

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

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Background

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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/ICAPWG	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
2021-05-20	ESPWG/TPAS	Proposed Mechanism to Effectuate a ROFR in the Public Policy Transmission Planning Process by the NYISO
2021-06-22	ESPWG/TPAS	Updated Mechanism to Effectuate a ROFR in the Public Policy Transmission Planning Process by the NYISO
2021-07-12	ESPWG/TPAS	Draft Tariff and Manual to Effectuate a ROFR in the Public Policy Transmission Planning Process by the NYISO
2021-07-23	ESPWG/TPAS	Draft Tariff and Manual to Effectuate a ROFR in the Public Policy Transmission Planning Process by the NYISO
2021-08-02	TPAS/ESPWG	Draft Tariff and Manual to Effectuate a ROFR in the Public Policy Transmission Planning Process by the NYISO

Background

- In late 2018/early 2019, concerns were raised in the NYISO's stakeholder process over the reservation of a right of a Transmission Owner ("TO") to build, own, and recover the costs of upgrades to facilities it owns in Section 31.6.4 of the NYISO OATT
- Discussions on whether the TOs in the New York Control Area possess a federal right of a first refusal ("ROFR") over upgrades in NYISO's competitive transmission planning processes expended considerable time and resources without reaching a resolution

Background

- **On August 18, 2020, NYISO filed a petition for a declaratory order seeking confirmations and clarifications on specific issues related to its competitive transmission planning processes and the existence of a ROFR to build, own, and recover the cost of upgrades to their existing facilities**

Background

- **On April 15, 2021, the Commission granted, in part, and denied, in part, NYISO's petition for declaratory order.**
- **Relevant to the proposed revisions, the Commission found:**
 - TOs possess a federal ROFR for upgrades to their existing transmission facilities, including upgrades that are part of another Developer's proposed transmission project, that the NYISO selects in one of its competitive transmission planning processes
 - The current provisions of the OATT do not contain a mechanism for a TO to exercise the federal ROFR as it relates one of NYISO's competitive transmission planning processes

Proposed Revisions

General Approach

- Current proposal principally aimed at developing a mechanism for TOs to exercise the ROFR in NYISO's PPTPP, as well as an enhancement to the information used in the evaluation and selection phase of the process
- In addition to the proposed revisions to the OATT, NYISO will be posting an updated Data Submission for Public Policy Transmission Projects form (Attachment C to the PPTPP Manual)
- The proposal will apply to the current Long Island Offshore Wind Export Public Policy Transmission Need

General Approach

- Discussion of the proposal can be broken down into three parts:
 1. Clarification of Facilities in Project Submittal
 2. Designation Process for Upgrades
 3. Feasibility/Constructability Review of Proposed Modifications to Existing Transmission Facilities
- NYISO also proposes ministerial changes in relevant tariff provisions

Part 1 - Clarification of Proposed Facilities

- This part will be finalized with the posting of the updated Data Submission for Public Policy Transmission Projects form (Attachment C to the PPTPP Manual) but is included as background on the overall implementation of the proposed designation process
- The updated Data Submission for Public Policy Transmission Projects form asks Developers to, among other things:
 - Characterize the components of a proposed Public Policy Transmission Project, and
 - Provide relevant in-service dates if sequencing of the various components is required

Part 1 - Clarification of Proposed Facilities

- **Providing information in this format serves several purposes:**
 - Aids Developers in conceptualizing which components of their project would be subject to the federal ROFR
 - Serves as a starting point for NYISO to identify components of a project that will be designated to a Transmission Owner exercising the federal ROFR under a proposed implementation mechanism
 - Helps to eliminate confusion between characterization of the project and interconnection facilities
 - Provides relevant in-service dates for components for incorporation in a Development Agreement and/or in that event that more than one Designated Entity is responsible for a selected Public Policy Transmission Project

