

**INFORMAL CHALLENGE OF NYSEG, RG&E, and LIPA
TO NEET NY'S 2023 PROJECTED NET REVENUE REQUIREMENT**

New York State Electric & Gas Corporation (“NYSEG”), Rochester Gas and Electric Corporation (“RG&E”), and the Long Island Power Authority (“LIPA”) (collectively referred to herein as “the Interested Parties”) submit this Informal Challenge to NextEra Energy Transmission New York’s (“NEET NY”) formula rate 2023 Projected Net Revenue Requirement. Specifically, the Interested Parties challenge: (i) the adequacy of the justifications provided by NEET NY to support its claim that the entire \$86 million of cost overruns for its Empire State Line Project are “Unforeseeable Costs”; and (ii) NEET NY’s categorization of certain costs as “Unforeseeable Costs” under the cost containment provisions set forth in NEET NY’s 2018 formula rate settlement agreement (“Settlement Agreement”).¹

On October 13, 2022 and December 1, 2022, AVANGRID, Inc. (“AVANGRID”), the parent company of NYSEG and RG&E, submitted initial and follow-up informal information and document requests to NEET NY regarding its 2023 Projected Net Revenue Requirement. These requests sought further explanation and documentary support for cost overruns for NEET NY’s Empire State Line Project that NEET NY categorized as Unforeseeable Costs, as the term is defined in the Settlement Agreement.² NEET NY provided responses to AVANGRID’s initial and follow-up informal information and document requests on November 3, 2022 and December 22, 2022, respectively.

In response to AVANGRID’s informal requests, NEET NY failed to provide adequate justification for its determination that \$86 million of cost overruns for its Empire State Line Project were due to circumstances that rendered them Unforeseeable Costs. The Interested Parties do not challenge whether such costs were prudently incurred, but rather challenge whether these costs were accurately categorized as Unforeseeable Costs and properly applied to NEET NY’s cost containment provisions. Pursuant to the terms of the Settlement Agreement and NEET NY’s Formula Rate Implementation Protocols (“NEET NY Protocols” or “Protocols”),³ the burden of proof rests with NEET NY to justify excluding these costs from the

¹ See Offer of Settlement, NextEra Energy Transmission New York, Inc., Section 3.3 Cost Cap, FERC Docket No. ER16-2719-000 (May 25, 2018). Pursuant to an August 17, 2018 order issued by the Federal Energy Regulatory Commission (“FERC” or “the Commission”), the Commission approved the Settlement Agreement and accepted – subject to certain compliance filings submitted by NEET NY and later accepted by the Commission on July 9, 2019 – NEET NY’s revised tariff records, which included revisions to its formula rate and formula rate implementation protocols. See *NextEra Energy Transmission New York, Inc.*, 164 FERC ¶ 61,117 (2018). LIPA (formerly Power Supply Long Island) was a signatory to the Settlement Agreement.

² See *infra* page 2 and note 9.

³ New York Independent System Operator, Inc., Open Access Transmission Tariff, Rate Schedule 6, Section 6.10.9.2.2, OATT Schedule 10 – NextEra Energy Transmission New York, Inc.

cost containment provisions set forth in its formula rate.⁴ NEET NY has yet to meet its burden. A summary table of NEET NY's responses, and the Interested Parties' related challenges, is attached as Appendix A. Links to the materials referenced in Appendix A are contained in Appendix B.

I. NEET NY Settlement Agreement

NEET NY's approved Settlement Agreement sets the base return on equity ("ROE") and incentive rate treatments for its Empire State Line Project.⁵ NEET NY agreed "to be bound by the terms of this Settlement Agreement with respect to NEET NY's Eligible Projects,"⁶ which includes the Empire State Line Project.⁷ Pursuant to the terms of the Settlement Agreement, NEET NY is required to "provide updates of Unforeseeable Costs as part of project cost updates in its annual June informational filing, including information demonstrating how such costs were determined to be Unforeseeable Costs."⁸

The Settlement Agreement defines Unforeseeable Costs as,

costs and savings that, with the exercise of commercially reasonable due diligence, could not have been anticipated at the time that NEET NY's Capital Cost bid for the Empire State Line Project was submitted to the NYISO in December 2015 and at the time that the Capital Cost Bid for the AC Transmission Project was submitted to the NYISO on April 29, 2016. The rate treatment applicable to such Unforeseeable Costs is set forth in section 3.3.d. Unforeseeable Costs are costs:

- (i) Associated with material modifications to the routing or scope of work of the Eligible Projects that result from a NYPSC order, negotiations or settlement agreements within the siting process, or are imposed or required by any other governmental agency. For the avoidance of doubt, foreseeable obligations as included in the License application, or non-material obligations imposed upon NEET NY as a normal part of the siting process, shall not be deemed to be Unforeseeable Costs;
- (ii) Associated with changes in applicable laws and regulations, or interpretations thereof by governmental agencies; or
- (iii) As a result of orders of courts or action or inaction by

⁴ See, e.g., *infra* notes 9 and 12.

⁵ Settlement Agreement, Article 2.1.

⁶ *Id.* at Article 3.1.

⁷ *Id.* at Article 2.2.

⁸ *Id.* at Article 3.3(d).

governmental agencies.⁹

As further explained below and in the attached Appendix A, there were some items included in NEET NY's \$86 million of cost overruns that, despite the inadequate information provided by NEET NY to-date, it appears to the Interested Parties that with the exercise of commercially reasonable due diligence should have been anticipated. These costs are therefore not properly classified by NEET NY as Unforeseeable Costs.¹⁰

II. NEET NY Protocols

Pursuant to NEET NY's Protocols, on September 30, 2022, NEET NY posted its 2023 Projected Net Revenue Requirement to a publicly accessible location on the New York Independent System Operator's ("NYISO") website.¹¹ Under the Protocols, NEET NY's projected net revenue requirement must, among other things, "Provide the formula rate calculations and all inputs thereto, as well as supporting documentation and workpapers for data that are used in the projected net revenue requirement," and "Provide sufficient information to enable Interested Parties to replicate the calculations of the projected net revenue requirement."¹² As stated above, NEET NY failed to provide adequate justification for its determination that \$86 million of cost overruns from its Empire State Line Project are Unforeseeable Costs. Where such costs are incorrectly categorized by NEET NY as Unforeseeable Costs, the formula rate inputs for NEET NY's revenue requirement on the Empire State Line Project are correspondingly inaccurate.

Section IV.D of the NEET NY Protocols set forth Challenge Procedures and lists the issues in NEET NY's Annual True-Up or projected net revenue requirement that are subject to being challenged.¹³ Pursuant to the Protocols, the Interested Parties challenge the following:

(2) whether the Annual True-Up or projected net revenue requirement fails to include data properly recorded in accordance with these protocols;

⁹ *Id.* at Article 3.3(b).

¹⁰ At a minimum, this list of reasonably foreseeable costs includes those associated with the Thruway Horizontal Directional Drill, Agricultural Matting, Article VII/Section 68/Section 70 Proceedings, and Bulk Power System requirements line items in Appendix A. Additional information is required to determine whether some or all of the remaining line items in Appendix A were reasonably foreseeable.

¹¹ NEET NY Protocols, Section II.C, Annual True-Up and Projected Net Revenue Requirement.

¹² *Id.* at Section II.F, Annual True-Up and Projected Net Revenue Requirement.

¹³ *Id.* at Section IV.D, Challenge Procedures.

(3) the proper application of the formula rate and procedures in these protocols;

(4) the accuracy of data and consistency with the formula rate of the calculations shown in the Annual True-Up and projected net revenue requirement;

(7) any other information that may reasonably have substantive effect on the calculation of the charge pursuant to the formula.¹⁴

Under the Protocols, a party submitting an Informal Challenge to NEET NY must specify the inputs, supporting explanations, allocations, calculations, or other information to which it objects, and provide an appropriate explanation and documents to support its challenge.¹⁵ This Informal Challenge complies with NEET NY's Protocols.¹⁶ The Interested Parties submit the following challenges to NEET NY's 2023 Projected Net Revenue Requirement, and accompanying explanations and documents in support of its challenges.

III. Informal Challenge

This Informal Challenge addresses two main issues. First, with respect to all items listed in the \$86 million of cost overruns for the Empire State Line Project, NEET NY failed to provide adequate information and documents to justify that such costs were properly designated as Unforeseeable Costs. Second, despite the lack of information provided by NEET NY, for a subset of costs included in the \$86 million of cost overruns, the Interested Parties were still able to ascertain that NEET NY's categorization of such items as Unforeseeable Costs is unsupported as those items clearly fall outside the definition of Unforeseeable Costs. The exclusion of such foreseeable costs from NEET NY's cost containment provisions results in incorrect formula rate inputs for NEET NY's revenue requirement, as these cost containment provisions affect the ROE on foreseeable cost overruns and thus the overall project ROE. Consequently, the Empire State Line Project rate charged to transmission customers is also incorrect. The exact project ROE, and thus the correct revenue requirement to be recovered in the NEET NY formula rate, cannot be determined by the Interested Parties for the reasons set forth above.

To date, NEET NY has failed to provide the information and documents required to adequately support its categorization of its cost overruns as Unforeseeable Costs. This is the case for every line item listed in Appendix A, though as explained above, for certain items the

¹⁴ *Id.*

¹⁵ *Id.* at Section IV.B, Challenge Procedures.

¹⁶ *See generally* NEET NY Protocols.

Interested Parties have still been able to determine that NEET NY inappropriately categorized certain foreseeable cost overruns as Unforeseeable Costs. For each of the line items listed in Appendix A, the burden is on NEET NY to demonstrate that the cost satisfies the definition of Unforeseeable Costs set forth in the Settlement Agreement. To justify each line item in Appendix A, the Interested Parties would expect to see, among other things, the following information and documentation, which NEET NY failed to provide:

- (1) The dollar value of the line item in NEET NY's bid;
- (2) the final cost of the line item;
- (3) the difference between the dollar value in the bid and final cost;
- (4) the dollar value that NEET NY claims is unforeseeable; and
- (5) All documentation supporting NEET NY's assertion that the costs are unforeseeable, including but not limited to contractor/internal cost estimates and re-estimates, change orders, work orders, memos, communications, invoices and other materials used in the determination that such costs were incurred, were incremental to the costs included in NEET NY's bid, and were unforeseeable through the use of commercially reasonable due diligence.¹⁷

In order to satisfy its burden and enable meaningful discussions with Interested Parties, any and all information in NEET NY's possession that is responsive to AVANGRID's previous information and document requests, as well as the information and documents listed herein, needs to be provided by NEET NY.

IV. Conclusion

The Protocols require that NEET NY "make a good faith effort to respond to any Informal Challenge within twenty (20) business days of notification of such challenge," and "appoint a senior representative to work with the party that submitted the Informal Challenge (or its representative) toward a resolution of the challenge."¹⁸ To the extent NEET NY disagrees with such challenge, NEET NY is to provide the Interested Parties with "an explanation supporting the inputs, supporting explanations, allocations, calculations, or other information."¹⁹ We encourage NEET NY to appoint a senior representative immediately to

¹⁷ The column titled "Additional Challenge Notes" in Appendix A is additive to, and not a substitution for, the missing information and documentation listed herein.

¹⁸ NEET NY Protocols, Section IV.D, Challenge Procedures.

¹⁹ *Id.* at Section IV.D, Challenge Procedures.

attempt to resolve these issues to avoid the need to proceed to a formal challenge before the Commission.

The Interested Parties respectfully request that, pursuant to the NEET NY Protocols, NEET NY timely post to the NYISO website this Informal Challenge with attached Appendices, as well as NEET NY's response, along with any Informal Challenges from other Interested Parties and NEET NY's responses to such Informal Challenges.²⁰

²⁰ See *id.* at Section IV.E, Challenge Procedures.

