

151 FERC ¶ 61,004
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

New York Independent System Operator, Inc.
New York Transco, LLC
Central Hudson Gas & Elec. Corp.,
Consolidated Edison Co. of New York, Inc.,
Niagara Mohawk Power Co., d/b/a National Grid,
New York State Elec. & Gas Corp.,
Orange and Rockland Utilities, Inc.,
Rochester Gas and Electric Corp.

Docket No. ER15-572-000

ORDER ON TRANSMISSION FORMULA RATE, RETURN ON EQUITY, COST
ALLOCATION, AND TRANSMISSION INCENTIVES

(Issued April 2, 2015)

1. On December 4, 2014, the New York Independent System Operator, Inc. (NYISO) submitted, on behalf of the New York Transco, LLC (NY Transco) and the indicated New York Transmission Owners¹ (together Applicants), a proposed transmission cost-of-service formula rate template (Formula Rate) and formula rate implementation protocols (protocols) for NY Transco to recover costs associated with five transmission projects that NY Transco intends to develop and own. Applicants also request several transmission rate incentives pursuant to section 219 of the Federal Power Act² (FPA),

¹ The New York Transmission Owners comprise Central Hudson Gas & Elec. Corp., Consolidated Edison Co. of New York, Inc. (Con Edison), Niagara Mohawk Power Corp., d/b/a National Grid, New York State Elec. & Gas Corp. (NYSEG), Orange and Rockland Utilities, Inc. (O&R), and Rochester Gas and Electric Corp. (RG&E).

² 16 U.S.C. § 824s (2012).

Order No. 679,³ and the guidance of the Commission's November 15, 2012 Transmission Incentives Policy Statement.⁴ Applicants request that the Commission grant the requested transmission incentives and waiver of certain filing requirements. Applicants also request that the Commission accept the formula rate, protocols, base return on equity (ROE) of 10.6 percent, and cost allocation for five transmission projects without suspension or hearing, to be effective April 3, 2015.

2. For the reasons discussed below, we accept in part, and reject in part, the transmission rate incentives proposal. We also accept and suspend, for a nominal period, the formula rate proposal, subject to refund, and establish hearing and settlement judge procedures for certain formula rate issues. We also reject the proposed cost allocation as discussed more fully below.

I. Applicants' Filing

3. Applicants submitted a filing requesting summary disposition of the formula rate and protocols for NY Transco to recover costs associated with five transmission projects that NY Transco intends to develop and own. Applicants also request several transmission rate incentives. Applicants explain that NY Transco was formed as a New York limited liability company and will be owned by the affiliates of the New York Transmission Owners. Specifically, the owners of NY Transco are: (1) Consolidated Edison Transmission, LLC, an affiliate of Con Edison/O&R; (2) Grid NY LLC, an affiliate of National Grid; (3) Iberdrola USA Networks New York Transco, LLC, an affiliate of NYSEG/RG&E; and (4) Central Hudson Transmission LLC, an affiliate of Central Hudson.⁵

4. Applicants request that the Commission accept the proposed NY Transco tariff sheets, to be effective April 3, 2015, without suspension or hearing. Alternatively, Applicants request that the Commission limit the issues set for hearing and impose a nominal suspension period, citing proceedings where the Commission found that shorter suspension periods were warranted where the Commission urged transmission owners to

³ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁴ *Promoting Transmission Investment through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (Transmission Incentives Policy Statement).

⁵ NY Transco Application, Ex. No. NYT-1 at 19.

move from stated rates to formula rates and where customers would be benefitted from the incentive formula rates provided to commence construction of upgrades.⁶

5. Applicants explain that the rate resulting from the tariff sheets will not be charged until the later of (i) receipt of all necessary regulatory approvals, or (ii) when the first project is transferred to NY Transco.⁷ Applicants add that the NY Transco will acquire the five proposed transmission projects after all regulatory approvals are received, including section 203 approval from the Commission, and approval, from the New York Public Service Commission (NYPSC), to transfer the projects.⁸ Applicants state that they “anticipate that the transfer of project assets will occur towards the end of 2015,” and therefore, do “not request authority to begin recovery of any costs until January 1, 2016.”⁹

6. Applicants propose to allocate the costs of the projects using an adjusted load ratio share approach, such that approximately 75 percent of the costs are allocated to transmission districts southeast of the Upstate New York/Southeastern New York (UPNY/SENY) constraint and approximately 25 percent allocated to upstate transmission districts. Applicants assert that this adjusted load ratio share cost allocation method is justified by the significant economic and reliability benefits that accrue to downstate loads.

7. Applicants request waiver of any of the Commission’s regulations required to accept the filing, including section 35.13(h) of the Commission’s regulations, which require public utilities to file cost-of-service statements and rate design information.¹⁰

⁶ NY Transco Application, Transmittal at 56-57 (citing *Commonwealth Edison Co.* 119 FERC 61,238, at P 75 (2007) (finding that shorter suspension periods were warranted where the Commission urged transmission owners to move from stated rates to formula rates) and *Trans-Allegheny Interstate Line Co.*, 119 FERC 61,219, at P 38 (2007)).

⁷ NY Transco Application, Ex. No. NYT-41 at 5.

⁸ The Commission is issuing concurrently with this order an order addressing Applicants’ separate request for authorization to transfer certain assets from Applicant New York Transmission Owners to NY Transco, which Applicants filed with the Commission in Docket No. EC15-45-000 pursuant to sections 203(a)(1)(A) and 203(a)(1)(B) of the FPA. *New York Transco, LLC*, 151 FERC ¶ 61,005 (2015).

⁹ NY Transco Application, Ex. No. NYT-1 at 8. Ex. No. NYT-41 at 5.

¹⁰ See 18 C.F.R. § 35.13(h) (2014).

Applicants also request waiver of the section 35.25(a)(c)(4) requirement to file projections of the allocation of costs among customers for its requested construction work in progress in rate base incentive, asserting that Order No. 679 found that the rationale behind the need for forward-looking allocation ratios among wholesale customers for generation investment would be unlikely for transmission investment.¹¹

II. The Projects

8. Applicants explain that the New York Transmission Owners submitted the five transmission projects at issue in this proceeding for the NYPSC's consideration in two state competitive solicitation proceedings. Specifically, the New York Transmission Owners proposed three projects (Transmission Owner Transmission Solutions (TOTS) Projects) in a proceeding to develop a contingency plan should the Indian Point Energy Center close¹² and two projects (AC Projects) in a proceeding initiated to examine resource adequacy needs in New York State.¹³ Applicants assert that the TOTS Projects are thus designed to address historical congestion and future reliability concerns stemming from the potential closure of Indian Point Energy Center, while the AC Projects address resource adequacy needs.¹⁴ Applicants state that the transmission projects described below were originally studied and planned under the New York State Transmission Assessment and Reliability Study (STARS) in 2010 and 2012.

9. Applicants explain that, through the NYPSC proceeding examining resource adequacy needs in New York State, the State is seeking to improve power flow from upstate and downstate to "ensure reliability and reduce congestion, lower the cost of delivering power to customers and increase the efficiency of existing generation

¹¹ NY Transco Application, Transmittal at 65-69 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 119 (2006)); *see* 18. C.F.C. § 35.25 (2014).

¹² *See* NYPSC Order Accepting IPEC Reliability Contingency Plans, Establishing Cost Allocation and Recovery, and Denying Requests for Rehearing, Case 12-E-0503, at 17 (Nov. 4, 2013).

¹³ *See* NYPSC, Order Instituting Proceeding, Case 12-T-0502, at 1-2 (Nov. 30, 2012) (AC Proceeding); *see also* NYPSC, Order Establishing Procedures for Joint Review Under Article VII of the Public Service Law and Approve Rule Changes, Case 12-T-0502, at 1 n.2 (Apr. 22, 2013). The TOTS Projects and the AC Projects jointly will be referred to in this order as "the projects."

¹⁴ *See* NY Transco Application, Transmittal at 18-19, 50.

dispatch[.]”¹⁵ Specifically, applicants state that the UPNY/SENY interface is among the most congested in the nation. They explain that NYISO’s 2013 Congestion Assessment and Resource Integration Study (CARIS) found that eliminating such congestion will provide benefits to consumers of about \$1.4 billion in avoided congestion charges.¹⁶ Further, they maintain, the Commission has found that the UPNY/SENY and Central East constraints have been overloaded since 2008 and continue to raise long-term reliability concerns.

A. AC Projects

10. Applicants state that the two AC Projects are currently competing with other transmission developers in the NYPSC’s resource adequacy proceeding.¹⁷ According to Applicants, the two AC Projects will require NYISO approval once they are finalized, because Applicants expect to propose the projects as transmission solutions in NYISO’s Order No. 1000-compliant public policy planning process.

11. One of the AC Projects is the proposed Edic-to-Pleasant Valley 345 kV Line, estimated to cost \$1.02 billion. It would connect National Grid’s Edic Substation in Oneida County, New York, to Con Edison’s Pleasant Valley Substation in Dutchess County, New York, entirely within existing rights-of-way. The transmission line would be about 153 miles long and include three new substations. In addition, approximately 75 miles of two existing 80-mile, 230 kV transmission lines would be removed to allow for the construction of a new 345 kV transmission line on existing rights-of-way. The replacement of these transmission lines and the remaining five miles of each of these transmission lines would be rebuilt to address age-related conditions, ultimately providing 1,000 MW of additional transfer capability across the UPNY/SENY interface.

12. The other AC Project is the Oakdale-to-Fraser 345 kV Line, which would add a second, 57-mile, 345 kV transmission line between the Oakdale and Fraser 345 kV Substations. Applicants state that the project would be constructed within existing rights-of-way, would increase the import capability into southeastern New York during normal and emergency conditions and would be located in Broome, Chenango, and Delaware Counties in New York.

¹⁵ *Id.* at 14-15.

¹⁶ *Id.* at 22.

¹⁷ *Id.* at 18-20.

B. TOTS Projects

13. Applicants state that the NYPSC has already approved the construction of the three TOTS Projects in order to “meet a firm in-service deadline of June 1, 2016.”¹⁸ They add that, because the NYPSC issued an order approving the TOTS Projects, NYISO included them in its 2014 Reliability Needs Assessment.¹⁹

14. Applicants state that the first TOTS Project, the \$66 million Fraser-to-Coopers Corner Project, will increase power transfer by reducing series impedance over the existing 345 kV Marcy South transmission lines. They assert that this will add 25 percent series compensation through the installation of capacitors, and also re-conductor the 21.8 miles of the Fraser-Coopers Corners 345 kV transmission line owned by NYSEG using existing towers. There will also be a number of upgrades at affected substations not owned by NYSEG. This project will help increase thermal transfer limits across the Total East interface and the UPNY/SENY interface and will also provide a partial solution for system reliability if Indian Point Energy Center retires.

15. Applicants state that the second TOTS Project, the \$121 million Ramapo-to-Rock Tavern Project, will add a second 345 kV transmission line from Con Edison’s Ramapo 345 kV Substation to Central Hudson’s Rock Tavern 345 kV Substation by constructing three upgrades: (a) approximately 12 miles of overhead 345 kV transmission line will be installed between Orange and Rockland’s Sugarloaf Substation and Rock Tavern Substation using the existing double circuit 345 kV transmission towers; (b) an existing Orange and Rockland 138 kV transmission line between Ramapo and Sugarloaf Substations will be converted from 138 kV to 345 kV; (c) a new 345 kV Sugarloaf Substation will be constructed with a 400 MVA, 345 kV/138 kV step-down transformer and associated 345 kV switching equipment and ancillary facilities. Applicants allege that the project will increase import capability into southeastern New York during normal and emergency conditions.

16. Applicants state that the third TOTS Project, the \$262 million Staten Island Unbottling Project, involves transmission upgrades to Con Edison’s interconnecting 345 kV transmission line with Cogeneration Technologies Linden Venture, L.P., to allow generating facilities located on Staten Island to export power to the rest of the New York power grid. Specifically, this project is expected to be completed in two phases. Phase

¹⁸ See *id.* at 18-19, 50 (referring to NYPSC Order Accepting IPEC Reliability Contingency Plans, Establishing Cost Allocation and Recovery, and Denying Requests for Rehearing, Case 12-E-0503, at 21 (Nov. 4, 2013)).

¹⁹ *Id.* at 21.

one will mitigate a reliability issue by separating Con Edison's common pipe double leg feeder into two feeders with independent positions at the Goethals and Linden Substations. In phase two, transmission capacity will be increased by adding forced cooling to four existing 345 kV transmission lines between the Goethals, Gowanus, and Farragut Substations. The Staten Island Unbottling Project will add approximately 440 MW of transfer capability off Staten Island using these transmission lines.

III. Notice of Filing and Responsive Pleadings

17. Notice of the filing was published in the *Federal Register*, 79 Fed. Reg. 73,289 (2014), with interventions and comments due on or before December 26, 2014. In response to several motions requesting extensions of time to file comments in this proceeding and Docket No. EC15-45-000, the Commission subsequently extended the comment date to and including January 16, 2015.²⁰

18. Timely notices of intervention or motions to intervene were filed by Multiple Intervenors, City of New York, New York (City of NY), New York Association of Public Power (NYAPP), Long Island Power Authority (LIPA), Boundless Energy NE, LLC (Boundless Energy), NYPSC, Municipal Electric Utilities Association of New York (Municipals), New York State Department of State Utility Intervention Unit (Utility Intervention Unit), Exelon Corporation (Exelon), NextEra Energy Transmission, LLC, the New York Power Authority (NYPA), and Smart Wire Grid Inc.

19. Exelon; Multiple Intervenors; City of NY; NYAPP; LIPA; Boundless Energy; NYPSC; Municipals; Columbia Land Conservancy, Farmers and Families for Claverack, Farmers and Families for Livingston, Pleasant Valley Concerned Citizens, Preservation League of New York State, Scenic Hudson, Inc., Walnut Grove Farm, and the Towns of Clinton, Livingston, Milan and Pleasant Valley (Joint Commenters); Utility Intervention Unit; Entergy Nuclear Power Marketing, LLC (ENMP); and NYPA filed comments and/or protests to the filing.

20. On February 2, 2015, Applicants filed an answer to the protests. On February 11, 2015, LIPA filed an answer to Applicants' answer. On February 19, 2015, Applicants filed an answer to LIPA's answer. On March 19, 2015, the NYPSC filed an answer to Applicants' answer.²¹

²⁰ Notice Granting Extension of Time, Docket Nos. ER15-572-00 and EC15-45-000 (not consolidated) (Dec. 22, 2014).

²¹ NYPSC Answer at 2.

IV. Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept Applicants', NYPSC's, and LIPA's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Transmission Incentives

a. Summary of Incentives Requested

23. Applicants request several transmission incentives, as discussed more fully below. Applicants seek authority to establish a regulatory asset in Account 182.3, Other Regulatory Assets, that would allow for the deferral and subsequent recovery of all prudently incurred pre-commercial costs that are not capitalized as part of the cost of construction, including pre-commercial costs of permitting, consulting and legal costs related to the projects and formation costs related to the formation of NY Transco.²² Applicants seek inclusion of 100 percent of Construction Work In Progress (CWIP) in rate base for the Edic-to-Pleasant Valley and for the Oakdale-to-Fraser Projects. Applicants propose to use a hypothetical capital structure of 60 percent equity and 40 percent debt. Applicants seek the ability to recover 100 percent of prudently incurred costs in the event any subset of the projects must be abandoned for reasons outside of their reasonable control. Finally, applicants request three ROE adders: the 50 basis point ROE adder for participation in a Regional Transmission Organization (RTO adder), a 50 basis point ROE adder for NY Transco's status as a Transco, and a 50 basis point adder for risks and challenges.

²² NY Transco Application, Transmittal at 29, 41-42, 64.

b. FPA Section 219 Requirement

24. In the Energy Policy Act of 2005,²³ Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in certain transmission infrastructure. The Commission subsequently issued Order No. 679, which sets forth processes by which a public utility may seek transmission rate incentives pursuant to section 219, including the incentives requested here by Applicants. Additionally, in November 2012, the Commission issued a policy statement providing additional guidance regarding its evaluation of applications for transmission rate incentives under section 219 and Order No. 679.²⁴

25. Pursuant to Order No. 679, an applicant may seek to obtain incentive rate treatment for a transmission infrastructure investment that satisfies the requirements of FPA section 219, i.e., the applicant must show that “the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.”²⁵ Order No. 679 established the process for an applicant to demonstrate that it meets this standard, including a rebuttable presumption that the 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 and is found to be acceptable to the Commission; or (2) a project has received construction approval from an appropriate state commission or state siting authority.²⁶

The Commission also stated that “other applicants not meeting these criteria may nonetheless demonstrate that their project is needed to maintain reliability or reduce congestion by presenting [to the Commission] a factual record that would support such a finding.”²⁷

²³ Pub. L. No. 109-58, § 1241 119 Stat. 594 (2005).

²⁴ See Transmission Incentives Policy Statement, 141 FERC ¶ 61,129.

²⁵ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

²⁶ *Id.*

²⁷ *Id.* P 57; see also Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 41.

26. An applicant for a transmission rate incentive must also demonstrate a nexus between the incentives being sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is tailored to address the demonstrable risks or challenges faced by the applicant.²⁸ Applicants must provide sufficient support to allow the Commission to evaluate each element of the package and the interrelationship of all elements of the package. The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.

27. In the Transmission Incentives Policy Statement, the Commission announced its expectation that an applicant seeking an ROE incentive would demonstrate: (1) that the proposed project faces risks and challenges that are not either already accounted for in the applicant's base ROE or addressed through risk-reducing incentives; (2) that it is taking appropriate steps and using appropriate mechanisms to minimize its risk during project development; (3) that alternatives to the project have been, or will be, considered in either a relevant transmission planning process or another appropriate forum; and (4) applicants are expected to commit to limiting the application of the ROE incentive to a cost estimate.²⁹

28. The Transmission Incentives Policy Statement lists a few examples of the types of projects that could satisfy the first criterion, i.e., that the proposed project faces risks and challenges that are not either already accounted for in the applicant's base ROE or addressed through risk-reducing incentives. They are projects that:

- (1) relieve chronic or severe grid congestion that has had demonstrated cost impacts to consumers;
- (2) unlock location constrained generation resources that previously had limited or no access to the wholesale electricity markets; or
- (3) apply new technologies to facilitate more efficient and reliable usage and operation of existing or new facilities.³⁰

²⁸ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 115.

