

## **ATTACHMENT 5**

**EXHIBIT NO. CECONY-402**

**NYPA AUGUST 28, 2023 TRANSMITTAL LETTER (DOCKET NO. EL23-96-000)**

**VIA ELECTRONIC FILING**

August 28, 2023

Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

**Re: New York Power Authority  
Propel NY Energy Alternate Solution 5 Project  
Application for Incentive Rate Treatment  
Docket No. EL23-\_\_\_\_-000**

Dear Secretary Bose:

Pursuant to sections 205 and 219 of the Federal Power Act (“FPA”),<sup>1</sup> Order No. 679,<sup>2</sup> the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) November 15, 2012 policy statement on transmission incentives,<sup>3</sup> and Rule 207 of FERC’s Rules of Practice and Procedure,<sup>4</sup> New York Power Authority (“NYPA”) hereby files this Petition for Declaratory Order and requests authorization to recover 100% of prudently incurred costs associated with its investment in the Propel NY Energy Alternate Solution 5 Project (“Propel NY Project” or “Project”), if the Project is abandoned or cancelled for reasons beyond the control of NYPA.

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<sup>1</sup> 16 U.S.C. §§ 824d, 824s; *see* 18 C.F.R. § 35.35(d) (2023).

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

<sup>3</sup> *Promoting Transmission Investment through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (“Incentives Policy Statement”).

<sup>4</sup> 18 C.F.R. § 385.207.

On October 11, 2021, New York Transco LLC (“NY Transco”) and NYPA (together, “Project Sponsors”) submitted Propel NY transmission solutions to the New York Independent System Operator, Inc. (“NYISO”) through its Order No. 1000 competitive Public Policy Transmission Planning Process (“PPTPP”), which was designed to select the more-efficient or cost-effective solution to address identified transmission needs being driven by New York State policies. On April 5, 2022, NYISO Staff determined that six Propel NY solutions satisfied the identified needs to upgrade transmission facilities on Long Island and accommodate 3,000 megawatts (“MW”) of anticipated offshore wind (“OSW”) generation while also installing at least one new connection between Long Island and the rest of New York State.<sup>5</sup> Propel NY Alternate Solution 5, an estimated \$3.262 billion project and the highest ranked solution was formally selected by vote of the NYISO Board of Directors (“Board”) on June 13, 2023<sup>6</sup> and announced to the public on June 20, 2023.<sup>7</sup> The Project will enable increased access to decarbonized generation resources, specifically OSW, and deliver clean energy to high-demand areas that rely predominately on fossil generation resources, especially during peak demand times.

In this filing, NYPA is requesting a single risk-reducing incentive for its investment in the Project, narrowly tailored to address the unique risks and challenges faced by NYPA

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<sup>5</sup> NYISO, *Long Island Offshore Wind Export Public Policy Transmission Need Viability & Sufficiency Assessment*, at 8-9 (Apr. 5, 2022) (“NYISO Viability Assessment”), [https://www.nyiso.com/documents/20142/22968753/LI-OSW-Export-PPTN-Viability-Sufficiency-Assessment\\_Report.pdf](https://www.nyiso.com/documents/20142/22968753/LI-OSW-Export-PPTN-Viability-Sufficiency-Assessment_Report.pdf).

<sup>6</sup> NYISO, *Long Island Offshore Wind Export Public Policy Transmission Plan*, 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 5-6 (June 13, 2023) (“Board of Directors’ Decision” or “NYISO Planning Report”), <https://www.nyiso.com/documents/20142/38388768/Long-Island-Offshore-Wind-Export-Public-Policy-Transmission-Planning-Plan-2023-6-13.pdf/03712cc1-6da6-ee89-2f63-176d2d7a9296?t=1687290255402>.

<sup>7</sup> Press Release, NYISO, *NYISO Board Selects Transmission Project to Deliver Offshore Wind Energy* (June 20, 2023), <https://www.nyiso.com/-/press-release-%7C-nyiso-board-selects-transmission-project-to-deliver-offshore-wind-energy>.

in developing the Project, i.e., authorization to recover 100% of its prudently incurred costs in the Project in the event the Project is abandoned or cancelled for reasons beyond NYPA's control ("Abandonment Incentive"). NYPA intends to apply for additional incentives at a later date as the Project proceeds through contract development and design, and once the parameters of cost cap and right of first refusal issues are finalized.<sup>8</sup>

NYPA requests that the Commission grant the requested Abandonment Incentive no later than October 12, 2023. Timely action on this request will support development of this beneficial Project by NYPA consistent with the Project development timeline, NYISO's infrastructure requirements and in-service date of May 2030, and Commission regulations and policies.

## **I. BACKGROUND**

### **A. NYPA and Its Formula Rate**

NYPA is a corporate municipal instrumentality and a political subdivision of the State of New York, organized under the laws of New York, and operates pursuant to Title 1 of Article 5 of the New York Public Authorities Law. NYPA is a "municipality" within the meaning of section 3(7) of the FPA and is a "state instrumentality" within the definition of section 201(f) of the FPA and therefore is exempt from the requirements of Part II of the FPA.<sup>9</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

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<sup>8</sup> NYPA understands that New York Transco LLC will submit its own request for incentive rate treatments for its investment in the Project.

<sup>9</sup> 16 U.S.C. §§ 796(7) and 824(f).

constructing, owning, and operating critical segments of transmission infrastructure throughout the State.

