

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Verified Petition Of New York Transco LLC For An Expedited
Order Granting It A Certificate Of Public Convenience And
Necessity Pursuant To Section 68 Of The Public Service Law
And Confirmation Of Its Lightened Regulatory Status

Case 20-E-_____

**VERIFIED PETITION OF NEW YORK TRANSCO LLC FOR AN EXPEDITED
ORDER GRANTING IT A CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY PURSUANT TO SECTION 68 OF THE PUBLIC SERVICE LAW AND
CONFIRMATION OF ITS LIGHTENED REGULATORY STATUS**

John T. McManus
Aubrey A. Ohanian

HARRIS BEACH PLLC
Attorneys for New York Transco LLC
677 Broadway, Suite 1101
Albany, New York 12207
(518) 427-9700
jmcmanus@harrisbeach.com
aohanian@harrisbeach.com

Dated: November 2, 2020

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Verified Petition Of New York Transco LLC For An Expedited Order Granting It A Certificate Of Public Convenience And Necessity Pursuant To Section 68 Of The Public Service Law And Confirmation Of Its Lightened Regulatory Status

Case 20-E-_____

VERIFIED PETITION OF NEW YORK TRANSCO LLC FOR AN EXPEDITED ORDER GRANTING IT A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO SECTION 68 OF THE PUBLIC SERVICE LAW AND CONFIRMATION OF ITS LIGHTENED REGULATORY STATUS

Pursuant to Public Service Law (“PSL”) § 68, 16 NYCRR Parts 17 and 21, and the New York State Public Service Commission’s (the “Commission”) prior direction,¹ New York Transco LLC (“Transco”) respectfully submits this verified petition (the “Verified Petition”) for an expedited order granting it a Certificate of Public Convenience and Necessity (“CPCN”) to: (1) construct and operate the New York Energy Solution project (the “NYES Project”), and (2) exercise rights and privileges granted under certain municipal Road Use Agreements (together, the “RUAs”).² In addition, Transco respectfully requests confirmation that the lightened regulatory regime the Commission previously established for Transco³ extends to the NYES Project. As outlined below, the NYES Project is convenient and necessary for the public service and, therefore, the Commission should grant the requested CPCN, authorize Transco to exercise its rights under the RUAs, and confirm that Transco’s lightened regulation extends to the NYES Project.

¹ Case 15-E-0743, *Petition of New York Transco LLC for an Order Providing for Lightened Regulation*, Order Granting Certificate of Public Convenience and Necessity (Issued May 6, 2016) (the “CPCN Order”).

² In order to allow Transco to begin to construct and operate the NYES Project without delay, Transco respectfully requests that the Commission issue an order deciding this Verified Petition at the same session, or a session before, it decides Transco’s pending PSL Article VII application (*see infra*).

³ Case 15-E-0743, *supra*, Order Providing for Lightened Rate Making Regulation and Approving Financing (Issued April 21, 2016) (the “Lightened Regulatory Regime Order”)

I. BACKGROUND

a. *Transco*

Formed in 2014, Transco is a New York limited liability company⁴ comprised of affiliates of New York State’s investor-owned utilities.⁵ Transco’s purpose is to plan, develop, and own new high-voltage electric transmission facilities that will enhance the current capabilities of the bulk power system across New York State and to help the State meet its carbon emission requirements.

Transco acquired the Commission-approved Transmission Owners Transmission Solutions (“TOTS”) projects from New York State Electric & Gas Corporation (“NYSEG”); Orange and Rockland Utilities, Inc.; and Consolidated Edison Company of New York, Inc. (“Con Edison”).⁶ On the same day that the Commission approved the transfer of the TOTS facilities to Transco—whose rates are regulated by a Federal Energy Regulatory Commission (“FERC”)-approved tariff—the Commission created a lightened-regulatory regime that Transco would be subject to with respect to its ownership of the TOTS facilities.⁷ In turn, the Commission issued an order granting Transco a CPCN, subject to conditions, related to the TOTS assets.⁸

⁴ In satisfaction of 16 NYCRR § 17.2, attached as Exhibit 1 is Transco’s Articles of Organization. In addition, attached as Exhibit 2 is the relevant portion of Transco’s current operating agreement, which document governs the management of its internal affairs, which states that Transco was established “for the purpose of planning, constructing, owning, operating, maintaining and expanding transmission facilities”

⁵ Transco’s members are Consolidated Edison Transmission, LLC; Grid NY LLC; Avangrid Networks New York Transco, LLC; and Central Hudson Electric Transmission, LLC.

⁶ Case 16-E-0012 et al., *Joint Petition of New York State Electric & Gas Corporation and New York Transco LLC for Approval of a Transfer or Lease of Assets*, Order Authorizing Transfers Subject to Conditions and Modifications (Issued April 21, 2016); Case 16-E-0013 et al., *Joint Petition of Orange and Rockland Utilities, Inc., Consolidated Edison Company of New York, Inc., and New York Transco LLC for Approval of a Transfer or Lease of Assets*, Order Authorizing Transfers Subject to Conditions and Modifications (Issued April 21, 2016).

⁷ See Case 15-E-0743, *supra*, Lightened Regulatory Regime Order, at 2 (stating that “this Order establishes a lightened regulatory regime, subject to conditions, applicable to NY Transco.”).

⁸ See Case 15-E-0743, *supra*, CPCN Order, at 1-2.