²⁹ See Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at PP 20, 24-30.

³⁰ *Id.* P 21.

i. Applicants' Filing

29. Applicants state that the three TOTS Projects satisfy the rebuttable presumption that they increase reliability and reduce congestion. Applicants state that the three TOTS Projects have received construction approval by the NYPSC in a process which considered whether the projects ensured reliability or reduced congestion.³¹

30. Applicants argue that, if the NYPSC selects the two AC Projects in its competitive process, the AC Projects would satisfy the rebuttable presumption that they increase reliability and reduce congestion. Applicants state that the NYPSC considers in its competitive process whether the projects ensure reliability or reduce congestion.³² In addition, Applicants assert that the record demonstrates that the AC Projects nevertheless will resolve historical congestion at major New York transmission interfaces and will support reliable transmission service in the future.³³

ii. Comments and Protests

31. NYAPP and the City of NY argue that the AC Projects should not be granted incentives because they have not met the rebuttable presumption and there have been no final conclusions that these projects will ensure reliability or reduce the cost of delivered power by reducing transmission congestion.³⁴ In addition, NYAPP argues that Applicants have failed to provide a sufficient factual record to demonstrate that the AC Projects are needed to maintain reliability or reduce congestion. LIPA argues that Applicants should not be permitted to recover pre-commercial costs for projects that might never be selected or built. LIPA argues that, were the Commission to allow such recovery, it will encourage all developers to request recovery of development costs even where they will not be selected in the regional transmission planning process, thereby saddling ratepayers with increased costs contrary to the Commission's policies of reducing the cost of transmission infrastructure.³⁵

³¹ NY Transco Application, Transmittal at 32.

³² *Id.* at 34.

³³ *Id.* at 36-37.

³⁴ NYAPP Protest at 5-10; City of NY Protest at 16-17.

³⁵ LIPA Protest at 36-37.

iii. Answers

32. Applicants answer that they have conclusively demonstrated that the projects will ensure reliability and reduce the cost of delivered power by reducing congestion through the New York Energy Highway Blueprint's conclusion that the projects "including by [sic] what are now called the TOTS and AC Projects, would be needed to maintain reliability in New York State in future years and support optimal development of renewable electric generating resources."³⁶ Applicants argue that because the NYPSC is currently considering the AC Projects in a proceeding which will determine whether the AC Projects meet the section 219 standard, they are presumptively eligible for the requested incentives conditioned on their selection by the NYPSC and inclusion in the NYISO plan.³⁷

33. In its answer, the NYPSC replies that, contrary to Applicants' assertion, it does not agree that the AC Projects meet the section 219 threshold requirement of ensuring reliability or reducing the cost of delivered power, and reiterate that it is premature "to authorize rate treatment for the AC projects."³⁸

iv. Commission Determination

34. We find that Applicants are entitled to the rebuttable presumption that the Commission established in Order No. 679 with respect to the threshold requirement of section 219 for the three TOTS Projects. As detailed above, the TOTS Projects have received construction approval from an appropriate state commission or state siting authority that considered whether the projects ensured reliability or reduced congestion.³⁹

35. For the AC Projects, we find that Applicants are not entitled to the rebuttable presumption regarding the threshold requirement of section 219, because the AC Projects have not been approved in a fair and open regional planning process or received construction approval from an appropriate state commission or state siting authority that considered whether the projects ensured reliability or reduced congestion.⁴⁰

³⁶ Applicants Answer at 3.

³⁷ *Id.* at 4-5.

³⁸ NYPSC Answer at 3.

³⁹ See NY Transco Application, Transmittal at 4; NYPSC, Reliability Contingency Plan Order, Case 12-E-0503, at 7, 25 (Nov. 4, 2013).

⁴⁰ See NY Transco Application, Transmittal at 20 (internal citations omitted).

Nevertheless, we find that Applicants have sufficiently demonstrated in the record that the Edic-to-Pleasant Valley 345 kV Line is needed to maintain reliability or reduce congestion, and thus, meets the threshold requirement of section 219. As discussed more fully below, we find that the record demonstrates that the project will provide relief to significant and chronic congestion in the region, thus reducing the cost of delivered power. However, we find that Applicants have not made a sufficient factual showing for the Oakdale-to-Fraser 345 kV Line. Therefore, any incentive that the Commission grants in this order for the Oakdale-to-Fraser 345 kV Line is conditioned on the project either being selected in a regional transmission planning process that considers whether the project ensures reliability or reduces congestion or receiving construction approval from an appropriate state commission or state siting authority that considers whether the project ensures reliability or reduces congestion.

c. Order No. 679 Nexus

36. In addition to satisfying the section 219 requirement of ensuring reliability and/or reducing the cost of delivered power by reducing congestion, Order No. 679 requires an applicant to demonstrate that there is a nexus between the incentive sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is “tailored to address the demonstrable risks or challenges faced by the applicant.”⁴¹ The regulations under section 219 require a project-specific demonstration of the nexus between the requested incentives and the risks and challenges of the projects. More recently, the Commission stated that an applicant may demonstrate that several individual projects are appropriately considered as a single overall project based on their characteristics or combined purpose, and seek incentives for that single overall project.⁴²

i. Applicants’ Filing

37. Applicants contend that the projects are worthy of incentives because there is a nexus between the transmission incentives sought and the risks and challenges NY Transco faces in constructing the projects.

38. Applicants state the three TOTS Projects face several risks and challenges. They point to the 30 permits and licenses required for the siting and building the three TOTS

⁴¹ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

⁴² See *PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,273, at P 45 (2010) (citing *PacifiCorp*, 125 FERC ¶ 61,076 (2008)).

Projects,⁴³ asserting that several risks and challenges include building across a waterway in the case of the Staten Island Unbottling Project, siting a line through a state park in the case of the Fraser-to-Coopers Corner Project, and building in highly populated areas with potential culturally significant resources that need to be protected in the case of Ramapo to Rock Tavern Project. Applicants state that they are required to build their substations with a maximum noise tolerance of 6 decibels. Applicants explain that all of the TOTS Projects face a tight deadline to have some of the projects in service by June 1, 2016 which adds an additional risk.⁴⁴ Applicants assert that without the incentives requested, NY Transco's ability to maintain adequate cash flow would be challenged, and could lead to a lower credit rating and higher financing costs.⁴⁵

39. According to Applicants, the two AC Projects face demonstrable risk because they are in competition with alternate projects in the NYPSC proceeding and may or may not be selected. Applicants point to documents that require 23 different permits and licenses to site and build the two AC transmission lines.⁴⁶ Applicants explain that another risk is that the Edic-to-Pleasant Valley transmission line will be constructed entirely on existing rights-of-way in part because of a request from the NYPSC to do so. Some of the transmission lines are 345 kV transmission lines that are going to be built on rights-of-way that were intended for 230 kV transmission lines. Applicants assert that if they cannot engineer these lines to use the existing rights-of-way, then the AC Projects might not be built.⁴⁷

40. Applicants contend that, as a start-up company with no direct business history, credit rating, or debt repayment history, NY Transco faces considerable risks in financing the over \$1.7 billion of capital investment required for the projects, and the incentives

⁴³ NY Transco Application, Transmittal Letter, Ex. NYT-14 at 1-2.

⁴⁴ NY Transco Application, Transmittal Letter, Ex. NYT-4 Haering and Allen Test. at 22-25.

⁴⁵ NY Transco Application, Transmittal Letter, Ex. NYT-18 Lapson Test. at 11-12.

⁴⁶ NY Transco Application, Transmittal Letter, Ex. NYT-14 at 1-2.

⁴⁷ NY Transco Application, Transmittal Letter, Ex. NYT-4 Haering and Allen Test. at 28-30.

requested for the projects will allow NY Transco to access capital markets in an efficient manner.⁴⁸

41. As required by Order No. 679, Applicants filed a technology statement explaining some examples of the innovations adopted in some or all of the projects (including the AC Projects), including: reconfiguration and more efficient use of existing assets to minimize real estate needs and mitigate environmental and visual impacts; incorporating innovative compact structure designs to maximize use of existing rights of way corridors and mitigate visual impacts; innovative construction techniques such as live-line construction and use of low impact vehicles will be assessed on some projects to minimize impacts to the environment and system reliability; adoption of the latest microprocessor-based system protection technology to provide the best fault clearing capabilities and system monitoring data; and adoption of the latest technology in digital fault recorders and sequence of event recorders which will provide the best capabilities to assess system disturbances.⁴⁹

42. Finally, Applicants propose that NY Transco would annually file the FERC-730 form, Report of Transmission Investment Activity, with the Commission in order to satisfy the annual filing requirement for applicants granted CWIP in rate base. Applicants states that the annual FERC-730 requires NY Transco to provide information regarding transmission investment costs and project construction status, including estimated completion dates.⁵⁰ Further, as part of the annual customer notification and information procedures, NY Transco will develop and post on Open Access Same-Time Information System (OASIS) work papers that show the cost information and in-service date assumptions regarding the transmission projects and CWIP amounts to be included in its estimates for each year.⁵¹

(a) **Accounting and Rate Treatment for Start-up and Pre-commercial Costs**

43. Applicants seek authority to establish a regulatory asset in Account 182.3, Other Regulatory Assets, that would allow for the deferral and subsequent recovery of all

⁴⁸ NY Transco Application, Transmittal Letter, Ex. NYT-18 Lapson Test. at 27.

⁴⁹ NY Transco Application, Transmittal Letter, Ex. NYT-4 Haering and Allen Test. at 32-33.

⁵⁰ 18 C.F.R. §§ 35.35(h)(1)-(2) (2015).

⁵¹ NY Transco Application, Transmittal at 42.

prudently incurred pre-commercial costs that are not capitalized as part of the cost of construction, including pre-commercial costs of permitting, consulting and legal costs related to the projects, and formation costs related to the formation of NY Transco.⁵² Applicants state that the Commission approved a similar accounting treatment (booking pre-commercial costs to a regulatory asset account) in *Potomac Appalachian Transmission Highline Co.*, which, like NY Transco's proposal, involved a stand-alone transmission company building its first transmission line.⁵³ They add that, once NY Transco's ongoing expenses may be recovered under its formula rate, the regulatory asset will be amortized over five years, consistent with Commission precedent.

44. Applicants also seek authority to accrue carrying charges on the regulatory asset equal to the Allowance for Funds Used During Construction (AFUDC) rate. Applicants state that once the regulatory asset account is included in rate base as part of the revenue requirement, NY Transco will earn a return on the unamortized balance of the regulatory asset. Applicants assert that this incentive is reasonable and necessary to recover all expenses incurred, but not included in CWIP, prior to the date formula rate is charged to the customers.

(b) Construction Work in Progress

45. Applicants seek inclusion of 100 percent of CWIP in rate base for the Edic-to-Pleasant Valley and for the Oakdale-to-Fraser Projects. Applicants state that the Edic to Pleasant Valley Project would require a transmission expenditure of approximately \$1.022 billion over five years, while the Oakdale-to-Fraser Project would require a transmission expenditure of approximately \$246 million over four years. Applicants further state that this expenditure would nearly quadruple NY Transco's 2016 net transmission plant in service. Applicants explain that allowing 100 percent of CWIP in rate base for the Edic-to-Pleasant Valley and the Oakdale-to-Fraser Projects will alleviate some of the disincentives to completing the project.⁵⁴

46. Applicants also state that 100 percent of CWIP in rate base will maintain NY Transco's credit ratings and solid financial and operating statistics, which includes stable

⁵² *Id.* at 29, 41-42, 64.

⁵³ NY Transco Application, Transmittal at 64 (citing *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 52 (2008), *aff'd in relevant part on reh'g*, 133 FERC ¶ 61,152 (2010) and *Transource Missouri, LLC*, 141 FERC ¶ 61,075, at PP 56-59 (2012)).

⁵⁴ NY Transco Application, Transmittal at 20.

cash flow over the construction and life of the two AC Projects. Applicants argue that over the first three years of the AC Projects, NY Transco would be able to double its operating revenue using CWIP rather than AFUDC.⁵⁵

47. Applicants explain that NY Transco will identify individually the Edic-to-Pleasant Valley Project and the Oakdale-to-Fraser Project as transmission construction projects for which CWIP is eligible to be included in transmission rate base and will not accrue any AFUDC on these projects. Applicants explain that each transmission construction project is designated with a unique project funding number within its construction accounting system, and the Edic-to-Pleasant Valley Project will be flagged in the accounting system as ineligible for AFUDC accrual. Additionally, Applicants explain the internal controls and procedures to ensure the proper tracking and accounting for transmission construction projects eligible to be included in transmission rate base.⁵⁶

48. Applicants state that the Commission has waived the requirement to file Statement BM under section 35.13(h)(38) of the Commission's regulations.⁵⁷ Applicants request waiver of the requirements in sections 35.25(c)(4) and (g) of the Commission's regulations, related to the anti-competitive impacts of CWIP recovery.⁵⁸ Applicants assert that the anti-competitive concerns are less significant with respect to the inclusion of transmission related CWIP in rates. Applicants argue that they have supplied extensive information regarding its request for CWIP in rate base and believe that this information is sufficient to satisfy the requirements in sections 35.25(c)(4) and (g) of the Commission's regulations.⁵⁹ Applicants request waiver of any of the Commission's regulations required to accept the filing, including section 35.13(h)'s requirement to

⁵⁵ *Id.* at 42.

⁵⁶ NY Transco Application, proposed NYISO OATT, Att. DD, Section 36.3.1.2, "Formula Rate Implementation Protocols," Section 7, "Construction Work in Progress."

⁵⁷ NY Transco Application, Transmittal at 65 (internal citations omitted). Statement BM is the summary of data and assumptions related to the economics of a utility's construction program over ten years, including an assessment of relative costs of adopting alternative strategies such as generation, heightened load management and conservation efforts, additions to transmission plant, or increased purchases of power, and an explanation of why the program adopted is prudent and consistent with a least-cost energy supply program.

⁵⁸ *See* 18 C.F.R. §§ 35.25(c)(4), 35.25(g) (2014).

⁵⁹ NY Transco Application, Transmittal at 65.

provide cost-of-service statements on total cost of service.⁶⁰ Applicants also request waiver of the section 35.25(a)(c)(4) requirement to file projections of the allocation of costs among customers for its requested CWIP in rate base incentive, noting that Order No. 679 found that the rationale behind the need for forward-looking allocation ratios among wholesale customers for generation investment would be unlikely for transmission investment.⁶¹

(c) Hypothetical Capital Structure

49. Applicants propose to use a hypothetical capital structure of 60 percent equity and 40 percent debt. Applicants state that NY Transco will use its actual capital structure in the formula rate once the last of the projects is placed into service or a date certain, whichever comes first. Applicants assert that the requested hypothetical capital structure is necessary to offset the risks of the projects and will allow it to achieve a reasonable cost of capital.⁶²

50. Applicants claim that the 60 percent equity and 40 percent debt hypothetical capital structure will improve NY Transco's credit rating and eliminate \$168 million in borrowing relative to a 50 percent equity capital structure.⁶³ They state that this will also increase NY Transco's operating cash flow by approximately \$20-30 million per year from 2017-2019. They add that this lower debt level, combined with increased operating cash flow, will improve key credit ratios used by Moody's and Standard and Poor's, and help NY Transco attract investment capital.⁶⁴

(d) Abandoned Plant Recovery

51. Applicants seek the ability to recover 100 percent of prudently incurred costs in the event any subset of the projects must be abandoned for reasons outside of their reasonable control. As discussed above, Applicants claim that the projects face a number of risks that could lead to eventual abandonment. In support, Applicants cite

⁶⁰ See 18 C.F.R. § 35.13(h) (2014).

⁶¹ NY Transco Application, Transmittal at 65-69 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 119 (2006)); see 18 C.F.R. § 35.25(a)(c)(4).

⁶² NY Transco Application, Ex. No. NYT-18 Lapson Test. at 21-22.

⁶³ *Id.* at 18.

⁶⁴ *Id.* at 32-34.

Order No. 679, in which the Commission held that recovery of abandoned plant costs is an “effective means to encourage transmission development by reducing the risks of non-recovery of costs.”⁶⁵

(e) **ROE Adders**

52. Applicants request three ROE adders: the 50 basis point ROE adder for RTO participation, a 50 basis point ROE adder for NY Transco’s status as a Transco, and a 50 basis point adder for risks and challenges. Applicants propose the following condition on the cost recovery associated with these ROE adders: “[the ROE adders] will not be recovered for costs that exceed the cost estimates at the time the projects have all governmental approvals to move forward to construction and have completed engineering design.”⁶⁶

53. Applicants request a 50 basis point ROE adder for RTO participation because it says NY Transco will turn over operation of the projects to NYISO once they are in service.

54. Applicants request a 50 basis point ROE adder for NY Transco’s status as a Transco. Applicants assert that NY Transco qualifies for the Transco incentive because it meets the Commission’s definition of a Transco⁶⁷ and because in Order No. 679-A, the Commission rejected arguments to limit an applicant’s ability to seek incentive-based rate treatments based on corporate structure or ownership.⁶⁸ Additionally, Applicants assert that NY Transco’s business plan is to continuously reinvest its available cash flows into transmission development, just like the other companies that the Commission held out in Order No. 679 as examples of Transcos that should receive ROE adders.

⁶⁵ NY Transco Application, Transmittal at 43 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163).

⁶⁶ *Id.* at 51. The actual quote made reference to the specific 150 basis point of ROE adders that Applicants requested and this language was modified for clarity.

⁶⁷ Section 35.35(b)(1) defines Transco as a “stand-alone transmission company that has been approved by the Commission and that sells transmission service at wholesale and/or retail on an unbundled basis, regardless of whether it is affiliated with another public utility.”

⁶⁸ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 76.