NYPA's bulk power transmission system currently encompasses 1,456 circuit miles and consists of facilities ranging from 115 kilovolts ("kV") to 765 kV. Many of these facilities comprise backbone paths necessary for critical North-South and West-East energy transfers to downstate load. Lacking distribution facilities or a defined geographical service territory of its own, NYPA has, since the inception of NYISO, recovered its cost of owning and maintaining its backbone transmission facilities through the NYPA Transmission Adjustment Charge ("NTAC"), a charge assessed to virtually all loads in NYISO on a load-ratio share basis.<sup>10 11</sup>

On January 29, 2016, NYPA filed an application under section 205 of the FPA to incorporate changes to the NYISO OATT to convert its stated transmission revenue requirement into a transmission formula rate (hereinafter, "Formula Rate").<sup>12</sup> After negotiations with interested parties, an uncontested settlement was filed on September 30, 2016, which the Commission accepted on January 19, 2017.<sup>13</sup> The Commission-authorized Formula Rate Template determines for NYPA its NTAC annual transmission revenue requirement ("ATRR") and project-specific ATRRs for transmission projects not

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<sup>10</sup> See *Cent. Hudson Gas & Elec. Corp.*, 86 FERC ¶ 61,062, at p. 61,212, *order on reh'g*, 88 FERC ¶ 61,138, at pp. 61,403-04 (1999). The NTAC formula appears at Section 14.2.2.2.1 of the NYISO Open Access Transmission Tariff ("OATT"). See NYISO OATT, Att. H, Annual Transmission Revenue Requirement for Point-to-Point Transmission Service and Network Integration Transmission Service §§ 14.2.2.2 ("NTAC Calculation") & 14.2.2.2.1 ("NTAC Formula").

<sup>11</sup> NYPA also has project-specific parameters in its formula rate for projects not included in NTAC.

<sup>12</sup> *N.Y. Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,268 (2016). Despite NYPA's non-jurisdictional status under Part II of the FPA, NYPA recognizes the Commission's jurisdiction over transmission rate matters because its revenue requirement is collected through the NYISO OATT, a FERC-jurisdictional transmission organization. See *N.Y. Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,240, at PP 28-30 (2012).

<sup>13</sup> *N.Y. Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,043 (2017).

recovered through the NTAC.<sup>14</sup> NYPA has previously added two project-specific ATRR calculations to its Formula Rate<sup>15</sup> and anticipates that the Project will be the third project-specific addition.

## **B. NY Transco**

Formed in 2014, NY Transco is an owner and developer of bulk power transmission facilities in New York State and was formed 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 ensure long-term grid reliability. NY 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.

## **C. New York’s Climate Legislation**

The Propel NY Project is an outgrowth primarily of ambitious clean energy legislation known as the Climate Leadership and Community Protection Act (“CLCPA”) that was enacted by the New York State legislature in 2019.<sup>16</sup> CLCPA requires a 40% statewide reduction in greenhouse gas emissions from 1990 levels by 2030 and an 85% reduction by 2050; a minimum of 70% statewide electric generation produced by renewable energy by 2030 (the “70 x 30 Target”); a 100% emissions-free electric demand system by 2040; and the procurement of at least nine gigawatts (“GW”) of OSW by 2035,

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<sup>14</sup> See NYISO OATT, Att. H, § 14.2.3.2.2, Schedule D2 (“Project Specific Capital Structure and Cost of Capital”) & Schedule F1 (work sheet that sums NTAC ATRR and project-specific ATRRs).

<sup>15</sup> See *N.Y. Indep. Sys. Operator.*, 154 FERC ¶ 61,268 at P 28 (Commission’s 2016 acceptance of NYPA’s request for new Rate Schedule 15 to the NYISO OATT to enable NYPA to recover its project-specific ATRR associated with the Marcy-South Series Compensation Project); *N.Y. Indep. Sys. Operator, Inc.*, 176 FERC ¶ 61,211 (2021) (Formula Rate Template changes accepted for NYPA’s recovery of project-specific ATRR associated with Segment A of AC Transmission Projects).

<sup>16</sup> 2019 N.Y. Laws, ch. 106.

six GW of photovoltaic solar generation by 2025, and three GW of energy storage resources by 2030 (collectively, the “CLCPA Requirements”).<sup>17</sup>

In 2020, in recognition of the fact that significant changes to the New York power grid are required to meet the CLCPA Requirements, the legislature enacted the Accelerated Renewable Energy Growth and Community Benefit Act (“Accelerated Renewable Energy Act”).<sup>18</sup> To achieve the CLCPA Requirements, the Accelerated Renewable Energy Act requires the State to provide for the construction of expanded transmission and distribution infrastructure sufficient to ensure that new renewable energy generation projects used to meet the CLCPA Requirements can be timely and cost-effectively delivered to load.<sup>19</sup> In furtherance of this goal, the Accelerated Renewable Energy Act calls for the New York State Public Service Commission (“PSC”) “to make a comprehensive study of the State’s

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<sup>17</sup> CLCPA §§ 2(1)(a) and 7(a); N.Y. Energy Conservation L. § 75–0107(1); N.Y. Pub. Serv. L. (PSL) § 66–p(2), (5).

