

Applying the TO ROFR to Network Upgrade Facility “Upgrades”

Draft Tariff Provisions

New York Transmission Owners
NYISO ESPWG Meeting

October 25, 2022

I. Agenda

- I. Agenda
- II. Previous NUF Upgrade Presentations and Discussions
- III. Project Background
- IV. Proposed NUF Upgrade Tariff Changes
- V. Next Steps

II. Previous NSR Upgrade Presentations and Stakeholder Outreach

- **July 1, 2022 TPAS/ESPGW:**

- (<https://www.nyiso.com/documents/20142/31936988/TO%20NUF%20ROFR%20-%20ESPGW%20July%201%202022%20for%20posting.pdf/3516b37a-8a2f-1e1a-6a3d-f840a5aeff33>)
- Comments requested by July 14
- No Comments

- **July 26, 2022 TPAS/ESPGW:**

- (<https://www.nyiso.com/documents/20142/32418586/03%20TO%20NUF%20ROFR.pdf/81afcf6a-a738-ffba-b30f-22e03bfc611e>)
- Comments Requested by August 10
- No Comments

- **In the absence of comments, we have engaged in extensive stakeholder outreach.**

III. Project Background

- The NYISO's transmission planning process resulted in case-by-case resolution of how to implement the TOs' reserved right to build and recover the costs of upgrades to their transmission systems.
- The NYISO tariff lacked provisions governing how to implement this right.
- The NYISO acted to remedy this deficiency in the Public Policy Transmission ("PPT") process with FERC's help.
- The ISO established the process for Upgrades proposed by a Developer as part of its PPT project but left open PPT Network Upgrade Facilities Upgrades ("PPT NUF Upgrades"). The NYTO July 2022 proposal provides the solution. Now we review key tariff provisions.

II. Project Background (Con't)

- First, on August 18, 2020: NYISO filed with FERC a Petition for a Declaratory Order to confirm:
 - Each NYTO has a right of first refusal to build, own and recover the costs of upgrades (“Upgrades”) to its transmission facilities, as distinct from New Facilities, including Upgrades proposed as part of another developer’s Order No. 1000 project.
- Second, on April 15, 2021: FERC issued a declaratory order confirming that the NYTOs have a Rights of First Refusal (“ROFR”) and observed that the NYISO tariff did not address how the ROFR was to be implemented. The Order is final and non-appealable.

Project Background (Cont'd)

- Third, on October 12, 2021: the NYISO filed ROFR implementation tariff amendments with FERC under FPA section 206.
 - The NYISO filing only addressed Upgrades that are part of a Developer's proposed PPT project.
 - The Tariff Proposal had cleared the lower committee, but did not pass the MC (with many abstentions).
- Lastly, on March 11, 2022: FERC issued an order approving the NYISO's proposed implementation of the ROFR without modification.
 - The order is final and non-appealable.
 - The NYISO has started to apply the ROFR procedures to the pending Long Island PPT solicitation.

¹ See Appendix A for citations.

III. Project Background (Con't)

- The ROFR applies to upgrades as defined in OATT Attachment Y Section 31.6.4 (“Upgrades”).¹
- The NYISO implementation filing addressed Upgrades proposed by a Developer in its PPT project proposal. This was the first point in the PPT process that the ROFR would apply.

¹“For purposes of Section 31.6.4, the term ‘upgrade’ shall refer to an improvement to, addition to, or replacement of a part of an existing transmission facility and shall not refer to an entirely new transmission facility.”