55. Applicants request a 50 basis point ROE adder for risks and challenges. To justify the request for a ROE adder for risk and challenges, Applicants assert that NY Transco faces risks and challenges that are not either already accounted for in its base ROE or addressed through risk-reducing incentives. Applicants state that some of these risks are of project delays, unexpected changes in project plans and budgets due to permitting requirements and land acquisition, and regulatory risks. Applicants assert that NY Transco's risks exceed the normal risks reflected in a traditional discounted cash flow (DCF) analysis because the negative cash flow and adverse impacts on its credit metrics are not captured by the DCF analysis (which examines operating public utilities with revenues and positive cash flows) and are not fully alleviated by the CWIP, pre-operational cost recovery, or hypothetical capital structure incentives.

56. Applicants state that the abandonment incentive does not cover all the risks of abandonment because the abandonment must be approved by the Commission after the fact. Applicants state that CWIP and pre-commercial regulatory asset incentives help with cash flow but any investment requires an upfront expenditure followed by a long period of returns and the investment might not be as good after the fact as other investments that could have been made with this capital. They argue that the risk is proportional to the scale of the investment so larger investments require a higher ROE.⁶⁹

57. Applicants also point to the Transmission Incentive Policy Statement's recognition that ROE adders are appropriate for projects that would relieve chronic and severe grid congestion, have demonstrated cost impacts to customers, and unlock location-constrained generation. Applicants point to a number of independent sources that recognize the reliability and congestion concerns due to the persistent congestion on the UPNY/SENY and Central East constraints. In particular, Applicants assert that NY Transco's five projects will have a significant impact on the estimated \$765 million to \$1.1 billion in annual congestion in NYISO.⁷⁰

58. Further, Applicants state that they are taking appropriate steps and using appropriate mechanisms to minimize NY Transco's projects' risk during project development, consistent with the Transmission Incentives Policy Statement. They add that alternatives to the projects have been, or will be, considered in either a relevant transmission planning process or another appropriate forum. Further, Applicants state

⁶⁹ NY Transco Application, Transmittal at 37-41, Lapson Test. at 14-22.

⁷⁰ NY Transco Application, Haering and Allen Test. at 7.

that they commit to limiting the application of the ROE incentive for risks and challenges to a cost estimate.⁷¹

ii. **Comments and Protests**

59. LIPA protests that the AC Projects are too speculative to receive the pre-commercial cost recovery and abandonment incentives.⁷²

60. NYAPP asserts that the AC Projects do not qualify for risk-reducing incentives, especially CWIP. NYAPP argues that merely strengthening credit metrics is not a sufficient reason to grant CWIP, as the Commission found in *Baltimore Gas & Electric Co.*⁷³ NYAPP argues that by Applicants' own admission, "the formation of NY Transco is itself a risk-reducing measure [...] because it spreads project risks across multiple owners."⁷⁴ NYAPP concludes that the Commission should not grant risk-reducing incentives for the AC Projects because NY Transco is a risk-reducing entity.

61. The NYPSC and Joint Commenters protest that the 60 percent equity 40 percent debt hypothetical capital ratio is excessive, and the NYPSC asserts that a 50 percent equity 50 percent debt capital ratio is more reasonable.⁷⁵ The NYPSC argues that the actual average equity ratio of a proxy group of 41 utilities is 47 percent equity while the actual equity ratio of the utilities that make up NY Transco averages 53 percent.⁷⁶ NYAPP argues that if the Commission considers granting the hypothetical capital structure, the Commission should consider a capital structure that neither raises long-term costs to transmission customers nor results in a windfall profit to NY Transco, noting that a more commonly-approved hypothetical capital structure is 50/50, and the Commission

⁷¹ Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at PP 20-28.

⁷² LIPA Protest at 35-37.

⁷³ NYAPP at 10-11 (citing *Balt. Gas & Elec. Co.*, 120 FERC ¶ 61,084 at P 68 (2007) (denying the CWIP incentive request because these factors weren't sufficient to justify granting CWIP)).

⁷⁴ NYAPP Protest at 11 (citing NY Transco Application, Ex. No. NYT-18 at 15).

⁷⁵ NYPSC Protest at 12-13; Scenic Hudson Comments at 3-4.

⁷⁶ *Id.* at 12-14.

should scrutinize the deadline by which a hypothetical capital structure expires to ensure that customers are not excessively charged.⁷⁷

62. Several parties protest Applicants' requested ROE adders and argue that the total ROE requested is unjustly high.⁷⁸ Some allege that the 150 basis points of ROE incentive adders are excessive and will unreasonably raise transmission costs for New York ratepayers, considering Commission precedent.⁷⁹ The NYPSC states that Applicants have failed to demonstrate that the total package of incentives is tailored to address the applicant's demonstrable risks and challenges or that the resulting rates are just and reasonable. By way of example, the NYPSC asserts that the \$670 net present value of net benefits could be wiped out if 150 basis points are added to the ROE, or if there are cost overruns during construction. Municipals add that there is no need for a discrete ROE incentive for Applicants equipment, which will consist of upgrades to the New York Transmission Owners' existing assets, maintained by the utilities' employees and already committed to NYISO's control.⁸⁰ NYAPP and Multiple Intervenors agree that the incentive ROE adders should be rejected. City of NY argues that Applicants have not demonstrated the need for ROE adders on top of the risk reducing incentives, particularly given that the New York Transmission Owners are already required to build the three TOTS Projects.⁸¹

63. The NYPSC and City of NY argue that it would be an unreasonable double count to grant NY Transco an ROE adder for RTO participation, since NY Transco is essentially an extension of the New York Transmission Owners themselves and these companies have already been compensated for joining the NYISO.⁸² Further, the NYPSC and Municipals assert that it is not appropriate to award an ROE incentive for

⁷⁷ NYAPP Protest at 12 (internal citations omitted).

⁷⁸ NYPSC Protest at 2, 10; Utility Intervention Unit Protest at 4; Joint Commenters Protest at 3-4; Multiple Intervenors Protest at 24-25.

⁷⁹ City of NY Protest at 11; NYPSC Protest at 20; NYAPP Protest at 16-17 (citing *Pub. Serv. Elec. & Gas Co.* 137 FERC ¶ 61,253 at 60 (2011) (lowering the requested 100 basis point ROE adder from 100 basis points to 25 basis points for the Mid Atlantic Power Pathway Project)).

⁸⁰ Municipals Protest at 21.

⁸¹ City of NY Protest at 11-14.

⁸² *Id.* at 6, 13; NYPSC Protest at 20.

transferring operational control to NYISO, because such action would occur even without an incentive.⁸³ The NYPSC adds that the New York Transmission Owners have already ceded their assets to NYISO control, noting that the TOTS Projects “are essentially modifications of [New York Transmission Owner] facilities already under the operational control of NYISO.”⁸⁴

64. The NYPSC protests that NY Transco has not demonstrated that a 50 basis point adder for forming a Transco is appropriate, pointing out that the New York Transmission Owners affiliated with NY Transco have significant experience and expertise in developing transmission projects, as well as financial stability. Additionally, the NYPSC argues, given the ongoing need for transmission in New York, there is minimal regulatory risk. The NYPSC adds that the CWIP and abandoned plant recovery incentives, which it supports, also reduce risk, obviating the need for a Transco risk adder.

65. NYPSC and NYAPP argue that NY Transco is not independent and should not get a Transco adder.⁸⁵ Multiple Intervenors point out that the New York Transmission Owners who are forming NY Transco own and operate the vast majority of transmission facilities in New York State and these projects would increase their ownership percentage. Multiple Intervenors argue that it is not clear whether the transmission owners forming NY Transco would have incentive to favor investing in future transmission projects through the vehicle of NY Transco rather than through their own individual rates because they can get higher rates and a higher ROE through NY Transco than through the individual New York transmission owner rates.⁸⁶

66. NYAPP argues that NY Transco should not get the Transco ROE adder because NY Transco does not meet the Commission’s definition of a Transco as outlined in Order No. 679.⁸⁷ Multiple Intervenors argue that there is no need for the transmission owners to form a Transco and the transmission owners are fully capable of developing the TOTS Projects without the proposed transactions, as NYPA is doing for its respective portion of

⁸³ NYPSC Protest at 20; Municipals Protest at 24-25.

⁸⁴ NYPSC Protest at 20.

⁸⁵ NYPSC Protest at 16-18; NYAPP Protest at 12.

⁸⁶ Multiple Intervenors Protest at 3, 11-13.

⁸⁷ NYAPP Protest at 12 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 201); Multiple Intervenors Protest at 25-26.

the TOTS Projects. Multiple Intervenors argue that the primary- if not the sole- reason for creating NY Transco is to attempt to procure inflated ROEs for state-regulated transmission projects. Multiple Intervenors argue that it would be inequitable and not in the public interest to reward the transmission owners with any ROE adders beyond a base ROE which is already in excess of the midpoint of their own range of reasonableness.⁸⁸

67. Multiple Intervenors argue that Applicants fail to identify any tangible benefits that would inure to customers as a result of the operation of NY Transco, asserting that the transmission incentives should be rejected.⁸⁹ Multiple Intervenors argue that the formation of NY Transco appears to be no more than a vehicle for the applicant New York Transmission Owners to seek unduly-favorable financial relief for their shareholders. Multiple Intervenors argue that the development of NY Transco would result in higher- not lower- rates for consumers because of the unduly favorable cost recovery provisions, transmission incentives and higher ROE resulting in a much higher revenue requirement than if the projects were subject to retail rate jurisdiction or the individual transmission owners' existing transmission rates set forth in the NYISO OATT.

68. NYPSC, LIPA, and NYAPP argue that the requested ROE adder for risks and challenges is unnecessary for all projects if Applicants receive the non-ROE incentives.⁹⁰ LIPA, City of NY, and Multiple Intervenors aver that the three TOTS Projects are much less risky than the two AC Projects and do not deserve any ROE adders.⁹¹ Entergy protests that Applicants failed to quantify the risks they face so it is not possible to determine if the requested ROE adder would be justified.⁹² LIPA argues that the risks Applicants cite – project delays, changes in project plans and budgets, and regulatory risk – have not been shown to be specific to the TOTS Projects. LIPA asserts that the TOTS Projects have already received state regulatory approval and are already under construction by the New York Transmission Owners.

⁸⁸ Multiple Intervenors Protest at 26-27.

⁸⁹ *Id.* at 13.

⁹⁰ NYPSC Protest at 18; LIPA Protest at 34; NYAPP Protest at 14-15.

⁹¹ LIPA Protest at 32; City of NY Protest at 14; Multiple Intervenors Protest at 25-26.

⁹² Entergy Protest at 4-5.

69. With respect to the AC Projects, LIPA argues that granting the ROE adder for risks and challenges, preauthorization to recover abandonment costs, and regulatory asset treatment for non-CWIP project costs would be inappropriate. LIPA argues that the AC Projects are speculative and granting such incentives would enable them to charge New York ratepayers for development expenses of projects that may never be built. LIPA alleges that Applicants won't face any extraordinary financial risk for the AC Projects because "the Transco will presumably have significant cash flow from the TOTS Projects as it begins development of the AC Projects (if, indeed, they are ever selected)."⁹³ LIPA argues that if the Commission grants Applicants' incentives "to cover their initial development costs and risks," then other competing developers would do so as well. "This outcome would increase the cost of constructing needed transmission, and runs counter to the Commission's declared policy of streamlining and reducing the costs of transmission infrastructure," LIPA alleges.⁹⁴

70. NYAPP argues that the ROE incentive adder associated with risks and challenges should not be granted because the risks and challenges are insufficient to merit the adder, the risk-reducing incentives – particularly the abandoned plant recovery incentive- will ameliorate the risks and challenges of the projects, and the combined requested ROE incentives are excessive in light of Commission precedent.⁹⁵ NYAPP argues that Applicants give two risks (1) permitting and construction risks; and (2) financing risks. NYAPP argues that the permitting and construction risks are no greater than the risk associated with any transmission project, and the financing risks are already compensated through the abandoned plant recovery incentive.⁹⁶

iii. Answers

71. In response to LIPA's protest that the AC Projects are too speculative to receive the pre-commercial cost recovery incentive, Applicants argue that the AC Projects meet all of the tests set forth by the Commission in the Transmission Incentives Policy

⁹³ LIPA Protest at 36.

⁹⁴ *Id.* at 37.

⁹⁵ NYAPP Protest at 13.

⁹⁶ *Id.* at 14-15.

Statement, including that the projects “relieve chronic or severe grid congestion that has had demonstrated cost impacts to consumers.”⁹⁷

72. In response to protests to the requested hypothetical capital structure, Applicants reiterate that their requested capital structure is consistent with Commission precedent.⁹⁸

73. Applicants answer that the Commission explicitly rejected the notion that incentives requests must demonstrate that the projects would not be built “but for” the incentives, reiterating from their application several risks and challenges that are not mitigated by the non-ROE incentives.⁹⁹

74. In its answer, the NYPSC argues that Applicants incorrectly state that the NYPSC required the AC Projects be built within existing rights-of way. The NYPSC states that, contrary to the Applicants’ assertion, the NYPSC simply invited project proponents to “submit alternatives to their existing proposals, incorporating, to the maximum extent possible, projects that can be contained within the bounds of existing rights-of-way.”¹⁰⁰ The NYPSC replies that such use of existing rights-of-way, which the New York Transmission Owners already own, makes the AC Projects less risky and reduces project costs.¹⁰¹

iv. Commission Determination

75. We consider, below, whether the total package of incentives requested satisfies the nexus test. In applying the nexus test, we find that Applicants have sufficiently demonstrated that the requested risk-reducing incentives and ROE adder for RTO participation are warranted, as discussed further below. We also find that an incentive ROE adder is appropriate for the Edic-to-Pleasant Valley transmission line. However, as explained below, we deny the requested Transco ROE adder and the incentive ROE adder for risks and challenges for the TOTS Projects and the Oakdale-to-Fraser 345 kV Line.

⁹⁷ Applicants Answer at 6 (citing Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at P 21).

⁹⁸ *Id.* at 14-15.

⁹⁹ *Id.* at 8-10 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 48).

¹⁰⁰ NYPSC Answer at 3-4.

¹⁰¹ *Id.* at 3-4.

Applicants failed to demonstrate that these adders are “tailored to address demonstrable risks and challenges,” as discussed more fully below.¹⁰²

(1) **Accounting and Rate Treatment for Start-up and Pre-commercial Costs**

76. We authorize NY Transco to record a regulatory asset for all prudently incurred pre-construction costs, for the TOTS Projects and the AC Projects, that are not capitalized as part of the cost of construction, including pre-construction costs of permitting and consulting activities, as discussed more fully below.

77. In Order No. 679, the Commission allowed project developers to defer and then amortize (expense) pre-commercial operations costs that were not capitalized, including the types of preliminary survey and investigation (PSI) costs recordable in Account 183, Preliminary Survey and Investigation Charges. The Commission also noted that it will entertain proposals to defer and amortize other types of costs on a case-by-case basis. Applicants propose to defer and amortize permitting, consulting and legal costs related to the projects, as well as costs related to the formation of NY Transco. We authorize NY Transco to record a regulatory asset for such prudently-incurred pre-commercial costs. We find that this incentive appropriately addresses the risks and challenges of the projects, because this incentive will provide NY Transco with added up-front regulatory certainty, reduce interest expenses, improve coverage ratios, and assist in the construction of the projects. Therefore, we find NY Transco’s recovery of such costs for the projects to be appropriate, and we grant Applicants’ request to establish a regulatory asset for the pre-commercial costs of each project. Our approval of pre-commercial cost recovery incentive is consistent with our approval of pre-commercial cost recovery in *Potomac Appalachian Transmission Highline Co.*, which, like Applicants, involved a stand-alone transmission company created by a transmission owner to construct new transmission projects within its franchised service territory.¹⁰³

78. We also grant NY Transco’s request to accrue a carrying charge on the regulatory asset using the AFUDC rate. In granting this request, we note that the carrying charges must be computed and compounded consistent with the Commission’s practices for AFUDC, e.g. compounding no more frequently than semi-annually.

¹⁰² Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at P 10.

¹⁰³ See *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 52 (2008), *aff’d in relevant part on reh’g*, 133 FERC ¶ 61,152 (2010); see also *Transource Missouri, LLC*, 141 FERC ¶ 61,075, at PP 56-59 (2012).

79. However, we note that NY Transco's Attachment 2- Cost Support,¹⁰⁴ does not fully satisfy the Commission's requirements for pre-commercial costs. For example, Applicants propose to provide a single description "Project Name" with no further indication as to what types of costs will be included. To ensure that the costs are legitimate pre-commercial costs and satisfy accounting concerns, Applicants must provide a methodology for identifying, tracking, and disclosing the nature of all of the prudently-incurred pre-commercial costs that are deferred and amortized to expense. We also require NY Transco, for the duration of its pre-commercial cost recovery, to disclose the type and amount of all pre-commercial costs deferred and amortized by work order in its formula rate Annual Update filings. This should ensure transparency and guard against the costs being capitalized and recovered as part of the project cost in subsequent section 205 filings.¹⁰⁵ This is akin to the requirement set forth in section 35.25(f) of the Commission's regulations, which similarly requires a proposal of accounting treatment. Thus, although the Commission finds Applicants have sufficiently demonstrated that this incentive is warranted, we set for hearing whether the Applicants have an adequate methodology and procedures for identifying, tracking, and disclosing the nature of all of the prudently-incurred pre-commercial costs that are deferred and amortized to expense.¹⁰⁶ Applicants are hereby directed to submit such methodology and procedures, as part of the hearing proceedings ordered herein.

(2) Construction Work in Progress

80. We grant Applicants' request to include 100 percent of CWIP in rate base for the Oakdale-to-Fraser Project.¹⁰⁷ We also grant Applicants' request of 100 percent of CWIP in rate base for the Edic-to-Pleasant Valley Project. In Order No. 679, the Commission established a policy that allows utilities to include, where appropriate, 100 percent of prudently incurred, transmission-related CWIP in rate base.¹⁰⁸ The Commission stated that this rate treatment will further the goals of section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow, reducing the pressures on an

¹⁰⁴ NY Transco Application, proposed NYISO OATT, Att. DD, Section 36.3, Appendix A, (Attachment 2 - Cost Support).

¹⁰⁵ *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219 (2007).

¹⁰⁶ See 18 C.F.R. § 35.25(f) (2014).

¹⁰⁷ We note that Applicants request the CWIP incentive for only the AC Projects.