Appendix A to Informal Challenge

	Description	Cost (\$ Millions)		NEET NY's Explanation for Unforeseeable Classification (1)	Additional Challenge Notes
Governmental Authority Required	Thruway Horizontal Directional Drill (HDD)	18.1		The independent NYISO estimate assumed overhead crossing for the Thruway. NYSEGs existing overhead transmission lines cross the thruway overhead at the same location. NEETNY applied for a waiver with the New York State Thruway Authority (NYTA) to cross the Thruway that was denied.	The potential for costs to be incurred for undergrounding the line at a thruway crossing was not unforeseeable. A waiver was required by the NYSTA "...except in limited circumstances where the Authority, in its discretion, determines that placement of Utilities underground is not feasible." Assuming that such a waiver would be granted does not render the denial of the waiver as unforeseeable. The fact that there are existing overhead line crossings is irrelevant since the lines in question were constructed in 1961 and 1973, and were not subject to the 2010 regulations. A link to the regulation is posted in Appendix B to this Informal Challenge.
	Agricultural Matting	8.2		NEETNY's Environmental Monitoring & Construction Plan (EM&CP) approved by Public Service Commission (PSC) included a requirement to use matting in agricultural areas. NEETNY had planned to remove and replace top soil in agricultural areas.	The potential for costs to be incurred for agricultural matting was not unforeseeable. Electric Transmission RoW Guidelines state that "timber mats should be utilized as an alternative to topsoil stripping." NextEra participated in the AC Transmission technical meetings in 2015 prior to the submission of the Western NY bid. A review of the videos of such technical meetings shows that NextEra representatives inquired about the need for timber matting, and were told by Staff of the Department of Public Service that timber matting was a state requirement for agricultural areas. Links to the regulation and the videos of the technical meetings are posted in Appendix B to this Informal Challenge.
	Clearing Requirements	4.2		The PSC required extensive tree clearing requirements.	The information provided by NEET NY under the Information Exchange Procedures in Section III of the Protocols was inadequate to assess whether such costs were Unforeseeable Costs. Also, clearing is not an unusual requirement in a siting proceeding. Please provide documentation of tree clearing assumed in NEET NY's bid as well as incremental tree clearing requirements that NEET NY alleges were not foreseeable.
	Wetland Mitigation & Monitoring	7.4		Wetland mitigation required larger tree plantings and the mitigation be implemented during construction.	The information provided by NEET NY under the Information Exchange Procedures in Section III of the Protocols was inadequate to assess whether such costs were Unforeseeable Costs. Also, wetlands mitigation is not an unusual requirement in a siting proceeding. Please provide documentation of wetlands mitigation assumed in NEET NY's bid plus incremental mitigation requirements that NEET NY alleges were not foreseeable.
Governmental Authority Inaction	Delays / Acceleration / Schedule Compression	12.4		The duration and scope of the Article VII, Section 68, and Section 70 proceedings exceeded the project schedule. This required schedule compression to meet the in-service date.	Based on history prior to NEET NY's bid submission, the duration for completion of NEET NY's Article VII proceeding was well within the range for historical Article VII proceedings completed before NEET NY's bid submission. Whether the duration exceeded the project schedule is irrelevant in the context of whether the duration was foreseeable or unforeseeable. There was no statutory deadline for the NYPSC to complete the proceeding. A graph of how NEET NY's Article VII duration compares to others is included in Appendix B.
			7.7	Increased Right of way clearing costs including additional manpower and additional matting to support the increased crews	The information provided by NEET NY under the Information Exchange Procedures in Section III of the Protocols was inadequate to assess whether such costs were Unforeseeable Costs. Please provide documentation of the incremental costs for additional manpower and matting that were specifically and solely caused by schedule acceleration due to NEET NY's claim of governmental inaction. While there may have been more crews working in parallel, the number of man-hours of total labor should not have been materially different. There is insufficient information to ascertain whether the full \$7.7 Million is due to schedule acceleration, or if there are additional reasons for incremental costs.
			2.7	Increased E. Stolle Road construction costs attributable to construction activities scheduled during periods of heavy wet soil conditions	The information provided by NEET NY under the Information Exchange Procedures in Section III of the Protocols was inadequate to assess whether such costs were Unforeseeable Costs.
			2	Increased Dysinger Switchyard costs including additional manpower and the utilization of generators for temporary service	The information provided by NEET NY under the Information Exchange Procedures in Section III of the Protocols was inadequate to assess whether such costs were Unforeseeable Costs.
	Dysinger Soils	3.1		The soil for Dysinger substation needed reinforcement to support substation construction. Project proposed to use excess soils from the E Stolle switchyard at Dysinger. However, the length of timing to get Section 70 approval precluded the ability to utilize the E Stolle soils.	The information provided by NEET NY under the Information Exchange Procedures in Section III of the Protocols was inadequate to assess whether such costs were Unforeseeable Costs.

	Description	Cost (\$ Millions)		NEET NY's Explanation for Unforeseeable Classification (1)	Additional Challenge Notes
	Vertical Market Power (VMP) Legal/Regulatory Support	0.9		Project costs increased due to the extensive scope and duration of the Section 68 approval.	The information provided by NEET NY under the Information Exchange Procedures in Section III of the Protocols was inadequate to assess whether such costs were Unforeseeable Costs.
Commercially Unknowable	Engineering & Construction Requirements	20.4		Increased engineering, construction and design requirements due to connecting transmission owner and governmental authority requirements.	
			11.4	Costs to construct to bulk power system requirements; SIS did not identify the stations as BPS however, after consultation with the interconnection TOs, it became known that elements of the station must be designed to BPS standards due to the interconnection of multiple BPS facilities.	It was not only foreseeable that NEET NY would have been required to satisfy BPS requirements, but it should have been expected if NEET NY had performed commercially reasonable due diligence. NYISO's 2014 Intermediate Area Transmission Review lists 4,185 miles of BPS facilities which match the 2014 NYISO Gold Book listing of 4,185 miles of facilities operated above 138 kV. This suggests that all facilities above 138 kV in NY were classified as BPS at the time of NEET NY's bid.
			2.4	Construction of a microwave tower for communication between E. Stolle Rd and Five Mile Road station; proposed fiber or use of NYSEG microwave tower alternatives were not accepted	The information provided by NEET NY under the Information Exchange Procedures in Section III of the Protocols was inadequate to assess whether such costs were Unforeseeable Costs.
			2.3	Engineering design changes and engineering support to accommodate protection requirements of non-standard protection schemes of interconnecting TOs, compliance with newly adopted NERC standard PRC- 027, E Stolle station service design for NYSEG, development of documentation for the NYISO consistent with their standards, unavailability of Avangrid drawings due to RARP project, et al.	The information provided by NEET NY under the Information Exchange Procedures in Section III of the Protocols was inadequate to assess whether such costs were Unforeseeable Costs. There are numerous claims of unforeseeable requirements with inadequate documentation. For example, NEET NY has not provided documentation of what specific requirements were "non-standard," nor a discussion of what would be considered baseline for making a determination that requirements were "non-standard."
			0.84	Construction entrances to rights of way; Final approved EM&CP required significantly greater number of construction entrances	The information provided by NEET NY under the Information Exchange Procedures in Section III of the Protocols was inadequate to assess whether such costs were Unforeseeable Costs.
			0.74	Design and construction of laydown areas; NEETNY planned to deliver structures to the right of way following fabrication however, due to delay in Sec 70 approval, NEETNY needed to secure additional laydown areas to receive them	The information provided by NEET NY under the Information Exchange Procedures in Section III of the Protocols was inadequate to assess whether such costs were Unforeseeable Costs.
			0.13	NY PSC requirement to utilize non-specular conductor	The information provided by NEET NY under the Information Exchange Procedures in Section III of the Protocols was inadequate to assess whether such costs were Unforeseeable Costs.
			2.3	Miscellaneous Engineering and Construction costs including temporary installations due to supply chain issues (i.e. generator install), vendor equipment requirements, and indirect costs associated with BPS compliance	The information provided by NEET NY under the Information Exchange Procedures in Section III of the Protocols was inadequate to assess whether such costs were Unforeseeable Costs.
			0.29	Rounding / Remainder	The information provided by NEET NY under the Information Exchange Procedures in Section III of the Protocols was inadequate to assess whether such costs were Unforeseeable Costs.
	Commodity Pricing	3.9		Excessive inflation and global pandemic conditions increased material costs, shipping/freight costs and port delays to receive materials.	The information provided by NEET NY under the Information Exchange Procedures in Section III of the Protocols was inadequate to assess whether such costs were Unforeseeable Costs.
	Pipeline AC Mitigation	2.9		Extensive pipeline mitigation and meeting individual design requirements for each pipeline company.	The information provided by NEET NY under the Information Exchange Procedures in Section III of the Protocols was inadequate to assess whether such costs were Unforeseeable Costs.
	Mud Creek Bridge	1.4		The final Dysinger site required a bridge to provide access for transported equipment.	Please provide documentation of the reason(s) that a bridge was required, and why it was unforeseeable that the bridge would be required at the time of NEET NY's bid submission.
	AFUDC on Unforeseeable Items	3.1			
	Total Gross Unforeseeable	86.0			
	Unforeseeable Costs Adder	-5.5			
	Total Unforeseeable	80.5		Defined in 2018 FERC Settlement Agreement, Article 3.3(b)	

	Description	Cost (\$ Millions)		NEET NY's Explanation for Unforeseeable Classification (1)	Additional Challenge Notes
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(1) Column F is a combination of NEET NY responses related to these line items from the information exchange.

Appendix B to Informal Challenge

I. Governmental Authority Required

A. Thruway Horizontal Directional Drill (HDD)

<https://www.thruway.ny.gov/business/realproperty/forms/tap-401u.pdf>

B. Agricultural Matting

1. Electric Transmission RoW Guidelines

<https://agriculture.ny.gov/system/files/documents/2019/10/electric-transmission-row-guidelines.pdf>

2. NYPSC July 2015 AC Transmission Cases Technical Conference

<https://www.youtube.com/@nyspsc/videos>

a. July 20, 2015 4:45:55

<https://www.youtube.com/watch?v=mx8AB7o-4g>

b. July 21, 2015 32:45 – 35:54 / 3:02:16

<https://www.youtube.com/watch?v=a692KspLyBETechnical>

c. July 31, 2015 55:33 – 56:20 / 3:02:00

<https://www.youtube.com/watch?v=y7mE4CcPbOY>

d. July 31, 2015 1:17:25 – 1:20:47 / 3:02:00

<https://www.youtube.com/watch?v=y7mE4CcPbOY>

e. July 31, 2015 2:27:55 – 2:29:43 / 3:02:00

<https://www.youtube.com/watch?v=y7mE4CcPbOY>

Appendix B to Informal Challenge

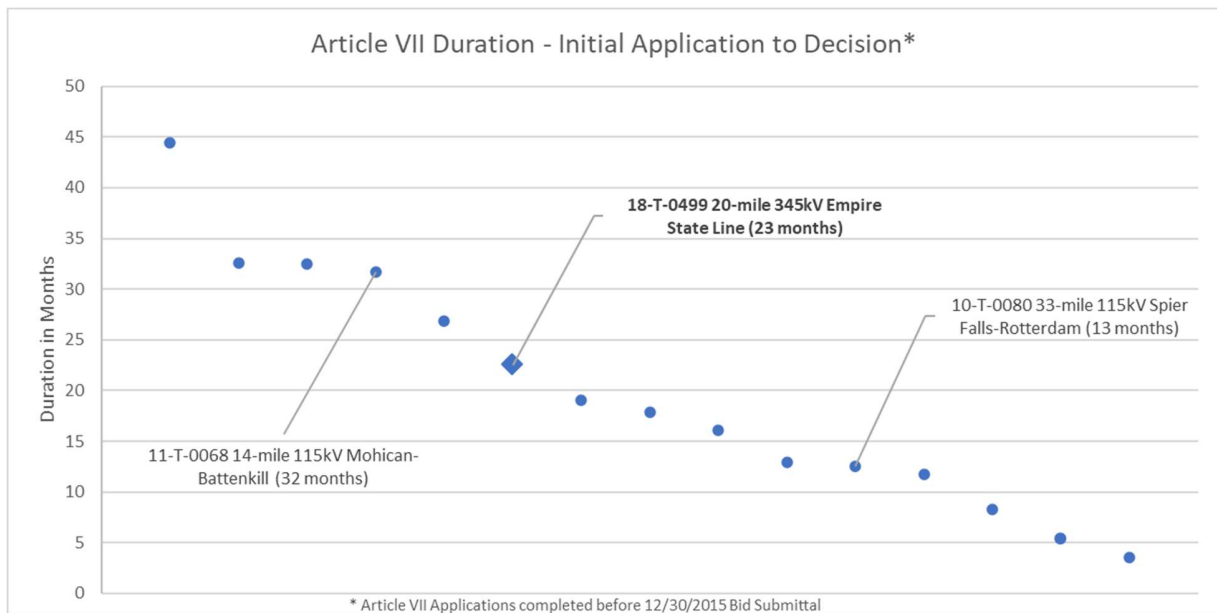
II. Government Authority Inaction

A. Delays / Acceleration / Schedule Compression

1. Article VII Process Guide and Cases

<https://dps.ny.gov/article-vii-major-electric-and-gas-transmission-facilities>

2. Article VII Duration Chart



III. Commercially Unknowable

A. Engineering & Construction Requirements

1. NYISO's 2014 Gold Book

<https://www.nyiso.com/documents/20142/2226467/2014-Load-Capacity-Data-Report-Gold-Book.pdf/7f25165f-b808-34dd-269e-093fdebca735>

2. NYISO's 2014 Intermediate Area Transmission Review

https://www.nyiso.com/documents/20142/1397660/2014_NYISO_IntermediateATR_FINAL_2015-06-03.pdf/14a3e705-8d9c-5a30-6139-2950fb85ef97



STONE
MATTHEIS
XENOPOULOS
& BREW, PC

January 31, 2023

VIA EMAIL

Mr. Richard Allen, President
NextEra Energy Transmission New York, Inc.
Richard.Allen@nexteraenergy.com

Re: NextEra Energy Transmission New York, Empire State Line: MEUA Informal Challenges to the 2023 Annual Formula Rate Update–Project Cost Overruns

Dear Mr. Allen:

Pursuant to the transmission formula rate implementation protocols established for NextEra Energy Transmission New York, Inc. (“NEET NY”) reflected in §6.10.9.2.2 of Attachment 3 to Rate Schedule 10 of the NYISO OATT, the Municipal Electric Utilities Association of New York (“MEUA”) notifies NEET NY of its informal challenges to the annual formula rate update filed September 30, 2022. In brief, the NEET NY update revealed a total cost overrun of the recently completed Empire State Line (“ESL”) in western New York of approximately \$86 million, which constituted a very significant cost run compared to the originally estimated cost to construct. In its filing, NEET NY asserts that the vast majority of those costs (in excess of \$80.5 million) were due to “unforeseen costs” and are thus excluded from the otherwise applicable construction cost cap established in the Settlement Agreement establishing that formula rate.¹

In the Settlement Agreement, unforeseeable costs above 5% of the ESL project cost cap are excluded from the cost containment mechanism (unforeseeable costs up to 5% are deemed to fall with the applicable contingency allowance). With respect to the Cost Cap, Article 3 of the Settlement Agreement states:

The Parties recognize that there are costs NEET NY may incur, or savings NEET NY may realize, that are in addition to those costs included in the Capital Cost Bid. These costs and savings, referred to herein collectively as “Unforeseeable Costs,” are costs and savings that, with the exercise of commercially reasonable due diligence, could not have been anticipated at the time that NEET NY’s Capital Cost bid for the Empire State Line Project was submitted to the NYISO in December 2015 and at the time that the Capital Cost Bid for the AC Transmission Project was submitted to the NYISO on April 29, 2016....