<sup>18</sup> 2020 N.Y. Laws, ch. 58, Part JJJ. This Petition refers to the goals set by CLCPA as CLCPA Requirements. We note that while the Accelerated Renewable Energy Act calls them “CLCPA targets,” the legislation indicates that these are binding requirements. *See, e.g.*, Accelerated Renewable Energy Act § 4(2)(b):

CLCPA targets “shall mean the public policies established in the climate leadership and community protection act enacted in chapter one hundred six of the laws of two thousand nineteen, including the requirement that a minimum of seventy percent of the statewide electric generation be produced by renewable energy systems by two thousand thirty, that by the year two thousand forty the statewide electrical demand system will generate zero emissions and the procurement of at least nine gigawatts of offshore wind electricity generation by two thousand thirty-five, six gigawatts of photovoltaic solar generation by two thousand twenty-five and to support three gigawatts of statewide energy storage capacity by two thousand thirty.

<sup>19</sup> *Id.* § 2 (“[T]he state shall take appropriate action to ensure that . . . (b) renewable energy can be efficiently and cost effectively injected into the state’s distribution and transmission system for delivery to regions of the state where it is needed. In particular, the state shall provide for timely and cost-effective construction of new, expanded and upgraded distribution and transmission infrastructure as may be needed to access and deliver renewable energy resources.”). Consistent with these requirements, the Accelerated Renewable Energy Act also provides that the public interest would be served by “expediting the regulatory review for the siting of major renewable energy facilities and transmission infrastructure necessary to meet the CLCPA [Requirements].” *Id.* § 4(a).

power grid to identify distribution and transmission infrastructure needed to enable the [S]tate to meet the CLCPA [Requirements].”<sup>20</sup>

On March 19, 2021, the PSC issued an Order<sup>21</sup> identifying the Long Island Offshore Wind Export Public Policy Transmission Need (“Long Island PPTN”) and referred that need to NYISO for solicitation and evaluation under its PPTPP. The Order declared that the CLCPA constitutes a Public Policy Requirement driving the need for transmission to increase the export capability from Long Island to the rest of New York State to ensure full output of OSW interconnected to Long Island.

NYISO began the 60-day solicitation window on August 12, 2021, and received 19 proposals by a total of four developers: seven proposals from Propel NY (a partnership between NYPA and NY Transco), one proposal from LS Power Grid Corporation I, ten proposals from NextEra Energy Transmission New York, Inc., and one proposal from Anbaric Development Partners, LLC.<sup>22</sup> NYISO’s Viability Assessment, a pass/fail test to screen whether the proposed project is capable of satisfying the minimum criteria of the Long Island PPTN, determined that six Propel NY solutions, including Alternate Solution 5, sufficiently addressed the public policy concern.<sup>23</sup> In April 2023, the NYISO Board met in-person with the individual developers of all of the proposed projects to examine the

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<sup>20</sup> *Id.* § 3. This comprehensive power grid study must identify “distribution upgrades, local transmission upgrades and bulk transmission investments that are necessary or appropriate to facilitate the timely achievement of the CLCPA [Requirements].” *Id.* § 7(2). The Accelerated Renewable Energy Act further provides that the required study shall address bulk transmission investments separately from distribution and local transmission upgrades. *Id.*

<sup>21</sup> *In the Matter of New York Independent System Operator, Inc.’s Proposed Public Policy Transmission Needs for Consideration for 2020*, Order Addressing Public Policy Requirements for Transmission Planning Purposes, Case No. 20-E-0497 (issued and effective Mar. 19, 2021), <https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=63726>.

<sup>22</sup> All of the developers that submitted proposed solutions to the Long Island PPTN were qualified transmission developers in accordance with Attachment Y of the OATT. *See* NYISO, NYISO Qualified Developers (Nov. 2, 2022), <https://www.nyiso.com/documents/20142/1395552/List-of-Qualified-Developers-2022-11-02-Final.pdf/0bfd049b-e386-dc01-780f-7ccc928fd138>.

<sup>23</sup> NYISO Viability Assessment at 20.



merits of their proposals and to discuss specific operational, financial, and other concerns about their projects. In April 2023, the NYISO Board met in-person with the individual developers of these proposed projects to examine the merits of their proposals and to discuss specific operational, financial, and other concerns about their projects.

Ultimately, on June 13, 2023, the NYISO Board agreed with NYISO staff's determination that Propel NY's Alternate Solution 5 proposal is the more-efficient or cost-effective transmission solution to address the Long Island PPTN to fully deliver energy from at least 3,000 MWs of OSW connected to Long Island and rest of New York State, while providing for possible OSW output between 3,700 and 6,000 MW ("Transmission Need").<sup>24</sup> The NYISO Board concluded the Project (i) cost-effectively offers expandability, operability, and performance benefits from three new AC tie lines from Long Island to the rest of the state; (ii) as compared to the other project proposals is not as risky and adds a strong 345 kV backbone to the Long Island transmission system that will help serve Long Island load with the future generation changes needed to meet the CLCPA;<sup>25</sup> and (iii) would have no adverse impacts on the competitiveness of the NYISO-administered markets.<sup>26</sup> The Board's approval of the Alternate Solution 5 proposal constitutes a significant decision that will provide considerable benefits to New York State's electric consumers.

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<sup>24</sup> NYISO Planning Report at 9-10.

<sup>25</sup> As discussed below, the Project is not without risks and challenges that support the incentive rate treatment requested here.

<sup>26</sup> NYISO Planning Report at 74.