Part 1 - Clarification of Proposed Facilities

- **Difference between the project and potential interconnection facilities:**
 - New transmission facilities and upgrades are considered to be “part of the project” and for the purpose of addressing the Public Policy Transmission Need
 - Developer proposes the design of the facility in its proposal to satisfy the Public Policy Transmission Need
 - Cannot be modified by any party after submission and throughout the evaluation and selection process
 - Potential Interconnection Facilities are for the purpose of reliably interconnecting the project to the NYS Transmission System in accordance with the applicable interconnection standard
 - NYISO, in coordination with the Connecting Transmission Owner, identifies the design of the interconnection facilities (e.g., Network Upgrade Facilities) through the interconnection studies
 - Any potential interconnection facility 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 applicable interconnection procedures

Part 2 - Designation Process for Upgrades

- **Designation process for upgrades serves as a mechanism to implement the federal ROFR in the PPTPP, and includes:**
 - 1) Review of project submittals for completeness and identify deficiencies related to, among other things, facility characterization and cost containment proposals with an opportunity for Developers to cure,
 - 2) NYISO's determination and posting of new transmission facilities and Public Policy Transmission Upgrades from the proposed Public Policy Transmission Projects prior to release of Viability and Sufficiency Assessment,
 - 3) Identification of the Designated Entities that are responsible for undertaking the Public Policy Transmission Project or a part of the Public Policy Transmission Project in the Public Policy Transmission Planning Report,
 - 4) Opportunity for Transmission Owners that are identified as Designated Entities to reject their designation within 30 days of the posting of a Public Policy Transmission Planning Report that selects a project, and
 - 5) Post-selection obligations of Designated Entities and alignment of existing provisions with the possibility of one or more Designated Entities for a selected Public Policy Transmission Project

Part 2 - Designation Process for Upgrades

■ New definitions in Section 31.1 of Attachment Y:

- **Designated Entity** - A Developer or Transmission Owner that the ISO designates pursuant to Section 31.4.11 of this Attachment Y as the person or entity to build, own, and recover the costs of a Designated Public Policy Project . . .
- **Designated Public Policy Project** - The Public Policy Transmission Project selected by the ISO as the more efficient or cost effective solution to a Public Policy Transmission Need, or a portion of such Public Policy Transmission Project, that the ISO designates to a Designated Entity pursuant to Section 31.4.11 of this Attachment Y . . .
- **Public Policy Transmission Upgrade** - Any portion(s) of a Public Policy Transmission Project that satisfies the definition of upgrade in Section 31.6.4 of this Attachment Y.
- NYISO also proposes conforming revisions across Sections 6.10, 31.4, 31.5, and 31.7 of the OATT to incorporate new definitions, and adding language in certain definitions to avoid potential conflicting terms with already selected Public Policy Transmission Projects.

Part 2 - Designation Process for Upgrades

■ Adjustments to Cost Containment Provisions

- NYISO proposes revisions to the cost containment provisions in the PPTPP to add Public Policy Transmission Upgrades to the list of Excluded Capital Costs and to use an independent cost estimate for all Public Policy Transmission Upgrades during the evaluation and selection process
- Proposed Tariff Revisions:
 - Section 6.10.6 of the OATT
 - Sections 31.4.8.1.1 through 31.4.8.1.3 of Attachment Y
 - Section 31.4.8.2 of Attachment Y
 - Section 31.7 of Attachment Y (provisions of the *pro forma* Development Agreement)

Part 2 - Designation Process for Upgrades

Step 1: Review of submissions and an opportunity to cure deficiencies

Concept: Following submission of proposals, NYISO will review the Developers' proposed Public Policy Transmission Projects and facility characterizations, based on reasonably available information, and will:

- Review each facility of the Public Policy Transmission Projects (*e.g.*, new transmission facilities and Public Policy Transmission Upgrades), and
- Communicate with the Developers any deficiencies in the proposals based on NYISO's characterization of such facilities and request additional information to clarify the deficiencies.
 - Developers would have 15 days to respond consistent with existing provisions.
 - Developers may provide additional information (i) to clarify why the Developer characterized a facility in a particular way or (ii) to update the project proposal information as it relates to the characterization of a facility—in particular, the Developers' Cost Cap.