¹ *NextEra New York Transmission, Inc.*, Docket No. ER16-2719-000, Offer of Settlement, Article 3.3 (Cost Cap), dated May 25, 2018.

The Settlement Agreement further explained that:

Unforeseeable Costs are costs:

- (i) Associated with material modifications to the routing or scope of work of the Eligible Projects that result from a NYPSC order, negotiations or settlement agreements within the siting process, or are imposed or required by any other governmental agency. For the avoidance of doubt, foreseeable obligations as included in the License application, or non-material obligations imposed upon NEET NY as a normal part of the siting process, shall not be deemed to be Unforeseeable Costs;
- (ii) Associated with changes in applicable laws and regulations, or interpretations thereof by governmental agencies; or
- (iii) As a result of orders of courts or action or inaction by governmental agencies.²

In practical terms, such costs are not presumed to be either prudent or imprudently incurred. At the same time, the unforeseeable cost exclusion does not encompass assumptions, estimates, actions or inactions on the part of NEET NY or other parties that simply prove to be inaccurate or erroneous. To claim that project costs incurred were unforeseeable and excludable from the cost containment cap, it is incumbent upon NEET NY to establish both that cost overruns incurred fall within the scope of the reasons noted above and that they were indeed unforeseeable (*i.e.*, could not have been anticipated at the time with the exercise of reasonable due diligence).

Several informal information requests were propounded to and responded by NEET NY with respect to the ESL cost overruns. In particular, on December 22, 2022, NEET NY responded to Avangrid questions asking the specific basis for unforeseeable claims with respect to enumerated cost items attributed to four identified cost categories (see attached). In MEUA's view, the supporting explanations that NEET NY provided in those responses are inadequate. Specifically:

1. **All listed unforeseeable overruns.** For each of the four cost categories addressed, NEET NY described the reasons why higher costs were incurred and the basic rationale for its underlying estimate, but it does not explain why the outcome/principal cause of the overruns could not have been reasonably anticipated at the time and not considered in developing the original estimated cost to construct. Please provide further information or explanations sufficient to meet the applicable standard for unforeseeable costs.
2. **Thruway Horizontal Drilling (HDD) (\$18.1 million).** In light of the noted NYSTA guidelines requiring undergrounding where feasible, please explain NEET NY's view

² NextEra New York Transmission, Inc., Offer of Settlement, Article 3.3 (Cost Cap).

that undergrounding was not considered a feasible approach at the time it submitted its project estimate.

3. **Engineering and Construction Requirements: Costs to construct to bulk power system (“BPS”) requirements (\$11.4 million).** Since the ESL project primarily involved upgrades and expansions to 345 kV lines and substations, please provide a more detailed explanation as to why NEET NY could not have reasonably anticipated at the time its bid was submitted that BPS requirements would apply to the project.
4. **Schedule delays, Article VII permitting (\$12.4 million).** NEET NY explained that the time to receive all permits necessary to commence construction required approximately 13 months longer than NEET NY anticipated. Since NEET NY has some control over the permitting timeline through its responses to information requests, and resolution of permitting issues, please further explain how the observed delays were beyond NEET NY’s control and could not have been reasonably anticipated at the time its bid was submitted.

Please acknowledge your receipt of this letter by “Reply All” e-mail.

Sincerely,

/s/ James W. Brew

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Counsel for Municipal Electric Utilities Association

Attachment

cc: Julie Krauss
Julie.Krauss@nexteraenergy.com

**INFORMAL CHALLENGE OF NIAGARA MOHAWK
TO NEET NY'S FAILURE TO PROVIDE ADEQUATE INFORMATION REGARDING
ITS 2023 PNRR**

Pursuant to Section IV of the NextEra Energy Transmission New York, Inc. (NEET NY) Formula Rate Implementation Protocols (Protocols),¹ Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk) submits this Informal Challenge to NEET NY's projected net revenue requirement for the 2023 Rate Year (2023 PNRR). Specifically, Niagara Mohawk challenges: (1) whether NEET NY has provided adequate supporting information regarding the approximately \$86 million in cost overruns associated with the Empire State Line project to justify classifying all of these costs as "Unforeseeable Costs" under the cost containment provisions set forth in NEET NY's 2018 formula rate settlement agreement (Settlement Agreement);² and (2) whether, based on the insufficient information provided to-date, it can be determined if the formula rate and procedures in the NEET NY Protocols have been properly applied to the 2023 PNRR.³

Niagara Mohawk recognizes that unforeseeable costs can and do occur when undertaking a project of this size and complexity, and especially during a time period marked by pandemic, record inflation, and unprecedented supply chain disruption. Nevertheless, transparency is essential for the functioning of an effective cost containment program, and the information received from NEET NY to-date on all the categories of "unforeseeable costs" identified by NEET NY in the Information Exchange Procedures has not permitted Niagara Mohawk to adequately assess NEET NY's claims of unforeseeability or for Niagara Mohawk to assure itself that the costs allocated to the claimed "unforeseeable" cost categories are properly allocated. Therefore, Niagara Mohawk requests that NEET NY provide sufficient additional supporting information on the Empire State Line Project cost overruns as required under the Protocols regarding the 2023 PNRR to resolve these issues.

¹ New York Independent System Operator, Inc. (NYISO) Open Access Transmission Tariff, Schedule 10, Section 6.10.9.2.2, as filed with and accepted by the Federal Energy Regulatory Commission (FERC). Capitalized terms not otherwise defined herein have the meanings set forth in the Protocols.

² See NEET NY Offer of Settlement, Docket No. ER16-2719-006 (May 25, 2018); *NextEra Energy Transmission N.Y., Inc.*, 164 FERC ¶ 61,117 (2018) (FERC letter order accepting Settlement Agreement subject to compliance filings); FERC letter orders issued on July 9, 2019 to accept compliance filings filed in Docket No. ER16-2719. Niagara Mohawk is a Settling Party to that settlement.

³ Pursuant to Section IV.D of the NEET NY Protocols, Informal and Formal Challenges shall be limited to all issues that may be necessary to determine: (1) the extent or effect of an Accounting Change; (2) whether the Annual True-Up or projected net revenue requirement fails to include data properly recorded in accordance with these protocols; (3) the proper application of the formula rate and procedures in these protocols; (4) the accuracy of data and consistency with the formula rate of the calculations shown in the Annual True-Up and projected net revenue requirement; (5) the prudence of actual costs and expenditures; (6) the effect of any change to the underlying Uniform System of Accounts or FERC Form No. 1; or (7) any other information that may reasonably have substantive effect on the calculation of the charge pursuant to the formula. Niagara Mohawk challenges NEET NY's 2023 PNRR based on issues (3) and (7) in Section IV.D of the NEET NY Protocols.

I. Background

The Settlement Agreement, among other things, sets the base return on equity and incentive rate treatments for NEET NY's Empire State Line Project.⁴ Pursuant to the Settlement Agreement, NEET NY is obligated to "provide updates of Unforeseeable Costs as part of project cost updates in its annual June informational filing, including information demonstrating how such costs were determined to be Unforeseeable Costs."⁵ The Settlement Agreement defines Unforeseeable Costs in relevant part as "costs and savings that, with the exercise of commercially reasonable due diligence, could not have been anticipated at the time that NEET NY's Capital Cost bid for the Empire State Line Project was submitted to the NYISO in December 2015."⁶

The Settlement Agreement specifies that Unforeseeable Costs consist solely of costs that are (i) "[a]ssociated with material modifications to the routing or scope of work of the Eligible Projects that result from a NYPSC [New York Public Service Commission] order, negotiations or settlement agreements within the siting process, or are imposed or required by any other government agency," (ii) "[a]ssociated with changes in applicable laws and regulations, or interpretations thereof by government agencies," or (iii) "a result of orders of courts or action or inaction by governmental agencies."⁷ The Settlement Agreement also states that "foreseeable obligations as included in the License application, or non-material obligations imposed upon NEET NY as a normal part of the siting process, shall not be deemed to be Unforeseeable Costs."⁸ Unforeseeable Costs in an aggregate amount up to 5% of each Eligible Project's Cost Cap are considered project costs that are part of the contingency and subject to cost containment under the Settlement Agreement, while Unforeseeable Costs that are more than 5% of the amount of the Cost Cap are not subject to the Cost Cap or cost containment and are recoverable in NEET NY's formula rate.⁹

Under the Protocols, NEET NY must file with FERC by March 15 of each year an informational filing of its projected net revenue requirement for the Rate Year, including its Annual True-Up and True-Up Adjustment.¹⁰ NEET NY posted its 2023 PNRR on the NYISO

⁴ Settlement Agreement, Article 2.1. The Settlement Agreement also addresses certain issues associated with NEET NY's then-potential (and now realized) development of the AC Transmission Project. The Empire State Line Project and the AC Transmission Project are defined in Articles 2.1(a) and 2.1(b) of the Settlement Agreement, respectively.

⁵ Settlement Agreement, Article 3.3(d).

⁶ Settlement Agreement, Article 3.3(b). The referenced Cost Cap Bid is defined in Article 3.3(a) of the Settlement Agreement.

⁷ Settlement Agreement, Article 3.3(b). The referenced Cost Cap is defined in Article 2.2 of the Settlement Agreement.

⁸ Settlement Agreement, Article 3.3(b).

⁹ Settlement Agreement, Article 3.3(d). The referenced Eligible Projects are defined in Article 2.2 of the Settlement Agreement.

¹⁰ Protocols, Section VI.A.

website for review by Interested Parties on September 30, 2022.¹¹ In accordance with the Information Exchange Procedures contained in Section III of the Protocols, Niagara Mohawk and other New York transmission owners (NYTOs) submitted written information requests to NEET NY regarding the 2023 PNRR on October 13, 2022 and AVANGRID, Inc. (AVANGRID)¹² submitted written information requests to NEET NY regarding the 2023 PNRR on December 1, 2022.¹³ NEET NY provided written responses to the NYTOs' requests on November 3, 2022 and provided written responses to AVANGRID's requests on December 22, 2022.

II. Informal Challenge

The Protocols require that the 2023 PNRR must (among other things) “[p]rovide the formula rate calculations and all inputs thereto, as well as supporting documentation and workpapers for data that are used in the projected net revenue requirement,” “[p]rovide sufficient information to enable Interested Parties to replicate the calculations of the projected net revenue requirement,” and “[i]dentify items included in the projected net revenue requirement at an amount other than on a historic cost basis.”¹⁴ To the extent that costs designated by NEET NY as Unforeseeable Costs do not satisfy the provisions of the Settlement Agreement or otherwise are not supportable, the data used to calculate the 2023 PNRR and the resulting calculations will be inaccurate.

The NYTOs and AVANGRID correctly served information requests on NEET NY seeking adequate information to determine whether the 2023 PNRR fails to include data properly recorded in accordance with the Protocols, the proper application of the formula rate and procedures in the Protocols, and other information that may reasonably have substantive effect on the calculation of NEET NY's charges under the formula rate. The NYTOs and AVANGRID specifically served information requests seeking information NEET NY is obligated to provide under the Settlement Agreement “demonstrating how such costs were determined to be Unforeseeable Costs.”

Niagara Mohawk believes the information on the 2023 PNRR that NEET NY has provided to date, including in its responses to the information requests from the NYTOs and AVANGRID, is insufficient to meet the requirements of the Settlement Agreement and the Protocols described above. The responses to the information requests have been incomplete and conclusory, lacking the level of detail necessary to comply with the Protocols. For example, regarding the costs associated with the Thruway Horizontal Directional Drill (HDD), Niagara Mohawk believes that NEET NY must provide additional information sufficient for Niagara

¹¹ This posting is required by Section II.C of the Protocols.

¹² AVANGRID is the parent company of New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E).

¹³ In addition, the NYTOs had previously submitted information requests on December 1, 2021 inquiring about many of the same categories of allegedly unforeseeable costs claimed by NEET NY in its 2021-22 PNRR. NEET NY responded to those information requests on January 10, 2022, but those responses were also lacking in detail and are conclusory.