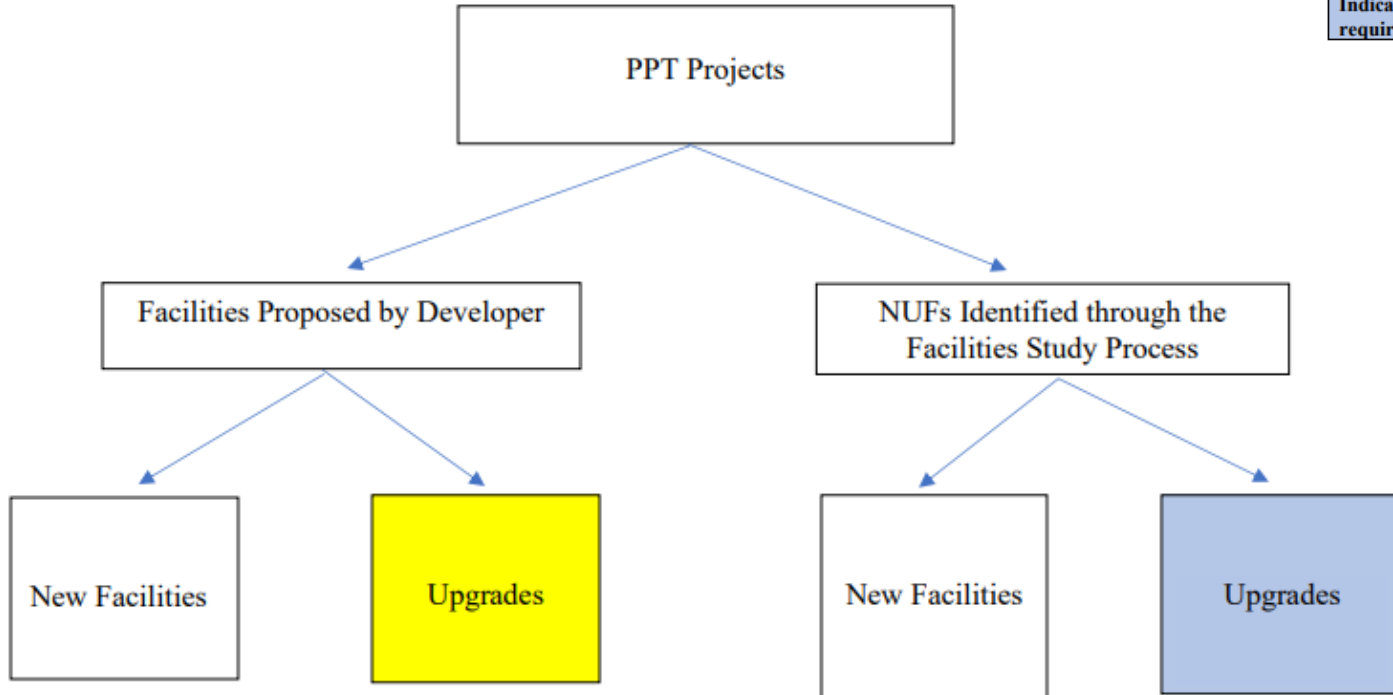
² See Appendix A for citations.

III. Project Background (Con't)

- A PPT project may require Upgrades that are identified in the transmission interconnection process of OATT Attachment P.
 - Network Upgrade Facilities or “NUFs” are identified pursuant to the transmission interconnection procedures of OATT Attachment P in Section 22.9.3.
 - NUFs are those facilities necessary to reliably interconnect a proposed transmission project to the system in accordance with all applicable requirements.
- NUFs may be New, or Upgrades (“NUF Upgrades”)
- The Declaratory Order applies to all Upgrades that are part of PPT projects, whether initially identified in the developer’s bid, or later through the interconnection process.

III. Project Background (Con't)

Indicates ROFR applies and currently covered by the Tariff
Indicates ROFR applies but requires revisions to the Tariff



III. Project Background (Con't)

- PPT NUF Upgrades, like all Upgrades, are subject to the ROFR.
- In the absence of a NYISO Tariff mechanism to address PPT NUF Upgrades, Developers and Transmission Owners are left to case-by-case bilateral negotiation and FERC filings.
 - Bilateral process lacks certainty and timeliness.
 - Process is not transparent.
 - Current lack of a Tariff process imparts more uncertainty and can delay resolution.

III. Project Background (Con't)

- The NYTOs vetted their solutions to provide for clear, transparent rules to implement the ROFR as applied to PPT NUF Upgrades in ESPWG and stakeholder discussions.
- The NYTOs' proposed Tariff mechanism provides:
 - Process certainty;
 - A defined role for the NYISO in determining which NUFs are Upgrades;
 - Deadlines to avoid project delays; and
 - Transparency.
- The mechanism closely parallels the mechanism the NYISO is now using for Upgrades that are proposed by a Developer.
 - Follows as much of the NYISO process as possible.
 - FERC approved this process.
 - The NYISO and Stakeholders are familiar with this process.