¹⁰⁸ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 29, 117.

applicant's finances caused by investing in transmission projects.¹⁰⁹ We find that allowing NY Transco to include 100 percent of CWIP in rate base "removes a disincentive to construction of transmission, which can involve very long lead times and considerable risk to the utility that the project may not go forward."¹¹⁰

81. As noted above, the Edic-to-Pleasant Valley Project is estimated to cost \$1.022 billion based on an expected in-service date of 2019. The Oakdale-to-Fraser Project is estimated to cost \$246 million and the project is expected to have an in-service date of 2019. The cost and lengthy construction period involved in completing these projects will strain NY Transco's cash flow and put upward pressure on NY Transco's ability to finance construction. Granting the CWIP incentive will help ease this pressure and reduce project cost by providing upfront certainty, improved cash flow, and reduced borrowing costs as NY Transco moves forward with each project.¹¹¹ Inclusion of CWIP in rate base "balance[s] the need for companies to recover carrying costs in a timely manner with the Commission's cost responsibility principle, while reducing the rate impacts of new transmission projects on customers."¹¹²

82. Further, we find that NY Transco's proposed accounting for the AC Projects sufficiently demonstrates that it has appropriate policies, procedures and internal controls in place to prevent the accrual of AFUDC on CWIP costs that are also included in the rate. As Applicants explain, NY Transco will identify each project individually, within its accounting system, as transmission construction projects eligible to include CWIP in transmission rate base and ineligible for AFUDC accrual. In addition, Applicants explain, NY Transco will employ internal controls and procedures to ensure the proper tracking and accounting for transmission construction projects eligible to be included in transmission rate base.¹¹³

¹⁰⁹ *Id.* P 115.

¹¹⁰ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 117.

¹¹¹ *See, e.g., DATC Midwest Holdings, LLC*, 139 FERC ¶ 61,224, at P 56 (2012); *MidAmerican Energy Company*, 137 FERC ¶ 61,250, at P 53 (2011).

¹¹² *See, e.g., Bost. Edison Co.*, 109 FERC ¶ 61,300, at P 31 (2004).

¹¹³ *See* NY Transco Application, proposed NYISO OATT, Att. DD, Section 36.3.1.2, "Formula Rate Implementation Protocols," Section 7, "Construction Work in Progress."

83. We disagree with NYAPP that granting the CWIP incentive in this case conflicts with *Baltimore Gas & Electric Co.*¹¹⁴ Contrary to NYAPP's assertion, *Baltimore Gas & Electric* does not stand for the proposition that "merely strengthening credit metrics is not a sufficient reason to grant CWIP."¹¹⁵ Rather, in that case, the Commission determined that the "facts and statements" submitted did "not align with the Commission's policy for 100 percent CWIP in rate base."¹¹⁶ Specifically, the Commission found that, given that the proposed transmission projects were scheduled to go into service within one year of its request for CWIP, the utility had not demonstrated a long lead time required to construct new transmission with associated cash flow difficulties.¹¹⁷ The Commission explained that Baltimore Gas and Electric's request was insufficiently justified, "[d]ue to the short construction time frame and [Baltimore Gas & Electric's] failure to demonstrate that it faces sufficient financial risks associated with the [proposed] projects. . . ." ¹¹⁸ The circumstances presented in *Baltimore Gas & Electric* are not the case here, where the lead time to construct the AC Projects is several years, the investment in the AC Projects is well over a billion dollars, and the Applicants have provided demonstrations of cash flow difficulties.¹¹⁹

(3) Hypothetical Capital Structure

84. We deny Applicants' request for NY Transco to use a hypothetical capital structure consisting of 60 percent equity and 40 percent debt for both the TOTS and AC Projects. As the Commission stated in Order No. 679, adoption of a hypothetical capital structure requires a demonstration of the required nexus between the need for the

¹¹⁴ *Balt. Gas & Elec. Co.*, 120 FERC 61,084, at P 69 (2007).

¹¹⁵ See NYAPP Protest at 11.

¹¹⁶ *Balt. Gas & Elec. Co.*, 120 FERC 61,084 at P 68.

¹¹⁷ *Id.* P 69 (citing the Commission's statement in Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 29, that "[g]iven the long lead time required to construct new transmission, and the associated cash flow difficulties faced by many entities wishing to invest in new transmission, the Final Rule provides that, where appropriate, the Commission will allow for the recovery of 100 percent of CWIP in rate base").

¹¹⁸ *Id.*

¹¹⁹ NY Transco Application, Ex. No. NYT-18 (explaining that cash flow during project development will present a large financial hurdle and that without CWIP in rate base, cash flow will be 60 percent lower).

requested hypothetical capital structure and the facts of its particular case. We find that NY Transco has not provided a sufficient nexus for the use of a hypothetical capital structure. We agree with NYPSC's and Joint Commenters' protests that the 60 percent equity 40 percent debt hypothetical capital ratio is excessive for an entity such as NY Transco, whose affiliates, New York Transmission Owners, will construct the projects and perform the maintenance and physical operation of the NY Transco assets.¹²⁰ Therefore, we reject NY Transco's requested hypothetical capital structure for the TOTS and AC Projects.

(4) Abandoned Plant Recovery

85. We grant Applicants' request for recovery of 100 percent of prudently incurred costs associated with abandonment of any of the three TOTS Projects, provided that the abandonment is a result of factors beyond the control of NY Transco, which must be demonstrated in a subsequent FPA section 205 filing for recovery of abandoned transmission facilities costs.¹²¹ We similarly grant Applicants' request for recovery of 100 percent of prudently incurred costs associated with abandonment of the two AC Projects, subject to the condition that the abandonment is a result of factors beyond the control of NY Transco, as demonstrated in a subsequent FPA section 205 filing for recovery of abandoned transmission facilities costs.¹²²

86. As we have emphasized in other proceedings, the recovery of abandonment costs is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.¹²³ In addition, as Applicants have demonstrated, we find that approval of the abandonment incentive will both attract financing for the projects and protect NY Transco from further losses if any of the projects is cancelled for reasons outside NY Transco's control.

87. As indicated above, we will not determine the justness and reasonableness of NY Transco's recovery of costs for abandoned electric transmission facilities, if any, until NY Transco seeks such recovery in a future FPA section 205 filing.¹²⁴ Order No. 679

¹²⁰ NYPSC Protest at 12-13; Joint Commenters Protest at 3-4.

¹²¹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 165-166.

¹²² *Id.*

¹²³ *Id.* P 163.

¹²⁴ *Primary Power*, 131 FERC ¶ 61,015 at P 124.

specifically reserves the prudence determination for the later FPA section 205 filing that every utility is required to make if it seeks abandoned plant recovery.¹²⁵ We note that, should the projects be cancelled before they are completed, it is unclear whether NY Transco will have any customers from which to recover its abandonment incentive. At such time, NY Transco will be required to make a showing in a section 205 filing that the abandonment costs were prudently incurred and it must propose a rate and cost allocation method to recover the costs in a just and reasonable manner.

(5) **ROE Adders**

(i) **ROE Adder for RTO Participation**

88. We grant the requested 50 basis point RTO adder, to be capped within the zone of reasonableness to the projects, provided that: (1) NY Transco takes all the necessary steps to turn over operational control of the projects to NYISO, and (2) NY Transco becomes a transmission-owning member of NYISO. In Order No. 679-A, the Commission stated that it would authorize incentive-based rate treatment for public utilities that are or will continue to be members of regional transmission organizations.¹²⁶ As such, the RTO adder is an appropriate incentive for utilities to both join and stay within an RTO.

89. We clarify that in the hearing proceedings discussed below, NY Transco's zone of reasonableness will be established, as well as a determination of where within that zone its base level ROE should be set.¹²⁷ The ROE incentive approved herein (50 basis points RTO adder) will be bounded by the upper end of the zone of reasonableness determined at hearing.

90. We reject protestors' arguments that the proposed RTO adder lacks sufficient justification and would not benefit reliability or increase the coordination of planning and operation of transmission facilities. As noted in prior orders addressing this incentive,¹²⁸

¹²⁵ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 165-166.

¹²⁶ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86; *see also Green Power Express LP*, 127 FERC ¶ 61,031, at P 85 (2009); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 58 (2008).

¹²⁷ Order No. 679-A, 117 FERC ¶ 61,345 at P 68.

¹²⁸ *Pacific Gas & Elec. Co.*, 141 FERC ¶ 61,168, at P 25 (2012); *Pacific Gas & Elec. Co.*, 132 FERC ¶ 61,272, at P 23 (2010).

the Commission's decision to grant an incentive ROE for RTO participation is consistent with the purpose of FPA section 219 and is intended to encourage public utilities' continued involvement in an RTO. 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"¹²⁹ and need not provide additional justification as to the necessity or benefits of the incentive.¹³⁰

91. We reiterate that the basis for the incentive adder is a recognition of the benefits that flow from membership in an RTO, ISO, or other Commission-approved Transmission Organization and that *continuing* membership is generally voluntary.¹³¹ Therefore, consistent with the policy in Order No. 679 to encourage continued involvement in NYISO,¹³² we find that the requested 50-basis point adder is appropriate, subject to it being applied to a base ROE that has been shown to be just and reasonable based on an updated discounted cash-flow analysis and subject to the resulting ROE being within the zone of reasonableness determined by that updated discounted cash-flow analysis, as those may be determined in hearing proceedings. As indicated above, our approval of this incentive is based on NY Transco's commitment to membership in the NYISO.

(ii) **Transco ROE Adder**

92. We deny the 50 basis point adder for being a Transco. As noted above, NY Transco is composed of the transmission affiliates of the six investor-owned utilities in New York, which collectively own 64 percent of the high voltage transmission (230 kV or higher), serve 84 percent of the load, and own 4 percent of the generation capacity.¹³³

¹²⁹ *Id.* P 327. NYISO is already covered under the Commission's definition. *See id.* P 328 (stating that all RTOs and ISOs are already covered by the approved definition).

¹³⁰ *See Midcontinent Indep. Sys. Operator, Inc.* 150 FERC ¶ 61,004 at PP 41-44 (2015).

¹³¹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 331 (emphasis added).

¹³² *See Pacific Gas & Elec. Co.*, 141 FERC ¶ 61,168 at P 25 (determining that granting Pacific Gas and Electric (PG&E) an incentive ROE for participation in the CAISO is consistent with the stated purpose of FPA section 219 as amended by EPAct of 2005 and is intended to encourage PG&E's continued involvement in the California ISO, despite arguments that such incentive is no longer necessary).

¹³³ Based on the NYISO 2014 Load and Capacity "Gold Book" Tables I-2b-1, III-2, and VI-2.

Order No. 679 provides guidance as to what showing is necessary for the Commission to grant approval: “A Transco with active ownership by a market participant or other new business arrangements is also eligible for Transco incentives to the extent it can show, for example, why active ownership by an affiliate does not affect the integrity of its investment planning, capital formation, and investment processes or how its business structure provides support for transmission investments in a way similar to the structure of non-affiliated Transcos or Transcos with only passive ownership by market participants.”¹³⁴ Applicants have not made such a showing. Applicants state that, as assets are placed into service, the New York Transmission Owner where a NY Transco project is located will perform the maintenance and physical operation of the NY Transco assets.¹³⁵ Additionally, Applicants explain that the affiliated New York Transmission Owners of NY Transco will provide business support functions to the NY Transco, as needed, for the administration of its business and the development of projects that will be built within each affiliated New York Transmission Owner’s respective transmission district or corridor.¹³⁶ Therefore, we find that this is not the type of arrangement that is sufficiently independent to merit incentives.

(iii) ROE Adder for Risks and Challenges

93. We deny the requested 50 basis point ROE incentive adder for risks and challenges for all three of the TOTS Projects and the Oakdale-to-Fraser 345 kV Line.¹³⁷ However, we grant the 50 basis point ROE incentive adder for the Edic-to-Pleasant Valley 345 kV Line.

94. The Commission stated in Order No. 679-A that it would authorize incentive ROEs to new transmission projects that demonstrate particular risks and challenges. In the Transmission Incentives Policy Statement, the Commission offered additional guidance for applicants seeking an incentive ROE adder based on a project’s risks and challenges. In the Transmission Incentives Policy Statement, the Commission found that an applicant is expected to make four showings to justify the need for an incentive ROE adder based on a project’s risks and challenges. First, an applicant is expected to demonstrate that the proposed project faces risks and challenges that are not either already accounted for in the applicant’s base ROE or addressed through the risk-reducing

¹³⁴ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 240.

¹³⁵ NY Transco Application, Ex. No. NYT-1, Nachmias Test. at 20.

¹³⁶ *Id.*

¹³⁷ Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at P 10.

incentives. The Commission specifically elaborated on the types of projects that it anticipated may face the types of risks and challenges that would not be addressed by either the base ROE or risk-reducing incentives.

1) projects that relieve chronic or severe congestion that has had demonstrated cost impacts to consumers;

2) projects that unlock location constrained generation resources that had previously had limited or no access to the wholesale electricity markets

3) projects that apply new technologies to facilitate more efficient and reliable usage and operation of existing or new facilities.

95. Second, an applicant is expected to demonstrate that it has taken appropriate steps and implemented appropriate mechanisms to minimize its risks during project development. Third, an applicant is expected to demonstrate that alternatives to the project have been or will be, considered in either a relevant transmission planning process or another appropriate forum. Fourth, an applicant is expected to commit to limit the application of such incentive ROE adder to a cost estimate.

96. Applying the policies set forth in the Transmission Incentives Policy Statement, we find that the Applicants have failed to satisfy the first showing for the TOTS Projects and the Oakdale-to-Fraser 345 kV transmission line, and thus we reject the Applicants request for an incentive ROE adder with respect to those four projects. We believe that the risk-reducing incentives granted in this order, together with the base ROE NY Transco ultimately receives, will sufficiently address the risks and challenges of the TOTS Projects and the Oakdale-to-Fraser 345 kV line that were identified by the Applicants. For example, the possibility that the specific challenges associated with obtaining permits and licenses for siting the transmission line could result in the cancellation of the project is sufficiently addressed by the abandonment incentive. The Applicants have failed to identify any additional risks or challenges that are not addressed by either the base ROE or by the risk-reducing incentives authorized herein. Moreover, these four projects do not possess the characteristics of the three types of projects that the Commission identified may warrant an incentive ROE adder. In particular, while Applicants generally assert that these projects will address congestion, we are not persuaded that such projects will relieve chronic and severe congestion that has had demonstrated cost impacts on consumers. Nor have the Applicants offered other facts demonstrating that unmet risk and challenges justify an incentive ROE adder. We find that an incentive ROE adder is thus not warranted for these four projects.

97. With respect to the Edic-to-Pleasant Valley 345 kV Line, however, we find that the Applicants have demonstrated that an incentive ROE adder based on that project's risks and challenges is warranted. The Edic-to-Pleasant Valley 345 kV Line is an investment of more than \$1 billion in capital, which itself is a major financial risk, and

will be constructed to relieve chronic and severe grid congestion that has had demonstrated cost impacts to consumers. The Commission has previously noted the chronic transmission constraints and capacity shortage in the Lower Hudson Valley.¹³⁸ The Edic-to-Pleasant Valley 345 kV Line would provide a significant amount of congestion relief by enabling approximately 1,000 MW of increased transfer capability between upstate New York and the Southeastern New York interface, which has been designated as one of the most congested interfaces in the nation.¹³⁹ We find persuasive NYISO's 2013 CARIS report, which identified more than \$200 million in production cost savings associated with the construction of the Edic-to-Pleasant Valley 345 kV Line alone, and transmission congestion relief across existing lines by 41 percent in 2022.¹⁴⁰ Notably, the Edic-to-Pleasant Valley 345 kV Line is expected to reduce transmission congestion costs by more than \$400 million, reduce transmission line losses by \$139 million, and reduce installed capacity costs between \$739 million and \$4.2 billion on a net present value basis over ten years.¹⁴¹ These facts are uncontested in this case.

98. Based on this evidence, we conclude that the Edic-to-Pleasant Valley 345 kV Line will relieve severe and chronic congestion in the region, and provide quantifiable rate benefits to consumers. Thus, the Edic-to-Pleasant Valley 345 kV line possesses the characteristics of the types of projects that the Commission found may warrant an incentive ROE based on the project's risks and challenges that are not already accounted for in the applicant's base ROE. For all of these reasons, we find that the Applicants

¹³⁸ NY Transco Application, Ex. NYT-4, Haering Test. at 12 (citing *N.Y. Indep. Sys. Operator, Inc.*, 136 FERC ¶ 61,165 (2011)).

¹³⁹ NY Transco Application, Ex. NYT-4, Haering Test. at 29, Transmittal at 2 (noting the U.S. Department of Energy has included southeastern New York in its designation of the Mid-Atlantic region as a National Interest Electric Transmission Corridor ("NEITC") under FPA Section 216 through studies that are available at: <http://energy.gov/oe/downloads/2009-electric-transmission-congestion-study>. DOE's 2014 draft study making the same determination is available at: <http://www.energy.gov/oe/downloads/national-electric-transmissioncongestion-study-draft-public-comment-august-2014>).

¹⁴⁰ NY Transco Application, Ex. No. NYT-6 NYISO 2013 Congestion Assessment and Resource Integration Studies Report (CARIS Report) 59-64.

¹⁴¹ NY Transco Application, Ex. No. NYT-6 NYISO CARIS Report at 64.

have satisfied the first showing necessary to justify the need for an incentive ROE adder for the Edic-to-Pleasant Valley 345 kV Line.¹⁴²

99. We also find that the Applicants have satisfied the other three showings expected under the Transmission Incentives Policy Statement. First, we find that, by seeking risk-reducing incentives and taking additional steps to mitigate risks, such as committing to use best practices in project management and procurement, Applicants have demonstrated that NY Transco is taking appropriate steps and using appropriate mechanisms to minimize risk during project development.¹⁴³ Second, Applicants state that they anticipate that the Edic-to-Pleasant Valley 345 kV line will be submitted in NYISO's regional public policy transmission planning process, should the NYPSC select the project in the competitive AC Proceeding.¹⁴⁴ Thus, this project will be evaluated against alternatives in both a competitive NYPSC proceeding and NYISO's regional public policy transmission planning process. We find that this satisfies the requirement that alternatives to the project have been, or will be, considered in either a relevant transmission planning process or another appropriate forum.¹⁴⁵ Finally, we find that Applicants' statements that the ROE adder "will not be recovered for costs that exceed the cost estimates at the time the projects have all governmental approvals to move forward to construction and have completed engineering design," and "any benefit

¹⁴² Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at P 21.