Part 2 - Designation Process for Upgrades

Step 1: Review of submissions and an opportunity to cure deficiencies (cont.)

Transition Rule:

- NYISO will coordinate with Developers in understanding their proposals while proposed tariff is pending at FERC
- Following the effective date of the revisions (*i.e.*, FERC order), NYISO will note deficiencies as it relates to a difference in characterization of the project elements and request additional information, and Developers can provide information to align their proposed caps in accordance with new Section 31.4.5.1.8.5 of the OATT

Proposed Tariff Revisions:

- Section 31.4.5.1 of Attachment Y
- New Section 31.4.5.1.8.5 of Attachment Y

Part 2 - Designation Process for Upgrades

Step 2: NYISO's identification of Public Policy Transmission Upgrades in Proposed Public Policy Transmission Projects

Concept: Post a list of facilities that NYISO identifies as new transmission facilities and Public Policy Transmission Upgrades from the proposed projects to meet the Public Policy Transmission Need for review by interested parties

- Interested parties may dispute the characterization of a facility on the list by providing notice within 20 Calendar Days of posting to the NYISO's website
- NYISO and interested parties will work to resolve the disputes during the stakeholder discussions on the Viability and Sufficiency Assessment
- NYISO will post the final list on or before the filing of the Viability and Sufficiency Assessment with New York State Public Service Commission ("NYPSC"), and note if any facility has an dispute that is pending
- If the list contains a characterization that differs from the Developer's proposal, NYISO will notify affected Developers to provide additional information, which can include revisions to the cost cap in accordance with new Section 31.4.5.1.8.5 of Attachment Y

Part 2 - Designation Process for Upgrades

Step 2: NYISO's identification of Public Policy Transmission Upgrades in Proposed Public Policy Transmission Projects (cont.)

Concept:

- Within fifteen (15) calendar days of the NYISO's filing of the final Viability and Sufficiency Assessment with the NYPSC, Developers have the option to elect to withdraw a proposed project based on the characterization of facilities without incurring additional study costs by using the existing option to proceed with the evaluation of their proposed projects for selection by the NYISO pursuant to Section 31.4.6.6 of Attachment Y

Effective Date: Date of FERC order

Proposed Tariff Revisions:

- New Section 31.4.6.5.1 of Attachment Y

Part 2 - Designation Process for Upgrades

Step 3: Identification in the Public Policy Transmission Report of the Designated Entities that are responsible for the Designated Public Policy Projects

Concept: NYISO staff will include in the Public Policy Transmission Report a preliminary list of Designated Entities and Designated Public Policy Projects that make up the recommended Public Policy Transmission Project

- New transmission facilities will be designated to the proposing Developer
- Public Policy Transmission Upgrades will be designated to the Transmission Owner owning the existing facility to be upgraded
- A Designated Public Policy Project will contain all the facilities that NYISO preliminarily identifies as being designated to a particular Designated Entity
- Necessary Network Upgrade Facilities for the selected Public Policy Transmission Project will be studied through the TIP and finalized during the Facilities Study

Part 2 - Designation Process for Upgrades

Step 3: Identification in the Public Policy Transmission Report of the Designated Entities that are responsible for the Designated Public Policy Projects (cont.)