## **II. DESCRIPTION OF THE PROPEL NY PROJECT**

### **A. Project Overview**

The Propel NY Project<sup>27</sup> expands the opportunities for OSW injection on Long Island by serving the identified Transmission Need through new electric transmission lines, new substations, and existing substation upgrades. The addition of the Propel NY Project will establish a continuous 345 kV path that greatly expands the deliverability of renewable generation from offshore to New York load centers. A schematic map of the Project is attached as Attachment A.

Specifically, the Project includes transmission investments designed to increase the normal transfer limit of the Long Island export interface by 2,265 MW to achieve an increase in OSW energy integration.<sup>28</sup> The Propel NY Alternate Solution 5 would add three new 345 kV Long Island tie lines: two between Shore Road and Sprain Brook and one between East Garden City and Tremont. The Project is bolstered by a Shore Road – Ruland Road – East Garden City 345 kV backbone and other transmission facilities in Long Island. These facilities add a strong 345 kV backbone to the Long Island transmission system that not only allows the delivery of OSW power but also will effectuate the efficient transfer of power in the future, providing optionality for resource planning and expansion needed to achieve the CLCPA mandates. With the new facilities, the Project provides (1) effective operability under a variety of outage conditions, (2) low cost per MW for transfer capability, expandability, and operating range, and (3) lower project cost than alternative projects. Additionally, while the Transmission Need projects were not required to relieve the congestion on the Barrett-Valley Stream 138 kV path within Long Island,

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<sup>27</sup> “Propel NY Project” hereinafter refers to the selected Propel NY Alternate Solution 5.

<sup>28</sup> NYISO Planning Report at 32-33.

Alternate Solution 5 partially relieves this constraint by adding a new Barrett – East Garden City 345 kV line.<sup>29</sup>

The Project consists of the following electric transmission facilities:

- East Garden City – Tremont 345 kV PAR-controlled line;
- Shore Road – Sprain Brook two (2) 345 kV PAR-controlled lines;
- Barrett – East Garden City 345 kV PAR-controlled line;
- Ruland Road – Shore Road 345 kV line;
- Ruland Road – East Garden City 345 kV PAR-controlled line;
- Shore Road – East Garden City 345 kV line; and
- Syosset – Shore Road 138 kV PAR-controlled line.<sup>30</sup>

#### **B. Project Benefits**

In the NYISO Viability Assessment mentioned above, NYISO performed an independent review<sup>31</sup> of each proposed project based on its performance under the various metrics set forth in the tariff and directed by the PSC. These metrics include capital costs, voluntary cost cap, cost per MW, expandability, operability, performance, property rights and routing, 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. Based on consideration of all the evaluation metrics, together with input from developers, stakeholders, and the New York Department of Public Service staff, and upon performing a detailed comparative review among the projects, the

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<sup>29</sup> *Id.* at 10-11.

<sup>30</sup> The Project has been designed to accommodate additional enhancements, including the installation of distributed temperature and partial discharge monitoring systems.

<sup>31</sup> NYISO commenced a detailed evaluation of each viable and sufficient transmission proposal with the assistance of its independent consultant, Substation Engineering Company.

NYISO staff recommended the Board of Directors select Propel NY's Alternate Solution 5 proposal as the more-efficient or cost-effective transmission solution to satisfy the identified Transmission Need on Long Island.

NYISO estimates the Project will result in significant production cost savings, emissions reductions, and decreases in congestion across the region. Specifically, NYISO calculates that the project would result in production cost savings of approximately \$3.6 billion over a twenty-year period.<sup>32</sup>

The Project also brings substantial environmental and congestion relief benefits as it will result in up to 8.06 billion tons of carbon dioxide emissions avoided over a twenty-year period on a statewide basis.<sup>33</sup> NYISO has determined the Project will relieve transmission congestion and provide a myriad of additional economic and performance benefits including, 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>34</sup> When accounting for these benefits, the all-in benefit/cost ratio would be dramatically greater. Ultimately, the Project is clearly necessary to comply with the New York CLCPA Requirements.

### **III. INCENTIVE RATE REQUEST**

Pursuant to section 219 of the FPA and Order No. 679, NYPA requests that the Commission authorize the Abandonment Incentive—i.e., the recovery of 100% of prudently incurred costs in the event the Project is abandoned for reasons beyond NYPA's

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<sup>32</sup> NYISO Planning Report at 11.

<sup>33</sup> *Id.* at 58.

<sup>34</sup> *Id.*, Executive Summary at 6.

control. NYPA is requesting the Abandonment Incentive in anticipation of accelerating its investment in the Project in the coming months and because the Commission's practice has been to award recovery of 100% of abandoned plant only for costs expended after the date of an order granting the abandoned plant incentive. To the extent the Commission acquires the authority under its regulations to apply this incentive to allow recovery of abandoned plant costs expended after the date the Project was selected in a regional planning process, NYPA requests this relief for the Project.

Recognizing the need to encourage investment in transmission infrastructure, Congress in 2005 directed the Commission to establish rules for transmission incentive-based rate treatments for the purpose of benefitting consumers by ensuring reliability and reducing transmission congestion.<sup>35</sup> In response to this directive, FERC issued Order No. 679 setting forth procedures by which utilities may seek incentive-based rate treatments for their investments in new transmission projects.<sup>36</sup> Order No. 679 specifically identifies as one available incentive the ability to recover 100% of prudently incurred costs associated with abandoned transmission projects in transmission rates when such abandonment is outside the control of management. The Commission found that such recovery constitutes "an effective means to encourage transmission development by reducing the risk of non-recovery of costs."<sup>37</sup>

Applicants seeking incentive rate treatments under Order No. 679 must demonstrate that the facilities for which incentives are sought either ensure reliability or reduce congestion, and that there is a nexus between the incentives sought and the

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<sup>35</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594, 315 and 1283.