As part of the Lightened Regulatory Regime Order, the Commission imposed the requirements of PSL § 68 on Transco.⁹ In turn, in the CPCN Order, the Commission “required [Transco] to demonstrate compliance with PSL §68(1) and to obtain a CPCN in relation to the construction or operation of any additional electric plant.”¹⁰ Since the NYES Project constitutes “additional electric plant” not contemplated by the CPCN Order, Transco respectfully files this Verified Petition to obtain a CPCN to construct and operate the NYES Project. In addition, Transco respectfully requests that the Commission extend its lightened regulatory regime to Transco’s construction and operation of the NYES Project.

b. *The NYES Project*

i. Summary Of The Declaration Of Need For And Selection Of The NYES Project

In November 2012, following the release of Governor Andrew M. Cuomo’s 2012 *Energy Highway Blueprint*, which called for, among other things, the development of over 1,000 MW of new AC transmission upgrades to move power from upstate to downstate, the Commission initiated the *Examine Alternating Current Transmission Upgrades* proceeding.¹¹ In this proceeding, the Commission identified the AC transmission corridor traversing the Mohawk Valley Region, the Lower Hudson Valley region, and the Capitol Region as a source of persistent congestion. These regions include facilities connected to Marcy, New Scotland, Leeds, and the Pleasant Valley substations, along with two major electrical interfaces, referred to as “Central East” and “UPNY/SENY.” Ultimately, the Commission identified the need to relieve congestion and replace aging infrastructure along the Central East and UPNY/SENY interfaces. In a series of

⁹ Case 15-E-0743, *supra*, Lightened Regulatory Regime Order, at 2 (“Consistent with prior Commission orders, NY Transco will be subject to PSL § 68, and therefore requires a CPCN.”).

¹⁰ Case 15-E-0743, *supra*, CPCN Order, at 7 (emphasis added).

¹¹ See Case 12-T-0502, *Proceeding on Motion of the Commission to Examine Alternating Current Transmission Upgrades*, Order Instituting Proceeding (Issued Nov. 30, 2012).

orders over the next several years, the Commission sought and evaluated, with the New York Independent System Operator, Inc.'s (the "NYISO") assistance, proposals from transmission owners and developers to increase electric transmission transfer capability across these interfaces.

While this evaluation was taking place at the Commission, the NYISO commenced its first Public Policy Transmission Planning Process ("PPTPP") pursuant to Attachment Y of the NYISO's Open Access Transmission Tariff (the "OATT")¹² and solicited potential Statewide transmission needs from interested developers.¹³ After considering those needs, the Commission declared the AC Transmission Public Policy Transmission Need related to the transmission need "driven by Public Policy Requirements for new 345 kV major electric transmission facilities to cross the Central East and UPNY/SENY interfaces to provide additional transmission capacity to move power from upstate to downstate" (the "AC Transmission PPTN").¹⁴ Subsequently, on February 29, 2016, the NYISO issued a solicitation for solutions to the AC Transmission PPTN, which was divided into two segments—Segment A (*i.e.*, Central East interface) and Segment B (*i.e.*, UPNY/SENY interface).¹⁵ In response to the NYISO's solicitation, Transco and Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") proposed two separate projects to satisfy Segments A and B of the AC Transmission PPTN.

¹² The Public Policy Transmission Planning Process was included in the OATT to comply with the FERC's Order No. 1000 (*see Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 FR 49,842 [Aug. 11, 2011]). Capitalized terms used in this section that are not defined have the meaning given to them in the OATT.

¹³ *See* New York Independent System Operator, Inc., Letter to NYISO Stakeholder or Interest Party Initiating Public Policy Transmission Planning Process (Dated Aug. 1, 2014), available at https://www.nyiso.com/documents/20142/1406936/Public%20Policy%20Needs%20Solicitation%20Letter_2014-08-01.pdf/5d6295b2-9184-570f-62a9-93b01c186cdb (last accessed Oct. 7, 2020).

¹⁴ Case 12-T-0502, *supra*, Order Finding Transmission Needs Driven by Public Policy Requirements (Issued Dec. 17, 2015), at 2, 68 (the "AC Transmission PPTN Order").

¹⁵ *See* New York Independent System Operator, Inc., AC Transmission Public Policy Transmission Needs Project Solicitation (Dated Feb. 29, 2016), available at https://www.nyiso.com/documents/20142/1390750/AC_Transmission_PPTN_Solution_Solicitation_2016-02-29.pdf/d7c645d2-74ee-b173-cff2-15453e21be0f (last accessed Oct. 7, 2020).

While the NYISO reviewed and evaluated these proposals, among others, the Commission re-affirmed the AC Transmission PPTN, stating: “The Commission agrees that persistent congestion on the Central East and UPNY/SENY interfaces continues to contribute to higher energy costs for downstate customers and to limit the accessibility of renewable resources located upstate.”¹⁶ The Commission then directed the NYISO to fully evaluate new 345 kV upgrades.¹⁷

After nearly three years of comprehensive and extensive comparative evaluations, on April 8, 2019, the NYISO Board of Directors announced its selection of Transco’s and National Grid’s proposal, which Transco subsequently acquired in full and named the NYES Project, to satisfy Segment B of the AC Transmission PPTN.¹⁸ As part of this selection, the NYISO reiterated its requirement that the NYES Project be operational by the end of 2023.¹⁹

ii. NYES Project Description

The NYES Project currently consists of the following primary components:

- 1) Installation of a new, 54.5-mile 345 kV electric transmission line that will be co-located with 115 kV electric transmission lines that will replace the existing 115 kV transmission lines between the new 345 kV Knickerbocker Switching Station to-be

¹⁶ Case 12-T-0502, *supra*, Order Addressing Public Policy Transmission Need for AC Transmission Upgrades (Issued Jan. 24, 2017), at 18.

