not be treated differently than other projects being developed to carry out the CLCPA and New York state renewable mandates.

### **1. Proposed Revisions to Section 36.2.1 in Attachment DD**

In order to effectuate this cost allocation methodology, Transco proposes to include a new section in Section 36.2.1 in Attachment DD of the NYISO Tariff. Section 36.2.1 includes the cost allocation tables for the proper allocation of costs of the transmission projects owned by Transco. Specifically, Transco proposes to include a new Section 36.2.1.3 that provides: "The costs associated with the Propel NY Energy Project will be allocated in accordance with Section 31.5.5.4.3 of Attachment Y of 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."<sup>223</sup>

### **2. Proposed Revision to Rate Schedule 13, Section 6.13.3.4**

Rate Schedule 13 (Section 6.13) in the NYISO OATT includes the rate mechanism for recovery of the Transco Facilities Charge or TFC that is established by using the Transco revenue requirements and the cost recovery methodology calculations in Section 6.13.3.4. Transco proposes to include a new Section 6.13.3.4.3 that contains the cost recovery methodology calculation for the Propel NY Energy Project. This calculation is similar to the cost recovery methodology previously approved by the Commission for use in Rate Schedule 19 of NYISO OATT for the recovery of CLCPA-required transmission upgrades.

### **B. Revisions Necessary to Implement the Cost Containment Mechanism**

Section 31.4.5.1.8 of Attachment Y to the NYISO OATT permits developers to submit a voluntary hard or soft Cost Cap proposal with its project submission that covers its Included

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<sup>223</sup> Transco also proposes to make a slight change to the title of Section 36.2.1 to reflect the fact that cost allocation of Transco projects may be described in a table or as a description, as is the case for the Propel NY Energy Project.

The Honorable Kimberly D. Bose

October 27, 2023

Page 46

Capital Costs,<sup>224</sup> but not its Excluded Capital Costs.<sup>225</sup> If selected, the developer must file its Cost Cap with the Commission and may not seek to recover through its transmission rates or through any other means costs for the Included Capital Costs above its agreed-upon Cost Cap, except as permitted for excusing conditions in Section 6.10.6.2 of Rate Schedule 10 to the NYISO OATT.<sup>226</sup>

In its project submission, Transco and NYPA proposed a soft cost cap of 80/20 whereby Transco, NYPA and ratepayers would share in the risk that actual Project costs for the NYISO OATT-defined Included Capital Costs are above the estimated costs.<sup>227</sup> Under an 80/20 soft cost cap, Transco and NYPA are jointly responsible for twenty percent (20%) of the amount that the actual costs exceed the estimate.<sup>228</sup> In other words, ratepayers do not contribute in any fashion for 20% of the cost overruns above the estimated costs included in the project submission, plus the 2% escalation factor proposed by Transco and NYPA. Transco and NYPA may include for

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<sup>224</sup> “Included Capital Costs” is defined in Section 31.4.5.1.8.1 as “all capital costs incurred by a Developer to plan for and construct a Public Policy Transmission Project, and to make it ready for its intended use. . . . Capital costs include the cost of contract work, labor, materials and supplies, transportation, special machine services, shop services, protection, injuries and damages, privileges and permits, engineering services, reasonably expected environmental site remediation and environmental mitigation costs as described in Section 31.4.5.1.8.1.1, general administration services, legal services, real estate and land rights, rents, studies, training, asset retirement, and taxes. At its option, a Developer may choose to include as Included Capital Costs real estate costs for existing rights-of-way that are part of the proposed Public Policy Transmission Project, but are not owned by the Developer (*e.g.*, existing utility rights-of-way).”

<sup>225</sup> Excluded Capital Costs is defined in Section 31.4.5.1.8.2 as the following categories of costs: (i) the cost of Public Policy Transmission Upgrade(s); (ii) the cost of upgrade facilities determined by the ISO that are necessary for the reliable interconnection of the proposed Public Policy Transmission Project in one of its transmission expansion or interconnection processes; (iii) debt costs, allowance for funds used during construction (“AFUDC”), and other representations of the cost of financing the transmission project during the construction timeframe that may be included as part of the capital cost of the project when it enters into service or as otherwise determined by the Commission; (iv) unforeseeable environmental remediation and environmental mitigation costs as described in Section 31.4.5.1.8.2.1; and (v) real estate costs for existing rights-of-way that are part of the proposed Public Policy Transmission Project, but are not owned by the Developer, that Developer chooses not to include as Included Capital Costs pursuant to Section 31.4.5.1.8.1.

<sup>226</sup> NYISO OATT, Section 6.10.6.1.