<sup>36</sup> Order No. 679 at P 1.

<sup>37</sup> *Id.* at P 163.

investment being made, i.e., the applicant must show that the incentives requested are rationally related to the investments being proposed.<sup>38</sup> Applicants must additionally show that the total package of incentives requested is tailored to address the demonstrable risks or challenges faced by the applicant in undertaking the project.<sup>39</sup> NYPA expects to request other transmission incentives for the Project at a later stage of Project development.<sup>40</sup> Consistent with Order No. 679-A and Commission precedent, when NYPA files for additional incentives it intends to “demonstrate that the total package of incentives is appropriately tailored to address the demonstrable risks or challenges posed by the Project.”<sup>41</sup>

The Propel NY Project is a significant development project designed to bring cutting edge OSW generation across densely populated areas to serve critical infrastructure and electric energy needs across New York Control Area.<sup>42</sup> It is a “posterchild” for the kind of projects FERC’s incentive rate treatment is designed to facilitate. As demonstrated below, NYPA should be awarded the requested Abandonment Incentive for the Propel NY Project because: (1) the Project satisfies the Order No. 679 rebuttable presumption as it was approved through the PSC and NYISO’s Order No. 1000 processes; and (2) NYPA has narrowly tailored its incentive request to address the specific risks and challenges faced in constructing the Project.

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<sup>38</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.

<sup>39</sup> Incentives Policy Statement at P 10; Order No. 679-A at P 115; 18 C.F.R. § 35.35(d).

<sup>40</sup> The Commission has found that transmission incentive applicants need not raise each incentive to be sought in an initial application. See, e.g., *Transource Kan., LLC*, 151 FERC ¶ 61,010, at P 34 (2015), *clarifying on denial of reconsideration*, 154 FERC ¶ 61,011 (2016), *pet. for review dismissed sub nom., Kan. Corp. Comm’n v. FERC*, 881 F.3d 924 (D.C. Cir. 2018).

<sup>41</sup> Order No. 679-A at P 6 (internal citation omitted); see also *LS Power Grid N.Y., LLC*, 167 FERC ¶ 61,139, at P 19 (2019).

<sup>42</sup> The New York Control Area is the electric control area that is under the operational control of NYISO.

### **A. Rebuttable Presumption**

Order No. 679 provides that to obtain a transmission rate incentive under section 219, an applicant must demonstrate that the proposed transmission project will “either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.”<sup>43</sup> Order No. 679 established a rebuttable presumption that this standard is met if: (1) the transmission project results from a fair and open regional planning process that considers and evaluates the project for reliability and/or congestion; **or** (2) the transmission project has received construction approval from an appropriate state commission or state siting authority.<sup>44</sup>

In Order No. 679, the Commission stated 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>45</sup> In Order No. 679-A, the Commission further clarified that it created the rebuttable presumption “for the purpose of avoiding duplication in determining whether a project maintains reliability or reduces congestion,” stating that the Commission “do[es] not wish to repeat the work of state siting authorities, regional planning processes, or the DOE in evaluating these issues.”<sup>46</sup>

The Propel NY Project should be considered to qualify for the Commission’s rebuttable presumption under Order No. 679 because NYISO found that the Project is a complete, viable, and sufficient solution to satisfy the State’s Public Policy Transmission

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<sup>43</sup> Order No. 679 at PP 76, 77; 18 C.F.R. § 35.35(d).

<sup>44</sup> Order No. 679 at P 58; Order No. 679-A at P 49; 18 C.F.R. § 35.35(i).

<sup>45</sup> Order No. 679 at P 54.

<sup>46</sup> Order No. 679-A at P 46.

Need that was identified by the PSC, as it would unbottle a significant amount of OSW generation to southeast New York and advance the development of planned renewable generation in the Long Island area. NYISO specifically found NYPA to be a Qualified Developer, Alternate Solution 5 to be technically practicable, and NYPA “has provided an approach for acquiring any necessary rights-of-way, property, and facilities.”<sup>47</sup>

A failure to grant the rebuttable presumption here would require the Commission to duplicate NYISO’s review and analysis of transmission congestion in Long Island and southeast New York and solutions that effectively address it, which the Commission stated in Order No. 679-A that it seeks to avoid in such cases.<sup>48</sup>

Additionally, the Project’s designation as complete, viable, and sufficient to satisfy the Public Policy Transmission Need has resulted from a fair planning process. The Public Policy Transmission Planning Process (or PPTPP), as part of NYISO’s Comprehensive System Planning Process, considers transmission needs driven by public policy requirements in the local and regional transmission planning processes.<sup>49</sup> Consistent with its obligations to regulate and oversee the electric industry under New York State law, the PSC has the primary responsibility for the identification of transmission needs driven by Public Policy Requirements.

The PPTPP consists of four core steps: (1) the identification of a Public Policy Transmission Need, (2) developers proposing solutions to satisfy the identified Public

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<sup>47</sup> NYISO Viability Assessment at 20.

<sup>48</sup> Order No. 679-A at P 46.

<sup>49</sup> The PPTPP was developed in consultation with NYISO stakeholders and the New York PSC and was approved by FERC under Order No. 1000. *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).