¹⁷ *Id.* at 19 (“The additional transmission capacity to move power from upstate to downstate New York should provide various economic and public policy benefits.”).

¹⁸ New York Independent System Operator, Inc., *NYISO Board of Directors’ Decision on Approval of AC Transmission Public Policy Transmission Planning Report and Selection of Public Policy Transmission Projects*, Executive Summary (Dated April 8, 2019), available at <https://www.nyiso.com/documents/20142/1390750/Board-Decision-AC-Transmission-2019-04-08.pdf/32323d32-f534-a790-1b03-2cb110033320> (last accessed Oct. 7, 2020). The NYISO Board also announced its selection of one of the proposed solutions jointly submitted by the New York Power Authority (“NYPA”) and North American Transmission (now LS Power Grid New York, LLC and LS Power Grid New York Corporation I, together “LS Power”) to satisfy Segment A of the AC Transmission PPTN (*id.* at 6). NYPA and LS Power filed a joint Article VII application to construct, operate, and maintain the Segment A project on August 20, 2019 (*see generally* Case 19-T-0549, *Application of LS Power Grid New York, LLC, LS Power Grid New York Corporation I, and the New York Power Authority for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for Edic/Marcy to New Scotland; Princetown to Rotterdam Project* [Filed Aug. 20, 2019]).

¹⁹ *Id.* at 2.

owned by Transco and located in the Town of Schodack, Rensselaer County, the rebuilt Churchtown Switching Station to-be owned by Transco and located in the Town of Claverack, Columbia County, and the existing 345 kV and 115 kV Pleasant Valley Substations owned by Consolidated Edison Company of New York, Inc. (“Con Edison”) and Central Hudson Gas & Electric (“Central Hudson”), respectively, and located in the Town of Pleasant Valley, Dutchess County.

- 2) Replacement of 2.2-miles of 115 kV electric transmission line in an existing National Grid right-of-way that extends from the 115 kV Blue Stores Substation to a tap with the existing National Grid #8 115 kV Lafarge to Pleasant Valley line.
- 3) The reconductoring of 2 345 kV electric transmission lines on existing structures between the existing 345kV Pleasant Valley Substation and the new 345 kV Van Wagner Capacitor Bank Station to-be owned by Transco and located in the Town of Pleasant Valley, Dutchess County.²⁰

The NYES Project will be located in the following municipalities: the Town of Schodack in Rensselaer County; the Towns of Stuyvesant, Stockport, Ghent, Claverack, Livingston, Gallatin, and Clermont in Columbia County; and the Towns of Milan, Clinton, and Pleasant Valley in Dutchess County. As the Commission required, the NYES Project will be constructed within existing utility rights-of-way (“ROW”) or on utility-owned or controlled land.²¹ More specifically, the majority of the real property underlying the NYES Project is controlled by National Grid, and

²⁰ Please reference Exhibit 2 to Transco’s Article VII Application for a more complete description of the NYES Project’s facilities.

²¹ See Case 12-T-0502, *supra*, Order Finding Transmission Needs Driven by Public Policy Requirements (Issued Dec. 17, 2015), Appendix B, at 1 (directing the NYISO to select proposed transmission solutions that do not require the acquisition of new permanent transmission ROW, with exception for the transfer or lease of existing transmission ROW property or access rights from a current utility company owner to a developer of the transmission solution).

the remainder is controlled by Con Edison or NYSEG. As a result, before Transco can construct and operate the NYES Project, those three transmission owners must secure the Commission’s permission to transfer—in full or in part—their respective real property interests to Transco.²²

On October 18, 2019, Transco filed an application with the Commission for a Certificate of Environmental Compatibility and Public Need (“CECPN”) pursuant to PSL Article VII to construct, operate, and maintain the NYES Project.²³ More recently, on September 9, 2020, Transco filed a negotiated Joint Proposal, which has been executed by several parties, including the Department of Public Service staff, to resolve the Article VII proceeding.²⁴

c. *The RUAs*

Pursuant to PSL § 66 (1), the Commission shall “[h]ave general supervision of all . . . electric corporations having authority under any general or special law or under any charter or franchise to lay down, erect or maintain wires, pipes, conduits, ducts or other fixtures in, over or under the streets, highways and public places of any municipality for the purpose . . . furnishing

²² See Case 19-T-0684, *supra*, Exhibit 8, Other Pending Filings (Filed Oct. 18, 2019), at 8-5 (noting the anticipated filing of a PSL § 70 petition[s] with the Commission because of the NYES Project’s utilization of existing utility ROW and adjacent utility-owned or controlled land to minimize impacts on existing residences, community facilities, and ecologically-sensitive areas); see also Case 12-T-0205, *supra*, Order Finding Transmission Needs Driven by Public Policy Requirements (Issued Dec. 17, 2015), at 60 (“[T]he Commission expects the utility company owner to bargain in good faith to reach an agreement with the developer of the transmission solution as to property access and compensation as it would for other linear project developers that seek to co-locate on utility property.”).