<sup>227</sup> Transco and NYPA also included a 2% escalation factor on its initial estimated costs.

<sup>228</sup> At this time, Transco and NYPA’s final Project ownership percentage has not been determined. Transco and NYPA shall determine each party’s share of the 20% cost overrun prohibition on recovery outlined here and will include that determination as part of its post-development accounting and cost recovery verification meeting described herein.

recovery under their respective Formula Rates the remaining eighty percent (80%) of costs that exceed the estimate.<sup>229</sup>

Section 6.10.6.3 of Rate Schedule 10 to the NYISO OATT provides that a developer may achieve the percentage cost sharing either i) through foregoing rate recovery of that percentage of capital costs in excess of the soft cost cap, or ii) through an alternative rate mechanism that may adjust rate recovery through only a reduction in the ROE and any applicable incentives solely on the amount in excess of the soft cost cap. “The alternative rate mechanism must achieve a rate recovery reduction for the percentage of Included Capital Costs in excess of the soft Cost Cap that is equal to or better for ratepayers in the total long run revenue requirement on a present value basis for the [Project] compared to that which would be achieved under option (i) based on the percentage cost sharing that the [Developer] proposed to the ISO.”<sup>230</sup>

Transco requests approval to implement the soft cost cap by reducing the applicable ROE solely on the total amount of Project costs in excess of the soft cost cap such that the overall recovery of the amount in excess of the Included Capital Costs is, as required by the NYISO OATT, equal to or better for ratepayers on a present value basis compared to that which would be achieved under option (i). Specifically, Transco will determine the appropriate reduction in both the base ROE value and the approved incentive ROE adders that, when applied to the total amount of Project costs above the soft cost cap, Transco’s cost recovery would be equal to its cost recovery if it had simply decided to write-off its share of the 20% of non-recoverable Included Capital Costs.

Transco’s alternative rate mechanism essentially has two parts. First, Transco has proposed to include the necessary language in Attachment 4 of the Transco Formula Rate (as set forth in Section 36.3.1.1 of Attachment DD to the NYISO OATT) that establishes Transco’s commitment to forego cost recovery on the 20% of the cost overrun.<sup>231</sup> Transco and NYPA’s soft cost cap proposal precludes any recovery for 20% of the costs that exceed the estimate, plus the 2% escalation factor described above, and the additional language in the Formula Rate is designed to formally establish that Transco’s cost recovery for the Propel NY Energy Project is limited under certain circumstances. Transco also proposes a general revision to the Tariff to include an additional sentence in Section 6.13.2 of Rate Schedule 13 of the NYISO OATT that pertains to Transco’s commitment to adhere to the requirements of Section 6.10.6 of Rate Schedule 10 to the NYISO OATT for any transmission project for which Transco has proposed to limit its allowable cost recovery consistent with a Cost Cap mechanism, unless otherwise permitted by FERC.

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<sup>229</sup> As described, *infra*, Transco and NYPA have developed a process that will ensure no duplicative recovery of Project costs through their respective formula rates.

<sup>230</sup> NYISO OATT, Section 6.10.6.3.

<sup>231</sup> Redlined and clean versions of NYISO OATT, Section 36, Attachment DD are included with this filing as Appendices A and B, respectively.

Second, Transco has also developed a workpaper (titled “Propel NY Energy Project Cost Containment Verification Workpaper” and referred to herein as the “Verification Workpaper”) that will include the necessary information for it and any interested stakeholder to confirm that the ROE reductions applicable to the recovery of costs above the cost estimate are sufficient to reduce Transco’s recovery of Included Capital Cost overruns to a level that, as required by the NYISO OATT, results in the same or greater benefits to ratepayers if Transco were to simply write-off that amount.<sup>232</sup> As described more fully below, Transco will populate the Verification Workpaper upon Project completion, once all Project costs are known, and present the results to stakeholders as part of meeting Transco and NYPA will hold to present overall Project accounting as part of their commitment to verify no duplicative recovery of Project costs.

