

# Mechanism to Implement Transmission Owners' ROFR over Upgrades in the Public Policy Transmission Planning Process

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# Agenda

- **Review of Declaratory Order**
- **Proposed Revisions to Public Policy Transmission Planning Process**
- **Next Steps**

# Background

Date	Working Group	Discussion points and links to materials
2018-12-19	ESPWG/TPAS	Necessary Local Upgrades for Public Policy Transmission Need projects by Indicated Transmission Owners (Central Hudson Gas & Electric, ConEd, National Grid, NYSEG, O&R, and RG&E)
2019-04-12	ESPWG/TPAS	Straw Proposal to Address Non-BPTF Upgrades in the Public Policy Transmission Planning Process and Establish a Procedure to Administer Section 31.6.4 of Attachment Y by the NYISO
2019-05-21	ESPWG/TPAS	Updated Straw Proposal to Address Upgrades in the Public Policy Transmission Planning Process by the NYISO
2019-08-20	ESPWG/TPAS/ICAP WG	Updated Straw Proposal to Address Upgrades in the Public Policy Transmission Planning Process by the NYISO
2020-04-15	N/A	FERC Issues Declaratory Order Clarifying ROFR in NYISO's Planning Processes
2020-05-20	ESPWG/TPAS	Proposed Mechanism to Effectuate a ROFR in the Public Policy Transmission Planning Process by the NYISO

# Declaratory Order

# NYISO's Petition for Declaratory Order

- On August 18, 2020, NYISO filed a petition for declaratory order seeking confirmations and clarifications on three specific issues related to the existence of a federal right of first refusal (“ROFR”) for NYTOs to build, own, and recover the cost of upgrades to their existing transmission facilities.
- Interested parties submitted comments and protests in response to NYISO's petition.

# April 15 Declaratory Order

- On April 15, 2021, the Commission granted, in part, and denied, in part, NYISO's petition for declaratory order.
- The Commission noted that “the record reflects that NYISO has already expended considerable time and resources pursuing a stakeholder process to resolve these issues” and determined that Commission action was proper to remove uncertainty.

# April 15 Declaratory Order

- **ISSUE No. 1** – The Commission granted the Petition on this issue, and found that the NYTOs possess a federal ROFR for upgrades to their own existing transmission facilities and local transmission facilities, including upgrades that are part of another Developer’s proposed transmission project that NYISO selects in one of its competitive transmission planning processes.

# April 15 Declaratory Order

- **ISSUE No. 2** – The Commission denied the Petition on this issue, and found that if a NYTO exercises its federal ROFR for upgrades to its existing transmission facilities, the existing provisions of the OATT do not (i) contain a mechanism for a TO to exercise its right and (ii) permit the NYISO to treat the applicable TO as the developer for the upgrade portion of the transmission project that the NYISO Board selected.



# April 15 Declaratory Order

- **ISSUE No. 3** – The Commission granted the Petition, in part, on this issue, and found that a proposed transmission facility, which would decommission an existing transmission facility in order to connect a new facility in a different configuration than the original facility, would constitute a new facility rather than an upgrade.

# April 15 Declaratory Order

- **Commissioner Clements remarked, in her concurrence, that NYISO’s Public Policy Transmission Planning Process has been “a bright spot in the Order No. 1000 landscape” and expressed concerns that confirmation of a federal ROFR could limit competition depending on how NYISO revises its tariff to include a mechanism for the NYTOs to exercise this federal ROFR.**

# Proposed Revisions to Public Policy Transmission Planning Process

# General Approach

- **Given the Commission's Order, NYISO is revisiting the latest proposal that was discussed with stakeholders in August 2019**
- **NYISO is starting with the August 2019 proposal for, among other things, a mechanism to implement the federal ROFR having taken into account comments from stakeholders received in past discussions**

# General Approach

- **Proposed revisions are envisioned to apply to the current Long Island Offshore Wind Export Public Policy Transmission Need**
- **Proposed revisions principally aimed at developing a mechanism for NYTOs to exercise the ROFR in the Public Policy Transmission Planning Process (“PPTPP”)**
  - Future revisions will need to be discussed to provide a corresponding mechanism in the Reliability Planning Process and Economic Planning Process