²³ See Case 19-T-0684, *Application of New York Transco LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the New York Public Service Law to Construct, Operate, and Maintain a New, Double-Circuit 54.5-Mile 345/115 Kilovolt Electric Transmission Line and Related Facilities Located in the Town of Schodack, Rensselaer County; the Towns of Stuyvesant, Stockport, Ghent, Claverack, Livingston, Gallatin, and Clermont in Columbia County; and the Towns of Milan, Clinton, and Pleasant Valley in Dutchess County* (Filed Oct. 18, 2019) (the “Application”). The filing of the Application followed the Commission’s approval, pursuant to PSL § 69, for Transco to secure financing in amount up to \$400 million towards the development and construction of the NYES Project (see Case 19-E-0352, *Petition of New York Transco LLC for an Order Approving Financing*, Order Approving Financing and Making Findings [Issued Sep. 19, 2019]). This approval allowed Transco to finance the development and construction of the NYES Project consistent with the capitalization requirements of Transco’s FERC-approved settlement agreement (see FERC Docket No. ER15-572-006, *New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): NY Transco Rate Schedule submitted on 12/4/2014*, Offer of Settlement [Filed Aug. 21, 2017]; see FERC Docket No. ER15-572-006, *supra*, Letter Order Approving Applicants’ 8/21/17 Filing of an Offer of Settlement [Issued Nov. 16, 2017]).

²⁴ See Case 19-T-0684, *supra*, Joint Proposal (Filed Sept. 9, 2020).

or transmitting electricity for light, heat or power, or maintaining underground conduits or ducts for electrical conductors, and . . . electric plants owned, leased or operated by any . . . electric corporation.”²⁵

As outlined above, the NYES Project traverses 11 municipalities as defined by PSL § 2 (16) (*i.e.*, towns). The NYES Project crosses at least one municipal roadway in each traversed municipality. As a result, Transco is in the process of securing RUAs from each impacted municipality to obtain the permissions necessary to cross the relevant municipal roadways. To date, Transco has secured RUAs from the Towns of Stockport, Claverack, Stuyvesant, Schodack, Gallatin, and Pleasant Valley and is in the process of securing the remaining five RUAs, which it expects to have in the coming weeks. Certified copies of the RUAs entered into with the Towns of Stockport, Claverack, Stuyvesant, Schodack, Gallatin, and Pleasant Valley are attached hereto as Exhibit 3. Certified copies of the remaining RUAs will be filed with the Commission when they are available. It is anticipated that they will take a similar form to the RUAs attached to this Verified Petition.

II. COMMUNICATIONS

The following persons should be included on the official service list in this proceeding, and all communications concerning this filing should be addressed to them:

Kathleen Carrigan*
General Counsel
New York Transco LLC
One Hudson City Centre, Suite 300
Hudson, New York 12534
(518) 444-4631
Kathleen.Carrigan@NYTransco.com

John T. McManus*
Aubrey A. Ohanian
Harris Beach PLLC
677 Broadway, Suite 1101
Albany, New York 12207
(518) 427-9700
jmcmamus@harrisbeach.com
aohanian@harrisbeach.com

*Designated service agent.

²⁵ PSL § 66 (1).

III. THE COMMISSION SHOULD GRANT TRANSCO'S REQUESTED CPCN BECAUSE THE NYES PROJECT IS CONVENIENT AND NECESSARY

a. Legal Standard

PSL § 68 (1) prohibits electric corporations such as Transco from constructing any electric plant and from exercising any rights or privileges under any franchise without the Commission's prior approval. The Commission has ruled in a number of cases that its issuance of a CECPN pursuant to PSL Article VII satisfies the first of these requirements, but that projects receiving a CECPN under PSL Article VII must still obtain Commission approval under PSL § 68 before their owners may exercise any of the rights and privileges granted under any municipal consent or franchise agreement. For example, the Commission has previously held:

[O]ur issuance of a PSL Article VII Certificate supplants the requirement for construction approval under PSL §68, but not the requirements for our approval of its corporate formation and the exercise of any municipal right, privilege or franchise.²⁶

Despite the fact that the Commission's decision in Transco's Article VII Application will satisfy the first PSL § 68 requirement, Transco seeks a CPCN to construct and operate the NYES Project consistent with the Commission's directive contained in the CPCN Order to do so. In addition, Transco needs to secure the Commission's permission under PSL § 68 to exercise its rights under the RUAs (*i.e.*, franchise agreements).

As the Commission explained in the CPCN Order, it is

authorized to grant a CPCN to an electric corporation pursuant to PSL §68(1), whenever it shall, after due hearing, determine that the construction or right, privilege or franchise sought to be approved is convenient and necessary for the public service, upon consideration of the economic feasibility of the corporation, the corporation's ability to finance improvements of ... electric plant, render safe,

²⁶ Case 10-E-0339, *Petition of Hudson Transmission Partners, LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation*, Order Providing For Lightened Rate Making Regulation, slip op. at 6 (Issued April 14, 2011).

adequate and reliable service, and provide just and reasonable rates, and whether issuance of a certificate is in the public interest.²⁷

In addition, a “petitioner must certify that it is authorized to provide electric service and verify that it has obtained the required consents from the proper municipal authorities.”²⁸

In applying these and other requirements of PSL Article 4 to projects developed under lightened regulation, however, the Commission has recognized that “[a]uthority over these matters has been exercised flexibly, at our discretion, with the extent of scrutiny afforded a particular transaction reduced to the level the public interest requires.”²⁹

For the reasons set forth below, Transco’s request for a CPCN satisfies all of the applicable portions of PSL § 68 (1) and the Commission’s regulations. As required by 16 NYCRR § 17.3, Transco sets forth in detail its compliance with applicable statutory (*i.e.*, PSL § 68 [1]) and regulatory (*i.e.*, 16 NYCRR Parts 17 and 21) requirements below.

b. *General Matters (16 NYCRR Part 17)*

As required by 16 NYCRR § 17.1, a verification page, executed by the President of Transco, is included below. Additionally, as referenced above, Transco’s formation documents are attached as Exhibits 1 and 2 in satisfaction of 16 NYCRR § 17.2.

c. *Requirements For All Petitions (16 NYCRR § 21.2)*

In conformance with 16 NYCRR § 21.2 (a), Transco states that the following investor-owned utilities (“IOUs”) operate and maintain electric transmission facilities within the territory—or rights-of-way (“ROW”)—in which the NYES Project will be located: National Grid, NYSEG, Con Edison, and Central Hudson. Neither Transco nor the NYES Project will provide retail

²⁷ Case 15-E-0743, *supra*, CPCN Order, at 5.