With respect to the proposed Tariff language, Transco proposes to include a new Note G in Attachment 4 of its Formula Rate, to reflect Transco’s commitment to the cost containment mechanism described above. Specifically, proposed Note G is identified in Column (a) of the table that identifies the project specific revenue requirements for each of Transco’s projects that have different base ROE levels, different ROE incentive adders that apply to each project, and the different cost containment mechanisms that apply to the various projects that Transco owns.<sup>233</sup> New proposed Note G states:

Column (a), The Propel New York Energy Project is subject to certain cost recovery allowances as specified in the Development Agreement with the New York Independent System Operator, Inc. that governs the development rights for the Propel NY Energy Project and as further described in Section 31.4.5.1.8 of Attachment Y of the ISO OATT and Section 6.10.6 of Rate Schedule 10 of the ISO OATT. If implicated, those cost allowance provisions will be reflected independently in column (a) and corresponding columns. As permitted by Section 6.10.6.2 of Rate Schedule 10 of the ISO OATT, the following excusing conditions apply which excuses New York Transco from the applicable Cost Cap on recovering the Included Capital Costs of the Propel New York Energy Project to the extent the costs arise from one of the following:

1. Transmission project changes, delays, or additional costs that are due to the actions or omissions of the NYISO, Connecting Transmission Owner(s), Interconnecting Transmission Owner(s),

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<sup>232</sup> A fully functioning Excel file of the Propel NY Energy Project Cost Containment Verification Workpaper is included as Attachment E to this filing.

<sup>233</sup> Transco agreed to a cost containment mechanism in the AC Transmission Project Settlement in Docket No. ER15-572-000, that currently applies to the NYES. *See New York Indep. Sys. Operator, Inc.*, 160 FERC ¶ 63,021 (2017). Transco has included a similar Note, Note E that describes the cost recovery allowances reflected in the Commission-approved AC Transmission Project Settlement.

The Honorable Kimberly D. Bose

October 27, 2023

Page 49

- Affected Transmission Owner(s), or other Designated Entity(ies) responsible for completing other parts of the Propel New York Energy Project, as those terms are defined in the ISO OATT;
2. A Force Majeure event as defined in the Development Agreement and subject to the Force Majeure requirements in Section 15.5 of the Development Agreement;
  3. Changes in laws or regulations, including but not limited to applicable taxes;
  4. Material modifications to scope or routing arising from siting processes under Public Service Law Article VII or applicable local laws as determined by the New York State Public Service Commission or local governments respectively; and
  5. Actions or inactions of regulatory or governmental entities, and court orders.

It is appropriate for Transco to reference the development agreement that it expects to enter into with the NYISO to ensure that the appropriate cost recovery allowances memorialized in the development agreement govern Transco's recovery of costs under its Formula Rate. Section 6.10.6.4 of Rate Schedule 10 to the NYISO Tariff provides that the "Designated Entity's Cost Cap and the excusing conditions shall be included in the Development Agreement with the Designated Entity and will be implemented and enforced through rate proceedings at the Commission or the appropriate legal action initiated by the ISO." Transco has committed to the 80/20 soft cost cap recovery mechanism and there will be no change to the percentage recovery allowances in the development agreement. However, the Project is the first project selection implementing the cost cap provisions of the NYISO Tariff and Transco is not certain how the soft cost cap will ultimately be defined in the development agreement with NYISO. Transco does not want to create any confusion regarding the proper soft cost cap allowance with specific language in the Tariff that may not be included in the development agreement itself. As the development agreement creates the contractual obligation for Transco to limit its cost recovery to the soft cost cap level, reference to the development agreement in Note G is appropriate to govern such recovery, along with the implementation details discussed below in preparation of the anticipated ROE reduction amounts. Following its execution, the development agreement will be filed with the Commission as a rate schedule pursuant to Section 205 of the FPA.

As stated above, Transco also proposes to include an additional sentence in Section 6.13.2 of Rate Schedule 13 that provides:

Notwithstanding anything to the contrary herein, to the extent that an Approved NYTP is a Designated Public Policy Project for which NY Transco has submitted a Cost Cap pursuant to Section 31.4.5.1.8 of Attachment Y to the ISO OATT, the requirements set forth in Section 6.10.6 of Rate Schedule 10 to the ISO OATT shall be applicable to this Schedule

as it relates to the Cost Cap for such Approved NYTP, unless otherwise permitted by FERC.

This addition to Rate Schedule 13 (Section 6.13.2) is a general provision that pertains to Transco's commitment to adhere to the requirements of Section 6.10.6 of Rate Schedule 10 to the NYISO OATT for any transmission project for which Transco has proposed to limit its allowable cost recovery consistent with a Cost Cap mechanism, unless otherwise permitted by FERC.

The proposed Verification Workpaper is the soft cost cap implementation detail that Transco will utilize to determine the necessary ROE reductions under the alternative rate mechanism. The Verification Workpaper will also permit interested stakeholders to confirm Transco's analysis and verify that the ROE reductions do in fact result in equal to or greater benefits as if Transco were to simply write-off its share of 20% of the actual Included Capital Costs above the cost estimate.