¹⁴ Protocols, Section II.F.

Mohawk to determine whether the HDD costs are Unforeseeable Costs and whether the specific amount claimed by NEET NY is supportable. Similarly, Niagara Mohawk believes more detail must be provided to support NEET NY's claim that the extent to which agricultural matting was required by the state's Environmental Management and Construction Plan (EM&CP) was unforeseeable. Based on the inadequate information provided to date, NEET NY has not adequately demonstrated that, with the exercise of commercially reasonable due diligence, the "Unforeseeable Costs" claimed by NEET NY could not have been anticipated at the time that NEET NY's Capital Cost bid for the Empire State Line Project was submitted to the NYISO. Therefore, Niagara Mohawk believes that NEET NY must timely provide additional supporting information to allow Niagara Mohawk to determine: (1) whether the approximately \$86 million in cost overruns associated with the Empire State Line are properly categorized as "Unforeseeable Costs" under the Settlement Agreement; and (2) whether the formula rate and procedures in the NEET NY Protocols have been properly applied to 2023 NPRR.

III. Conclusion

Pursuant to Section IV.B of the Protocols, NEET NY is required to make a good-faith effort to respond to any Informal Challenge within 20 business days of notification of such challenge and to appoint a senior representative to work with the party that submitted the Informal Challenge (or its representative) toward a resolution of the challenge. Also, if NEET New York disagrees with an Informal Challenge, it must provide the Interested Party with an explanation supporting the inputs, supporting explanations, allocations, calculations, or other information to which the Interested Party objects. NEET NY is required to respond to all Informal Challenges by no later than February 28, 2023 (unless the review period is extended by NEET NY or FERC).

Niagara Mohawk urges NEET NY to appoint a senior representative as soon as possible to attempt to resolve the issues described above in this Informal Challenge, with a view to avoiding, if possible, the need for Niagara Mohawk to file a Formal Challenge with FERC. Given greater transparency on the cost categories by NEET NY, Niagara Mohawk expects that that the informal protest process will allow Niagara Mohawk to reach a reasonable degree of assurance that some or all of the \$86 million in cost overruns are appropriately classified as unforeseeable costs. Niagara Mohawk also respectfully requests that NEET NY post this Informal Challenge, and NEET NY's response, on the NYISO website.¹⁵ Niagara Mohawk looks forward to hearing from NEET NY regarding the issues described above.

¹⁵ See Protocols, Section IV.E.

STATE OF NEW YORK
DEPARTMENT OF STATE

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KATHY HOCHUL
GOVERNOR

ROBERT J. RODRIGUEZ
SECRETARY OF STATE

January 31, 2023

Richard W. Allen
President
NextEra Energy Transmission New York, Inc.
700 Universe Blvd
Juno Beach, FL 33408

Re: Informal Challenge to NextEra Energy Transmission New York, Inc. 2023 Projected Net Revenue Requirements

Dear Mr. Allen:

Pursuant to the Formula Rate Implementation Protocols for NextEra Energy Transmission New York, Inc (NEET NY), New York Independent System Operator Open Access Transmission Tariff (NYISO OATT) rate schedule 6.10.9.2.2, the New York State Division of Consumer Protection Utility Intervention Unit (UIU) hereby notifies NEET NY of its Informal Challenge to the characterization of certain project costs as unforeseeable in the 2023 Projected Net Revenue Requirement, specifically its characterization of Thruway Horizontal Directional Drilling (HDD) costs as unforeseeable.

In its 2023 projected net revenue requirement, NEET NY characterizes \$18.1 million in costs associated with HDD as unforeseeable but did not submit additional information to support this assertion. According to the settlement (Docket Nos. ER16-2719, ER18-125), ‘Unforeseeable Costs’ are costs and savings that, with the exercise of commercially reasonable due diligence, could not have been anticipated at the time that NEET NY’s Capital Cost bid for the Empire State Line Project was submitted to the NYISO in December 2015. Moreover, the formula rate requires that NEET NY provide, “information demonstrating how such costs were determined to be Unforeseeable Costs.”

In NEET NY’s response to NY Transmission Owners’ Question #2 provided on November 3, 2022, NEET NY stated that the costs were unforeseeable because (1) other bidders had made a similar assumption and (2) NEET NY’s request for a waiver had been denied during the project phase. NEET NY also provided the following rationale:

The independent NYISO estimate assumed overhead crossing for the Thruway. NYSEG’s existing overhead transmission lines cross the thruway overhead at the same location. NEETNY applied for a waiver with the New York State Thruway Authority (NYTA) to cross the Thruway that was denied.



**Department
of State**

Under the regulation in place at the time NEET NY submitted its bid, however, the NYSTA Occupancy and Work Permit Accommodation and Guidelines required that new utility crossings be placed underground, “except in limited circumstances where the Authority, in its discretion, determines that placement of Utilities underground is not feasible.” Given that the guidelines clearly treat the placement of overhead lines as an exception requiring a waiver, it was commercially reasonable to anticipate that, at the time of the bid, the costs associated with undergrounding the line could be incurred.

UIU, therefore, contends that the \$18.1 million HDD cost is mischaracterized as unforeseeable and should therefore be subject to the cost containment provisions.

Sincerely,

s/Erin Hogan

Erin Hogan, Director
NYS Department of State
Utility Intervention Unit
One Commerce Plaza
99 Washington Ave
Albany, NY 12231-0001
518-474-1859
Erin.Hogan@dos.ny.gov



Public Service Commission

Public Service Commission

Rory M. Christian

Chair and
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Diane X. Burman

James S. Alesi

Tracey A. Edwards

John B. Howard

David J. Valesky

John B. Maggiore

Commissioners

January 31, 2023

Julie Krauss
Principal Business Analyst
NextEra Energy Transmission New York, Inc.
700 Universe Blvd., UST/JB
Juno Beach, FL 33408
SENT VIA EMAIL: Julie.Krauss@nexteraenergy.com

RE: NextEra Energy Transmission New York, Inc.'s 2023 Projected Net Revenue Requirement

Dear Ms. Krauss,

Pursuant to NextEra Energy Transmission New York, Inc.'s Formula Rate Implementation Protocols, as contained in the New York Independent System Operator, Inc.'s Open Access Transmission Tariff Section 6.10.9.2.2, the New York State Public Service Commission hereby submits the attached informal challenge to NextEra Energy Transmission New York's projected net revenue requirement for 2023.

Please feel free to contact me at (518) 473-8178 or David.Drexler@dps.ny.gov should you have any questions.

Sincerely,

David G. Drexler

David G. Drexler

Managing Attorney

NYS Department of Public

Service

Three Empire State Plaza

Albany, NY 12223

Attachment

**NEW YORK STATE PUBLIC SERVICE COMMISSION’S
INFORMAL CHALLENGE TO THE 2023 PROJECTED NET REVENUE
REQUIREMENT FOR NEXTERA ENERGY TRANSMISSION NEW YORK, INC.**

INTRODUCTION

On September 30, 2022, the New York Independent System Operator, Inc. (NYISO) posted NextEra Energy Transmission New York, Inc.’s (NEET NY) projected net revenue requirement for 2023 with respect to its Empire State Line Project (Project).¹ The projected revenue requirement includes approximately \$83 million in various “cost overruns” for the Project that were identified as “Unforeseeable Costs,” as defined in the 2018 Formula Rate Settlement Agreement filed with the Federal Energy Regulatory Commission (Settlement Agreement).² By characterizing these costs as “unforeseeable,” NEET NY seeks to apply a 100 basis point adder incentive to the Return on Equity.

The New York State Public Service Commission (NYSPSC) objects to NEET NY’s characterization of the cost overruns as “unforeseeable.”³ As discussed below, various costs identified by NEET NY could have been anticipated, at the time NEET NY bid on the Project, with the exercise of commercially reasonable due diligence. Moreover, NEET NY has failed to adequately support the designation of the cost overruns as unforeseeable. Accordingly, these costs should be re-categorized as part of the cost containment provisions in the Settlement Agreement.

BACKGROUND

In October 2017, NEET NY was selected by the NYISO to develop the Project to address the Western New York Public Policy Transmission Need identified by the NYSPSC.⁴ The Project is a 345 kilovolt line that connects the Dysinger switchyard in Royalton, New York, with

¹ Available at: <https://www.nyiso.com/billing-rates>

² See FERC Docket No. ER16-2719-000, NextEra Energy Transmission New York, Inc., Offer of Settlement (filed May 25, 2018). FERC approved the Settlement Agreement on August 17, 2018 (164 FERC ¶ 61,117 (2018)).

³ The views expressed herein are not intended to represent those of any individual member of the NYSPSC. Pursuant to Section 12 of the New York Public Service Law, N.Y. Pub. Serv. L. §12, the NYSPSC Chair is authorized to direct this filing on behalf of the NYSPSC.

⁴ See NYSPSC Case 14-E-0454, In the Matter of New York Independent System Operator, Inc.’s Proposed Public Policy Transmission Needs for Consideration, Order Addressing Public Policy Requirements for Transmission Planning Purposes (issued July 20, 2015).

the new East Stolle switchyard in Elma, New York. NEET NY completed construction of the Project in July of 2022.

The costs of the Project are subject to the Settlement Agreement, which was developed among various parties, including the NYSPSC. Under the Settlement Agreement, NEET NY is subject to Cost Containment provisions, whereby “certain costs incurred by NEET NY above the Cost Cap will receive separate financial treatment that results in a ‘sharing’ of these costs between NEET NY and customers. Under the Cost Containment mechanism, twenty percent (20%) of certain costs above the Cost Cap will not earn an equity return, but NEET NY will be allowed to recover the associated depreciation and debt cost, while 80 percent of these costs above the Cost Cap will be allowed to earn the base ROE, associated depreciation, and debt cost, but will not be allowed to earn any ROE incentive adders.”⁵

The Settlement Agreement also provides for the treatment of Unforeseeable Costs beyond the Capital Cost Bid, specifying that “there are costs NEET NY may incur, or savings NEET NY may realize, that are in addition to those costs included in the Capital Cost Bid. These costs and savings, referred to herein collectively as ‘Unforeseeable Costs,’ are costs and savings that, with the exercise of commercially reasonable due diligence, could not have been anticipated at the time that NEET NY’s Capital Cost bid for the Empire State Line Project was submitted to the NYISO in December 2015 ...”⁶ Further, Unforeseeable Costs are costs:

(i) Associated with material modifications to the routing or scope of work of the Eligible Projects that result from a NYPSC order, negotiations or settlement agreements within the siting process, or are imposed or required by any other governmental agency. For the avoidance of doubt, foreseeable obligations as included in the License application, or non-material obligations imposed upon NEET NY as a normal part of the siting process, shall not be deemed to be Unforeseeable Costs;

⁵ See FERC Docket No. ER16-2719-000, Explanatory Statement in Support of Settlement Agreement, p. 6 (filed May 25, 2018). The Cost Cap is defined as the sum of the following: (A) the Capital Cost Bid, defined as the amount submitted by NEET NY in response to the NYISO's solicitation on the Western New York Public Policy Transmission Need, but excluding Empire Third Party Costs; (B) contingency of 18% will be applied to the Capital Cost Bid; (C) the sum of the Capital Cost Bid and the contingency of 18%, multiplied by an inflation factor of 2.0% per year for the period of time from the submission in response to the NYISO's Solicitation to the date that is one year prior to the Commercial Operation Date; and (D) Allowance for Funds Used During Construction. The Cost Cap was calculated as approximately \$110 million.

⁶ Settlement Agreement, Article 3.3(b).

(ii) Associated with changes in applicable laws and regulations, or interpretations thereof by governmental agencies; or

(iii) As a result of orders of courts or action or inaction by governmental agencies.⁷

The rate treatment applied to such costs provides that “Unforeseeable Costs in an aggregate amount up to 5% of each Eligible Project’s Cost Cap shall be considered project costs that are part of the contingency and subject to the Cost Containment Mechanism Unforeseeable Costs that are more than 5% of the amount of the Cost Cap are not subject to the Cost Cap or Cost Containment Mechanism and are recoverable in the formula rate.”⁸

DISCUSSION

In accordance with Section IV. D of the NEET NY Protocols, the NYSPSC hereby submits its Informal Challenge to NEET NY’s projected net revenue requirement for 2023 for the Project. The NYSPSC maintains that NEET NY has incorrectly recorded the approximately \$83 million in various “cost overruns” as “Unforeseeable Costs.”

I. NEET NY HAS NOT PROVIDED ADEQUATE SUPPORT TO DESIGNATE ANY UNFORSEEABLE COSTS

Pursuant to the terms of the Settlement Agreement, NEET NY is required to “provide updates of Unforeseeable Costs as part of project cost updates in its annual June informational filing, including information demonstrating how such costs were determined to be Unforeseeable Costs.”⁹ However, NEET NY’s projected net revenue requirement for 2023, as posted by the NYISO on September 30, 2022, is entirely devoid of any details explaining which costs were unforeseeable or why they were unforeseeable. The responses to information requests, to date, have also lacked a sufficient basis to determine any costs were truly unforeseeable. Accordingly, NEET NY has failed to provide adequate information and documents to justify that such costs were properly designated as Unforeseeable Costs.