²⁸ *Id.*

²⁹ Case 98-E-1670, *Carr Street Generating Station, L.P. – Petition for an Original Certificate of Public Convenience and Necessity and For a Declaratory Ruling On Regulatory Regime*, Order Providing For Lightened Regulation (Issued April 23, 1999) (the “Carr Street Order”), at 7.

transmission or retail electric service as the IOUs do within the NYES Project's territory. Instead, electricity transmitted by the NYES Project will flow exclusively to wholesale markets throughout New York State and neighboring control areas as the NYES Project serves as an important element of the New York State Transmission System operated by the NYISO under the provisions of its FERC-approved OATT. Accordingly, the NYES Project cannot be used to bypass any such services provided by the IOUs to any of its existing or future wholesale customers or to any retail customers of the IOUs.

In accordance with 16 NYCRR § 21.2 (b), certified copies of the RUAs that have been executed to date with the Towns of Stockport, Claverack, Stuyvesant, Schodack, Gallatin, and Pleasant Valley are attached as Exhibit 3. Transco will file the remaining RUAs in this docket upon execution.

Transco has not previously received any authority from the Commission to exercise powers under any prior franchise or municipal consent within the meaning of 16 NYCRR § 21.2 (c). However, as discussed above, the Commission has previously issued Transco a CPCN for the construction and operation of the TOTS facilities.³⁰ The verification of Transco's President and Secretary required by 16 NYCRR §§ 17.1 and 21.2 (b) and PSL § 68.1 are provided below.

In conformance with 16 NYCRR § 21.2 (d), Transco states that it has not yet received any permit, license, or authority from any federal authority relative to the Project. However, by order dated November 16, 2017, FERC approved a settlement related to Transco's recovery of its prudently incurred costs and request for certain incentive rate treatments for its investment in the NYES Project.³¹ In addition, Transco described the federal agencies involved with the NYES

³⁰ See Case 15-E-0743, *supra*, CPCN Order.

³¹ Letter Order Approving Applicants' 8/21/17 Filing of an Offer of Settlement; Docket No. ER15-572-000, et al., (Filed Nov. 16, 2017); *see also*, *New York Independent System Operator, Inc., et al.*, 151 FERC ¶ 61,004 (April 2, 2015) (*Order on Transmission Rate, Return on Equity, Cost Allocation, and Transmission Incentives*).

Project in Exhibit 8 to the PSL Article VII Application filed in Case 19-T-0684. If any federal permits, licenses, or authorizations for the Project are received while the Verified Petition is pending, Transco will supplement it as required by 16 NYCRR § 21.2 (d).³²

d. *Additional Information Required To Be Presented*

i. The Territory Within Which Transco Proposes To Exercise Authority (16 NYCRR § 21.3 [a])

16 NYCRR § 21.3 (a) requires Transco to describe and give the population of the territory within which it proposes to exercise the requested CPCN and the dates when construction will begin and service will be provided. As discussed above, the NYES Project will be located in an existing overhead electric transmission corridor and/or on adjacent land already owned or controlled by certain IOUs in the Town of Schodack in Rensselaer County; the Towns of Stuyvesant, Stockport, Ghent, Claverack, Livingston, Gallatin, and Clermont in Columbia County; and the Towns of Milan, Clinton, and Pleasant Valley in Dutchess County. The population of the traversed municipalities are provided in Table 6-1 of Exhibit 6 to the Application filed in Case 19-T-0684.³³ Construction of the NYES Project is expected to commence no later than February 2020 and conclude by December 2023. The NYES Project will be energized in full and provide service no later than December 31, 2023, consistent with the terms of the Development Agreement Transco entered into with the NYISO.³⁴ Following energization, the NYES Project will serve as a key element of the New York State Transmission System that the NYISO operates.

ii. The Plant And System To Be Constructed (16 NYCRR § 21.3 [b])

³² 16 NYCRR § 21.2 (e) is not relevant to this Verified Petition.

³³ See Case 19-T-0684, *supra*, Exhibit 6 (Filed Oct. 18, 2019).

³⁴ See FERC Docket No. ER20-865-000, *New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 205 re: Development Agreement among the NYISO, NMPC & NY Transco submitted on 1/23/2020*, Letter order accepting New York Independent System Operator, Inc.'s 01/23/2020 filing of an executed nonconforming development agreement among Niagara Mohawk Power Corporation etc. under ER20-865 (Issued March 10, 2020).