The Verification Workpaper is an Excel spreadsheet with three separate tabs that will contain the information Transco needs to determine the appropriate reduction in the combined base ROE value and incentive ROE adders that, when applied to the total amount of cost overruns, results in the appropriate amount of recovery (*i.e.*, exclusion of an amount equal to 20% of cost overruns on Included Capital Costs). Mr. Caso describes the soft cost containment mechanism and the Verification Workpaper in detail in his testimony.<sup>234</sup> A fully functioning Verification Workpaper is included in Attachment E of this filing submitted in native format so stakeholders can verify the proper working of the workpaper. Mr. Caso also includes a sample calculation in Exh. No. TRANSCO-301, populated with representative values to demonstrate how the workpaper works.

Specifically, as described by Mr. Caso, the tab titled "Rev. Req. Soft Cap 80-20" will be used to determine the net present value revenue requirement Transco would be entitled to if it were to write-off its share of the 20% cost overrun.<sup>235</sup> This value is used to determine what the overall revenue requirement recovery Transco must target in determining the ROE reductions explained above. Mr. Caso uses the following example in his testimony:

- Assume an initial Included Capital Cost estimate of \$1.8 billion and a 10% cost overrun resulting in a total in-service cost of \$1.98 billion.
- Assume a base ROE value of 10.7% and a 200 basis point ROE incentive adder consistent with the requests in this filing,

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<sup>234</sup> Caso Testimony at 20-25.

<sup>235</sup> *Id.* at 24.

- Include assumed values for the effective tax rate, borrowing interest rate, weighted average cost of capital and utilize a 50 year expected life.
- Based on the illustrative figures, Transco’s total long run revenue requirement on a present value basis is \$2.15 billion.<sup>236</sup>

The tab titled “Rev. Req. ROE Sharing.” includes the necessary information to determine the percentage reduction in the effective ROE value needed to result in cost recovery that is equivalent, on a net present value basis, to what Transco would recover if it were to simply write-off its share of the 20% cost overrun. The worksheet includes the same base assumptions described above. Mr. Caso explains that by calculating the net present value revenue requirement in tab “Rev. Req. Soft Cap 80-20,” Transco can determine what effective ROE value is necessary for cost recovery to be equivalent under the “Rev. Req. ROE Sharing.” tab.<sup>237</sup> In this example, the result is 67.8503% of the effective 12.7% ROE resulting in a base ROE of 8.62% and no incentive ROE adders.<sup>238</sup>

Finally, Transco includes a tab titled “No Cost Containment” that determines what the total long run revenue requirement for the Project would be if there is no cost cap mechanism applied. Transco proposes to perform this calculation to determine the overall ratepayer cost savings.

Once the appropriate reduced ROE level for the amounts above the cost cap is known, Transco can insert the ROE values into the Attachment 4 Incentive tab in the Formula Rate. The Formula Rate will then operate as intended to determine Transco’s yearly net adjusted revenue requirement to be reflected in rates under the NYISO OATT.

Transco requests that the Commission approve its soft cost cap alternative rate mechanism. Specifically, Transco requests that the Commission determine its 80/20 cost sharing arrangement described above is just and reasonable, the proposed Tariff language included in new Note G of Attachment 4 in its Formula Rate (as set forth in Section 36.3.1.1 of Attachment DD to the NYISO OATT) is just and reasonable, and that Transco’s proposed Propel NY Energy Project Cost Containment Verification Workpaper is a transparent and appropriate mechanism to verify that Transco meets the requirements of Section 6.10.6.3 of Rate Schedule 10 to the NYISO OATT. Transco also requests that the Commission find that its alternative rate mechanism achieves a rate recovery reduction that is equal to or better for ratepayers in the total long run revenue requirement on a present value basis compared to that which would be achieved if Transco were to simply write-off its share of 20% of the Included Capital Costs in excess of the estimate.

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<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

### C. Other Tariff Revisions

Transco proposes two additional, minor additions to Section 6.13.1 of Rate Schedule 13 and Section 36.1.1 of Attachment DD to the NYISO OATT. These two sections identify the projects that are eligible for cost recovery under the NYISO Tariff. Transco proposes to add an additional bulleted project description in both these sections identifying the Propel NY Energy Project as eligible facilities for rate recovery under the Tariff.<sup>239</sup>

## VII. RATE OF RETURN ON EQUITY

Transco currently has a FERC-approved Formula Rate included in the NYISO OATT at Section 36.3, Attachment DD under which it recovers its electric transmission revenue requirements. Transco will determine its revenue requirements for the Project utilizing this Formula Rate in the same manner it determines its revenue requirement for its other electric transmission investments. However, the base ROE values currently in use under the Formula Rate are project-specific and the Formula Rate does not include a base ROE value that is generally applicable to any additional transmission facilities that Transco might own or develop.