¹⁴³ NY Transco Application, Transmittal at 47-48.

¹⁴⁴ *Id.* at 20 ("In August 2014, NYPSC advisory staff proposed a comparative review process to assess proposals and to integrate the AC Proceeding with the NYISO's Public Policy Transmission Planning Process. . . . NY Transco's two AC Projects are pending before the NYPSC and are contingent upon selection and approval by the NYPSC and inclusion by the NYISO in its transmission plan for cost allocation purposes.").

¹⁴⁵ Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at P 26, (explaining the Commission's expectation that applicants for an incentive ROE to demonstrate that alternatives were considered. One way to make this demonstration is to show "[...] that its project was, or will be, considered in an Order No. 890 or Order No. 1000-compliant transmission planning process that provides the opportunity for projects to be compared against transmission or non-transmission alternatives. In making this showing, the applicant need not show that its project was selected in a regional transmission plan for purposes of cost allocation. Instead, the focus would be on whether the project was or will be considered in a process where it could be compared to other projects and shown to be preferable to any alternatives that were evaluated.")

coming in under budget will flow entirely to customers” demonstrate that Applicants will commit to limiting the application of the ROE incentive to a cost estimate.¹⁴⁶

100. For all of these reasons, the Applicants have sufficiently demonstrated that a 50 basis point incentive ROE adder is warranted for the Edic-to-Pleasant Valley 345 kV Line.¹⁴⁷ NY Transco’s ability to implement the 50 basis point ROE adder for risks and challenges is bounded by the upper end of the zone of reasonableness determined at hearing.

d. Other Incentives Issues

i. Comments and Protests

101. Multiple Intervenors argue that granting transmission incentives to the TOTS Projects is inconsistent with the NYPSC approval, and the NYPSC argues that the Applicants’ request for rate recovery is inconsistent with the competitive process and basis under which the projects were approved by the NYPSC.¹⁴⁸ The NYPSC requests that the Commission limit Applicants’ cost recovery to the Applicants’ original cost estimates:

We emphasize that the cost estimates provided by Con Edison, NYSEG, and NYPA for these projects [i.e., the TOTS] were provided so that the projects could compete with the other projects that responded to the NYPA RFP. As such, the TOTS Projects were proposed in a competitive environment, which we believe should have induced Con Edison, NYSEG, and NYPA to propose the most competitive price possible. We expect to retain the benefits of this competitive process for ratepayers. Therefore, *Con Edison, NYSEG, and NYPA should hold their investment costs for these projects to the estimates which they supplied when the project proposals were made, and which are reported supra.* The *cost recovery* sought for each project, as contemplated in

¹⁴⁶ See NY Transco Application, Transmittal at 51.

¹⁴⁷ Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at PP 20-28.

¹⁴⁸ Multiple Intervenors Protest at 22; NYPSC Protest at 8.

this Order, *should be limited to actual costs or to the estimates provided here, whichever is lower.*¹⁴⁹

102. Alternatively, the NYPSC seeks a risk-sharing mechanism between Applicants' shareholders and New York ratepayers, which the NYPSC adopted in its proceeding. For example, the NYPSC maintains that the developer should not receive any incentives above the base ROE on cost overruns beyond the original bid price. The NYPSC asserts that such cost caps are consistent with Commission precedent.¹⁵⁰

103. Municipals and Multiple Intervenors argue that if the Commission fails to constrain the New York Transmission Owners' cost recovery, this would send a strong signal that transmission developers can provide artificially low cost estimates to state regulators, without repercussions, simply to procure regulatory approvals. Similarly, Municipals and Multiple Intervenors noted that for the AC Projects, the NYPSC is considering a binding agreement from transmission developers to cost caps.¹⁵¹ Parties argue that while the favorable cost recovery treatments sought here (i.e., abandoned plant recovery, CWIP, pre-commercial cost recovery, and a hypothetical capital structure) may be appropriate in certain circumstances, they are not appropriate here because of the projects' selection in the competitive process on the basis of risk-sharing on the part of the developer.¹⁵²

104. Boundless Energy requests that the filing be rejected in its entirety. Boundless Energy asserts that allowing the New York Transmission Owners to escape the competitive process in exchange for the certainty of rate recovery sought in this proceeding harms the potential for the best transmission projects to be selected in the competitive process. Boundless Energy questions whether the New York Transmission Owners will continue to bypass New York's regulatory competitive process if encouraged to do so through acceptance of the filing.¹⁵³ Boundless Energy argues that

¹⁴⁹ NYPSC Protest at 8 (citing NYPSC Order Accepting IPEC Reliability Contingency Plans, Establishing Cost Allocation and Recovery, and Denying Requests for Rehearing, Case 12-E-0503, at 25 (Nov. 4, 2013) (emphasis added)).

¹⁵⁰ *Id.* at 23 (citing *Cal. Indep. Sys. Operator, Corp.*, 143 FERC ¶ 61,057, at P 233 (2013) (approving a voluntary agreement to be bound to cost caps)).

¹⁵¹ Multiple Intervenors Protest at 23; Municipals Protest at 20-22.

¹⁵² Multiple Intervenors Protest at 21-24.

¹⁵³ Boundless Energy Protest at 2-3.

applicant transmission owners are attempting to avoid competition and block the ability of non-incumbent transmission developers to compete on a level playing field. Boundless Energy argues that the applicant transmission owners are attempting a kind of right of first refusal by forming a Transco and seeking a faster, more secure, and richer pathway towards transmission development while nonincumbent transmission developers are precluded from doing so. Boundless Energy argues that the New York Transmission Owners' proposal to combine their incumbent market power under a Transco is a very effective manner to squelch competition and a bald attempt to circumvent and undo federal and state regulation encouraging competition.¹⁵⁴

105. Boundless Energy argues that there is no proof that the New York Transmission Owners' projects will become better projects more worthy of lucrative profits simply by virtue of the New York Transmission Owners choosing to recover the costs of the projects through a federally-regulated tariff rather than a state-jurisdictional rate. Boundless Energy argues that this is precisely what the New York Transmission Owners have done, by re-casting their transmission projects as federally-regulated, they are therefore able to earn higher rates of return than what they would have earned through the New York State Commission.¹⁵⁵ Boundless Energy argues that these projects have been planned through the transmission owners' STARS Report for more than a decade, and seek to be rewarded now for an effort funded by the NYPSC's rate orders retrospectively.

106. Boundless Energy requests that the Commission determine, prior to approving the filing, whether the incumbent transmission owners will increase their voting share in the NYISO markets by creating a Transco which would join NYISO and presumably have voting shares in the NYISO markets along with the incumbent transmission owning affiliates.¹⁵⁶

ii. Answers

107. In Applicants' answer, they assert that the Commission should reject the requests that utilities not be permitted to recover their prudently-incurred transmission investments as confiscatory, unconstitutional and contrary to decades of court precedent.¹⁵⁷

¹⁵⁴ *Id.* at 3-4.

¹⁵⁵ *Id.* at 4.

¹⁵⁶ *Id.* at 5.

¹⁵⁷ Applicants Answer at 11 (citing *Duquesne Light v. Barasch*, 488 U.S. 299 (1989); *Jersey Cent. Power & Light Co. v. Federal Energy Regulatory Com.*, 810 F.2d 1168 (1987); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944)).

Applicants file additional testimony indicating that investors would require an ROE significantly above the 10.6 percent requested base ROE if the protesters' proposal limiting cost recovery to estimates was adopted.¹⁵⁸

108. Applicants assert in their answer that the example contained in Appendix D of the NYPSC protest confirms that ratemaking components other than cost estimates result in a far greater impact on consumers' rates. Applicants argue that the NYPSC's attempt to show a \$449 million rate impact on customers from a \$49 million increase in cost estimates included changes increasing the ROE, the equity component of the capital structure, and cost of procuring debt. Applicants maintain that if the NYPSC's example only changed the cost estimate and none of the other components, the rate impact to customers from a \$49 million increase in project costs would have been reduced by almost two-thirds. Further, Applicants argue that if recovery of project costs is limited to cost estimates, benefits of projects to ratepayers may be delayed or lost permanently, which is at odds with the Commission's statutory responsibilities under section 219.¹⁵⁹

109. With respect to cost estimates, NYPSC replies that the New York Transmission Owners clearly understood that their estimates would be the basis for conducting a comparative evaluation for selecting among competing projects. The NYPSC argues that the Applicants' claim that the New York Transmission Owners' cost estimates were "unrealistically low" undermines the competitive process.¹⁶⁰

110. The NYPSC reiterates that NY Transco formation offers no added value and is not necessary to construct the projects, several of which have already begun construction without formation of NY Transco.¹⁶¹

iii. Commission Determination

111. In response to protesters, we decline to limit Applicants' cost recovery to estimates previously included as part of the NYPSC proceedings on the TOTS

¹⁵⁸ Applicants Answer, Avera and McKenzie Affidavit.

¹⁵⁹ Applicants Answer at 12-13.

¹⁶⁰ NYPSC Answer at 5 (citing Applicants' Answer at 16).

¹⁶¹ *Id.* at 5-6.

Projects.¹⁶² Absent a showing that costs have been imprudently incurred, the Commission allows utilities the opportunity to recover their costs.¹⁶³

112. Boundless Energy requests that the Commission determine, prior to approving the filing, whether the incumbent transmission owners will increase their voting share in the NYISO markets by creating a Transco having voting shares in the NYISO markets.¹⁶⁴ The NYISO Agreement, which establishes the scope of the NYISO's duties and prescribes such matters as voting procedure, membership, penalty provisions, and dispute resolution procedures, states:

A Party, together with any Affiliate or Affiliates, may vote in only one sector and may cast only one (1) vote. If a Party and its Affiliate or Affiliates qualify to participate in more than one sector, the affiliated Parties must advise the ISO President in which sector their vote will be cast. A Party may split its vote within its chosen sector at its discretion. A Party and its Affiliates may participate in different sectors, provided they vote in only one sector.¹⁶⁵

113. Therefore the scenario of increasing voting share through affiliates is unlikely. Should future concerns on participation arise, “[m]aintaining the integrity of the sectors and subsectors is important to the proper governance of the NYISO. Therefore, any Party may challenge at any time the right of a person, entity or Party to participate in a sector or

¹⁶² *Niagara Mohawk Power Corporation*, 104 FERC ¶ 61,279, at P 23 (2003); *accord Columbia Gas Transmission Corporation v. FERC*, 404 F.3d 459, 463 (D.C. Cir. 2005) (Commission may neither accept tariff provision that covers non-jurisdictional activity nor assert jurisdiction over such activity). We note that, notwithstanding our ruling here, we will hold Applicants to their commitment to limiting the application of the ROE incentive adder for risks and challenges, granted above, to a cost estimate. *See supra* paragraph 97.

¹⁶³ *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 308-310 (1989) (citing *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944)); *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679, 690 (1923); *see also Jersey Cent. Power & Light Co. v. FERC*, 810 F.2d 1168, 1175 (D.C. Cir. 1987) (“the *Hope* standard defines the point at which a rate becomes unconstitutionally confiscatory as well.”).

¹⁶⁴ Boundless Energy Protest at 5.

¹⁶⁵ NYISO Agreement, Article 7.01.

subsector, by filing a petition with the [NYISO Board], or by the [NYISO] Board raising the issue on its own motion.”¹⁶⁶

2. Transmission Formula Rate and Protocols

a. Formula Rate Template and Protocols

i. Applicants’ Filing

114. Applicants propose to implement a cost-of-service formula rate under which NY Transco will collect its annual transmission revenue requirement. The proposed formula rate would be populated using a combination of NY Transco and New York Transmission Owners’ FERC Form No. 1 accounts from the prior year, along with projections for the upcoming rate year.¹⁶⁷ The revenue requirement will be collected from all load-serving entities according to the allocation percentages for the NY Transco’s facilities from January 1 through December 31 of a given “Rate Year.” On or before September 30 of each year (“Publication Date”), NY Transco will recalculate its annual transmission revenue requirement using a combination of projected costs and true-up of prior rate year projections with actual costs, producing an “annual update” for the next rate year, and will post the update on the NYISO website, along with filing this annual update with FERC for informational purposes.¹⁶⁸ From the second rate year on, the costs will be based upon data reported on NY Transco’s prior calendar year FERC Form No. 1, and the FERC Form 1 data from NY Transco’s parent companies. Any data that is estimated will be true-up, with interest based on 18 C.F.R. section 35.19a,¹⁶⁹ in the following year’s annual update. Applicants state that NY Transco’s proposed

¹⁶⁶ NYISO Agreement, Article 2.02.

¹⁶⁷ See, e.g., NY Transco Application, proposed NYISO OATT, Att. DD, Section 36.3, Appendix A, “Attachment 2 - Cost Support,” line 292, summarizing Post-employment Benefits Other than Pensions from the Form 1 data of NY Transco, Central Hudson Gas & Elec. Corp., Consolidated Edison Co. of New York, Inc., Niagara Mohawk Power Co., d/b/a National Grid, New York State Elec. & Gas Corp., and Rochester Gas and Electric Corp.

¹⁶⁸ NY Transco Application, Transmittal at 58-59, Heintz Test. at 4-5.

¹⁶⁹ NY Transco Application, proposed NYISO OATT, Att. DD, Section 36.3, Appendix A, “Attachment 2 - Cost Support.”

methodology is consistent with prior cost-of-service formulas recently approved by the Commission for other PJM transmission owners¹⁷⁰ with a few exceptions.¹⁷¹

115. Applicants state that the formula rate uses forecasted 13 month average plant balances (i.e., transmission, general, distribution and intangible plant, and CWIP) in determining the annual net revenue requirement, and the average beginning and end of year balances for accumulated deferred income taxes (ADIT), land held for future use, materials and supplies, prepayments, and associated expenses.¹⁷² However, NY Transco's proposed tariff sheets state differently – 13 month average plant balances for all plant balances and prepayments, except general and intangible, and the average beginning and end of year balances for intangible plant in service, general plant in service, accumulated deferred income taxes (ADIT), land held for future use, materials and supplies.¹⁷³

116. Applicants state that the affiliated New York Transmission Owners of NY Transco will provide the business support functions, as needed, to NY Transco for the administration of its business and the development of projects that will be built within each transmission owner's respective transmission district or corridor. As assets are placed into service, Applicants state that the New York Transmission Owner where a NY Transco project is located will perform the maintenance and physical operation of the NY Transco assets. Accordingly, the stated rate inputs for PBOP in NY Transco's formula will be derived from the affiliated New York Transmission Owners of NY Transco. Applicants state that NY Transco will compensate each affiliated Transmission Owner for all services provided at cost consistent with the affiliate rules and requirements of both the Commission and the NYPSC.¹⁷⁴

117. Applicants propose that NY Transco will use a stated depreciation rate which will be an averaging of NY Transco's affiliated Transmission Owner depreciation rates.

¹⁷⁰ NY Transco Application, Transmittal at 74 (citing *PATH*, 122 FERC ¶ 61,188; *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007)).

¹⁷¹ *Id.* (Exceptions include the formula rate calculation of post-employment benefits other than pensions (PBOPs), among others).

¹⁷² NY Transco Application, Transmittal at 58-59, Heintz Test. at 4-5, 9.

¹⁷³ NY Transco Application, proposed NYISO OATT, Att. DD, Section 36.3, Appendix A, "Attachment 2 - Cost Support," lines 1-186.

¹⁷⁴ NY Transco Application, Nachmias Test. at 20-21, Heintz Test. at 4-5, 9.

Applicants explain that this is necessary because NY Transco is a newly-formed company with no assets on which to base depreciation. Applicants state that NY Transco will submit a new depreciation study within five years of the in-service date of the first project to go into service.¹⁷⁵ Applicants state that the proposed formula is very similar to the formula approved by the Commission as part of a settlement in *Tallgrass Transmission, LLC and Prairie Wind Transmission, LLC* 132 FERC ¶ 61,114 (2010) and *Transource Missouri, LLC*, 143 FERC ¶ 61,104 (2013), and consistent with Commission Staff's Guidance on Formula Rate Updates issued July 17, 2014.

118. Applicants also request approval of NY Transco protocols, which contain its annual true-up, information exchange, and challenge procedures. Applicants contend that the protocols clarify the project-specific revenue requirements determined by the formula rate template.¹⁷⁶ Applicants claim that the protocols are consistent with recent Commission orders addressing the MISO Tariff Attachment O protocols for forward-looking formula rates.¹⁷⁷

119. Applicants request waiver of any of the Commission's regulations required to accept the filing, including the section 35.13(h) cost-of-service statements on total cost of service, as allocated among customer classes and rate design information.¹⁷⁸

ii. Comments and Protests

120. The NYPSC argues that because it is currently evaluating the proposed AC Projects and intends to address whether the New York Transmission Owners' or others' projects should be evaluated under NYISO's public policy planning process, it is premature to authorize rate recovery for those projects. The NYPSC argues that this would put non-incumbent transmission developers at a competitive disadvantage.

121. Joint Commenters request that the Commission reject the filing entirely, arguing that NYISO determined that the cost to ratepayers will largely wipe out any benefits

¹⁷⁵ NY Transco Application, Heintz Test. at 16-17; proposed NYISO OATT, Att. DD, Section 36.3, Appendix A ("Attachment 9 - Depreciation and Amortization Rates").

¹⁷⁶ *Id.* at 9.

¹⁷⁷ *Id.* at 9-10 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013), *reh'g denied*, 146 FERC ¶ 61,209 (2014); *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212 (2014)).

¹⁷⁸ NY Transco Application, Transmittal at 65-69.

associated with the AC Projects, meaning that it would cost less for New York ratepayers to bear the cost of continued congestion rather than to spend the money to build the transmission lines to mitigate it.¹⁷⁹ Joint Commenters argue that the applicant transmission owners should not be given premature advantage in the competitive AC Proceedings by a FERC approved rate for projects that have not been shown to be needed.