16 NYCRR § 21.3 (b) requires Transco to describe the Project and provide the estimated cost thereof. The NYES Project is described above³⁵ and in detail in both the Application and Appendix A of the Joint Proposal filed in Case 19-T-0684. In addition, the estimated cost of the NYES Project is included in Revised Exhibit 9 to the Application filed in Case 19-T-0684.

iii. Manner Of Financing (16 NYCRR § 22.3 [c])

16 NYCRR § 22.3 (c) requires Transco to describe the manner in which the cost of the NYES Project is to be financed. On September 19, 2019, the Commission issued an order pursuant to PSL § 69 authorizing Transco to secure financing in an amount up to \$400 million toward the NYES Project's development and construction.³⁶ This approval allowed Transco to finance the NYES Project's development and construction consistent with the capitalization requirements of Transco's FERC-approved settlement agreement.³⁷

iv. Rates And Estimated Revenues And Expenses (16 NYCRR §§ 21.3 [d] and [e])

PSL § 68 (1) mandates that the Commission consider, and Transco provide, evidence of its ability to provide just and reasonable rates, and 16 NYCRR § 21.3 (d) requires the specification of the rates to be charged for the classes of service to be rendered, while 16 NYCRR § 21.3 (e) requires Transco to provide information concerning the NYES Project's revenues and expenses. Transco respectfully submits that these requirements are inapplicable here given that the rates for service provided by the NYES Project have been established by FERC under the Federal Power Act. FERC's rate setting process ensures that rates applicable to the transmission of electric energy

³⁵ Point I (b) (i), *supra*.

³⁶ Case 19-E-0352, *Petition of New York Transco LLC for an Order Approving Financing*, Order Approving Financing and Making Findings (Issued Sep. 19, 2019).

³⁷ See FERC Docket No. ER15-572-006, *supra*, Offer of Settlement (Filed Aug. 21, 2017); see also FERC Docket No. ER15-572-006, *supra*, Letter Order Approving Applicants' 8/21/17 Filing of an Offer of Settlement (Filed Nov. 16, 2017).

in interstate commerce are just and reasonable.³⁸ In accordance with the requirements of Attachment Y of the NYISO OATT, Transco proposed and FERC approved rates for recovery of Transco's prudently incurred costs for the development of the NYES in FERC Docket No. ER15-572-000, et al.³⁹ Further, the Project has been selected by the NYISO in a competitive solicitation process to address the Commission-approved AC Transmission PPTN. Accordingly, there is no need in this proceeding for the Commission to determine either the NYES Project's rates to be charged or the estimated revenues and expenses.

v. Public Interest Considerations (16 NYCRR §§ 21.3 [f] and [g])

16 NYCRR § 21.3 (f) requires Transco to demonstrate the facts that entitle it to exercise the CPCN petitioned for, including evidence of the economic feasibility of the enterprise and proof: (i) of its ability to finance the NYES Project, (ii) that it can render adequate service, and (iii) that the NYES Project is in the public interest. Building upon the third proviso of Section 21.3 (f), 16 NYCRR § 21.3 (g) requires Transco to establish the public need for the NYES Project since similar services (*i.e.*, electric transmission facilities) are already located along the NYES Project's ROW. Each of these issues is addressed below.

1. Economic Feasibility

The NYES Project's economic feasibility is established by the following facts: (1) the NYES Project addresses Segment B of the Commission-identified AC Transmission PPTN; and (2) the NYISO Board of Directors selected the NYES Project from among six competing projects proposed to satisfy Segment B of the AC Transmission PPTN. In addition, further evidence of the NYES Project's feasibility is provided by the fact that it will qualify for cost recovery under

³⁸ See 16 U.S.C. § 824d (2019).

³⁹ See *supra* n 32.

Attachment Y and Schedule 13 of the NYISO OATT and therefore, has an assured source of funding for the recovery of all prudently-incurred project costs.

2. Transco's Ability To Finance The Project

As outlined above, Transco has already secured the necessary Commission approvals to finance the debt needed to construct the NYES Project.⁴⁰ Consistent with the NYES Project's FERC-approved settlement, the remainder of the NYES Project will be financed with equity.

3. Provision Of Safe, Adequate, And Reliable Service

In addition to the requirement of 16 NYCRR § 21.3 (f), PSL § 68 (1) also requires the Commission to consider Transco's ability to render safe, adequate, and reliable service. This requirement is clearly met here as Transco and its affiliates are well-qualified and experienced developers and operators of wholesale transmission facilities. As outlined above, Transco has been safely, adequately, and reliably operating the TOTS facilities since early 2016 when it acquired those assets from certain IOUs. Moreover, during the AC Transmission PPTN process, the NYISO found Transco to be a qualified transmission developer, constructor, and operator in accordance with section 31.4.4.1 of the NYISO OATT. Under that rule, the NYISO must make a determination as to whether any developer seeking to participate in the PPTN process is qualified to do so, based on the following criteria:

- The technical and engineering qualifications and experience of the Developer relevant to the development, construction, operation, and maintenance of a transmission facility, including evidence of the Developer's demonstrated capability to adhere to standardized construction, maintenance, and operating practices and to contract with third parties to develop, construct, maintain, and/or operate transmission facilities;

⁴⁰ Point II (d) (iii), *supra*.

- The current and expected capabilities of the Developer to develop and construct a transmission facility and to operate and maintain it for the life of the facility; and
- The Developer's current and expected capability to finance, or its experience in arranging financing for, transmission facilities.⁴¹

Further assurances of the NYES Project's safe, adequate, and reliable operation are provided by the following facts. The NYISO Board of Directors selected the NYES Project through a competitive solicitation process, and Transco will develop the NYES Project under the NYISO's supervision and will be placed under NYISO's operational control once it is in service. In addition, the NYES Project will comply with all applicable requirements of the National Electric Safety Code and the requirements of the North America Electric Reliability Corporation; the Northeast Power Coordinating Council, Inc.; and the New York State Reliability Council.