Specifically, Transco initially filed the Formula Rate in Docket No. ER15-572-000 (“Formula Rate Filing”) for its expected ownership of the TOTS portfolio of projects and potential development of transmission projects under consideration in the long-standing NYPSC regulatory process to address the “Central East” and the “Upstate New York – Southeastern New York” constraint (the “AC Transmission Projects”). The Formula Rate included in the NYISO OATT is the result of two settlement agreements accepted by the Commission.

Transco entered into one settlement agreement to recover costs associated with its investment in the TOTS projects (“TOTS Settlement”).<sup>240</sup> The TOTS Settlement provided for, among other things, the general formula that would apply for Transco’s investment in electric transmission facilities, a TOTS-specific base ROE value of 9.5%, and incentive rate ROE adders specific to the TOTS cost recovery.<sup>241</sup>

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<sup>239</sup> In the preparation of this filing, Transco noticed several minor spelling errors in the leading sentences in Attachment 4 of the Formula Rate (Attachment DD, Section 36, of the NYISO OATT). Transco proposes to correct these spelling errors in this filing as noted in the redline provided in Attachment A to this filing. In addition, Transco noticed that the final Table in the Note section of Attachment 4 of the Formula Rate (Attachment DD, Section 36, of the NYISO OATT) appears out of place as it corresponds with Note C in that Attachment. Transco proposes to include “See Table below” to connect the intent and substance of Note C with the ending Table to avoid any confusion.

<sup>240</sup> See *Certification of Uncontested Settlement*, 154 FERC ¶ 63,007 (2016).

<sup>241</sup> See *Offer of Partial Settlement*, Section 2.1 (“Except as expressly set forth herein, this Settlement Agreement applies to the Applicants’ TOTS Projects . . .”); Section 3.2 (establishing a base ROE of 9.5% that would apply “to the capital costs of the TOTS Projects”).

The Honorable Kimberly D. Bose

October 27, 2023

Page 53

The second settlement concerned the AC Transmission Projects and would apply in the event Transco was awarded one or more aspects of the AC Transmission Projects consistent with the NYISO's PPTPP and a competitive solicitation NYISO administered in accordance with the PPTPP ("AC Transmission Project Settlement").<sup>242</sup> As part of the AC Transmission Project Settlement, the parties agreed to an AC Transmission Project-specific ROE value of 9.65% and incentive rate ROE adders specific to the AC Transmission Project cost recovery.<sup>243</sup>

As a result, Transco must propose a base ROE value that will apply solely to the Propel NY Energy Project.<sup>244</sup>

Transco requests approval to utilize a base ROE value of 10.7%. The base ROE is supported by the analysis and testimony of Mr. Adrien M. McKenzie. As explained by Mr. McKenzie, the requested base ROE of 10.7% is well within the composite zone of reasonableness of 8.43% - 13.23%. Combined with the 50 basis point RTO Participation Adder and the 150 basis point Risks and Challenges Adder, the requested overall ROE of 12.7% for the Project is also well within the composite zone of reasonableness.

Mr. McKenzie describes the risks faced by Transco as a transmission-focused entity and explains the critical role both the base ROE and the overall ROE will have in determining access to investment capital. Establishing an ROE that is sufficient to attract the necessary capital is very important for Transco as a transmission developer focused on development of large, complex transmission projects subject to an Order No. 1000-compliant competitive solicitation.

Mr. McKenzie's evaluation of a just and reasonable base ROE relies on the results of the two-step discounted cash flow ("DCF") model, the capital asset pricing model ("CAPM") and the

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<sup>242</sup> See *Certification of Uncontested Settlement*, 160 FERC ¶ 63,021 (2017). Transco was awarded development rights to the Segment B and Segment B Additions components of the NYPSC competitive solicitation.

<sup>243</sup> See *Offer of Settlement*, Section 2.1 ("This Settlement resolves all outstanding issues pertaining to NY Transco Docket No. ER15-572-000 associated with the AC Transmission Project proposals . . ."); Section 3.2 (establishing a base ROE of 9.65% that would apply "to all AC Transmission Project-related investments . . .").