⁷ Settlement Agreement, Article 3.3(b).

⁸ Settlement Agreement, Article 3.3(d).

⁹ Settlement Agreement, Article 3.3(d).

II. NEET NY HAS IMPROPERLY DESIGNATED CERTAIN COSTS AS UNFORSEEABLE

Based on the limited information provided by NEET NY in responses to information requests, NEET NY's categorization of such items as Unforeseeable Costs is unsupported, as those items clearly fall outside the definition of Unforeseeable Costs.

A. The Need for Horizontal Directional Drilling was Foreseeable

NEET NY claims that the need for Horizontal Directional Drilling under the New York State Thruway was not foreseeable, and points to the NYISO's consultant, which estimated the generic costs of a project assuming an overhead crossing. In addition, NEET NY notes that NYSEG has several existing transmission lines that cross the Thruway overhead in the same location. NEET NY indicates that it applied for a waiver with the New York State Thruway Authority in order to make an overhead crossing, but that such waiver request was ultimately denied by the Thruway Authority.

Despite the information cited by NEET NY, the potential for costs to be incurred for undergrounding the Project beneath the Thruway could have been anticipated at the time NEET NY submitted its Capital Cost bid. Because the submission of the Capital Cost bid preceded the NYISO consultant's estimate, it could not have been relied upon, even if such reliance were assumed to qualify as an exercise of due diligence. With the exercise of commercially reasonable due diligence, NEET NY should have been aware that the Thruway Authority's Occupancy and Work Permit Accommodation Guidelines (dated 2010) require utility crossings to be underground "except in limited circumstances where the Authority, in its discretion, determines that placement of Utilities underground is not feasible."¹⁰ With these limited circumstances in mind, NEET NY should not have assumed a waiver would have been granted, or that prior waivers granted to NYSEG were indicative that future waivers would be granted. Accordingly, the need for Horizontal Directional Drilling under the Thruway was foreseeable.

B. The Requirement for Agricultural Matting was Known and Foreseeable

While NEET NY had planned to remove and replace topsoil in agricultural areas, NEET NY cites the Environmental Management & Construction Plan (EM&CP) approved by the NYSPSC, which included a requirement to use matting in agricultural areas. However, the potential for costs to be incurred for agricultural matting was foreseeable. In fact, NextEra was

¹⁰ See <https://www.thruway.ny.gov/business/realproperty/forms/tap-401u.pdf>

directly informed at the AC Transmission technical meetings in 2015 that timber matting was a State requirement for agricultural areas.¹¹ As such, these costs were entirely foreseeable and could have been anticipated with the exercise of commercially reasonable due diligence.

C. The Need to Comply With Bulk Power System Requirements was Foreseeable

With respect to the costs to construct to Bulk Power System requirements, NEET NY points to the NYISO's System Impact Study, which did not identify the stations as Bulk Power System. NEET NY notes, however, that after consulting with the interconnecting Transmission Owners, it became aware that elements of the station must be designed to Bulk Power System standards due to the interconnection of multiple Bulk Power System facilities.

Notwithstanding the NYISO's System Impact Study, it was generally known at the time of NEET NY's bid that essentially all facilities rated 138 kV and above in New York were classified as part of the Bulk Power System. This information was readily available in the 2014-2015 NYISO Gold Book and the NYISO's 2014 Intermediate Area Transmission Review.¹² Therefore, upon undertaking its commercially reasonable due diligence, NEET NY could have anticipated the need to comply with Bulk Power System Requirements.

CONCLUSION

The exclusion of foreseeable costs from NEET NY's cost containment provisions results in incorrect formula rate inputs for NEET NY's revenue requirement and an overstatement of the 2023 projected revenue requirement. In accordance with the Protocols, NEET NY must "make a good faith effort to respond to any Informal Challenge within twenty (20) business days of notification of such challenge," and "appoint a senior representative to work with the party that submitted the Informal Challenge (or its representative) toward a resolution of the challenge."¹³

¹¹ See <https://www.youtube.com/@nyspsc/videos>; see also <https://agriculture.ny.gov/system/files/documents/2019/10/electric-transmission-row-guidelines.pdf>

¹² See <https://www.nyiso.com/documents/20142/2226467/2014-Load-Capacity-Data-Report-Gold-Book.pdf/7f25165f-b808-34dd-269e-093fdebca735> See also, https://www.nysrc.org/pdf/MeetingMaterial/RCMSMeetingMaterial/RCMS_Agenda_183/2014_NYISO_IntermediateATR_Draft_v12.pdf

¹³ Section IV.D, Challenge Procedures.

NEET NY must also provide “an explanation supporting the inputs, supporting explanations, allocations, calculations, or other information.”¹⁴

¹⁴ Section IV.D, Challenge Procedures.



NextEra Energy Transmission New York, Inc.
RY 2023 Annual Projected Rate and RY 2021 True-Up
Response to Informal Challenges

Date of Response: February 28, 2023

On October 20, 2022, NextEra Energy Transmission New York, Inc. (“NEETNY”) held an open meeting among Interested Parties pursuant to its formula rate implementation protocols (“Protocols”) to provide Interested Parties an opportunity to seek information and clarifications from NEETNY about the 2023 Projected Net Revenue Requirement. NEETNY and the Interested Parties engaged in the data request and response processes provided under the Information Exchange Procedures of the Protocols to review the inputs, supporting explanations, allocations, and calculations included in NEETNY’s Rate Year 2021 (“RY 2021”) annual true-up and Rate Year 2023 (“RY 2023”) projected net revenue requirement. NEETNY provided responses to information requests on November 3, November 10, and December 22, 2022.¹ NEETNY’s November 3, 2022 response to information requests included a detailed breakdown, on a line-item basis, of all costs included in its RY 2023 projections categorized as “Unforeseeable Costs” pursuant to the terms of the Settlement Agreement.² On December 22, 2022, NEETNY provided further support for specific Empire State Line Project (“Project”) costs categorized as Unforeseeable Costs and justifications for the categorization.

Pursuant to the Challenge Procedures of the Protocols, on January 31, 2023, Niagara Mohawk Power Corporation d/b/a National Grid, New York State Public Service Commission, New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, Long Island Power Authority, Municipal Electric Utilities Association of New York (“MEUA”), and the NYS Department of State Utility Intervention Unit (together the “Challengers”) submitted Informal Challenges to NEETNY. The Challengers seek further support for the categorization of the Project’s Unforeseeable Costs, and challenge the categorization of the Project costs included as Unforeseeable Costs in NEETNY’s RY 2023 projections. To the extent Project costs are incorrectly categorized as Unforeseeable Costs, the Challengers further challenge the formula rate inputs to NEETNY’s RY 2023 projections.

Upon receipt of the Informal Challenges, NEETNY appointed the President of NEETNY to work with the Challengers toward a resolution of the Informal Challenges. To that end, NEETNY contacted the Challengers to set meetings to discuss the issues identified in the Informal Challenges, provide further information and justification of Project costs categorized as

¹ NEETNY caused all information requests and responses thereto to be posted at a publicly accessible location on the New York ISO website. (available at <https://www.nyiso.com/billing-rates>).

² Offer of Settlement, NextEra Energy Transmission New York, Inc., FERC Docket No. ER16-2719-000 (May 25, 2018).

Unforeseeable Costs, and clarify the application of the terms of the Settlement Agreement to NEETNY's RY 2023 projections. The first of the aforementioned meetings with the Challengers was held on February 24, 2023, and NEETNY is seeking further meetings to be scheduled on or around March 3 and March 10, 2023. NEETNY welcomes participation from Interested Parties in the Information Exchange Procedures and Challenge Procedures of the Protocols and looks forward to the opportunity to further engage with the Challengers to explain the formula rate inputs to NEETNY's RY 2023 projections in a transparent manner and seek resolution of the Informal Challenges.

NEETNY Response to the Informal Challenges

NEETNY's RY 2023 projections appropriately categorize a total of \$86.0MM of Project costs as Unforeseeable Costs. Under the terms of the Settlement Agreement, Unforeseeable Costs are:

costs and savings that, with the exercise of commercially reasonable due diligence, could not have been anticipated at the time that NEETNY's Capital Cost bid for the Empire State Line Project was submitted to the NYISO in December 2015 and at the time that the Capital Cost Bid for the AC Transmission Project was submitted to the NYISO on April 29, 2016.³

The term "commercially reasonable" has not been defined by the New York Commercial Code. New York courts have recently attempted to articulate guidelines. In *Holland Loader Co. v. FLSmidth A/S*, the Court defined "commercially reasonable" as requiring "at the very least some conscious exertion to accomplish the agreed goal, but something less than a degree of efforts that jeopardizes one's business interests."⁴ Moreover, the efforts of a party to meet a "commercially reasonable" standard are to be judged in the context of the particular industry,⁵ as well as considering "the financial resources, business expertise, and practices of the [breaching party]."⁶ The standard for satisfying commercial reasonability under New York law is a "fairly lenient one."⁷

Similarly, the Federal Energy Regulatory Commission ("FERC" or "Commission") has stated that "reasonable efforts and good utility practice standards balance a variety of considerations including timeliness, reliability and safety" and a "decision about whether a public utility has violated the reasonable efforts or good utility practice standards is necessarily a judgment call, as the standards do not clearly define what it means to be timely or to act

³ Settlement Agreement, Article 3.3(b).

⁴ *Holland Loader Co. v. FLSmidth A/S*, 313 F. Supp. 3d 447, 469, 473 (S.D.N.Y. 2018), aff'd, 769 F. App'x 40 (2d Cir. 2019).

⁵ See *Id.* at 447 and 452.

⁶ see *3DT Holdings LLC v. Bard Access Sys.*, 2022 U.S. Dist. LEXIS 140030 citing *Lemond Cycling Inc. v. PIT Holding, Inc.*, 2005 WL 102969, at *5 [D. Minn. Jan. 14, 2005].

⁷ *Id.* at 16 (citation omitted); see also *Shane Campbell Gallery v. Frieze Events*, 441 F. Supp. 3d 1, 4 (S.D.N.Y. 2020) (concluding that plaintiff's allegation that it was exceedingly hot inside a tent was insufficient to show defendant failed to use commercially reasonable efforts to provide common area air conditioning).

NextEra Energy Transmission, LLC

consistent with good business practices, reliability, safety and expedition.”⁸ Moreover, under FERC precedent the reasonable efforts standard does not require “best” or “optimum efforts.”⁹

Thus, taken together, under these standards, a business that engages in an effort to abide by a commercially reasonable due diligence provision may prove that it has engaged in commercially reasonable due diligence, even if that standard is not expressly defined in the contract, through a fact-and circumstance-dependent determination. NEETNY is therefore providing Attachment A hereto which provides a fact-specific justification for the categorization of Project costs as Unforeseeable Costs.

NEETNY acted timely and consistent with Good Utility Practice in the development and subsequent submittal of its competitive bid to the New York ISO to develop the Empire State Line Project.¹⁰ As demonstrated in Attachment A, despite commercially reasonable due diligence as taken under both the New York and FERC standards, the Project costs categorized as Unforeseeable Costs in NEETNY’s RY 2023 projections could not have been anticipated at the time that NEETNY’s Capital Cost bid for the Empire State Line Project was submitted to the NYISO in December 2015.

The Settlement Agreement further defines Unforeseeable Costs as costs:

- i. Associated with material modifications to the routing or scope of work of the Eligible Projects that result from a NYPSC order, negotiations or settlement agreements within the siting process, or are imposed or required by any other governmental agency. For the avoidance of doubt, foreseeable obligations as included in the License application, or non-material obligations imposed upon NEETNY as a normal part of the siting process, shall not be deemed to be Unforeseeable Costs;
- ii. Associated with changes in applicable laws and regulations, or interpretations thereof by governmental agencies; or
- iii. As a result of orders of courts or action or inaction by governmental agencies.¹¹

As delineated in Attachment A, each of the Project costs categorized as Unforeseeable Costs are within the scope of Article 3.3(b) of the Settlement Agreement. Accordingly, NEETNY has correctly categorized \$86.0MM of Project costs as Unforeseeable Costs pursuant to the terms of the Settlement Agreement.

⁸ *Tenaska Clear Creek Wind, LLC v. Southwest Power Pool, Inc.*, 2022 FERC LEXIS 1220, *51 (F.E.R.C. September 9, 2022).

⁹ *Hecate Energy Greene Cty. 3 LLC v. Cent. Hudson Gas & Elec. Corp. N.Y. Indep. Sys. Operator, Inc.*, 2021 FERC LEXIS 1586, *10 (F.E.R.C. November 18, 2021).

¹⁰ FERC defines Reasonable efforts as "actions that are timely and consistent with Good Utility Practice and are substantially equivalent to those a Party would use to protect its own interests." Order No. 2003, 104 FERC ¶ 61,103 at P 67; pro forma LGIP section 1.