4. Public Interest/Need

In addition to the requirement found in 16 NYCRR § 21.3 (f), PSL § 68 (1) mandates that the Commission consider whether issuance of a CPCN is in the public interest. Moreover, 16 NYCRR § 21.3 (g) requires Transco to provide evidence that there is a public need for the NYES Project. The public interest and need for the NYES Project is clearly established by the fact that the NYISO Board of Directors selected it to meet the Segment B portion of the AC Transmission PPTN the Commission had identified in the AC Transmission PPTN Order. More specifically, the Commission found that the NYES Project would:

- Reduce transmission congestion so that large amounts of power can be transmitted to regions of New York where it is most needed;
- Reduce production costs through congestion relief;

⁴¹ New York Independent System Operator, Inc., OATT, § 31.4.4.1.1.

- Reduce capacity resource costs;
- Improve market competition and liquidity; to enhance system reliability, flexibility, and efficiency;
- Improve preparedness for and mitigation of impacts of generator retirements;
- Enhance resiliency/storm hardening;
- Avoid refurbishment costs of aging transmission;
- Take better advantage of existing fuel diversity;
- Increase diversity in supply, including additional renewable resources;
- Promote job growth and the development of new efficient generation resources in Upstate New York;
- Reduce environmental and health impacts through reductions in less efficient electric generation;
- Reduce costs of meeting renewable resource standards;
- Increase tax receipts from increased infrastructure investment;
- Enhance planning and operational flexibility; and
- Obtain synergies with other future transmission projects.⁴²

In selecting the NYES Project to meet the Segment B portion of the AC Transmission PPTN, the NYISO Board of Directors discussed and quantified many of the NYES Project's key benefits to the State's broader transmission network and outlined other qualitative benefits of the NYES Project. The benefits—both quantitative and qualitative—that the NYISO Board of Directors determined are summarized in Exhibit E-4 of the Application filed in Case 19-T-0684.

⁴² Case 12-T-0502, *supra*, Order Finding Transmission Needs Driven by Public Policy Requirements (Issued Dec. 17, 2015), at 66-67.

The NYISO Board of Director’s quantitative cost/benefit analysis of the NYES Project demonstrates that its benefits exceed its costs. As such, the NYES Project, and approval of the exercise of Transco’s rights, privileges, and franchises as an electric corporation, including the rights granted in the RUA’s described above, is plainly warranted by the public interest and is in the public need.

IV. CONFIRMATION THAT TRANSCO’S LIGHTENED REGULATORY REGIME IS APPLICABLE TO THE NYES PROJECT

In the Lightened Regulatory Regime Order, the Commission stated in numerous locations that it had created a “lightened regulatory regime, subject to conditions, applicable to NY Transco.”⁴³ In addition, Ordering Clause No. 1 of the Lightened Regulatory Regime Order states broadly that Transco “shall comply with the Public Service law in conformance with the requirements set forth in the body of this Order.”⁴⁴ Thus, Transco understood—and still understands—that the Lightened Regulatory Regime Order established a regulatory construct applicable to it. Notably, Transco has unconditionally accepted the terms of the Lightened Regulatory Regime Order and has been operating pursuant to it since early 2016.⁴⁵

Despite this broad language, in one location within the Lightened Regulatory Regime Order, the Commission stated more narrowly that the established lightened regulatory regime was appropriate for Transco “*in its ownership of the TOTS projects* because [] Transco’s transmission assets will be under the operational control and tariff administration of the NYISO and will only be operated in the wholesale marketplace.”⁴⁶ Given the potential implication by this sentence that the lightened regulatory regime outlined in 2016 was only applicable to Transco as it relates to its

⁴³ Case 17-E-02743, *supra*, Lightened Regulatory Regime Order, at 2 and 15.

⁴⁴ *Id.* at 16.

⁴⁵ Case 17-E-0743, *supra*, NY Transco Unconditional Acceptance of Lightened Rate Making Order (Filed May 19, 2016).

⁴⁶ *Id.* at 8 (emphasis added).

ownership of the TOTS facilities, for the avoidance of any doubt moving forward, Transco seeks the Commission's confirmation that the lightened regulatory regime it established in 2016 applies to Transco as an entity and, by extension, Transco's lightened regulatory regime remains in effect and is applicable to Transco's future operation of the NYES Project.⁴⁷

V. MOTION FOR AN EXPEDITED PROCEEDING

Pursuant to 16 NYCRR § 21.10 (a), Transco respectfully requests that the public hearing required by PSL § 68 prior to the issuance, modification, or renewal of a CPCN be held before the Commission based on the Verified Petition, inclusive of the exhibits attached thereto, without oral testimony. Such relief is proper here given that approval of the CPCN in this proceeding is in the public interest.⁴⁸

Within 14 days of filing the Verified Petition, Transco shall publish in a newspaper of general circulation in each municipality the NYES Project will cross a notice that: (1) briefly describes the subject matter of the Verified Petition; (2) states that Transco has moved that the public hearing required by the PSL be held before the Commission on the basis of the Verified Petition and such exhibits, prepared testimony, and any other information as may have been filed by any party or Staff counsel, and that oral testimony not be taken; and (3) states that any person opposed to the granting of the CPCN should, within 10 days of the date of the publication of the notice, notify in writing the secretary of the Public Service Commission at Agency Building 3, Empire State Plaza, Albany, NY 12223, of the reasons for the opposition.⁴⁹

⁴⁷ In the unlikely event the Commission concludes that the lightened regulatory regime it established in 2016 is narrowly applicable to Transco's ownership of the TOTS projects, Transco respectfully requests that the Commission extend that lightened regulatory regime to Transco's ownership and operation of the NYES Project, which, similar to the TOTS projects, will also be under the NYISO's operational control and tariff administration and will only be operated in the wholesale marketplace.