<sup>244</sup> The Commission need not be concerned that Transco's request implicates the Commission's prohibition on single issue ratemaking. As explained in the testimony of Mr. Caso, Transco entered into two separate settlement agreements in Docket No. ER15-572-000, in which the parties agreed to a base ROE level that would apply to Transco's investment in the TOTs portfolio of projects and a base ROE level that would apply to Transco's investment in the so-called AC Transmission Projects. The parties understood that Transco would need to file a proposal for a different base ROE level for any future project Transco seeks to develop. Other than the minor Project-specific changes described, *supra*, Transco is not proposing any changes to the Formula Rate and this filing has no rate recovery implications for the TOTS and AC Transmission Projects.

risk premium method.<sup>245</sup> In addition, Mr. McKenzie supports supplementing these methods to include the results of the expected earnings approach. The expected earnings approach serves as a direct measure of the expected returns on equity that investors associate with companies of comparable risk and provides a meaningful guide to the return the utility should be expected to earn on its book equity investment.<sup>246</sup>

Mr. McKenzie employed a national proxy group composed of 32 risk comparable electric utilities (“National Proxy Group”) and utilized that proxy group in each of the methods. Mr. McKenzie explains the development and selection of the National Proxy Group, elimination of low and high-end outliers, describes the DCF, CAPM, risk premium, and expected earnings methods, and the analysis under each. The results of Mr. McKenzie’s analysis is summarized below:

- Application of the two-step DCF methodology results in a zone of reasonableness of 8.23% - 12.10% with a median of 9.58% and a midpoint of 10.17;
- The CAPM estimates suggest an average ROE range of 9.83% - 12.89% with a median of 11.36% and midpoint of 11.36%;
- The utility risk premium approach implies an ROE point estimate in the 7.98% - 12.78% with a median of 10.38% and midpoint of 10.38%;
- The expected earnings approach results in a range of 7.67% - 15.15% with a median of 10.31% and midpoint of 11.41%;
- The composite ROE determination results in a zone of reasonableness of 8.43% - 13.23% with a median of 10.41% and midpoint of 10.83%;
- The 10.7% base ROE recommendation is bracketed by the median and midpoint values produced by the four financial models supported in the testimony.

Overall, a number of factors support the conclusion that a 10.7% base ROE is just and reasonable. First, the proposed base ROE of 10.7% is well within the composite zone of reasonableness of 8.43%-13.23%. Second, the proposed base 10.7% ROE is bracketed by the median and midpoint values produced by the four financial models supported by Mr. McKenzie.<sup>247</sup>

Third, Mr. McKenzie applies the DCF model to a select group comprised of low-risk companies to the non-utility sectors of the economy. The DCF analysis of this group results in

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<sup>245</sup> McKenzie Testimony at 10.

<sup>246</sup> *Id.*

<sup>247</sup> *Id.* at 14.

median cost of equity estimates varying from 10.55% to 11.08% with the midpoint values ranging from 10.74% to 11.51%. The recommended 10.7% base ROE is consistent with these comparable metrics.

## VIII. DEPRECIATION RATES

Transco proposes to utilize the depreciation rates that are currently included in Attachment 9 of its Formula Rate (as set forth in Section 36.3.1.1 of Attachment DD to the NYISO OATT). When Transco was newly formed and without assets, it calculated these rates using an average of the FERC-approved depreciation rates for the New York Transmission Owner affiliates of Transco. As part of its filing in Docket No. ER15-572-000, Transco originally committed to submit a new depreciation study within five years of the in-service date of the first project to be placed in service. However, as mentioned in Mr. Caso's testimony, Transco entered into two settlement agreements in that proceeding and the first settlement, the TOTS settlement, did not contain any consideration of the depreciation rates or Transco's commitment as articulated to the Commission in its original filing letter.<sup>248</sup> The second settlement, the AC Transmission Project settlement, did address depreciation rates and included a Section 3.2(h):

The depreciation rates applicable to all classifications of capital assets associated with the AC Transmission Projects are set forth in Attachment A to this Settlement. By January 1, 2026, NY Transco shall submit to FERC a limited Section 205 filing to implement any modification to depreciation rates as a result of a depreciation study.<sup>249</sup>

Transco met individually with the settling parties to confirm its interpretation of the settlements to be that Transco is required to perform a depreciation study and submit any modifications by January 1, 2026. The settling parties agreed with this interpretation of the settlement agreements and Transco intends to make such a filing in advance of the January 1, 2026 date.<sup>250</sup>

## IX. CWIP REGULATIONS

Transco requests waiver of the Commission's other filing requirements related to CWIP, including (i) 18 C.F.R. § 35.13 (h)(38), which requires an applicant to submit Statement BM to describe 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, (ii) 18 C.F.R. § 35.25(c)(4), which requires the development of forward-looking allocation ratios and an evaluation of potential anticompetitive effects of CWIP recovery

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<sup>248</sup> Caso Testimony at 11.