¹¹ Settlement Agreement, Article 3.3(b).
NextEra Energy Transmission, LLC

Furthermore, the inputs to NEETNY's cost of service for RY 2023 have been properly recorded and both the formula rate and Settlement Agreement have been applied according to their terms. Under the terms of the Settlement Agreement:

Unforeseeable Costs in an aggregate amount up to 5% of each Eligible Project's Cost Cap shall be considered project costs that are part of the contingency and subject to the Cost Containment Mechanism set forth below. Unforeseeable Costs that are more than 5% of the amount of the Cost Cap are not subject to the Cost Cap or Cost Containment Mechanism and are recoverable in the formula rate.¹²

The Project cost cap is \$110.4MM, and 5% of the Project cost cap is \$5.5MM. Accordingly, the cost containment mechanism has been applied to \$5.5MM of the total \$86.0MM in Unforeseeable Costs. Pursuant to the Settlement Agreement:

- i. 20% of any prudently incurred project costs above the Cost Cap that are subject to the Cost Containment Mechanism will not earn an equity return, but NEETNY will be allowed to recover the associated depreciation and debt cost.
- ii. 80% of any prudently incurred costs above the Cost Cap that are subject to the Cost Containment Mechanism will not earn any ROE Incentive Adders on the equity portion of such costs, but NEETNY will be allowed to earn the Base ROE, associated depreciation, and debt cost.¹³

As of the RY 2023 projections, the \$5.5MM in Unforeseeable Costs subject to the cost containment mechanism has depreciated to \$5.1MM. Therefore, NEETNY has not applied an ROE to the equity portion of \$1.0M of the \$5.1MM, and has applied the Base ROE of 9.65% to \$4.1M of the \$5.1MM of Unforeseeable Costs subject to the cost containment mechanism in calculating NEETNY's RY 2023 projections. As of the RY 2023 projections, the \$80.5MM of Unforeseeable Costs that have been excluded from the cost containment mechanism has depreciated to \$78.1MM. Therefore, NEETNY has applied the 100 basis point ROE Incentive Adders to the equity portion of the \$78.1MM of Unforeseeable Costs that have been excluded from the cost containment mechanism in calculating NEETNY's RY 2023 projections.

Pursuant to discussions held during the February 24, 2023, meeting with the Challengers, in addition to this instant response to the Informal challenges, NEETNY intends to provide a detailed cost breakdown of the Project costs categorized as Unforeseeable Costs in NEETNY's RY 2023 projections.

¹² Settlement Agreement, Article 3.3(d).

¹³ Settlement Agreement, Article 3.4(a).
NextEra Energy Transmission, LLC

ATTACHMENT A

Item	Thruway Horizontal Directional Drilling (HDD)
Cost	\$18.1M
Unforeseeable Cost Pursuant to Article 3.3(b) of the Settlement Agreement	Unforeseeable Cost pursuant to Article 3.3(b)(i) of the Settlement Agreement because the costs were incurred due to requirement of a Governmental Organization
Justification	<p>These costs could not have been anticipated through commercially reasonable due diligence under the NY/FERC standards because the limited time period provided to prepare the NYISO proposal required NEETNY to rely on publicly available information, transmission development experience, and engineering judgement to scope a design for the Thruway crossing.</p> <p>NEETNY proposed crossing the New York State Thruway on an existing easement that crossed the Thruway with two operating 230kV transmission lines. Further, NEETNY consulted the New York Thruway Authority Overhead Crossing Design Guide lines (TAP-421C), which provide that while the NYTA encourages underground crossings, NYTA will permit overhead crossings if the underground crossing is unusually difficult.</p> <p>NEETNY deemed an underground crossing of the Thruway unusually difficult to such an extent that it could not have anticipated NYTA's denial of the ungrounding waiver. Through commercially reasonable due diligence, NEETNY determined an underground crossing to be unusually difficult for the following reasons:</p> <ol style="list-style-type: none"> 1. HDD construction would be required for an extraordinary length, and through unknown soil conditions and present wetlands. Furthermore, an underground crossing would cause substantial construction impacts on neighbors, and complicated logistics in support of the HDD. Additionally, HDD requires a significant water source to operate the equipment, which can be difficult to locate in a rural area. 2. An underground crossing drives design changes to the transmission facilities. For example, the communications required to provide protection of the line was required to be changed. Initially, the plan was to utilize Power Line Carrier (PLC) and Fiber Optics (OPGW) as the two communication paths. The introduction of an underground section has the potential to attenuate the PLC signal thereby impacting operational reliability. Thus, the PLC needed to be replaced with a second OPGW. The second OPGW drove design changes to all transmission structures on the right of way due to its greater weight than the originally planned overhead ground wire. These changes also drive changes at the terminal substations. 3. An underground crossing presented greater operational risk due to the presence of cable splices, lightning arresters, and pot heads which all introduce another risk to failure. In the event an underground segment experiences a failure, the resulting outage duration and repair costs are greater when compared to an overhead line.

ATTACHMENT A

	<p>4. To create a crossing underground is significantly more costly than an overhead crossing directly speaking to the unusual difficulty of the HDD technique.</p> <p>The commercially reasonable due diligence NEETNY undertook to determine that an underground waiver would have been granted and therefore included with the bid proposal is validated by the proposals submitted into the NYISO solicitation by competing developers and by the NYISO themselves. Each developer who proposed a crossing of the New York State Thruway, including Avangrid, proposed for the crossing to be overhead. The NYISO, who had much more than 60 days to prepare an estimate, also estimated the crossing to be overhead and did not flag the potential for an underground crossing in their report.</p>
Description of Cost	<p>Boring/Directional Drilling: \$12.2M Cable Procurement and Installation: \$4.6M Engineering: \$0.32M Materials: \$0.9M Internal Payroll: \$4k</p>

ATTACHMENT A

Item	Agricultural Matting
Cost	\$8.2M
Unforeseeable Cost Pursuant to Article 3.3(b) of the Settlement Agreement	Unforeseeable Cost pursuant to Article 3(b)(i) of the Settlement Agreement due to obligations placed on NEETNY during the siting process
Justification	<p>NEETNY engaged in commercially reasonable due diligence in developing the proposed approach to protecting agricultural lands during construction and could not have anticipated that agricultural matting would be required.</p> <p>At the time of the bid preparation, NEETNY reviewed the New York State Department of Agriculture and Markets <i>Guidelines for Electric Transmission Right-of-Way Projects</i> published in 2011 and prior Article VIIs to assess the requirements for working on Agricultural lands. In all cases, topsoil stripping was acceptable and while it noted that matting was an alternative, it was more costly and therefore NEETNY proposed topsoil stripping. NEETNY's review of the guidelines resulted in a determination that matting was merely an alternative, and therefore could not have anticipated that it would be mandated in lieu of topsoil stripping.</p>
Description of Cost	<p>Contractor Costs: \$8.2M</p> <p>Scope includes ~14,000 mats, mobilization and demobilization, project management, field office and temp facilities, laydown yard rental and maintenance, mat loading and unloading</p>

ATTACHMENT A

Item	Clearing Requirements
Cost	\$4.2M
Unforeseeable Cost Pursuant to Article 3.3(b) of the Settlement Agreement	Unforeseeable Cost pursuant to Article 3(b)(i) of the Settlement Agreement due to obligations placed on NEETNY during the siting process
Justification	<p>These ultimate clearing requirements could not have been anticipated through commercially reasonable due diligence under the NY/FERC standards because the limited time period provided to prepare the NYISO proposal required NEETNY to rely on publicly available information, transmission development experience, and engineering judgement to develop a design for the proposed right of way.</p> <p>In its proposal, NEETNY proposed H-frame transmission structures to match the designs of the existing NYSEG 230kV transmission lines in order to mitigate visual impacts. As a result of the settlement discussions, NEETNY changed to monopole construction to mitigate agricultural impacts. In addition, NEETNY increased the required clearance from the outside conductor to the vegetation to 55'. The structure design change and the resulting structure centerline change resulted in increased clearing of at least 20'. This increase was required for approximately 12.5 miles. Furthermore, NEETNY was required to clear an additional 30' for danger trees.</p> <p>NEETNY designed the proposed transmission line to meet or exceed the requirements of the National Electric Safety Code. NEETNY also applied an additional distance factor to account for extreme wind conditions to provide additional clearance and safety. The additional clearance requirements placed on NEETNY in the settlement process exceeded the industry accepted design standards NEETNY had applied and therefore could not have been anticipated at the time of bid development.</p>
Description of Cost	<ul style="list-style-type: none"> • Contractor: \$2.68MM • Material: \$0.9MM • Engineering: \$0.46MM • Geotechnical analysis for rock auguring: \$0.90MM

ATTACHMENT A

Item	Wetland Mitigation and Restoration
Cost	\$7.4M
Unforeseeable Cost Pursuant to Article 3.3(b) of the Settlement Agreement	Unforeseeable Cost pursuant to Article 3(b)(i) of the Settlement Agreement due to obligations placed on NEETNY during the siting process
Justification	<p>NEETNY acted commercially reasonably in developing the wetland mitigation plan in the bid proposal and could not have anticipated the additional costs resulting from the early mitigation actions and additional montiors agreed to under the settlement discussions. In its bid, NEETNY recognized the need to mitigate the wetlands lost to the project. Approximately 35 acres of wetlands were impacted which required approximately 70 acres of compensatory mitigation.</p> <p>NEETNY proposed to develop the compensatory mitigation after the project was placed in service and, as such, the costs were planned to be an O&M expense. However, during the settlement discussions, the construction of the wetland mitigation was required to be initiated prior to COD, which required the costs to be capitalized.</p> <p>Additionally, at the time of the bid NEETNY anticipated the need for an environmental monitor and ag inspector, and based upon the length of the line, determined that one inspector was sufficient to fulfill both roles. As a result of settlement discussions, NEETNY agreed to engage separate inspectors for each role. Furthermore, the monitoring costs increased due to the heavy construction activity of the compressed schedule which required a second environmental monitor during the most active construction periods.</p>
Description of Cost	<ul style="list-style-type: none"> • Property Acquisition: \$1.8MM • Contractor: \$4.2MM • Labor: \$0.6MM • Materials: \$0.8MM

ATTACHMENT A

Item	Dysinger Soils
Cost	\$3.1M
Unforeseeable Cost Pursuant to Article 3.3(b) of the Settlement Agreement	Unforeseeable Cost pursuant to Article 3(b) of the Settlement Agreement as the cost could not have been anticipated at the time of NEETNY's capital cost bid
Justification	<p>NEETNY could not have anticipated that it would incur the Dysinger Soil costs through commercially reasonable due diligence under the NY/FERC standards because NEETNY intended to secure the property rights of an alternative parcel for the Dysinger substation.</p> <p>The primary parcel upon which the bid was based is located at the southwest intersection of the NYPA & NYSEG powerlines. NEETNY had been in discussions with the landowner who was interested in selling at the time of the bid submittal. Subsequent to submittal of the bid, the landowner had a change of heart. While NEETNY had the ability to exercise eminent domain, NEETNY only elects to pursue eminent domain rights as a matter of last resort, and therefore ultimately elected to purchase a different site, located Northwest of the intersection. Unlike the original location, this site was adjacent to a creek, was susceptible to flooding, and the soil posed poor conditions for constructing foundations. The existing soils needed to be removed and new soil needed to be brought onto the site.</p> <p>At the time the bid was submitted, NEETNY believed an agreement could be reached with the original landowner, and therefore could not have anticipated the increased costs associated with the alternate site.</p>
Description of Cost	<ul style="list-style-type: none"> Contractors: \$3.1M <p>Costs include the removal and replacement of unsuitable soils and replacing it with clay both in the substation yard area and the parking area. In addition, costs include work for slope stabilization. Finally, this cost item includes the costs for the installation of drilled shaft foundations.</p>

ATTACHMENT A

Item	Delays/Acceleration/Schedule Compression – Increased ROW Clearing Costs/Increased E Stolle Costs/Increased Dysinger
Cost	\$7.7M/\$2.7M/\$2M
Unforeseeable Cost Pursuant to Article 3.3(b) of the Settlement Agreement	Unforeseeable Cost pursuant to Article 3(b)(iii) of the Settlement Agreement due to inaction by governmental authorities
Justification	<p>These costs could not have been anticipated through commercially reasonable due diligence under the NY/FERC standards because the approval time to acquire all permits exceeded any reasonable and comparable approval timeframe. The major permitting approvals required to begin construction were the Article VII, EM&CP, Section 68, and Section 70. NEETNY planned on 23 months to receive these approvals and the last permit/approval was received in month 36. Attachment B provides a comparison of permit timeframes for recent major transmission projects being developed by non-incumbent transmission developers.</p> <p>NEETNY planned to apply for and receive the Sec 68 and Sec 70 in parallel with the Article VII/EM&CP approval. There are two principal drivers for the lengthy approval process. First is the length of the Section 68 review and the second is the late filing of the Section 70 application.</p> <p>On the Section 68, the recent approval times were 4 months for Transco and 13 months for LS Power. NEETNY received it in 26 months. If VMP was addressed similarly to TransCo and/or separately from Section 68 (i.e., in Art. 7) it is likely the Section 68 approval would have occurred more quickly. From the point in the proceeding that the record was closed to the point NEETNY received the Section 68 was approximately 11 months. See Attachment C for a chronology of the Section 68 process.</p> <p>On the Section 70, the application was planned to be filed and reviewed in parallel with the other permit applications. However, Avangrid refused to execute the Easement Agreement until after all other permits/approvals were received – thus delaying the filing of the Section 70. NEETNY is not aware of any requirement to seek the permits/approvals in a stepwise manner, in lieu of parallel applications. Further, NEETNY requested approval from Avangrid to begin construction activities on the ROW which was denied; Avangrid only approved access for clearing activities.</p>
Description of Cost	<ul style="list-style-type: none"> Increased transmission line costs for additional equipment, manpower, matting (6,000 additional mats), noise mitigation, and materials: \$7.7MM Increased E. Stolle Road construction costs attributable to construction activities scheduled during periods of heavy wet soil conditions: \$2.7MM