Policy Transmission Need, (3) an evaluation of the viability and sufficiency of the proposed Public Policy Transmission Projects and Other Public Policy Projects, and (4) a comparative evaluation of the viable and sufficient projects for the NYISO Board of Directors to select the more efficient or cost-effective Public Policy Transmission Project that satisfies the Public Policy Transmission Need, once the PSC confirms that there is a need for transmission.

Throughout the PPTPP, NYISO solicited input from NYISO's Board of Directors, NYISO staff, and stakeholders, as well as the views of NYISO's Market Monitoring Unit on the impacts of the proposed transmission projects on NYISO's competitive wholesale electricity markets. The assumptions, inputs, methodologies, and results of NYISO's analysis are published in the PPTPP Report.<sup>50</sup>

Because NYISO substantively approved the Project in the NYISO Viability Assessment and the Board determined Alternate Solution 5 to be the best proposal to address the Long Island PPTN, the Commission should consider the Project to qualify for Order No. 679's rebuttable presumption.

**B. The Project Is Eligible for Incentive Rate Treatment Under Order No. 679 Because It Is Needed to Maintain Reliability and Reduce Congestion.**

If the Commission somehow finds that the Project does not qualify for the rebuttable presumption, the Project is nonetheless eligible for transmission rate incentives because, based on NYISO's independent consultant, the Project is needed to maintain reliability and reduce congestion. The Commission has held that where an applicant does not qualify for Order No. 679's rebuttable presumption, applicants may still qualify for

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<sup>50</sup> See NYISO Planning Report.

incentives if they “demonstrate that their project is needed to maintain reliability or reduce congestion by presenting a factual record that would support such findings.”<sup>51</sup>

As detailed above, the Project will provide significant reliability benefits. Specifically, the Project’s added transfer capacity and upgrades to the transmission infrastructure serving Long Island will reduce the number of curtailments from OSW resources. The energy produced through reduced curtailment of OSW 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 OSW generation to the rest of the State.<sup>52</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 OSW generation to southeast New York.

NYISO independently determined that Propel NY Alternate 5 proposal will address an important Public Policy Transmission Need by helping to increase the export capability from Long Island to the rest of the State, ensuring access to Long Island’s OSW generation, reduce congestion, and help serve Long Island load as the generation mix continues to change in response to the public policies identified by New York State, all in an efficient and cost-effective manner.

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<sup>51</sup> Order No. 679 at P 57.

<sup>52</sup> NYISO Planning Report at 7.

Accordingly, if the Commission does not consider the Project to qualify 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 because it enhances reliability and substantially reduces congestion.

**C. There Is a Nexus Between the Abandonment Incentive and the Risks Faced by NYPA in Developing and Constructing the Project.**

Applicants seeking incentive rate treatments under Order No. 679 must also demonstrate that there is a nexus between the incentives sought 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>53</sup> The Commission explained in its November 15, 2012, Incentives Policy Statement that the nexus test is fact-specific.<sup>54</sup>

**1. NYPA Will Face Considerable Risks and Challenges During Project Development and Construction.**

*a. Financial Risks and Challenges*

There are a variety of significant financial risks and challenges facing NYPA in the development of the Project.<sup>55</sup> The Project has a total capital cost estimate of \$3.262 billion and requires the development of three new underground cables and a 345 kV transmission line through densely populated areas of southwest Long Island, including submarine cables. NYPA and NY Transco are investing a significant amount of money to help New York achieve its renewable, clean energy goals under the CLCPA and Accelerated Renewable Energy Act. NYPA is responsible for up to 30% of the Project Sponsors'

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<sup>53</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.

<sup>54</sup> See Incentives Policy Statement at P 6 (quoting Order No. 679 at P 26).

<sup>55</sup> This application for incentive rate treatments addresses NYPA's risks and challenges it faces in developing the Project. NY Transco may file for incentive rate treatments for its investment in the Project in a subsequent proceeding and may provide certain details on the risks and challenges it faces in developing the Project.

\$3.262 billion investment, requiring NYPA to take on a considerable amount of risk given the various inherent risks associated with constructing unprecedented major bulk power transmission lines.

The Commission has acknowledged that “no single utility [is] obligated to build” new high-voltage lines and upgraded infrastructure necessary to support the wholesale power markets no matter the generation source.<sup>56</sup> The Commission has recognized these inherent risks, including cash flow prior to facilities being placed into rate base.<sup>57</sup> In New York, these risks are particularly challenging as there has been only limited transmission development in the past 30 years, even in historically constrained areas of the State. Accordingly, NYPA’s investment in the Project is, by definition, an effort that “exceed[s] the normal risks undertaken by a utility.”<sup>58</sup>

Factors beyond the control of NYPA also could impact whether the Project will ultimately be built. The Project was approved based on NYISO’s finding that the Project is needed expeditiously to meet the State’s CLCPA Requirements. Legal challenges could lead to cancellation or significant modification of the Project. Similarly, changes in the legislative or executive leadership of the State could introduce changes to the CLCPA, the Accelerated Renewable Energy Act, or other state laws that could result in cancellation or modification of the Project. These risks are significant and will only grow as NYPA continues development of, and increases its investment in, the Project.

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<sup>56</sup> Order No. 679 at P 25 (internal quotation marks omitted).

<sup>57</sup> See Incentives Policy Statement at P 12.