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

including “price squeeze” and “double whammy” concerns; and (iii) 18 C.F.R. § 35.25(g), which requires an applicant to provide additional information regarding the anti-competitive impacts of CWIP recovery, including the proposed CWIP levels included in wholesale and retail rates. The Commission has recognized that Statement BM was designed primarily for CWIP associated with new generation projects in mind, and that the Commission has waived the requirement to submit Statement BM in cases involving transmission rates. Similarly, the Commission's requirements related to “double whammy” and “price-squeeze” relate to concerns that are not applicable in the case of transmission construction, and the Commission has waived these requirements for applicants seeking transmission incentives under Order No. 679.<sup>251</sup>

Sections 35.25(e) and 35.25(f) of the Commission's regulations require an applicant seeking CWIP recovery to discontinue the capitalization of AFUDC for CWIP that is included in rate base. The Commission's accounting regulations provide procedures to ensure that customers will not be charged for both capitalized AFUDC and corresponding amounts of CWIP in rate base.<sup>252</sup> The Commission's regulations also require an applicant to propose accounting procedures to ensure that customers will not be double charged for AFUDC and corresponding amounts of CWIP. Section 7 of Transco's Formula Rate Implementation Protocols describes the Accounting procedures that it must follow with respect to any amount of CWIP included in rate base.<sup>253</sup> These procedures follow established Commission accounting practices to ensure that wholesale customers are not charged for both capitalized AFUDC and corresponding amounts of CWIP included in rate base.

## **X. PROPOSED EFFECTIVE DATE**

Transco requests that the requested incentive rate treatments be effective no later than December 26, 2023, the end of the statutory 60-day notice period.<sup>254</sup> As further described below, these requested incentives are narrowly tailored to the unique risks Transco will face in developing the Propel NY Energy Project. The Commission typically issues affirmative findings and rulings on incentive rate treatments in its orders and does not set incentive rate requests for hearing or settlement procedures. Should the Commission determine that it cannot initially approve any element of the Application without further procedures, Transco respectfully requests that the Commission approve the Abandoned Plan Incentive in its initial order on this filing, effective December 26, 2023.

Transco also requests that the proposed changes to the NYISO OATT and approval of the requested base ROE value become effective on December 26, 2023, the end of the statutory 60-

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<sup>251</sup> See, e.g., *Tucson Elec. Power Co.*, 174 FERC ¶ 61,223 at P 26 (2021).

<sup>252</sup> *Id.*

<sup>253</sup> NYISO OATT, Attachment DD, Section 36.3.1.2.

<sup>254</sup> See *Transource Pennsylvania, LLC*, 184 FERC 61,091 at n. 5 (2023).

day notice period. Finally, Transco requests that the Commission determine the proposed cost allocation methodology and the cost containment mechanism to be just and reasonable.

## **XI. ACCOUNTING AND PROPOSAL TO ENSURE NO DUPLICATIVE RECOVERY**

Mr. Caso provides an overview of certain accounting matters related to Transco and the Project, including the joint development with NYPA. Transco intends to co-develop the Project with NYPA. As described in Mr. Mullin's testimony, Transco and NYPA combined their expertise and knowledge of transmission development in New York, stakeholder and affected community relationships, and NYPA's ownership of some transmission facilities in the area of project analysis, to create project proposals to best meet the identified Long Island PPTN and provide the most efficient and cost-effective service for New York ratepayers.<sup>255</sup> Transco and NYPA will act as equal sponsors and will have equal decision-making authority through all aspects of project development and operation. Transco will financially own no less than 70% of the Project and NYPA will financially own no less than 15% and potentially up to 30% of the Project.<sup>256</sup> The final ownership percentages will be finalized in advance of Project completion.

In order to ensure that there is no duplicative recovery of project costs, Transco and NYPA intend to engage a third party Project accountant that will be responsible for tracking Project costs and the amount that each party is responsible for consistent with its ownership share. On a monthly basis, Transco and NYPA will review the amounts recorded by each to ensure there is no duplicative accounting of Project costs. Once the Project is completed and the final accounting has been prepared, Transco and NYPA will schedule a one-time, special stakeholder meeting, in accordance with the stakeholder meeting notice provisions included in their respective formula rate implementation protocols that are incorporated into the NYISO OATT. During this stakeholder meeting Transco and NYPA will describe the final ownership percentages for each of Transco and NYPA, explain the accounting considerations necessary to reflect the final ownership percentages in their respective books and records, and answer any questions of stakeholders. Both will also prepare an informational workpaper identifying the final assets owned by Transco and NYPA, respectively, the total rate base of the assets, details including accounting entries of any transfers of assets that may have occurred between the parties that changed the ownership of any assets, the amount of costs greater than the cost cap or less than the cost cap, as the case may be, and details on the operations and maintenance costs incurred as of that date. The stakeholder meeting and the workpaper are intended to demonstrate that there is no ability for duplicative recovery of Project costs.