⁴⁸ 16 NYCRR § 21.10 (a) (1).

⁴⁹ 16 NYCRR § 21.10 (a) (3) (the "Newspaper Notice").

Finally, since Transco motion for an expedited proceeding is included within the Verified Petition, and it was properly served on each person or municipality entitled to service of a copy of the same (*i.e.*, each municipality crossed by the NYES Project), the service requirement in 16 NYCRR § 21.10 (a) (2) has been satisfied. Thus, if no written objection outlining a substantive reason opposing the motion is received within 10 days of the date of publication of the Newspaper Notice, the Commission may, consistent with the governing regulation and its own precedent, grant the motion and hold the hearing required by PSL § 68 at the time it considers this Verified Petition.⁵⁰ In order to allow Transco to begin construction and operation of the NYES Project without delay to meet the in-service date, Transco respectfully requests that the Commission issue an order deciding this Verified Petition at the same session, or a session before, it decides the Application.

VI. ENVIRONMENTAL REVIEW

PSL Article VII prohibits Transco from commencing construction of the NYES Project until it has received a CECPN from the Commission. Before issuing a CECPN, the Commission must undertake a comprehensive review of the NYES Project's environmental impacts. Thus, in Transco's Article VII proceeding, the Commission will address the NYES Project's potential environmental impacts and will provide protective measures tailored to avoid, minimize, and

⁵⁰ 16 NYCRR § 21.10 (b). *See e.g.* Case 14-E-0372, *Binghamton BOP LLC-Petition for an Original Certificate of Public Convenience and Necessity and Establishing a Lightened Regulatory Regime*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (Issued Dec. 11, 2014); Case 13-M-0028, *Petition of RED-Rochester, LLC and Eastman Kodak Company for Approval to Transfer Regulated Utility Assets at Eastman Kodak Park, Approval to Transfer Certificates of Public Convenience and Necessity, Providing for Continued Lightened and Incidental Regulation, Approval of Financing and Authorization, to the Extent Necessary, for Submetering*, Order Approving Transfer Subject to Conditions, Providing for Lightened Ratemaking Regulation, and Making Other Findings (Issued May 30, 2013); Case 11-E-0593, *Petition of Cricket Valley Energy Center, LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation*, Order Granting Certificate of Public Convenience and Necessity and Establishing Lightened Ratemaking Regulation (Issued Feb. 14, 2013).

mitigate those impacts. As a result, and consistent with Commission precedent, there is no need to conduct a separate environmental impact analysis in connection with the relief requested in this Verified Petition.⁵¹

⁵¹ See e.g. Case 10-E-0077, *Petition of Bayonne Energy Center, LLC for an Original Certificate of Public Convenience and Necessity for Permission and Approval to Operate as an Electric Corporation within the State of New York, Order Granting Certificate Of Public Convenience And Necessity*, at 3-4 (Issued April 6, 2010) (“Accordingly, a separate environmental review under SEQRA is not warranted in connection with Bayonne’s petition for a CPCN.”).

VII. CONCLUSION

In sum, Transco respectfully requests a CPCN to: (1) construct and operate the NYES Project in satisfaction of the Commission's mandate in the CPCN Order, and (2) exercise the rights and privileges granted under certain municipal RUAs. In addition, Transco respectfully requests that the Commission confirm or extend Transco's lightened regulatory status to its construction and operation of the NYES Project. For the reasons set forth above and because the NYES Project is convenient and necessary for the public service, the Commission should grant the requested CPCN, authorize Transco to exercise its rights under the RUAs, and confirm that Transco's lightened regulation extends to the NYES Project.

In order to allow Transco to begin construction and operation of the NYES Project without delay and to meet the in-service date, Transco respectfully requests that the Commission issue an order deciding this Verified Petition at the same session, or a session before, it decides the Application.

HARRIS BEACH PLLC

/s/ John T. McManus

John T. McManus

Aubrey A. Ohanian

677 Broadway, Suite 1101

Albany, New York 12207

(518) 427-9700

jmcmanus@harrisbeach.com

aohanian@harrisbeach.com

Attorneys for New York Transco LLC

Dated: November 2, 2020
Albany, New York

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Verified Petition Of New York Transco LLC For An Expedited
Order Granting It A Certificate Of Public Convenience And
Necessity Pursuant To Section 68 Of The Public Service Law
And Confirmation Of Its Lightened Regulatory Status

Case 20-E-_____

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF Albany)

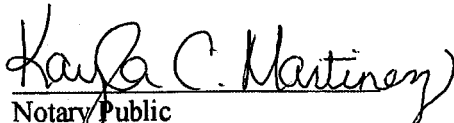
Victor Mullin, being duly sworn, deposes and states as follows:

1. I am the President of New York Transco LLC, the petitioner in this proceeding.
2. I am authorized to sign this verification on behalf of New York Transco LLC.
3. I have reviewed the foregoing Verified Petition, and the statements of fact contained therein pertaining to New York Transco LLC, which are true and correct to the best of my knowledge, information, and belief.
4. Transco, an entity authorized to provide electric service, has obtained all of the municipal approvals required for the construction and operation of the New York Energy Solution Project from the proper municipal authorities as detailed in the foregoing Verified Petition, except that Transco is still awaiting final approval of their Road Use Agreements with the Towns of Ghent, Livingston, Clermont, Milan, and Clinton.
5. Transco will supplement this Verified Petition as certified copies of those Road Use Agreements become available.



Victor Mullin

Sworn to and subscribed before me
this 2nd day of November 2020.


Notary Public

