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**NYISO ESPWG/TPAS
Mechanism to Implement Transmission Owners' ROFR
over
Upgrades in the Public Policy Transmission Planning Process
Supplemental Comments of the New York Transmission Owners**

The New York Transmission Owners ("NYTOs")¹ submit the following supplemental comments concerning the implementation of their Right of First Refusal ("ROFR") applicable to Upgrades in the Public Policy Transmission Planning Process. Background is provided in the May 27, 2021 NYTO Comments. The NYTOs submit these comments in response to the NYISO Electric System Planning Working Group ("ESPWG") June 22, 2021 meeting and to clarify the treatment of "Upgrades" which are included within Network Upgrade Facilities ("NUF").

The NYISO Open Access Transmission Tariff ("Tariff" or "OATT") contains interconnection procedures for certain transmission projects in Attachment P. Attachment P will apply to some or all Public Policy Transmission Projects ("PPTP"). Attachment P defines "Network Upgrade Facilities" or "NUFs" as:

the least costly configuration of commercially available components of electrical equipment that can be used, consistent with good utility practice and Applicable Reliability Requirements, to make the modifications or additions to the New York State Transmission System that are required for the proposed Transmission Project to connect reliably to the system in a manner that meets the NYISO Transmission Interconnection Standard.

It is possible that NUFs will include "Upgrades," those facilities that are subject to a NYTO's right of first refusal ("ROFR"), the existence of which the Federal Energy Regulatory Commission ("FERC") affirmed in its April 14, 2021 declaratory order.²

The NYISO proposal presented to ESPWG on June 22, provides that "Network Upgrade Facilities will be handled through Attachment P." While the identification of NUFs is done through the analysis laid out in Attachment P, NUFs are required to interconnect a PPT facility reliably. NUFs are necessitated by (and therefore derivative of) the PPT facility and

¹ The New York Transmission Owners include: Central Hudson Gas & Elec. Corp; Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, Niagara Mohawk Power Corporation d/b/a National Grid; New York State Electric & Gas Corp., Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Co.

² *N.Y. Indep. Sys. Operator, Inc.*, 175 FERC ¶ 61,038, at P 30 (April 14, 2021).

their designation as New or Upgrades should be subject to the same definition in the NYISO OATT that applies to PPT facilities. The PPT facility cannot be interconnected to the grid without its related NUFs. Indeed, any facility that is an Upgrade (as defined by Order No. 1000 and OATT Section 31.6.4), whether part of the scope of a project selected in a regional plan for purposes of cost allocation or identified through the interconnection process, must be treated as an Upgrade. If and to the extent the NYISO identifies NUFs that are or include Upgrades, the ROFR should apply to such Upgrades.

Upon issuance of a Board PPTP selection determination, if a selected project includes any Upgrades, a TO with the associated ROFR must notify the NYISO if the TO is going to exercise such right within 30 days of the Board determination.³ It is possible that NUFs will be identified in a NYISO interconnection study (e.g., a System Impact Study or a Facilities Study) prior to Board selection of a PPTP. If this is the case, a TO would include in its notice to the NYISO whether it was exercising the ROFR with respect to any Upgrades, including Upgrades that are part of NUFs, within 30 days of the Board selection determination.

It is also possible that NUFs will be identified in the interconnection process after the Board selection process. If this is the case, the NUFs will be identified in a Facilities Study. If such NUFs identified after the Board selection determination include Upgrades, then the NYTOs believe it is feasible to provide a ROFR election notice to the NYISO within 15 days following the NYISO issuance of the Facilities Study report which identifies such NUFs. The NYTOs recommend that the NYISO adopt this mechanism.

Clear articulation of the process that applies to Upgrades, which are subject to the ROFR, must include the related NUFs that are Upgrades. This will provide for a smoother PPT planning process and avoid delays later.

Respectfully Submitted,

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³ The NYTOs support the process outlined in the NYISO presentation on June 22 for the reasons contained in the May 27, 2021 NYTO Comments. The content of discussions at the June 22 ESPWG meeting did not alter any of the NYTO positions contained in those comments.