<sup>58</sup> Order No. 679 at P 27.

### ***b. Regulatory Risks and Challenges***

There are also several known environmental, regulatory, and siting risks associated with the Project Sponsors' development of the Project. Most significantly, the Project still needs to obtain all necessary permits and approvals, including siting approvals required under Article VII of the New York Public Service Law.

Under Article VII, the Project qualifies as a “major utility transmission facility,”<sup>59</sup> and as a result will require a Certificate of Environmental Compatibility and Public Need (“Certificate”) and an approved Environmental Management and Construction Plan (“EM&CP”) from the PSC before Project construction may begin. The intent of the EM&CP is to minimize environmental impacts during construction and operation of the transmission facility. Accordingly, Article VII requires the PSC 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. The PSC 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>60</sup> These Certificate conditions can include facility location requirements, construction activity restrictions, required environmental or agricultural inspections, and applicant reporting requirements to regulators. The Project Sponsors expect to submit an EM&CP for the facilities they will own, potentially utilizing a phased approach in accordance with the various phases of construction of the Project. Approval

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<sup>59</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. *See, e.g.,* NYPSC, *The Certification Review Process for Major Electric and Fuel Gas Transmission Facilities: A Guide from the New York State Public Service Commission*, at 3 (Nov. 17, 2017), <https://dps.ny.gov/system/files/documents/2022/11/article-vii-guide-web-11-17-final.pdf>.

<sup>60</sup> *See* N.Y. Pub. Serv. L. § 121, *et seq.*; *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).

for a single EM&CP for longer or complicated projects can take a year or more, whereas, filing multiple EM&CPs for a project can help keep construction on schedule.

Moreover, the Article VII approval process requires significant public consultation, opening the Project up to public opposition to the construction of these new facilities by affected landowners, elected officials, and other stakeholders. The public consultation may be particularly challenging and could play a significant role in the Article VII permitting process. An Article VII application potentially triggers an administrative evidentiary hearing phase, in which interested parties may submit challenges to the Project.

If a party challenges the Article VII Application, the Project Sponsors must offer evidentiary proof in support of its application, defend its positions, and demonstrate compliance with applicable statutes and regulations. Often, these evidentiary hearings do not proceed day-to-day, but extend over weeks until complete.<sup>61</sup> Administrative law judges (“ALJs”) often require post-hearing briefs (initial and responsive/rebuttal briefs) from the parties, and the briefing schedule may take months to complete. Generally, the ALJ makes a recommended decision, and the PSC makes a final determination. This adjudicatory process could take months or years, resulting in significant construction delays, or, ultimately, abandonment of the Project.

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, because of increased compliance burdens due to recent regulatory changes applicable to USACE permits, may

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<sup>61</sup> See N.Y. Pub. Serv. L. § 121, *et seq.*

pose increased risk to the Project. There is a risk that the USACE permits could be delayed or denied due to these new regulatory compliance burdens.

Finally, several other stand-alone permits will likely need to be obtained prior to the Project's construction, including but not limited to: 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 reservation.

To minimize costs and environmental impacts, the Project Sponsors proposed to develop the majority of the Project within existing public rights-of-way ("ROWS"). However, the configuration of the Project will nonetheless require NYPA 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, including from other utilities and private landowners, it is possible that NYPA's efforts to obtain the ROWs may result in disputes or challenges that could, at a minimum, jeopardize the Project's in-service date or require a 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.

### *c. Execution Risks*

There are also several execution risks. In particular, the Project may face unexpected underground risks given the Project's new underground and submarine transmission lines in existing public ROWs and substation facilities on Long Island and across Westchester County. These unforeseen underground risks include the potential for unexpected geotechnical conditions during construction, such as rocks, which would require rerouting or drilling, and could result in schedule delays and increase costs. For NYPA, these unexpected underground risks extend to the development of land associated with the building of new or expanded substations.

In addition, the Propel NY Project may face issues with material procurement. The Project's material procurement risks include raw materials, particularly steel price volatility which has been heightened due to the recent COVID-19 pandemic. Further, manufacturing availability, quality, and delivery logistics risks are significant for a project of this scale.

The Propel NY Project may also face labor and equipment shortages—risks that are anticipated to pose a significant challenge. The large number of transmission projects undertaken in New York and nationally over the same period as the Propel NY Project is expected to strain the availability of transmission line contractors and crews. This is likely to have an impact on cost and schedule.

NYPA will also require system outages which at times may not be granted by NYISO due to system operation constraints. These outages will need to be coordinated to ensure continued system reliability. Moreover, the existing transmission facilities provide a significant amount of power to downstate New York. Requested outages to perform the necessary facility work will likely be heavily scrutinized, i.e., shorter outage/construction



durations or the need for temporary transmission lines may be required to mitigate reliability concerns, resulting in additional costs to the Project. As a result, the scale of the Project and the volume of additional transmission projects currently underway across New York State raises the risk that required system outages may not be obtainable in the timeframe needed for Project completion consistent with the target in-service date. This could impact the Project schedule and impose additional costs.

***d. Other Risks and Challenges***

Other risks include: (i) delays and increased project costs that could arise due to an unusually wet environment that requires an increased use of matting; (ii) wet conditions during construction that could lead to delays to the Storm Water Pollution Prevention Plan inspection schedule and increased costs for maintenance and sediment control; and (iii) extreme weather-related issues that may include, but is not limited to, rain, ice, snow, hurricanes, and blizzards that could lead to schedule delays and additional costs.