ATTACHMENT A

	<ul style="list-style-type: none">• Increased Dysinger Switchyard costs including additional manpower and the utilization of generators for temporary service: \$2.0MM
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ATTACHMENT A

Item	Vertical Market Power (VMP)
Cost	\$0.9M
Unforeseeable Cost Pursuant to Article 3.3(b) of the Settlement Agreement	Unforeseeable Cost pursuant to Article 3(b)(iii) of the Settlement Agreement due to action or inaction by governmental agencies
Justification	<p>These costs could not have been anticipated through commercially reasonable due diligence under the NY/FERC standards because there is no publicly available information forecasting the required level of effort. NEETNY anticipated that VMP would be assessed by the PSC and believed it would be reviewed as an item under the normal review period of the Article VII. Prior to the bid, VMP analysis only applied to Section 70 transfers. In the DPS staff notice of deficiency, NEETNY was directed to remove it from the Article VII application and submit it with the Sec 68. A reasonable review period for Sec 68 approval was 6-12 months. However, the total length of time for Sec 68 approval driven by the VMP issue was 26 months.</p> <p>The depth of studies and consultant time required to support the VMP assessment was significantly more than any previous VMP review that NEETNY had reviewed and certainly more than Transco and LSP (2-4x longer). A reasonable review period would have been consistent with prior Sec 68 reviews. As such, costs associated with a review period 2-4x longer than the most recent reviews could not have been anticipated.</p>
Description of Cost	<ul style="list-style-type: none"> • External consultant and legal: \$0.5MM • Internal labor: \$0.4MM <p>These are costs for VMP studies, filings, and associated testimony.</p>

ATTACHMENT A

Item	Engineering & Construction Requirements – BPS Costs
Cost	\$11.4M
Unforeseeable Cost Pursuant to Article 3.3(b) of the Settlement Agreement	Unforeseeable Cost pursuant to Article 3(b) of the Settlement Agreement as the costs could not have been anticipated at the time of NEETNY's capital cost bid
Justification	NEETNY acted commercially reasonably in developing the design costs for the bid but could not have anticipated this cost. Bulk power designated substations must be designed to NPCC design criteria. The BPS designation is determined by the NYISO in the performance of the system impact study (SIS) – the A10 test. The SIS had not been performed for the Empire State Line (ESL) project at the time the bid was prepared. As validation of NEETNY's commercially reasonable due diligence undertaken at the time of the bid, resulting in NEETNY's determination that the NEETNY facilities were not BPS facilities, the NYISO also confirmed, through the performance of an SIS, that the NEETNY facilities were not BPS facilities. However, during the development of the project design the connecting transmission owners informed NEETNY that their facilities were BPS and that NEETNY needed to incorporate NPCC designs to ensure their facilities remain NPCC compliant. NEETNY could not have anticipated the connecting transmission owner determinations at the time of the bid.
Description of Cost	<ul style="list-style-type: none"> • Engineering: \$3.8MM • Construction: \$3.5MM • Materials: \$4.1MM <p>These are engineering, material and construction costs to design the stations to NPCC standards.</p>

ATTACHMENT A

Item	Engineering & Construction Requirements – Microwave Tower
Cost	\$2.4M
Unforeseeable Cost Pursuant to Article 3.3(b) of the Settlement Agreement	Unforeseeable Cost pursuant to Article 3(b) of the Settlement Agreement as the costs could not have been anticipated at the time of NEETNY's capital cost bid
Justification	<p>The microwave tower installation could not have been anticipated through commercially reasonable due diligence under the NY/FERC standards because the introduction of a class year project, after NEETNY submitted its bid, necessitated a design review which resulted in a change to the communication design. Between any two transmission substations, a transmission line has two communication links to ensure reliability. On the Stolle Road to Five Mile Road transmission line, there was a Power Line Carrier (PLC) technology and also a leased telephone line as the second communication link. With the addition of the ESL line, the Facility study assessed the protection and communication design and concluded that a fiber line should be used instead of the leased telephone line. Subsequently, a 2019 class year project was to interconnect on the transmission line which necessitated a review of the communication design. The conclusion of that review was that a microwave link, rather than a fiber link, should be utilized. The NYISO directed NEETNY to install the microwave tower.</p> <p>At the time of NEETNY's bid, there was no business reason to require a microwave link. NEETNY could not have anticipated requirements for a later developed project.</p>
Description of Cost	<ul style="list-style-type: none"> Construction of a microwave tower for communication between E. Stolle Rd and Five Mile Road station: \$2.4MM

ATTACHMENT A

Item	Engineering & Construction Requirements – Non-Std Prot & Design Schemes
Cost	\$2.3M
Unforeseeable Cost Pursuant to Article 3.3(b) of the Settlement Agreement	Unforeseeable Cost pursuant to Article 3(b) of the Settlement Agreement as the costs could not have been anticipated at the time of NEETNY’s capital cost bid
Justification	<p>NEETNY acted commercially reasonable in developing the bid but could not have anticipated these costs because NEETNY expected the engineering drawings for the incumbent substations would be available and in good quality. Furthermore, NEETNY expected that protection requirements would be standardized. Lastly NEETNY anticipated that NYSEG would design and install the station service at E. Stolle Road.</p> <p>NEETNY experienced significant delays in receiving drawings from RG&E to permit NEETNY to complete the design to support the construction schedule. The Rochester Area Reliability Project (“RARP”) was a project completed in approximately 2020. The RARP project impacted a few of the substations that required upgrades for the ESL project. As NEETNY was to perform the design for the upgrades at the RGE stations, NEETNY required the as-built drawings. RGE did not provide the as-builts in a timely manner to support the design schedule. Furthermore, the drawings were of poor quality and illegible, which required field verification. This resulted in the NEETNY consultant to incur significant overtime costs. Additionally, the drawings did not reflect the actual field conditions, as equipment shown on the drawings as being installed was not and required NEETNY to re-engineer portions of the project. These delays and resultant costs were outside the control of NEETNY and could not have been anticipated.</p> <p>NEETNY incurred additional costs developing the protection design schemes with NYSEG and NYPA. Neither company had standard design schemes which required the development of new designs, significant level of internal review, and iterations of the design all adding to the cost.</p> <p>NERC adopted a new standard, PRC-027, during the project design requiring additional engineering work to comply with this standard. NEETNY could not have anticipated NERC’s new standard at the time of the bid.</p> <p>Lastly, NYSEG requested that NEETNY design the station service installation at E Stolle substation. NEETNY placed the request for station service in accordance with NYSEG processes. At some point after that request, NYSEG asked NEETNY to perform the design for that installation, resulting in further delay and cost increases outside of NEETNY’s control that could not have been anticipated.</p>
Description of Cost	<ul style="list-style-type: none"> • Consultant Labor: \$2.3MM

ATTACHMENT A

Item	Engineering & Construction Requirements – Additional Construction Entrances
Cost	\$0.84M
Unforeseeable Cost Pursuant to Article 3.3(b) of the Settlement Agreement	Unforeseeable Cost pursuant to Article 3(b)(i) of the Settlement Agreement due to obligations placed on NEETNY during the siting process and by other governmental agencies;
Justification	NEETNY acted commercially reasonable in developing the bid but could not have anticipated the requirement for additional construction entrances. The NEETNY ESL project is constructed on New York State Electric & Gas rights of way. In its proposal, NEETNY planned to utilize much of the NYSEG rights of way, including the use of the existing construction entrances with only 12 new construction entrances requiring private property. Through the settlement discussions, the access plans were modified based on input from the parties, thereby increasing the total number of entrances. Furthermore, additional construction entrances were required by the local municipal governments. The additional entrances could not have been anticipated at the time of the bid development.
Description of Cost	<ul style="list-style-type: none"> Contractor: \$0.8MM

ATTACHMENT A

Item	Engineering & Construction Requirements – Design & Construction of Laydown Areas
Unforeseeable Cost Pursuant to Article 3.3(b) of the Settlement Agreement	Unforeseeable Cost pursuant to Article 3(b)(iii) of the Settlement Agreement due to action or inaction by governmental agencies
Justification	<p>The requirement for additional laydown areas could not have been anticipated through commercially reasonable due diligence under the NY/FERC standards because the need was driven by the delay in acquiring the Section 70 permit which was outside of NEETNY’s control. NEETNY planned to take delivery of the structures on the rights of way adjacent to where the structures would be installed. This would reduce double handling and minimize project costs. Access to the right of way to store material would not be available until the Section 70 was approved. Suppliers would only hold the structures at their facility for 6 months after fabrication. Therefore, the delay in the Section 70 exceeded that 6 month period and laydown yards needed to be acquired for the material. As previously discussed, the extended delays in the Section 70, which resulted in the need for laydown areas, could not have been anticipated at the time of the bid.</p>
Description of Cost	<ul style="list-style-type: none"> Contractors: \$0.7MM

ATTACHMENT A

Item	Engineering & Construction Requirements – Non-Spec Conductor
Cost	\$0.13M
Unforeseeable Cost Pursuant to Article 3.3(b) of the Settlement Agreement	Unforeseeable Cost pursuant to Article 3(b)(i) of the Settlement Agreement due to obligations placed on NEETNY during the siting process and by other governmental agencies;
Justification	NEETNY could not have anticipated the requirement to use non-specular conductor through commercially reasonable due diligence under the NY/FERC standards because the transmission line is not located in a visually sensitive area. Conductor utilized in the transmission of electricity is predominantly aluminum. Aluminum has polished finished that when light hits it, it can be reflected. To remove that finish, the conductor is “sand blasted” to produce a dull finish that does not produce such high light reflecting properties. This type of conductor is utilized in areas with sensitive visual resource areas where it is important not to detract from the view by having a “shiny” reflection from transmission lines in the distance. The location of this transmission line is not within any visually sensitive areas and therefore the requirement for the non-standard conductor could not have been anticipated.
Description of Cost	<ul style="list-style-type: none"> • Material: \$0.1MM

ATTACHMENT A

Item	Engineering & Construction Requirements – Misc. E&C costs
Cost	\$2.3M
Unforeseeable Cost Pursuant to Article 3.3(b) of the Settlement Agreement	Unforeseeable Cost pursuant to Article 3(b) of the Settlement Agreement as the costs could not have been anticipated at the time of NEETNY's capital cost bid
Justification	<p>NEETNY acted commercially reasonably in developing the proposal and could not have anticipated these various costs. These costs were driven by supply chain issues, vendor equipment requirements, connecting utility planning and indirect BPS compliance costs.</p> <p>E. Stolle and Dysinger station required an emergency generator to serve as a station service supply. The generator delivery schedule was disrupted, and temporary generators were required to be installed in order to perform testing and energize the station. Such disruptions could not have been anticipated at the time of the bid.</p> <p>National Grid is the utility providing service to the Dysinger substation. NEETNY requested station service which was being managed by a Project Manager. Approximately two weeks prior to the need for the station service, the Project Manager informed NEETNY that National Grid had been following the incorrect procedure and the station service would not be installed as originally scheduled. NEETNY arranged with National Grid to install a temporary station service until the permanent service could be installed. This was necessary to maintain the project schedule, and could not have been anticipated due to the actions outside of NEETNY's control.</p> <p>NEETNY made assumptions, as are appropriate under industry standards, for the design of the control building foundations and some equipment foundations in the original bid. Upon receipt of the equipment drawings, modifications to the design were required to accommodate the equipment requirements.</p> <p>Furthermore, additional security measures were required to be implemented for compliance with BPS. These included the addition of physical barriers and monitoring equipment which could not have been anticipated at the time of the bid in light of NEETNY's reasonable determination that the NEETNY facilities were not BPS facilities.</p>
Description of Cost	<ul style="list-style-type: none"> Contractor: \$2.3MM

ATTACHMENT A

Item	Commodity Pricing
Cost	\$3.9M
Unforeseeable Cost Pursuant to Article 3.3(b) of the Settlement Agreement	Unforeseeable Cost pursuant to Article 3(b) of the Settlement Agreement as the costs could not have been anticipated at the time of NEETNY's capital cost bid
Justification	<p>NEETNY could not have anticipated the commodity price increases through commercially reasonable due diligence under the NY/FERC standards because they resulted from extraordinary global supply chain interruptions. NEETNY submitted its bid in 2015 and beginning in 2020 global supply chain disruptions occurred as a result of the pandemic. The material for the project was procured beginning in 2019 and continuing through 2021. The major material components of the project were steel structures, conductor, and electrical equipment. The average market price of steel was \$1.25/lb at the time of the bid in 2015. At the time of the material being ordered, steel costs had risen by nearly 50% to approximately \$1.88/lb in 2020.</p> <p>The global pandemic and associated disruption to the supply chain could not have been anticipated at the time of the bid.</p>
Description of Cost	<ul style="list-style-type: none"> • Material Costs: \$3.5MM • Shipping Costs: \$0.4MM <p>Commodity Pricing includes additional shipping costs which were experienced due to the supply chain disruption.</p>