122. NYAPP argues that Applicants' proposed transmission formula rate does not conform to Commission precedent. Specifically, NYAPP states that proposed formula rate is unjust and unreasonable due to lack of transparency.¹⁸⁰ It explains that Commission policy directs that formula rates should include calculations, work papers, and the details necessary to explain how the numbers are derived from FERC Accounts such as the customers would be able to verify and replicate calculations made in formula rate and a company could not exercise discretion in calculating the rate.¹⁸¹ NYAPP asserts that Applicants rely heavily on internal company records for many inputs in its proposed formula rate that are impossible to verify. NYAPP further asserts that Applicants failed to use FERC No. 1 data or any other publicly available and verifiable data in their determination of the level of plant in service. NYAPP claims that, among other formula rate inputs, Applicants' net plant annual transmission revenue requirement components, accumulated depreciation amounts, CWIP, and prepayments are calculated based on company records.¹⁸²

123. NYAPP further states that certain components of the proposed formula rate are inconsistent with Commission precedent. As an example, NYAPP states that NY Transco's Administrative and General Expenses includes Electric Power Research Institute (EPRI) and the Edison Electric Institute (EEI) membership dues, which is counter to Commission precedent. NYAPP states that the Commission does not permit

¹⁷⁹ Joint Commenters Protest at 2-3; Utility Intervention Unit Protest at 4.

¹⁸⁰ NYAPP Protest at 19.

¹⁸¹ *Id.* (citing *Tampa Elec. Co.*, 133 FERC 61,023, at P 54 (2010); *Midwest Indep. Transmission Sys. Operator, Inc.*, 101 FERC ¶ 61,221, at PP 63-64 (2002), *reh'g denied*, 103 FERC ¶ 61,035 (2003); *Am. Elec. Power Serv. Corp.*, 120 FERC ¶ 61,205, at PP 31-33 (2007); *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007); *Trans Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, at P 59 (2007); *Potomac-Appalachian Transmission Highline, LLC*, 122 FERC ¶ 61,188 (2008); *Bost. Edison Co.*, 111 FERC ¶ 61,266 (2005); *Midwest Indep. Sys. Operator, Inc.*, 108 FERC ¶ 61,235, at P 68 (2004)).

¹⁸² *Id.* at 20.

transmission owners to pass on EPRI and EEI costs to customers.¹⁸³ According to NYAPP, the Commission should require NY Transco to exclude recovery of any expenses associated with EPRI and EEI from its formula rate. Further, NYAPP asserts that NY Transco's proposed formula rate may permit for double recovery of expenses related to PBOPs. NYAPP explains that since NY Transco does not have any employees, it proposes to recover PBOPs expenses derived from the affiliates of the entities owning NY Transco but fails to provide an explanation of how it would avoid double recovery. NYAPP requests that the Commission sets these issues for hearing.¹⁸⁴

124. With respect to formula rate protocols, NYAPP asserts that NY Transco has failed to fully comply with the Commission's precedent and guidance, as its protocols do not include certain provisions addressing (1) accumulated deferred income tax inputs, (2) asset retirement obligations, (3) the recovery of acquisition premiums, and (4) the recovery of amounts related to transmission incentive projects. NYAPP references the Commission's directives to the MISO transmission owners concerning necessary protocols in support.¹⁸⁵ Among several other changes, NYAPP requests those stated below:

NYAPP suggests to revise Section 3(e)(ix) of the protocols to add:

Shall identify the specific amounts included in the Annual Update related to each transmission incentive project, a citation to the proceeding in which FERC granted the incentive, and provide a derivation of the value for each such project.¹⁸⁶

In Section 4 (Annual Review Procedure), NYAPP suggests to revise subsection (b), as follows:

Information requests shall be limited to what is necessary to determine if: (i) NY Transco has properly calculated the

¹⁸³ *Id.* at 21 (citing Order No. 679, 116 FERC ¶ 61,057, at P 391 (2006)).

¹⁸⁴ *Id.* at 23.

¹⁸⁵ *Id.* at 23-26 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013), *reh'g denied*, 146 FERC ¶ 61,209 (2014); *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212 (2014)).

¹⁸⁶ *Id.* at 26 (citing FERC Staff Guidance at Section 2(b)).

Annual Update under review (including any corrections pursuant to Section 6); (ii) the costs included in the Annual Update are properly recordable and recorded, prudently incurred, reasonable, and otherwise consistent with NY Transco's accounting policies, practices and procedures consistent with the USofA; (iii) the input data used in the Annual Update are accurate and correctly used in the Formula Rate; (iv) the extent and effect of Accounting Changes; and (v) the Formula Rate has been applied according to its terms, including the procedures in these Protocols. ~~Information requests shall not solicit information concerning costs or allocations where the costs or allocation methods have been determined to be appropriate by FERC in the context of prior NY Transco Annual Updates, except that such information requests shall be permitted if they (i) seek to determine if there has been a change in circumstances, (ii) are in connection with corrections pursuant to Section 6, or (iii) relate to costs or allocations that have not previously been challenged and adjudicated by FERC.~~

iii. Answer

125. Applicants answer that the proposed formula rate is fully consistent with formulas approved by the Commission and that the protests present only minor objection to NY Transco's formula rate. Applicants further state that contrary to the assertion that the formula rate uses plant balances that are not transparent, the beginning and ending plant balances for assets will be taken from NY Transco's annual Form No.1 filings and the formula references those balances.¹⁸⁷

126. Applicants further state that NYAPP raises challenges to various rate components based on its misreading of the formula or Commission precedent such as its challenge to the recovery of EPRI and EEI fees. Applicants explain that since it has no retail customers, NY Transco will not be able to recover those costs if they are excluded from the formula rate. Therefore, a disallowance based on the new policy suggested by NYAPP would cause all wholesale-only utilities to reduce or stop any support for EPRI research and reduce EEI industry organization participation. Applicants further maintain that wholesale-only utilities will have disincentive to educate the public on safe behaviors

¹⁸⁷ Applicants Answer at 16.

and could incur greater legal and litigation costs if the Commission disallows cost recovery for safety related education or outreach.¹⁸⁸

127. Applicants also assert that NYAPP's concern about double recovery of PBOPs expenses is unsupported and misplaced because the Commission has ample ability to prevent it. Applicants further assert that NY Transco's proposed formula rate protocols provide ample opportunity for the Commission and all parties to review all formula inputs as to their consistency with the Commission policy.¹⁸⁹

b. Base ROE

i. Applicants' Filing

128. Applicants propose a 10.60 percent base ROE, based on the analysis and testimony of Dr. William E. Avera and Mr. Adrien M. McKenzie. Dr. Avera and Mr. McKenzie state that they developed two zones of reasonableness based on the Commission's two-step discounted cash flow (DCF) methodology established in Opinion No. 531.¹⁹⁰ The first, using Institutional Brokers' Estimate System growth-rates, is 6.25 percent to 11.63 percent; the second, using *Value Line* growth rates, is 6.45 percent to 13.59 percent. They argue that 10.60 percent is within each proposed zone of reasonableness, and therefore just and reasonable.

129. To calculate these zones of reasonableness, Dr. Avera and Mr. McKenzie used a national proxy group of 30 risk-comparable electric companies. They state that the median values using the two-step DCF methodology are 8.78 and 8.82 percent, based on Institutional Brokers' Estimate System and *Value Line* growth rates, respectively. They state that corresponding midpoints are 8.94 percent and 10.02 percent. They argue that a 10.60 percent base ROE is justified "because there is clear evidence that the median or midpoint cost of equity estimates produced by the two-step DCF model fall far below investors' expectations as a result of anomalous market conditions," consistent with Opinion No. 531.¹⁹¹

¹⁸⁸ *Id.* at 16-17.

¹⁸⁹ *Id.* at 17.

¹⁹⁰ NY Transco Application at 60 (citing *Coakley v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014)).

¹⁹¹ *Id.* at 61.

130. Dr. Avera and Mr. McKenzie assert that, as in Opinion No. 531, a base ROE in the upper half of the zone of reasonableness is required to meet the Supreme Court's *Hope*¹⁹² and *Bluefield*¹⁹³ standards. They argue that *Hope* and *Bluefield* require the ROE to be sufficient to: a) fairly compensate investors for capital invested; b) ensure the utility's ability to attract capital on reasonable terms, and c) maintain the utility's financial integrity.

131. Dr. Avera and Mr. McKenzie argue that 10.60 percent is also consistent with the results of alternative benchmarks that they performed. They state that their risk premium analysis yielded a median of 10.61 percent; their Capital Asset Pricing Model (CAPM) yielded a median of 11.45 percent; and, their expected earnings of the proxy group yielded a median of 9.82 percent.¹⁹⁴ Because the average of the median of these is 10.61 percent, Dr. Avera and Mr. McKenzie conclude that a 10.60 base ROE for NY Transco is just and reasonable. Additionally, they calculated ROEs with a second set of benchmarks, including, e.g., ROEs for Commission-jurisdictional gas pipelines. The average median value for that set of benchmarks is 11.16 percent, according to NY Transco.

132. Dr. Avera and Mr. McKenzie conclude by arguing that mechanically setting a base ROE at the median or midpoint of the DCF range of reasonableness, without consideration of NY Transco's particular circumstances or the implications of current anomalous capital market conditions, would discourage such new entry and reduce competition for new transmission development projects. They also argue that 10.60 percent is similar to Transource Missouri, LLC's base ROE accepted by the Commission in 2012.

ii. Comments and Protests

133. ENMP states that granting a base ROE of 10.60 percent, in addition to all requested incentives, would yield an overall ROE of 12.10 percent. ENMP notes that such an ROE exceeds the upper limit of 11.63 in NY Transco's IBES-based DCF model. Municipals allege that the overall ROE, including adders, should not exceed the requested 10.60 percent base ROE, and therefore request discovery and further exploration of NY Transco's proposal. Alternatively, Municipals argue that if the

¹⁹² *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (*Hope*).

¹⁹³ *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679 (1923) (*Bluefield*).

¹⁹⁴ NY Transco Application, Ex. NYT-26 at 1.

Commission accepts the filing without a hearing the overall ROE should be set at 10.25 percent.

134. Multiple Intervenors argue that a 10.60 percent ROE is excessive and should be rejected. The NYPSC requests an evidentiary hearing regarding NY Transco's base ROE. The NYPSC questions the inclusion of ITC Holdings Corp. (ITC) in NY Transco's proxy group, alleging that its high ROE and growth rate may not be sustainable. The NYPSC maintains that if ITC is included, it may not be necessary to include any ROE incentive adders. Additionally, the NYPSC states that it performed a DCF analysis that yielded a 41-member proxy group and a zone of reasonableness of 5.90 percent to 11.45 percent.

135. Joint Commenters argue that the proposed ROE coupled with a 60 percent equity component is excessive, not just and reasonable, and would unfairly burden Hudson Valley ratepayers, while the majority of the benefit would accrue to New York City consumers.¹⁹⁵

136. Utility Intervention Unit argues that the proposed overall ROE of 11.63 percent is greater than ROEs allowed by the NYPSC and would be burdensome for consumers. NYAPP suggests an 8.8 percent ROE would be more reasonable, noting that the Commission typically sets the ROE at the median of the zone of reasonableness, unless there is specific evidence that a business and financial risk profile is unusual. NYAPP maintains that NY Transco should not be allowed to use financial risk to adjust its ROE above the median on one hand, and on the other, state that such financial risk is a basis for receiving ROE incentives. NYAPP argues that the cost of capital for utilities has dropped in the past six years and that any adjustment to the two-step DCF model is a matter of factual dispute.

137. City of NY argues that the Commission has previously found that not every rate within the zone of reasonableness "would necessarily be just and reasonable if charged."¹⁹⁶ City of NY argues that the Commission must balance the twin objectives of consumers and investors, and that Applicants failed to account for consumer interests when proposing a 10.60 percent ROE. City of NY asserts that Applicants' reliance on Opinion No. 531 to justify an ROE between the midpoint and the high end of the zone of reasonableness is inapposite. City of NY argues that the unusual capital market conditions present during that case do not apply to the instant filing. City of NY notes

¹⁹⁵ Joint Commenters Protest at 4.

¹⁹⁶ City of NY Protest at 7 (citing *Bangor Hydro-Electric Co.*, 122 FERC ¶ 61,038, at P 12 (2008)).

that Con Edison accepted a 9.20 percent ROE in a recent state rate case, and Central Hudson proposed a 9 percent ROE in a pending state rate case.¹⁹⁷ Finally, NYPA supports the Commission's policy on base ROE as set forth in Opinion No. 531.

iii. Answer

138. In their answer, Applicants assert that protesters' arguments lack merit. Applicants state that an ROE halfway between the median and upper end of the zone of reasonableness is consistent with Opinion No. 531, and that Dr. Avera and Mr. McKenzie were conservative in using IBES data to establish the zone of reasonableness. They argue that the 11.63 high end of the zone of reasonableness appropriately limits NY Transco's overall ROE, and that protesters ignore this fact.

139. Dr. Avera and Mr. McKenzie note that certain protesters seek to cap the utility's return of and return on its investment at the project estimate. They argue that such a proposal would expose NY Transco to even greater risk and materially affect their proposed base ROE. They assert that their 10.6 percent base ROE proposal is based in part on the opportunity to recover prudently incurred costs, irrespective of cost estimates. They argue that exposing NY Transco to cost disallowances, despite being prudently incurred, "would imply a degree of investment risk far in excess of that which investors associate with the proxy group used in our analysis."¹⁹⁸ They argue that if their analysis had been based on protesters' proposal, they would have recommended "a significantly higher ROE."¹⁹⁹

c. Commission Determination

140. We find that parties raise disputed issues of material fact with respect to NY Transco's proposed formula rates, protocols, and base ROE that we cannot resolve based on the record before us and are more appropriately addressed in hearing and settlement judge procedures. These issues include, but are not limited to, components of the formula rate, as well as the allocation of various expenses between the New York Transmission Owners and NY Transco. We also find that we can narrow the scope of the hearing by making summary findings on Applicants' request for Commission approval of: (1) an ROE adder for RTO participation; (2) the CWIP, abandonment, and pre-

¹⁹⁷ City of NY Protest at 10.

¹⁹⁸ Applicants Answer, Avera and McKenzie Aff. at 3.

¹⁹⁹ *Id.*

commercial cost recovery incentives;²⁰⁰ (3) Section 4(b) protocol review procedures; (4) the ROE adders for Transco formation and risks and challenges; and (5) the proposed cost allocation provisions. These issues are not set for hearing and settlement judge procedures.

141. Our preliminary analysis indicates that Applicants' proposal has not been shown to be just and reasonable and may be unjust and unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept NY Transco's formula rate and rate protocols for filing, suspend them for a nominal period, subject to refund, and set them for hearing and settlement judge procedures. At the hearing, Applicants will be required to demonstrate the justness and reasonableness of their proposal except to the extent we have made summary findings herein.

142. While we are setting the rate for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures begin. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²⁰¹ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.²⁰² The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

²⁰⁰ We note that, while we determine that Applicants have sufficiently demonstrated that the requested pre-commercial cost recovery incentive is warranted, we set for hearing whether Applicants have an adequate methodology and procedures for identifying, tracking, and disclosing the nature of all of the prudently-incurred pre-commercial costs that are deferred and amortized to expense, as discussed more fully in the transmission incentives section above.

²⁰¹ 18 C.F.R. § 385.603 (2014).

²⁰² If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

143. In *Midwest Independent Transmission System Operator, Inc.*, the Commission found that formula rate protocols must specifically provide that the informational filing include the information that is reasonably necessary to determine: (1) that input data under the formula rate is properly recorded in any underlying work papers; (2) that the transmission owner has properly applied the formula rate and the procedures in the protocols; (3) the accuracy of data and the consistency with the formula rate of the actual revenue requirement and rates (including any true-up adjustment) under review; (4) the extent of accounting changes that affect formula rate inputs; and (5) the reasonableness of projected costs included in the projected capital addition expenditures (for forward-looking formula rates).²⁰³

144. Consistent with our findings approving CWIP in rate base and the transparency requirements outlined in *Midwest Independent Transmission Sys. Operator, Inc.*,²⁰⁴ we agree with NYAPP that Applicants should make NYAPP's proposed changes to Section 3(e)(ix), identifying the specific amounts included in the Annual Update related to each transmission incentive project with a derivation of the value for each such project.

145. We also direct Applicants to make NYAPP's requested changes to Section 4(b) of the protocols, as consistent with the transparency requirements. Because fully integrated, corporately unbundled utilities may serve a combination of wholesale and retail customers and also provide unbundled transmission and ancillary services, it is necessary to apportion the total company cost of service among groups of customers or utility operating functions. Additionally, such cost allocation must be transparent, particularly given the variety of customers served by electric utilities and the fact that they are in many cases subject to the jurisdiction of more than one regulatory commission. Within a utility's cost of service there are several types of allocations.

146. Our concern with transparency here relates to the allocations of shared plant or expense items between the New York Transmission Owners and NY Transco. Here, the affiliate New York Transmission Owners will be providing staff, general and intangible

²⁰³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012), *order on investigation*, 143 FERC ¶ 61,149 (2013), *order on reh'g*, 146 FERC ¶ 61,209 (2014), *order on compliance*, 146 FERC ¶ 61,212 (2014) (MISO Compliance Order). In order to address whether MISO's *pro forma* formula rate protocols and the formula rate protocols of individual transmission owners were sufficient to ensure just and reasonable rates, the Commission established paper hearing procedures.

²⁰⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013), *reh'g denied*, 146 FERC ¶ 61,209 (2014); *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212 (2014).

plant, operations and maintenance, and administrative and general services to NY Transco, and such allocation of costs among affiliates must be transparent to ensure the accuracy of data and that the input data to the formula rate is properly recorded. The Annual Update must allow interested parties to ensure that the allocations of labor-related costs between and among the New York Transmission Owners and NY Transco is accurate and consistent with the Commission's regulations. Also, where the New York Transmission Owners provide a percentage of General Plant related items to NY Transco such as transportation vehicles, communication equipment, the company's central headquarters, office furniture, etc., the allocation of the costs of such plant among each New York Transmission Owner and NY Transco must be transparent in the Annual Update. We therefore direct Applicants to make the changes to Section 4(b) of the protocols to remove the limitations on seeking information related to costs or allocations in a compliance filing within 30 days of the issuance date of this order.