Effective Date: Date of FERC order

Proposed Tariff Revisions:

- Section 31.4.8.3 of Attachment Y
- Section 31.4.11 of Attachment Y

Part 2 - Designation Process for Upgrades

Step 4: TOs that are identified as Designated Entities have an opportunity to reject their designation within 30 days of the posting of an approved Public Policy Transmission Planning

Concept: An applicable TO has the opportunity to consider whether it wishes to serve as the Designated Entity to build, own, and recover the cost of a Designated Public Policy Project, but the TO must notify the NYISO if it rejects its designation within 30 days of the posting of a Public Policy Transmission Report approved by the NYISO Board that selects a Public Policy Transmission Project

- If the Transmission Owner does not reject its designation, the Transmission Owner shall be the Designated Entity for the identified Designated Public Policy Project
- If the Transmission Owner rejects its designation, the proposing Developer shall be the Designated Entity for the identified Designated Public Policy Project

Proposed Tariff Revisions:

- New Section 31.4.11.3 of Attachment Y

Part 2 - Designation Process for Upgrades

Step 5: Post-selection obligations of Designated Entities and ability of NYISO to address inability of Designated Entities to complete their designated projects

Concept: Following NYISO's posting of a list of Designated Entities and Designated Public Policy Projects, a Designated Entity shall have responsibilities akin to a current Developer

- Obtain necessary approvals and authorizations for its Designated Public Policy Project,
- Enter into a Development Agreement for its Designated Public Policy Project,
- Complete the applicable interconnection process for its Designated Public Policy Project, and
 - A Designated Entity could join an existing TIP application with the permission of the Transmission Developer or initiate a new TIP application for the Designated Public Policy Project.
- Ability to recover the costs for the selected project under Rate Schedule 10, as well as a reasonable rate of return

Part 2 - Designation Process for Upgrades

Step 5: Post-selection obligations of Designated Entities and ability of NYISO to address inability of Designated Entities to complete their designated projects (cont.)

Concept:

- In the event that a Designated Entity of a Designated Public Policy Project fails to execute or file a Development Agreement pursuant to Section 31.4.12.2 of Attachment Y or NYISO terminates the Development Agreement and NYISO determines that an alternative Developer should be designated, a Designated Public Policy Project that was originally designated to a Transmission Owner will first be offered to the proposing Developer before NYISO solicits bids from other Developers. Otherwise, consistent with existing provisions, NYISO shall solicit bids from Developers to finance and complete the development and construction of the Designated Public Policy Project.

Proposed Tariff Revisions:

- Section 31.4.12 of Attachment Y
- Section 31.4.12.3 of Attachment Y
- Section 31.7 of Attachment Y (*pro forma* Development Agreement)
- Sections 22.4.1, 22.4.2.2, 22.4.2.4, and 22.11.1 of Attachment P
- Section 6.10 of the OATT

Part 3 - Feasibility/Constructability Evaluation

Concept:

- NYISO will perform sensitivities, as appropriate, to account for the Public Policy Transmission Need case when performing the required interconnection studies
- Conduct a feasibility/constructability analysis in the optional Feasibility Study or 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
 - Such analysis is intended to evaluate the feasibility/constructability of the upgrade itself, as opposed to the current feasibility analysis under Attachment P for the Point of Interconnection

Part 3 - Feasibility/Constructability Evaluation

Concept (cont.):

- Include a tariff requirement for applicable Transmission Owner staff to execute a non-disclosure agreement when performing the expanded analysis during the optional Feasibility Study and SIS

Effective Date: Date of FERC order; however, proposed revisions include a transition mechanism to amend the scope following the effective date to have the Connecting Transmission Owner conduct the feasibility/constructability evaluation even if the SIS commenced

Proposed Tariff Revisions:

- Section 22.4.2.4 of Attachment P
- Section 22.7.2 of Attachment P
- Sections 22.8.3 and 22.8.4 of Attachment P
- Section 31.4.8 of Attachment Y

Next Steps

Next Steps

- **NYISO is seeking authorization to file the proposed revisions under Section 205 of the Federal Power Act**
- **Anticipated Schedule:**
 - **August 11, 2021:** Business Issues Committee Vote
 - **August 25, 2021:** Management Committee Vote
 - **September 21, 2021:** Board of Directors Vote
 - **September 24, 2021:** Section 205 Filing with FERC
 - **November 23, 2021:** FERC order (anticipated to be prior to initial draft of Viability and Sufficiency Assessment)

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