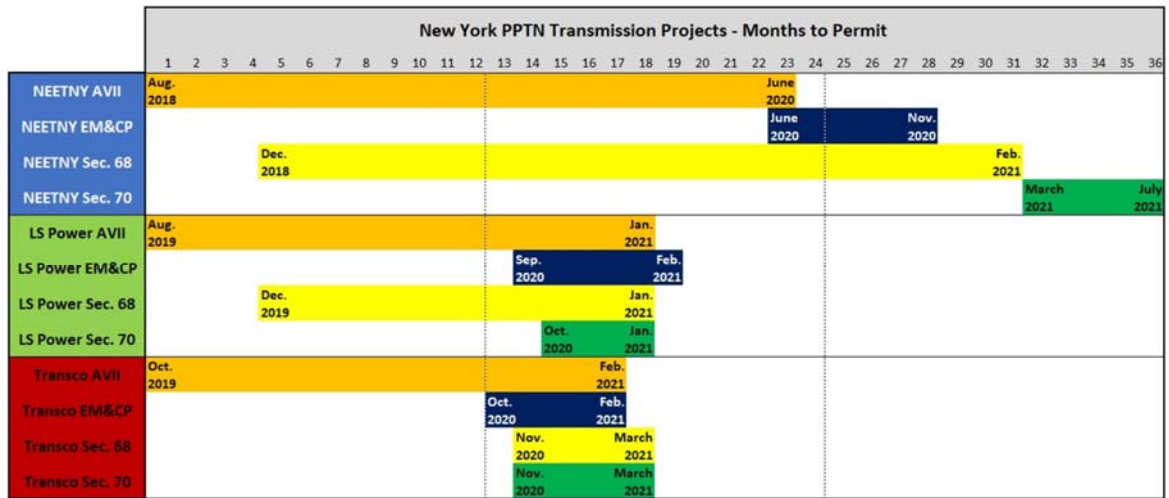
ATTACHMENT A

Item	Pipeline AC Mitigation
Cost	\$2.9M
Unforeseeable Cost Pursuant to Article 3.3(b) of the Settlement Agreement	Unforeseeable Cost pursuant to Article 3(b)(i) of the Settlement Agreement due to obligations placed on NEETNY during the siting process and by other governmental agencies;
Justification	<p>NEETNY could not have anticipated the incremental AC Mitigation through commercially reasonable due diligence under the NY/FERC standards because the limited time to prepare the NYISO bid proposal precluded NEETNY from assessing each pipeline company's requirements and performing analysis to assess the cost impact. NEETNY recognized the need for pipeline mitigation and had reasonably included 1.4 miles of mitigation in the bid. NEETNY planned for mitigation to be installed on facilities that did not meet the National Association of Corrosion Engineers guidelines. NEETNY consulted with the pipeline companies following receipt of the Article VII and found that most times their standards exceeded the NACE guidelines. This resulted in mitigation being installed on over 8 miles of pipelines.</p> <p>Furthermore, each pipeline company had individual requirements to work near and over their facilities that could not have been determined through commercially reasonable due diligence at the time of the bid. In addition, NEETNY anticipated being able to use light weight equipment to minimize impacts to the agricultural fields. However, the above average wet season resulted in fields being difficult to navigate requiring matting. The added matting and pipeline access requirements contributed to the cost increase and NEETNY could not have anticipated the extent of the wet season.</p>
Description of Cost	<ul style="list-style-type: none"> • Contractor (Access): \$1.5MM • Contractor (Mitigation): \$1.3MM • Consultants: \$61k

ATTACHMENT A

Item	Mud Creek Bridge
Cost	\$1.4M
Unforeseeable Cost Pursuant to Article 3.3(b) of the Settlement Agreement	Unforeseeable Cost pursuant to Article 3(b) of the Settlement Agreement as the costs could not have been anticipated at the time of NEETNY's capital cost bid
Justification	<p>NEETNY could not have anticipated through commercially reasonable due diligence under the NY/FERC standards that the Dysinger station would require a bridge.</p> <p>NEETNY proposed to construct Dysinger substation on a parcel of land southwest of the intersection of the NYPA & NYSEG transmission lines. Due to difficulty securing the property, the Dysinger station was moved to a parcel Northwest of the intersection. This new parcel has a creek running through it, aptly named Mud Creek. To access the constructible area of the parcel, a bridge crossing Mud Creek needed to be replaced to handle the weight of the equipment to be brought into Dysinger substation.</p> <p>NEETNY planned on constructing the substation on a different parcel of land and therefore could not have anticipated the need for a bridge on the alternate location.</p>
Description of Cost	<ul style="list-style-type: none"> • Construction: \$1.2MM • Engineering: \$0.2MM

ATTACHMENT B



ATTACHMENT C

ESL Section 68 Chronology

12-14-18: NEETNY files petition seeking approval to exercise the rights granted to NEETNY in various road crossing agreements with municipalities and provided evidence of NEETNY's ability to finance, build and operate the ESL.

01-14-19: Deficiency letter issued stating that NEETNY must address vertical market power issues

02-08-19: NEETNY responded to the deficiency with testimony and exhibits

Late February, early March: DPS Staff informed NEETNY, via a phone call, that the verifications filed with the Sec 68 petition on 12-14-18 was insufficient

03-08-19: Revised verifications filed

03-11-19: DPS staff provided a letter stating that the application was complete

04-09-19: ALJ issues notice for a procedural conference on 05-03-19

[Prior to the 5-03-19 procedural conference we reached agreement with staff on a procedural schedule. NEETNY presented that to the ALJ at the 5-03-19 conference. The ALJ adopted that schedule which included staff testimony being filed 8-07-19 and ended with reply briefs being filed 11-20-19 after which the record would be closed.]

07-25-19: NEETNY informed staff that supplemental testimony needed to be filed to update the VMP analysis.

[Based on that, the ALJ issued a revised procedural ruling dated 8-03-19 that included the filing of NEETNY's supplemental testimony on 8-16-19, staff testimony on 9-20-19 and reply briefs 1-21-20]

09-20-19: Staff testimony filed

10-18-19: NEETNY files rebuttal testimony

[Hearings had been set for 11-25-19, however the ALJ subsequently changed the date to mid-December. Before that date, on 11-29-19 staff filed revised testimony. Because staff's revised testimony raised new issues, NEETNY asked that the schedule be revised to allow NEETNY to file supplemental testimony addressing the new staff testimony. Staff and the ALJ agreed and the hearings were then delayed again until mid-January 2020.]

02-21-20: Initial briefs filed

03-13-20: Reply briefs filed

[RECORD CLOSED AFTER REPLY BRIEFS FILED]

[No communication from ALJ following the closing of the record. NEETNY made multiple calls to DPS seeking an update but were only told the case was under consideration]

09-30-20: NEETNY files a letter with the PSC Secretary noting the record had been closed for 6 months and requesting a decision

ATTACHMENT C

10-02-20: ALJ issues recommended decision

10-22-20: Briefs on exceptions to the PSC were filed

11-06-20: Reply briefs on exceptions were filed

02-11-21: PSC issues **Order granting the CPCN**

NEETNY Formula Rate Challenges

Responses to Verbal Questions Raised on March 3, 2023 Conference Call

March 9, 2023

1. What were the timeframes to secure Section 68 approval for projects developed prior to the ESL project bid submittal (prior to 2015)?

Response: The following Sec 68 approval timeframes were for electric transmission projects developed by a non-incumbent developer.

- Hudson Transmission Partners:
 - Filed: 7/13/2010
 - Approved: 4/14/2011
 - Total Duration: 9 months
- Neptune Cable:
 - Filed: 6/6/2005
 - Approved: 11/30/2005
 - Total Duration: 6 months
- Champlain Hudson Power Express
 - Filed: 8/30/13
 - Approved: 1/21/14
 - Total Duration: 5 months

2. What was the estimate of the transmission line overhead crossing of the Thruway included in the proposal?

Response: The estimated cost included in the proposal for the overhead crossing was \$348,727.

3. Provide an explanation of the NPCC requirements for Bulk Power Station design.

Response: The Northeast Power Coordinating Council (NPCC) has a reliability reference guide called Directory #4. This Directory provides the protection system design requirements applicable to Bulk Power system elements. One of the overarching objectives of the criteria is to eliminate a single point of failure which could impact system reliability. This has a significant impact on the station design. Some of the design impacts include separation of communication paths, installation the primary and secondary relays on separate panels, and installation of two distinct battery systems with the appropriate protection such that no one incident can impact them both. Examples of some incidents that the stations are designed to mitigate include floods, fire, and mechanical impact (i.e. equipment cutting into cables).

Line Item	Bid estimate cost	Actual cost ¹	Incremental actual cost (Unforeseeable amount)
Thruway Horizontal Directional Drilling	\$0	\$18,111,081	\$18,111,081
Agricultural Matting	\$471,142	\$8,684,171	\$8,213,029
Clearing Requirements	\$1,727,539	\$4,228,553	\$2,501,014
Wetland Mitigation and Restoration	\$193,120	\$7,409,145	\$7,216,025
Dysinger Soils	\$0	\$3,057,239	\$3,057,239
Delays/Acceleration/Schedule Compression – Increased ROW Clearing Costs/Increased E Stolle Costs/Increased Dysinger	\$0	\$12,376,580	\$12,376,580
Vertical Market Power	\$0	\$909,258	\$909,258
Engineering & Construction Requirements – BPS Costs	\$0	\$11,407,719	\$11,407,719
Engineering & Construction Requirements – Microwave Tower	\$0	\$2,419,722	\$2,419,722
Engineering & Construction Requirements – Non-Std Prot & Design Schemes	\$0	\$2,347,445	\$2,347,445
Engineering & Construction Requirements – Additional Construction Entrances	\$0	\$840,852	\$840,852
Engineering & Construction Requirements – Design & Construction of Laydown Areas	\$0	\$698,545	\$698,545
Engineering & Construction Requirements – Non-Spec Conductor	\$0	\$134,560	\$134,560
Engineering & Construction Requirements – Misc. E&C costs	\$0	\$2,328,012	\$2,328,012
Comodity Pricing	\$2,577,259	\$6,497,485	\$3,920,226
Pipeline AC Mitigation	\$226,222	\$3,152,544	\$2,926,322
Mud Creek Bridge	\$0	\$1,419,194	\$1,419,194
Total			\$80,826,823
Rounding			

Footnotes

¹ Actual Cost reflective as of July 2022 when 2023 projection was created

NEETNY Formula Rate Projection Challenges

Responses to Verbal Questions Raised on the March 10, 2023 Conference Call

March 16, 2023

- 1. What was the linear distance the mitigated pipelines traveled longitudinally on the ESL right of way?**

Response: The total linear pipeline distance was approximately 32,500 feet.

- 2. What two parcels were referenced in the Article VII filing?**

Response: The two parcels are referred to as the Raduns and the Walters parcels.

Line Item	Bid estimate cost	Actual cost ¹	Incremental Cost
Thruway Horizontal Directional Drilling	\$348,727	\$18,111,081	\$17,762,354
Agricultural Matting	\$471,142	\$8,684,171	\$8,213,029
Clearing Requirements	\$1,727,539	\$4,228,553	\$2,501,014
Wetland Mitigation and Restoration	\$193,120	\$7,409,145	\$7,216,025
Dysinger Soils	\$0	\$3,057,239	\$3,057,239
Delays/Acceleration/Schedule Compression – Increased ROW Clearing Costs/Increased E Stolle Costs/Increased Dysinger	\$0	\$12,376,580	\$12,376,580
Vertical Market Power	\$0	\$909,258	\$909,258
Engineering & Construction Requirements – BPS Costs	\$0	\$11,407,719	\$11,407,719
Engineering & Construction Requirements – Microwave Tower	\$0	\$2,419,722	\$2,419,722
Engineering & Construction Requirements – Non-Std Prot & Design Schemes	\$0	\$2,347,445	\$2,347,445
Engineering & Construction Requirements – Additional Construction Entrances	\$330,000	\$1,170,852	\$840,852
Engineering & Construction Requirements – Design & Construction of Laydown Areas	\$849,952	\$1,548,497	\$698,545
Engineering & Construction Requirements – Non-Spec Conductor	\$1,088,188	\$1,222,748	\$134,560
Engineering & Construction Requirements – Misc. E&C costs	\$0	\$2,328,012	\$2,328,012
Comodity Pricing	\$2,577,259	\$6,497,485	\$3,920,226
Pipeline AC Mitigation	\$226,222	\$3,152,544	\$2,926,322
Mud Creek Bridge	\$0	\$1,419,194	\$1,419,194
Total			\$80,478,096
Rounding			

Footnotes

¹ Actual Cost reflective as of July 2022 when 2023 projection was created