**D. Application of the Nexus Test Under Order No. 679-A**

As stated above, in addition to satisfying the section 219 eligibility requirements, an applicant must “demonstrate that the total package of incentives requested is tailored to address demonstrable risks and challenges” of the project.<sup>62</sup>

In Order No. 679-A, the Commission clarified that its “nexus” test is met when an applicant demonstrates that the total package of incentives required is tailored to address the demonstrable risks or challenges faced by the applicant.<sup>63</sup> In determining whether an applicant has met this requirement, “the Commission will examine the total package of incentives being sought, the inter-relationship between any incentives, and how any

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<sup>62</sup> Order No. 679-A at P 6.

<sup>63</sup> *Id.* at PP 6, 21.

requested incentives address the risks and challenges faced by the project.”<sup>64</sup> NYPA is not requesting every incentive rate treatment available under Order No. 679. Rather, the Abandonment Incentive requested for the Project is narrowly tailored to address the specific challenges faced by NYPA in developing the Project.

NYPA seeks authorization for the Abandonment Incentive to mitigate the risk of unrecovered costs in the event that all or part of the Project is abandoned for reasons outside of NYPA’s control. As described above in subsections III.C.1(a) – (d), the Project faces significant financial, regulatory, permitting and execution risks and other requirements that may result in the Project being terminated at no fault of NYPA. As a result, the abandonment incentive is warranted.

**E. The Commission Should Approve the Incentive Rate Treatments at the Earliest Possible Date.**

NYPA respectfully requests that the Commission authorize the use of the requested incentive rate treatment effective on the date of its order, and no later than October 12, 2023. NYPA has already dedicated considerable resources to the Project and continues to undertake further expenditures to support the development of the Project. Authorization of the requested incentive rate treatment will provide risk mitigation by sending a positive signal of regulatory support for the Project to investors and rating agencies.

**IV. ADVANCED TECHNOLOGY STATEMENT**

Order No. 679 requires the submission of a technology statement that describes the advanced technologies considered and an explanation of advanced technologies are not to be employed. While NYPA does not specifically seek an advanced technology incentive,

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<sup>64</sup> *Id.* at P 21.

it will emphasize good utility practice and efficient engineering design and construction practices.

The Project will employ International Electrotechnical Commission (“IEC”) 61850 protocols.<sup>65</sup> IEC 61850 protocols will be used to upgrade existing substation communication and in constructing new substation communication systems to improve efficiency and bolster system reliability. Pursuant to IEC 61850 protocols, all substations will be outfitted with fiberoptic cables (replacing copper wires in existing substations) and transitioned to digital control. Utilizing IEC 61850 protocols 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 NYPA will be exposed to some design and implementation risks.

## **V. REQUESTED WAIVERS**

Section 381.108 of FERC’s regulations exempts “[s]tates, municipalities and anyone who is engaged in the office business of the Federal Government” from the fee otherwise required under Rule 207(c) for a petition for issuance of a declaratory order.<sup>66</sup> As described above, NYPA is a “municipality” within the meaning of section 3(7) of the FPA and is a “state instrumentality” within the meaning of section 201(f) of the FPA.<sup>67</sup> It

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<sup>65</sup> IEC 61850 is part of the IEC Technical Committee.

<sup>66</sup> See 18 C.F.R. § 381.108(a) (“States, municipalities and anyone who is engaged in the official business of the Federal Government are exempt from the fees required by this part and may file a petition for exemption in lieu of the applicable fee.”).

<sup>67</sup> 16 U.S.C. § 824(f) (“No provision in this subchapter shall apply to, or be deemed to include . . . a State or any political subdivision of a State . . . or any agency, authority, or instrumentality of any one or more of the foregoing . . .”); see also *Village of Bergen v. FERC*, 33 F.3d 1385, 1389 (D.C. Cir. 1994).

is the established practice of the Commission to exempt municipalities from paying applicable filing fees and from compliance with Section 35.13 of the Commission's regulations. Accordingly, NYPA respectfully requests exemption from the declaratory order filing fees and from any filing requirements of Section 35.13.<sup>68</sup>

In addition to the waivers and exemptions specifically requested above, NYPA respectfully requests that the Commission grant waiver of any other requirements of its regulations, as necessary.

## **VI. CORRESPONDENCE AND COMMUNICATIONS**

All notices, correspondence, and communications regarding this filing should be directed to the following individuals:

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<sup>68</sup> The Commission has granted such waivers to NYPA when previously requested. *See, e.g., N.Y. Power Auth.*, 169 FERC ¶ 61,125, at P 49 (2019) (waiving filing fees for NYPA as requested due to its status as a municipal utility organized under the laws of New York State); *N.Y. Indep. Sys. Operator*, 154 FERC ¶ 61,268 at PP 69-70 (granting NYPA's requested waiver of Section 35.13 of the Commission's regulations because NYPA is not subject to the Commission's regulatory filing requirements and granting NYPA's requested exemption from the filing fee); *N.Y. Indep. Sys. Operator*, 140 FERC ¶ 61,240 at PP 36-37 (same).

## VII. CONCLUSION

For the reasons set forth above, NYPA respectfully requests that the Commission grant the rate incentive treatment including pre-authorization to recover 100% of prudently incurred costs of the Project if it is abandoned or canceled, in whole or in part, for reasons beyond the NYPA's control.

Respectfully submitted,

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Attachment