# General Approach

- **Proposed revisions seek to maintain competition within the parameters of Order No. 1000**
- **Proposed revisions do not include an expanded definition of “upgrade”**
  - As directed by FERC in a 2014 compliance order, NYISO’s definition is directly from Order No. 1000,
  - The 2021 Declaratory Order did not direct changes to the NYISO’s definition of upgrade in the NYISO’s tariff and rejected arguments requesting a change, and
  - Five other ISOs/RTOs have similar definitions in their tariffs and agreements.

# Feasibility/Constructability Evaluation of Upgrades During System Impact Study

- NYISO will perform sensitivities, as appropriate, to account for the Public Policy Transmission Need case when performing the required interconnection studies
- **Revise the scope of the feasibility/constructability analyses in the optional Feasibility Study and System Impact Study (“SIS”) under Attachment P for upgrades proposed or related to Public Policy Transmission Projects to study the feasibility/constructability as it relates to the local transmission system**
  - Analyzes not only the Points of Interconnection but also the feasibility/constructability of the Upgrade itself
- **Include a tariff requirement for applicable Transmission Owner staff to execute a non-disclosure agreement when performing the expanded analysis in the SIS to prohibit communications between those that are performing the interconnection work and other Transmission Owner staff that will be involved in decisions in the Public Policy Transmission Planning Process**

# Feasibility/Constructability Evaluation of Upgrades During System Impact Study

- **Revise the SIS study to make it into two distinct parts for Public Policy Transmission Projects and use one part of the SIS as an input into the NYISO's evaluation and selection**
  - Part 1 of the SIS will include the identification of potential feasibility/constructability concerns of proposed Upgrades and necessary Network Upgrade Facilities to reliably interconnect the project
    - Part 1 will be used as an input into NYISO's evaluation and selection in the Public Policy Transmission Planning Process
    - NYISO's consultant in the public policy evaluation will prepare independent cost estimates for the identified Network Upgrade Facilities and any risks identified with the feasibility/constructability of an Upgrade
  - Part 2 of the SIS will include the good faith cost estimate for the identified NUFs and be included in the final SIS report
    - The cost estimate in the SIS would continue to be based on input from the Connecting Transmission Owner
    - NYISO's evaluation and selection in the Public Policy Transmission Planning Process would proceed in parallel, thereby reducing the potential for delay



# Clarification in Project Submittals

- **NYISO proposes to clarify the various types of components in a Public Policy Transmission Project in order to:**
  - Aid Developers in conceptualizing which components of their project would be subject to the federal ROFR and designated to a Transmission Owner
  - Assist NYISO in characterizing the various project components in the proposed designation process
  - Help to eliminate confusion between characterization of the project and Network Upgrade Facilities that may occur during the negotiation of the Development Agreement and Interconnection Agreement

# Clarification in Project Submittals

- **Difference between part of the Project vs. potential Network Upgrade Facilities:**
  - New transmission facilities and Upgrades are considered to be “part of the project” for purposes of the evaluation
    - Developer proposes the design of the facility in its proposal
    - Cannot be modified by the Developer or the NYISO after submission and during the evaluation process
  - Potential NUFs are for the purpose of reliably interconnecting the project to the NYS Transmission System and to allow the Developer to provide a complete project to the NYISO
    - The NYISO, in conjunction with the Connecting Transmission Owner, identifies the design of the facility through the Transmission Interconnection Studies that would be required in order for the project to interconnect
    - Will likely be modified based upon the results from the NYISO-conducted interconnection studies, which will account for system conditions using the base cases under the Transmission Interconnection Procedures

# Clarification in Project Submittals

- **Revisions would be primarily made to the project submittal forms in the applicable attachments to the PPTPP Manual requiring Developers to specify components of its project as follows:**
  - New transmission facilities to achieve the Public Policy Transmission Need,
  - Upgrades that a Developer proposes to achieve the Public Policy Transmission Need (includes those directed by the New York State Public Service Commission (“PSC”) for a Public Policy Transmission Need), and
  - Potential Network Upgrade Facilities (“potential NUFs”), which are interconnection facilities and system upgrades that a Developer believes will be necessary to reliably interconnect the proposed transmission project to the New York State Transmission System pursuant to the Transmission Interconnection Standard.