147. The settlement and hearing proceedings will also address arguments that the NY Transco formula rate may permit double recovery between NY Transco and the New York Transmission Owners. Certain New York Transmission Owner rates are stated rates established in 1999.²⁰⁵ In Order No. 679, the Commission stated that it was willing to consider transmission incentive filings applicable to both Transcos and traditional public utilities that propose rates applicable only to new transmission projects without reopening the cost of service for existing transmission facilities (single issue ratemaking).²⁰⁶ The Commission acknowledged that it will consider the potential need to harmonize rates for existing transmission facilities with rates for new facilities to ensure that there is no double-recovery in the new rates.²⁰⁷ Therefore, we direct participants in the hearing and settlement proceedings to consider how to ensure that there is no double-recovery in the proposed NY Transco formula rates for new transmission facilities, of

²⁰⁵ See Settlement Agreement filed on November 17, 1999 in Docket No. ER97-1523-000, accepted by the Commission in Docket No. ER97-1523-023, *Members Sys. of the N.Y. Power Pool*, 92 FERC ¶ 61,128 (2000).

²⁰⁶ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at PP 191-193; *Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States*, 94 FERC ¶ 61,272 (2001), *reh'g denied*, 95 FERC ¶ 61,225, *on reh'g*, 96 FERC ¶ 61,155, *further order on reh'g*, 97 FERC ¶61,024 (2001) (Removing Obstacles).

²⁰⁷ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 192 (2006) (emphasis added).

costs already included in the New York Transmission Owner existing rates, and those transactions between these affiliates will be at cost.²⁰⁸

148. We agree with protestors that approval of the formula rate should be tied to the final outcome of the cost-allocation method. Thus, NY Transco's proposed formula rate (which has been set for hearing for the resolution of other issues) may not become effective until an appropriate Commission-approved cost allocation mechanism for the recovery of both the TOTS and the AC Projects costs is in effect.

3. Cost Allocation

149. In Order No. 1000, the Commission required, among other things, public utility transmission providers to eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.²⁰⁹ In addition, the Commission required public utility transmission providers to revise their Open Access Transmission Tariffs to, among other things, describe a transparent and not unduly discriminatory process for evaluating proposals for selection in the regional transmission plan for purposes of cost allocation.²¹⁰

150. To comply with the requirements of Order No. 1000, NYISO established a regional transmission planning process, under which qualified transmission developers can propose transmission solutions for selection in the regional transmission plan for purposes of cost allocation, including transmission solutions to transmission needs driven

²⁰⁸ See *Montana Power Co.*, 4 F.P.C. 213 (1944) (discussing the legitimate cost of public utility assets in transactions where the regulated public utility affiliates are in substance and effect, but not in form, one in the same. Further defining such transactions as not at arms' length).

²⁰⁹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

²¹⁰ *Id.*

by public policy requirements, with an effective date of January 1, 2014 for the revisions.²¹¹

a. Applicants' Filing

151. Under the proposal, Applicants propose to allocate the costs of the three TOTS Projects using an adjusted load ratio share approach, such that approximately 75 percent of the costs are allocated to transmission districts southeast of the UPNY/SENY constraint and approximately 25 percent allocated to upstate transmission districts.²¹² The method results in the following cost allocation percentages:

Con Edison/O&R Transmission District – 41.7%

New York Power Authority – 16.9%

Long Island Power Authority Transmission District – 16.7%

National Grid Transmission District – 10.4%

NYSEG/RG&E Transmission District – 8.9%

Central Hudson Transmission District – 5.4%

152. Applicants note that while this “adjusted load ratio share” cost allocation method is a departure from the default load ratio share method for public policy projects that normally would allocate 60 percent of the costs of selected projects to downstate transmission districts with 40 percent allocated to those located upstate, it is nevertheless allowed under the Commission-approved four step cost allocation for public policy transmission projects because the four step method allows for transmission owners to propose a different cost allocation method.²¹³

²¹¹ *N.Y. Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059 (2013); *N.Y. Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,044 (2014).

²¹² We note that, though the allocation tables in the tariff sheets Applicants submitted for the proposed cost allocation only reference the TOTS Projects, they indicate in their transmittal letter to this filing that the proposed cost allocation method would cover the AC Projects as well.

²¹³ NY Transco Application, Ex. NYT-37 at 7-8. NYISO’s regional cost allocation method for public policy projects consists of the following four steps: Step 1) if the public policy requirement that drives the transmission need prescribes the use of a

(continued...)

153. Applicants assert that this adjusted load ratio share cost allocation method is explained by the significant economic and reliability benefits that accrue to downstate loads.

154. Applicants assert that the adjusted load ratio share cost allocation method satisfies the three key factors that the Commission laid out in Order No. 890, including that costs are assigned in a manner that is roughly commensurate with benefits. They also argue that the cost allocation method is essential to support construction of the transmission projects that generally meet public policy requirements, consistent with Order No. 1000. They assert that the statewide benefits of the projects include “reliability, congestion, and a variety of public policy benefits including economic development, job creation, increased local tax revenues, renewable energy and environmental benefits.” They further argue that it is consistent with Order No. 1000 for Applicants to propose a cost allocation method that applies to an entire group of transmission projects without providing a precise cost-benefit assessment for each project.

155. Applicants assert in their transmittal that they seek to use the cost allocation method for all five transmission projects and propose to add a new Schedule 13 to the NYISO OATT, Section 6, and add new Section 36.1.1 which states:

The purpose of Section 36.2 is to provide for the allocation of costs to be recovered through the Transco Facilities Charge (“TFC”) described in Section 6.13 of Schedule 13 of the ISO OATT for the following NY Transco, LLC (“NY Transco”) projects: (1) the Second Ramapo-to-Rock Tavern 345-kV Line Project, the Marcy South Series Compensation and Fraser-to-Coopers Corners Reconductoring Project, and the Staten Island Unbottling Project, each of which have been approved by the New York Public Service Commission on November 4, 2013, in Case No. 12-E-0503 (the

particular cost allocation and recovery method, NYISO shall use that method; Step 2) if Step 1 does not apply, then the transmission developer may propose (subject to NYPSC guidance and Commission approval) a cost allocation based on an adjusted load ratio share; Step 3) if Steps 1 and 2 do not apply, the NYPSC may identify an alternative cost allocation method; and Step 4) in the absence of any of the above cost allocation methods, NYISO will allocate the costs of the transmission project to all load-serving entities in the NYISO Control Area on a postage-stamp basis using load ratio share. *See* NYISO OATT, Attachment Y, NYISO OATT, Attachment Y, §§ 31.5.5.4.

“Transmission Owner Transmission Solutions” or “TOTS” projects); (2) the Second Oakdale-to-Fraser 345-kV Line Project and the Edic-to-Pleasant Valley 345-kV Line Project (the “AC” projects) upon approval by the New York Public Service Commission in Case Number 12-T-502 and subject to inclusion by the ISO in the ISO transmission plan for purposes of cost allocation; and (3) any regulated public policy transmission project that has been approved by the ISO [] and determined to be eligible to recover such costs pursuant to Sections 31.5.5.3 and 31.5.5.4 [for transmission projects selected to meet a public policy need or requirement] of Attachment Y of the ISO OATT. Section 36.2 shall include cost allocation tables for each NY Transco project eligible to recover costs through the TFC.

156. Section 36.2 lists the TOTS Projects as eligible to recover costs, and their cost allocation tables.

b. Comments and Protests

157. Several parties request that the Commission reject Applicants’ proposed cost allocation and replace it with a method that appropriately allocates costs commensurate with benefits received, further basing such cost allocation on geographic locations (i.e., NYISO load zones) as opposed to transmission districts, and determine cost allocation on a project-specific basis.²¹⁴

158. Several parties request that the entire application be rejected outright because the Applicants’ use of an “adjusted” load ratio share cost allocation is not explained and not consistent with a “beneficiaries pay” approach, and none of the projects have been selected by the NYISO in the regional transmission plan for the purposes of regional cost allocation.²¹⁵ Several parties argue that none of the projects have been selected in the NYISO transmission plan for the purposes of cost allocation, and thus, the transmission

²¹⁴ NYPA Protest at 15; Multiple Intervenors Protest at 20-21; Municipals Protest at 11.

²¹⁵ NYAPP Protest at 3; Municipals Protest at 11-16.

owners' reliance on the NYISO public policy transmission planning process is premature at best.²¹⁶

159. Municipals argue that the proposed cost allocation would create a perverse incentive for developers to bypass NYISO's market-driven approach to transmission planning and investment, undercutting how public policy requirements are planned for in the NYISO OATT.²¹⁷

160. Several protesters argue that granting the requested rate treatment for the AC Projects will give Applicants unduly preferential rate treatment, harm competition and create an unequal playing field between the incumbent New York Transmission Owners and other participants in the ongoing state competitive process. The City of NY requests that the Commission should defer any rates, cost recovery, or cost allocation for the AC Projects until the conclusion of the state proceedings.²¹⁸ The City of NY argues that commencing with Order No. 888, the Commission has strived to level the playing field among market participants and allow non-utilities to compete against utilities with the goal of lowering costs to consumers. City of NY argues it would be inequitable and unfair to grant any cost recovery for the Applicants' preliminary efforts because it would place them at an unfair advantage over merchant developers who do not have the ability to recover their development costs from ratepayers if their projects are not selected.

161. The NYPSC argues that an evidentiary hearing is necessary to ensure the proposed cost allocation and recovery for TOTS Projects are just and reasonable. The NYPSC disputes Applicants' assertion that it endorsed their cost allocation proposal. It argues that the proposal it initially supported included the voluntary participation of LIPA and NYPA, and included 18 transmission projects throughout the state. Without the participation of LIPA and NYPA in Applicants' filing, the NYPSC maintains that the instant filing "impose[s] an involuntary allocation of costs upon them."²¹⁹ The NYPSC

²¹⁶ Multiple Intervenors Protest at 16 (citing NYISO OATT, Attachment Y at 31.5.5.3, which provides that: "A project that is proposed as a solution for a Public Policy Transmission Need is eligible for cost allocation when: (i) it is selected by the ISO as the more efficient or cost effective regulated transmission solution to satisfy the Public Policy Transmission Need, and (ii) as determined by the Commission); Boundless Energy Protest at 2-3; Municipals Protest at 11-16.

²¹⁷ Municipals Protest at 17-18.

²¹⁸ Boundless Energy Protest at 4; NYPSC Protest at 24; City of NY Protest at 17.

²¹⁹ NYPSC Protest at 21.

states that the conceptual premise for its order accepting the TOTS Projects no longer exists and that there are factual questions surrounding the reasonableness of costs.

162. Others, too, protest that the original vision for NY Transco was a six party Transco, which included NYPA and LIPA; however, the New York state legislature did not grant NYPA permission to participate in NY Transco. Further, they reiterate that NYPA had originally agreed to be allocated 16.9 percent of the costs of transmission development, with the understanding that it would be a package of 18 projects which would achieve broader overall benefits through their expanded scope.²²⁰ NYPA argues also, it agreed to be allocated 16.9 percent of these costs because as one of the six party Transco, it could use the NY Transco return on investment to mitigate inequity resulting from the uniform allocation of costs to NYPA's upstate and downstate customers, as well as reinvest any return into investments to benefit its customers.²²¹ NYPA argues that recently, the NYPSC adopted a 90 percent downstate/10 percent upstate cost allocation for the AC Projects, reflecting the fact that "the primary benefit of the projects will be reduced congestion to downstate load areas, but also recognizes that some benefits accrue to upstate customers in the form of reliability and reduced operational costs."²²²

163. NYPA and Multiple Intervenors explain that unlike other transmission districts, NYPA has no defined geographical service territory and its municipal systems are located all over the state. Yet under Applicants' cost allocation proposal, its municipals located upstate (north of the UPNY/SENY interface) are allocated the same for the projects as those municipals located south of the interface. Multiple Intervenors provide a scenario where costs are allocated based on transmission districts instead of geographic NYISO load zones, grossly inequitable situations would arise where a NYPA customer located in the Rochester region would be allocated 16.9 percent of the costs while another RG&E customer located across the street from the NYPA customer would be allocated only 8.9 percent of the costs.²²³ NYPA and Multiple Intervenors argue that Applicants' proposed cost allocation is not supported by a load flow study and such allocation of costs to its municipals is not consistent with beneficiary-pays cost allocation principles. NYPA

²²⁰ NYAPP Protest at 2-3; NYPA Protest at 9, 12.

²²¹ NYPA Protest at 9, 12.

²²² *Id.* at 11 (citing NYPSC Case 12-T-0502, Proceeding on Motion of the Commission to Examine Alternating Current Transmission Upgrades at 10, 41 (issued Dec. 16, 2014)).

²²³ Multiple Intervenors Protest at 19.

notes that it is one of the developers of certain components of one of the TOTS Projects but its components are not part of the application.²²⁴

164. Several parties argue that to avoid these problems, costs should be allocated based on geographic load zone locations rather than transmission districts.²²⁵ NYPA proposes that a determined percentage of project costs be assessed to energy withdrawals according to locations within the upstate load Zones A-F, while the remaining percentage of costs should be allocated to downstate load Zones G-K.²²⁶ NYPA and Multiple Intervenors state that these revenue requirements would be sub-allocated to load zones or sub-zones using a load ratio share, similar to the manner in which the Reliability Facilities Charge is assessed to energy withdrawals under Schedule 10 of the NYISO OATT. NYPA and Multiple Intervenors argue that this approach would better ensure that project costs are borne by NYPA's customers in proportion to the benefits they receive.²²⁷

165. Multiple Intervenors argue that the proposed cost allocation is not in the public interest and should be rejected. Multiple Intervenors argue that reducing congestion that exists at the UPNY/SENY interface will likely have the effect of increasing energy prices to upstate regions, while the beneficiaries of the projects would be customers in the downstate regions.²²⁸ Multiple Intervenors further argue that there should not be a single cost allocation for all five projects, as the beneficiaries of each project differ from project to project.²²⁹

166. Multiple Intervenors argue that the Applicants' position that cost allocation is essential to supporting the projects is untrue. Multiple Intervenors argue that work on the

²²⁴ NYPA Protest at 2-5, 11-12; Multiple Intervenors Protest at 19-20.

²²⁵ NYPA Protest at 2-4, 13-14; Multiple Intervenors Protest at 14, 19. City of NY Protest at 15.

²²⁶ The downstate load zones are: G- Hudson Valley; H- Millwood; I- Dunwoodie; J- New York City; and K- Long Island. Recently, FERC issued an order combining load zones G through J creating a new capacity zone to send effective economic price signals in order to resolve chronic congestion.

²²⁷ NYPA Protest at 13-14; Multiple Intervenors Protest at 14.

²²⁸ Multiple Intervenors Protest at 3.

²²⁹ *Id.* at 20.

TOTS Projects is progressing irrespective of whether the applicant transmission owners receive the requisite regulatory approvals or not and there is no evidence that the proposed cost allocation is necessary for the TOTS Projects to be built. Multiple Intervenors argue that there is nothing preventing the New York Transmission Owners from advancing the TOTS Projects under a different cost allocation method, such as the one approved by the NYPSC in the AC Proceedings. Multiple Intervenors also argue that the proposed cost allocation is inconsistent with the NYPSC's recent ruling in the AC Proceeding, where the NYPSC found that 90 percent of the costs should be allocated to downstate customers and 10 percent of the costs should be allocated to upstate customers.²³⁰

167. LIPA notes that it was involved in the STARS study that ultimately led to the formation of Applicants. LIPA asserts that it participated in discussions with New York Transmission Owners regarding the formation of NY Transco. LIPA notes that in order to participate in NY Transco, it would have needed approval from the New York State Legislature enabling it (along with NYPA) to create subsidiaries and participate in a limited liability corporation. LIPA asserts that it informed New York Transmission Owners that it would not participate in Applicants' filing unless Applicants committed to constructing projects that either benefitted, or had no negative effect on, LIPA's ratepayers. LIPA maintains that this is because "Long Island has only discrete and limited interconnections with the integrated transmission system in the remainder of New York State."²³¹ LIPA continues, "Nothing in the STARS Report or the Energy Blueprint suggests that any of the five projects proposed by Applicants would change the existing electrical topology or otherwise increase integration of the Long Island transmission grid with the rest of New York State."²³²

168. LIPA states that in spring 2014, it became apparent that the New York State Legislature would not adopt the necessary legislation enabling LIPA or NYPA to participate in Applicants' filing and that LIPA withdrew from Applicants' discussions in June 2014. Accordingly, LIPA maintains that although the proposed five projects in Applicants' filing are to be constructed by an entity called "Applicants'," neither the

²³⁰ Multiple Intervenors at 17-18 (citing NYPSC, Order Instituting Proceeding, Case 12-T-0502, at 1-2 (Nov. 30, 2012)); *see also* NYPSC, Order Establishing Procedures for Joint Review Under Article VII of the Public Service Law and Approve Rule Changes, Case 12-T-0502, at 1 n.2 (Apr. 22, 2013).

²³¹ LIPA Protest at 11 (citing NY Transco Application, Exhibit No. NYT-5 (STARS Phase II Report)).

²³² *Id.* at 12 (citing NY Transco Application, Exhibit No. NYT-2).

proposed projects nor the entity's membership are the same as that which had been under discussion to support a 16.7 percent cost allocation to LIPA. Therefore, LIPA concludes, Applicants cannot rely on the NYPSC's November 3, 2013 order regarding cost allocation for the TOTS Projects.

169. LIPA contends that the Commission can summarily dispose of the instant filing in one of two ways. First, LIPA alleges that the instant filing is inconsistent with both the NYISO tariff and the transmission planning and cost allocation requirements of Order No. 1000, and therefore any attempt at regional cost allocation is inappropriate. Specifically, LIPA maintains that none of the five proposed projects were selected in NYISO's transmission planning process "as the more efficient or cost-effective transmission project for purposes of cost allocation."²³³ They note that the TOTS Projects were included, but not selected, in NYISO's reliability planning process – a component of the overall transmission planning process – and that neither of the AC Projects has been included or selected in any NYISO transmission planning process.²³⁴ Therefore, LIPA asserts, the Commission should summarily dismiss those portions of the instant filing that would allocate any costs of the five proposed projects to load-serving entities that are not part of Applicants.