As explained by Mr. Caso, this accounting proposal is intended to be consistent with the proposal that NYPA will follow for its development of "Segment A" of the AC Projects with LS

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<sup>255</sup> See Mullin Testimony at 14.

<sup>256</sup> *Id.* at 10.

Power Grid New York Corporation I (“LS Power”).<sup>257</sup> LS Power entered into a settlement agreement in FERC Docket No. E20-716-000, in which it, and NYPA, will provide an informational workpaper within six months of project completion with the same information outlined above.<sup>258</sup> With the benefit of NYPA’s experience regarding the accounting proposal for the Segment A Project, Transco and NYPA will conduct a similar stakeholder accounting verification for the Project.

## **XII. ADVANCED TECHNOLOGY STATEMENT**

Order No. 679 requires the submission of a technology statement that describes the advanced technologies considered and an explanation if advanced technologies are not to be employed. At certain substations, the Propel NY Energy Project will employ International Electrotechnical Commission (“IEC”) 61850 protocols.<sup>259</sup> IEC 61850 protocols will be used to upgrade some of the existing substation communication and in constructing certain new substation communication systems to improve efficiency and bolster system reliability. Pursuant to IEC 61850 protocols, some substations will be outfitted with fiberoptic cables (replacing copper wires in existing substations) and transitioned to digital control. Utilizing IEC 61850 protocols where feasible will provide greater insight into asset conditions and operations and reduce operating expenditures. Additionally, because substations will be digital, system settings will be able to be adjusted in real-time, permitting a more efficient flow of power. However, IEC 61850 applications are rare in New York. The IEC 61850 protocols are not yet common in the industry, thus Transco will be exposed to some design and implementation risks.

Additionally, Transco will use HDD as an advanced method of installing underground cable. The Propel NY Energy Project will require 6,000 feet of horizontal directional drilling to lay transmission cables under the East River, which can pose several risks and require innovative, time-consuming solutions. This lengthy HDD required for the Project will require advanced techniques and innovative technologies to successfully complete.

## **XIII. REQUESTED WAIVERS**

Consistent with the Commission’s precedent in formula-rate related proceedings, Transco respectfully requests waiver of any component of the Commission’s filing requirements not met by this Application including the need to submit additional cost-of-service statements.<sup>260</sup> Transco does not propose any revisions to the formula rate under which the costs of the Project will be recovered. Transco also requests waiver of any other provision of Part 35 of the Commission’s

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<sup>257</sup> Caso Testimony at 13.

<sup>258</sup> *LS Power Grid New York Corp. I*, Docket No. ER20-716-000, Offer of Settlement, Section 3.11 (filed Apr. 1, 2021).

<sup>259</sup> IEC 61850 is part of the IEC Technical Committee.

<sup>260</sup> *See Okla. Gas & Elec. Co.*, 122 FERC ¶ 61,071, at P 41 (2008).

regulations that may be deemed necessary to permit the incentive rate treatments and ROE to become effective on the dates requested herein.

#### **XIV. OTHER REGULATORY FILINGS AND APPROVALS**

Other than the administrative changes described above, Transco does not anticipate any other FERC approvals will be necessary, including any approval under FPA section 203. For the Propel NY Energy Project, Transco will apply Article VII approval from the NYPSC and may apply for additional permits from the agencies identified in the preliminary permitting matrix provided as Exh. TRANSCO-202.

#### **XV. CORRESPONDENCE AND COMMUNICATIONS**

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

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#### **XVI. CONCLUSION**

For the reasons set forth above, Transco respectfully requests that the Commission:

1. Accept and approve the cost allocation methodology for the Propel NY Energy Project;
2. Accept for filing the proposed revisions to Rate Schedule 13 (Section 6.13) of the NYISO OATT and Attachment DD (Section 36) of the NYISO OATT as fully described herein;
3. Grant the requested transmission incentive rate treatments for the Propel NY Energy Project, as discussed herein;
4. Accept for filing and approve the requested 10.7% base ROE value as supported by the testimony of Mr. McKenzie;

The Honorable Kimberly D. Bose

October 27, 2023

Page 60

5. Accept and approve the cost containment mechanism described herein; and
6. Make such other determinations as requested herein.

Please contact the undersigned if you have any questions regarding this matter.

Respectfully submitted,

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