# Designation Process for Upgrades

- NYISO proposes to consider the facility characterizations provided in a Developers' proposal as a starting point in identifying components of a project that may be designated to a Transmission Owner exercising a ROFR
- NYISO will apply the current definition in Section 31.6.4 of Attachment Y, as well as Commission precedent, in making a determination as to the characterization of each component.
  - New Facilities – automatically designated to the proposing Developer of the selected Public Policy Transmission Project
  - Upgrades to Existing Transmission Facilities – handled through a designation process prior to the evaluation and selection phase of the process

# Designation Process for Upgrades

- **Proposed procedure for identifying the Designated Entity for Upgrades:**

Step One – No later than 30 calendar days before NYISO’s presentation of the Viability and Sufficiency Assessment to stakeholders, NYISO will post a list of the Upgrades for which NYISO will identify the applicable Transmission Owner that can elect to be the “Designated Entity”

- Eligible components of a proposed project will be those that meet the definition of an Upgrade for the components considered to be a part of a Developer’s proposed project
- The list of Upgrades will not be associated with a specific project or Developer

# Designation Process for Upgrades

- **Proposed procedure for identifying the Designated Entity for Upgrades: (continued)**

Step Two – Each applicable Transmission Owner must notify NYISO, in writing, within 15 calendar days of the posting of the final Viability and Sufficiency Assessment whether it accepts or declines to be the Designated Entity of an Upgrade

- If the applicable Transmission Owner accepts its designation, NYISO will consider the Transmission Owner to be the Designated Entity and for purposes of the evaluation and selection of the proposals, the NYISO will use the independent estimate for cost and timing, as well as the cost contingency, for the Upgrades designated to the Transmission Owner
- If Transmission Owner rejects its designation for an Upgrade, NYISO will consider the Developer to be the Designated Entity to develop, own, and recover the costs of the Upgrade and will apply the Developer's voluntary cost containment measures to the Upgrade, if proposed

# Designation Process for Upgrades

- **Proposed procedure for identifying the Designated Entity for Upgrades: (continued)**

Step Three – NYISO will inform the proposing Developers and applicable Transmission Owners of the final designations of Upgrades for their proposed transmission solutions