170. LIPA disputes Applicants' assertion that their cost allocation proposal is necessary to support the projects' construction. LIPA states that the NYPSC order cited by Applicants as regulatory support for the projects is misleading. LIPA states that the NYPSC's November 4, 2014 Order does not address whether any net benefits associated with the TOTS Projects are commensurate with the costs that Applicants propose to allocate to Long Island ratepayers.²³⁵

171. LIPA alleges that the NYPSC has made no decision regarding the AC Projects. LIPA argues that NYISO – not the NYPSC – must select transmission facilities in a regional transmission plan for purposes of regional cost allocation. Therefore, LIPA maintains that the AC Projects lack either state or federal regulatory support for regional cost allocation to Long Island.

172. Second, LIPA argues, the Commission should summarily dispose of Applicants' request for regional cost allocation for the AC Projects because they are speculative in nature. Specifically, LIPA urges the Commission to consider the TOTS and AC Projects

²³³ *Id.* at 15.

²³⁴ *Id.* at 15-16 (citing NY Transco Application, Transmittal at 34-35).

²³⁵ *Id.* at 20.

independently from one another, as they are designed to solve different congestion and reliability problems.²³⁶ LIPA argues that the TOTS Projects were approved by the NYPSC to prevent reliability violations that could occur in the event Indian Point Energy Center shut down. By contrast, LIPA asserts, the AC Projects are designed to address congestion issues “stemming from the UPNY/SENY and Central East interface.”²³⁷

173. LIPA also states that the NYPSC has not yet decided whether to designate UPNY/SENY congestion as a Public Policy Requirement under the NYISO OATT, nor has it issued a certificate of public need to any party to address such congestion. LIPA states that the NYPSC does not anticipate selecting a project (in the event it determines a need in the first place) to address this congestion until the end of 2015 at the earliest.²³⁸ Due to such uncertainty, LIPA argues, the Commission lacks any basis for evaluating whether the proposed cost allocation for the AC Projects is just and reasonable.

174. LIPA states that if the Commission declines to summarily dispose of the cost allocation proposal, it should suspend the proposal for five months and order an evidentiary hearing because the cost allocation proposal is not based on any demonstrated benefits to Long Island ratepayers. LIPA states that the Applicants propose to allocate 16.7 percent of the five projects’ costs to Long Island ratepayers. However, LIPA argues, “Long Island has very few transmission connections to the interconnected New York State Transmission grid.”²³⁹ LIPA asserts that any assertion that Applicants’ five proposed projects will benefit the export- and import-constrained Long Island require a more thorough analysis than anything provided to date in the instant filing.

175. LIPA argues that Applicants’ use of the same cost allocation formula as when LIPA was participating in NY Transco is invalid, as LIPA is no longer a sponsor of any of the five proposed projects. LIPA argues that when it was still participating in the formation of NY Transco, it hired a consulting firm to develop a cost allocation methodology “to measure the net costs ... of LIPA’s potential participation in the Transco.”²⁴⁰ The model developed by Lummus Consulting used a 20-year transmission planning horizon to calculate “the net present value revenue requirements to LIPA of

²³⁶ *Id.* at 22.

²³⁷ *Id.* at 23 (citing NY Transco Application, Transmittal at 25).

²³⁸ *Id.* at 24-25.

²³⁹ *Id.* at 27.

²⁴⁰ *Id.* at 30.

participation in the Transco under several different scenarios, including those in which NY Transco construction of transmission projects on Long Island were proposed.”²⁴¹

176. LIPA argues that the Lummus Model found that the proposed 16.7 percent cost allocation share would impose a net present value cost (i.e., costs exceeding benefits) to Long Island ratepayers of \$81 million for the TOTS Projects. The addition of the AC Projects would result in a total net present value cost of \$351 million to Long Island ratepayers.²⁴²

177. LIPA states that its consultant ran its model under a second scenario: the allocation percentage for Long Island that would be commensurate with expected benefits to Long Island. LIPA states that its consultant concluded the cost allocation to Long Island should be no greater than 6.6 percent of the TOTS Projects costs, “only if Indian Point remained in service. If Indian Point were removed from service, Long Island would see no benefit from the TOTS Projects, and should therefore not be allocated any costs.”²⁴³ LIPA asserts that the second scenario showed that an allocation of 2.8 percent of the combined costs of the TOTS and AC Projects would be roughly commensurate with the benefits of those projects. LIPA notes that it provided the only quantitative cost allocation evidence in the instant proceeding.

c. Answers

178. In their answer, Applicants state that none of the proposed alternative allocations have been shown to be superior to the one proposed by Applicants, and even if they had, the Commission must accept the Applicants proposal if it finds the proposal to be just and reasonable. Applicants answer that LIPA and the City of NY’s arguments that they should not pay is in stark contrast to the NYPSC’s position that 90 percent of the costs would be allocated downstate rather than the Applicants’ proposal of 75 percent cost allocation downstate.²⁴⁴

²⁴¹ *Id.* at 31 (citing Aff. of Yuri Fishman at P 5. On January 21, 2015, LIPA filed an errata, noting that “Mr. Fishman’s affidavit contained several inadvertent typographical errors,” which the errata corrected); *see also* LIPA Errata at 1.

²⁴² *Id.* (citing Aff. of Yuri Fishman at 10, 11).

²⁴³ *Id.*

²⁴⁴ Applicants Answer at 19.

179. Applicants further answer that the projects clearly fall under state public policies envisioned in the NYISO OATT planning for public policy requirements. Applicants rebut protesters' arguments that the only vehicle for regional cost allocation of the projects is Order No. 1000, noting that the TOTS Projects have been included in the NYISO base transmission plan and the AC Projects' costs won't be allocated until they are selected by the NYPSC and included by the NYISO in its plan. Applicants further argue that the Commission has statutory authority to allocate costs to any beneficiaries of facilities. Applicants argue that LIPA's position demonstrates that classic "free rider" problem that Order No. 1000 attempts to address.²⁴⁵

180. LIPA answers that Applicants' answer "does not address formally or even specifically any element of LIPA's Motion for Summary Disposition."²⁴⁶ LIPA maintains that the Commission should treat Applicants' answer as an admission that the preconditions for summary disposition have been met and that the Commission should summarily dispose of the requested cost allocation. LIPA alleges that Applicants' answer makes "material distortions" about three issues, which LIPA purports to correct.²⁴⁷

181. First, LIPA states that Applicants' answer asserts that "LIPA 'agrees' that the TOTS and AC Projects are necessary to ensure reliability or reduce transmission congestion."²⁴⁸ LIPA counters that it made no such admission and in fact has taken no position about the need for either the TOTS or AC Projects.

182. Second, LIPA states that Applicants' answer notes LIPA's endorsement of NYISO's 60/40 cost allocation method for public policy transmission projects, arguing that LIPA should be estopped from pointing out the physical limitations of Long Island's electrical grid and arguing about the over-allocation of costs. LIPA argues that in its comments on NYISO's Order No. 1000 compliance filing, it reserved its rights with respect to specific projects and their effect on Long Island. LIPA also argues that Applicants failed to demonstrate why a load-ratio allocation is commensurate with the benefits that will accrue to Long Island.

183. Third, LIPA alleges that Applicants' characterization of LIPA's cost-benefit approach ignores long-standing practice. LIPA argues that the weak transmission

²⁴⁵ *Id.* at 21-22 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323).

²⁴⁶ LIPA Answer at 2.

²⁴⁷ *Id.* at 3.

²⁴⁸ *Id.* at 3-4.

connections between Long Island and other downstate Zones have been acknowledged elsewhere, and was the topic of a Commission technical conference in 2014. LIPA asserts that none of the proposed projects would interconnect with the Long Island Transmission District and that fact is central to any inquiry the Commission institutes, if it does not grant summary disposition. LIPA argues that Applicants' answer "attempts to materially distort" Mr. Fishman's analysis, and should be ignored.²⁴⁹

184. In its answer, the NYPSC argues that Applicants mischaracterize their cost allocation proposal as endorsed by the NYPSC. The NYPSC reiterates its protest that the conceptual premise for cost allocation based on a suite of 18 projects is no longer in place and therefore, the NYPSC does not take a position on cost allocation at this time.²⁵⁰

d. Commission Determination

185. We note from the outset that LIPA and NYPA have not agreed to pay the percentage of costs allocated to their transmission districts under the proposed cost allocation method for the TOTS and AC Projects.²⁵¹ While LIPA and NYPA initially, and conditionally, agreed to join NY Transco and agreed to the cost allocation method, as noted above, they are unable to join NY Transco and do not join the other New York Transmission Owners in this filing. As a result, the cost allocation method at issue here cannot be considered a participant funding method, because not all of the transmission providers that would be allocated costs have voluntarily agreed to bear the costs. Given that the cost allocation method is not participant funding, we considered whether the TOTS and AC Projects would qualify under any existing rate schedule allowing regional cost allocation. We find that, outside of the Order No. 1000 transmission planning process, the NYISO OATT does not contain such a rate schedule.²⁵²

²⁴⁹ *Id.* at 7-8.

²⁵⁰ NYPSC Answer at 6-7.

²⁵¹ However, as discussed further below, under NYISO's Order No. 1000 regional transmission planning process, if NYISO evaluates and selects either the AC Projects or the TOTS Projects in the regional transmission plan for purposes of cost allocation, LIPA and NYPA could be allocated costs in accordance with the appropriate regional cost allocation method.

²⁵² Prior to Order No. 1000, NYISO's OATT included two types of regional transmission projects, reliability and economic, and provisions that allow individual transmission providers to recover the costs of local transmission projects from customers in their service territories. The TOTS and AC Projects do not meet the criteria for

(continued...)

186. To comply with Order No. 1000, NYISO adopted a regional transmission planning process to identify those transmission needs driven by public policy requirements for which potential transmission solutions will be evaluated. In order for a transmission project to be eligible to use the regional cost allocation method, NYISO must select the transmission project in the regional transmission plan for purposes of cost allocation. NYISO has not selected the AC or TOTS Projects in the regional transmission plan for purposes of cost allocation, and as such, neither the AC nor TOTS Projects are eligible to use the regional cost allocation method at this time.

187. We note, however, that NYSIO has begun using its Order No. 1000-compliant regional transmission planning process,²⁵³ and that the NYPSC is evaluating the AC Projects and considering whether the AC Projects should be evaluated under NYISO's Order No. 1000 public policy transmission planning process.²⁵⁴ Thus, it is possible that NYISO will select the AC Projects in the regional transmission plan for purposes of cost allocation such that the AC Projects are eligible to use the regional cost allocation method. The TOTS Projects, however, were evaluated by the NYPSC prior to the effective date of NYISO's Order No. 1000 transmission planning process.²⁵⁵ Accordingly, in order for the TOTS Projects to be selected in the regional transmission plan for purposes of cost allocation, NYISO must reevaluate, and ultimately select, the TOTS Projects.

188. Therefore, we reject the cost allocation method for the AC and TOTS Projects because it imposes costs on LIPA and NYPA that they did not voluntarily agree to pay

regional reliability or economic transmission projects, and the New York Transmission Owners did not propose the projects as local transmission projects.

²⁵³ *N.Y. Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059 (2013), *order on reh'g & compliance*, 148 FERC ¶ 61,044, at P 37 (2014).

²⁵⁴ NYPSC Comments at 23 (stating that “[t]he NYPSC plans to address later this year whether the IOUs or alternative projects should be evaluated under the NYISO’s public policy planning process). *See also id.* exhibit, NYPSC, Order Establishing Modified Procedures for Comparative Evaluation, Case 12-T-0502, at 40 (NYPSC deciding to coordinate its comparative evaluation phase of the AC Projects with NYISO’s public policy planning process).

²⁵⁵ The requirements of Order No. 1000 apply to the evaluation or reevaluation of any transmission facility that occurs after the effective date of the public utility transmission provider’s filing adopting the Order No. 1000 transmission planning and cost allocation reforms. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 65.

and there is no provision in the NYISO OATT that would permit a subset of New York Transmission Owners or a nonincumbent Transco with no existing customers to require LIPA and NYPA to pay the costs of the TOTS and AC Projects.

189. However, Applicants may choose to submit to FERC a revised cost allocation method that would allocate the costs of the TOTS Projects only to those entities that agree to pay – either by renegotiating the cost allocation with LIPA and NYPA or by allocating the costs solely among those transmission developers participating in the NY Transco. Applicants also may request that NYISO evaluate the AC Projects or reevaluate the TOTS Projects as part of its regional transmission planning process, and, if selected in the regional transmission plan for purposes of cost allocation, the AC and TOTS Projects would be eligible for the Order No. 1000 regional cost allocation method.

190. We note that, given our rejection of Applicants' proposed cost allocation, it is unclear which customers should be allocated costs. Therefore, Applicants will be required to make a showing in a future section 205 filing proposing a just and reasonable cost allocation method before NY Transco may recover these costs from transmission customers. We remind applicants that approval of recovery of incentives and the formula rates would not go into effect until there is a Commission-approved cost allocation method in place. Applicants must have a Commission-accepted cost allocation method in effect in order to recover the costs in a just and reasonable manner.²⁵⁶

4. Waivers

191. Applicants request any necessary waivers of section 35.13 of the Commission's regulations, including waivers of the requirements to submit work papers and cost-of-service statements in sections 35.13(a)(2)(iv), 35.13(d)(1), (2), and 35.13(h) of the Commission's regulations.

192. We deny Applicants' request for waiver of the filing requirements set forth in section 35.13 of the Commission's regulations.²⁵⁷ Prior Commission orders have granted waiver of cost support in formula rate cases because the formula rates used FERC Form No. 1 data and, therefore, additional data were not needed to evaluate those proposals.²⁵⁸

²⁵⁶ *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009).

²⁵⁷ 18 C.F.R. § 35.13 (2014).

²⁵⁸ *Allegheny Power System Operating Companies*, 111 FERC ¶ 61,308, at P 56 (2005), *order on reh'g*, 115 FERC ¶ 61,156 (2006); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009).

However, unlike those cases, NY Transco's formula rates will be updated using a substantial amount of costs that are not contained in its FERC Form No. 1 or publicly-available documents, much of which will be based on services provided by affiliated transmission owners. Therefore, NY Transco's formula rates do not qualify for waiver of the filing requirements set forth in section 35.13 of the Commission's regulations as it applies to amounts not supported by FERC Form No. 1 data. We expect Applicants to submit the information, along with all supporting work papers and testimony required by section 35.13 of our regulations, as part of the case in chief in the hearing proceedings ordered herein.

193. Several of the components in NY Transco's formula rates are based on company records only, and therefore do not illustrate how its rates were derived from FERC Accounts or the formulas used. Commission policy requires that a formula rate clearly state the formula used to achieve the rate. The formula rates should contain calculations, work papers, and the detail necessary to explain how the numbers were derived from FERC Accounts.²⁵⁹ Where a utility includes line item numbers but does not record the formula used in calculating the rate, or where the utility does not show how the rate is derived from the FERC Accounts, or where the accounting transparency in the formula rate is lacking due to projections of data or other factors, a company has the potential to exercise discretion in calculating the rate.²⁶⁰ To ensure that the detail and specificity of NY Transco's rates are sufficient, we direct Applicants to submit as part of the case in chief in the hearing proceedings ordered herein, the company records upon which the proposed formula rates components, and to file tariff sheet modifications as well as calculations, work papers, and the detail necessary to explain how the numbers were derived from FERC Accounts.

²⁵⁹ See *Midwest Independent Transmission System Operator, Inc.*, 101 FERC ¶ 61,221 (2002), *reh'g denied*, 103 FERC ¶ 61,035 (2003); *American Electric Power Service Corporation*, 120 FERC ¶ 61,205 (2007); *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007) (Deficiency letter issued, formula rates later set for hearing); *Trans Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, at P 59 (2007); *Potomac-Appalachian Transmission Highline, LLC*, 122 FERC ¶ 61,188 (2008); *Bost. Edison Co.*, 111 FERC ¶ 61,266 (2005); *Midwest Independent System Operator, Inc.*, 108 FERC ¶ 61,235, at 68 (2004). See also, *ISO New England, Inc.*, 100 FERC ¶ 61,140 (2002).

²⁶⁰ See *Maine Yankee Atomic Power Co.*, 43 FERC ¶ 61,453, at 61,923 (1988) (requiring specificity in the calculation of formula rate, as it appears in the form of a rate schedule).

The Commission orders:

- (A) Applicants' proposed formula rates are hereby accepted for filing, suspended, and set for hearing, subject to refund.
- (B) Applicants request for CWIP, abandonment, and pre-commercial cost recovery incentives, and its request for a 50 basis points ROE adder for membership in an RTO are hereby granted.
- (C) Applicants' request for a hypothetical capital structure incentive is hereby denied.
- (D) Applicants' request for an ROE adder for risks and challenges is hereby granted for the Edic-to-Pleasant Valley 345 kV Line and denied for the Oakdale-to-Fraser 345 kV Line and the TOTS Projects.
- (E) Applicants are hereby ordered to make a compliance filing containing revisions to Section 3(e)(ix) and Section 4(b) of the protocols for the formula rate within 30 days of the date of issuance of this order, revising interested parties' rights with respect to requests for information on intercompany allocations and listing project specific data.
- (F) Applicants are hereby ordered to file a compliance filing within 30 days of the date of this order removing the cost allocation for all five projects from the proposed tariff, as rejected herein.
- (G) Applicants request for an ROE adder for being a Transco is hereby denied.
- (H) Applicants are expected to submit, as part of the case in chief, that includes the required cost support under section 35.13 of the Commission's regulations, and the required accounting support for its proposal under section 35.25 of the Commission's regulations for CWIP and ADIT.
- (I) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning Applicants' revisions to the NYISO OATT. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (K) and (L) below.

(J) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(K) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(L) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission. Chairman LaFleur and Commissioner Moeller are dissenting in part with a joint separate statement to be issued at later a date.

(S E A L)

Kimberly D. Bose,
Secretary.