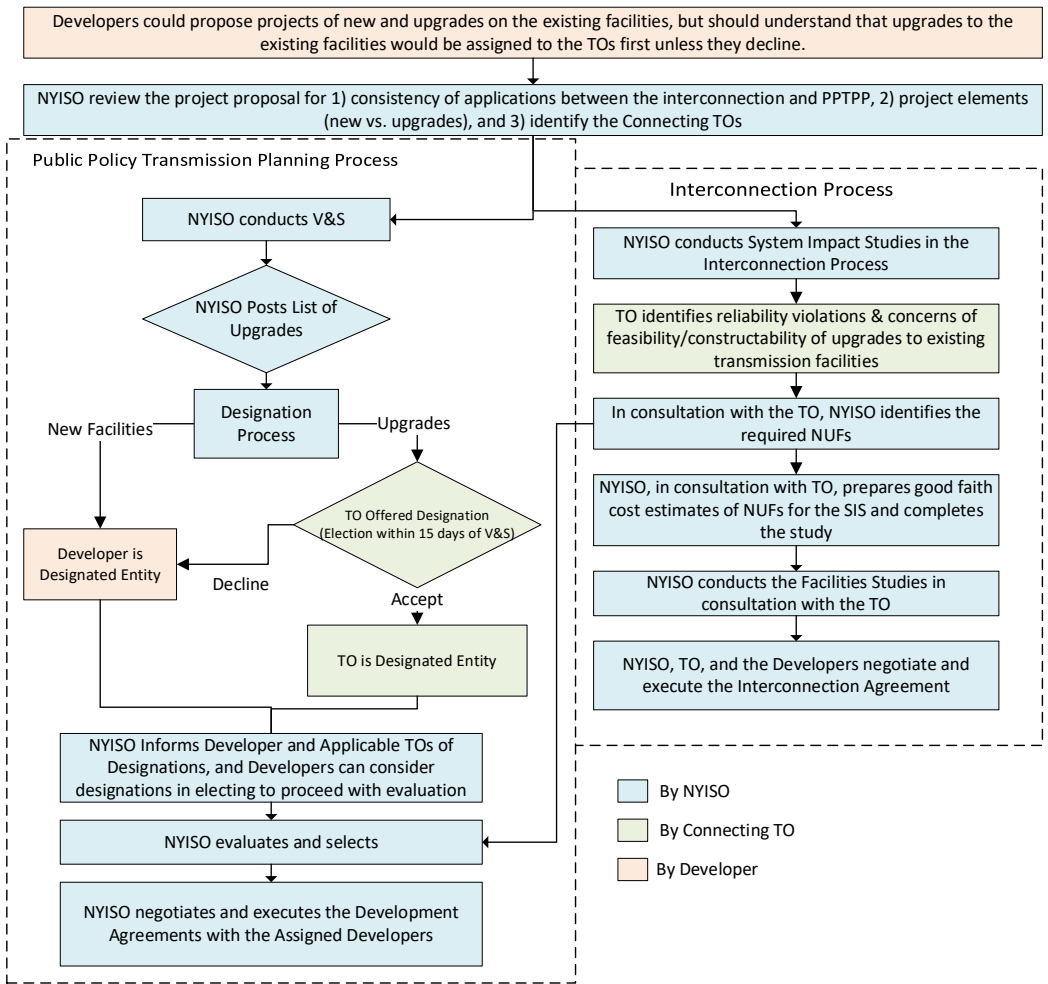
Step Four – The affected Developers will have an opportunity to consider whether to proceed with the NYISO’s evaluation and selection of their proposed projects pursuant to Section 31.4.6.6 of Attachment Y based on the Upgrade designations for their proposals

- This point will allow Developers to cease further consideration without being billed for costs of evaluating their proposed transmission project for selection

# Designation Process for Upgrades

- **Following selection of the more efficient or cost effective solution by the NYISO Board, the Designated Entity(ies) will:**
  - enter into a Public Policy Transmission Planning Process Development Agreement with NYISO for the components of the selected project that it was designated for,
  - join and participate in the ongoing and future TIP studies for the selected project as it relates to the designated components
    - If the Transmission Owner is a Designated Entity for an Upgrade, it can participate as (a) a co-sponsoring “Transmission Developer” with the proposing Developer or (b) initiate a new Transmission Interconnection Application for the elected Upgrade
    - If the Transmission Owner joins in the TIP studies under the ongoing TIP Application, it will agree to equally share in the costs of any ongoing or future studies with the Developer
  - have the opportunity to recover the costs for the selected project under Rate Schedule 10, as a well as a reasonable rate of return
    - Designated Entity is responsible for rate submissions





# Next Steps

# Stakeholder Feedback

- The NYISO is seeking robust discussion and stakeholder feedback
- Please submit any questions or comments by May 24, 2021, to [PublicPolicyPlanningMailBox@nyiso.com](mailto:PublicPolicyPlanningMailBox@nyiso.com)
- All comments will be posted to the NYISO's website

# Next Steps

- **NYISO plans on returning to the ESPWG/TPAS in June 1, 2021 and June 16, 2021 for further discussions**
- **NYISO targeting a filing in July 2021**

# Questions?

# Our mission, in collaboration with our stakeholders, is to serve the public interest and provide benefit to consumers by:

- Maintaining and enhancing regional reliability
- Operating open, fair and competitive wholesale electricity markets
- Planning the power system for the future
- Providing factual information to policymakers, stakeholders and investors in the power system