IV. Proposed Tariff Changes

- Tariff redlines follow with:
 - The primary implementation provisions appear in new Section 22.9.6 of OATT Attachment P
 - This section is entirely new so for ease of review we did not provide underscoring.
 - This section parallels the ISO's implementation of the ROFR with respect to Upgrades proposed by a Developer at the project proposal stage – merely applying the process at the Facilities Study phase of a selected PPT project.
 - Bracketed clauses in [*italics*] provide a short statement of the primary purpose of the paragraph that follows to aid the reader.

IV. Proposed Tariff Changes

Insert in OATT Attachment P (Transmission Interconnection) a new Section 22.9.6:

22.9.6 Designation of Network Upgrade Facilities for Selected Public Policy Transmission Projects

[1. In the Facilities Study, the ISO shall determine whether NUFs are Upgrades or New Facilities after considering comments.]

For a Transmission Project that is selected by the ISO for inclusion in the regional transmission plan for purposes of cost allocation as the more efficient or cost effective solution to a need identified in the Public Policy Transmission Planning Process under Attachment Y to the OATT, the ISO shall identify the Network Upgrade Facilities that satisfy the definition of upgrade under Section 31.6.4 of the OATT in the Facilities Study report or update any previous identification of such Network Upgrade Facilities if the Facilities Study report is revised. In advance of finalizing the Facilities Study report or any update, the ISO shall consider any comments on such designations from the Transmission Developer and the Connecting Transmission Owner or Affected Transmission Owner that owns the existing facility(ies) to be upgraded by one or more of the Network Upgrade Facilities.

IV. Proposed Tariff Changes – Attachment P New Section 22.9.6 (Con't):

[2. TO must notify ISO if it declines to be the designated entity for the NUF Upgrades within 30 days.]

Each relevant Connecting Transmission Owner or Affected Transmission Owner must notify the ISO and the Transmission Developer in writing within 30 Calendar Days of the ISO issuing the final Facilities Study report, or any update to the Facilities Study report if the Connecting Transmission Owner or Affected Transmission Owner declines the responsibility to build, own, and finance one or more Network Upgrade Facilities that satisfy the definition of upgrade under Section 31.6.4 of the OATT.

IV. Proposed Tariff Changes – Attachment P New Section 22.9.6 (Con’t):

[3. Absent a declination, TOs are responsible for building, owning and financing the NUF Upgrades and may use Schedule 10 cost allocation and recovery applicable to PPT projects. TO must enter into an ISO Development Agreement.]

In the absence of such declination notice, the Connecting Transmission Owner or the Affected Transmission Owner shall be the entity responsible to build, own, and finance such Network Upgrade Facilities (“Designated Network Upgrade Facilities”). The Connecting Transmission Owner or the Affected Transmission Owner shall be eligible to recover the costs of the Designated Network Upgrade Facilities through Rate Schedule 10 of the OATT. The Transmission Developer’s and Transmission Owner’s obligations and responsibilities will be documented in the Transmission Project Interconnection Agreement, as applicable, and the Transmission Owner will be required to comply with the requirements for a Designated Entity under Attachment Y in building, owning, and recovering the costs of the Designated Network Upgrade Facilities, including, but not limited to, entering into or amending a Public Policy Transmission Planning Process Development Agreement.

IV. Proposed Tariff Changes – Attachment P New Section 22.9.6 (Con't):

[4. If TO declines to act as the Designated Entity for an NUF Upgrade, Developer posts security.]

If the Connecting Transmission Owner or Affected Transmission Owner provides timely notice declining the responsibility to build, own, and finance one or more Network Upgrade Facilities that meet the definition of upgrade under Section 31.6.4 of the OATT, then the Transmission Developer shall be responsible for financing and posting Security in accordance with Section 22.11.1 of this Attachment P for such Network Upgrade Facilities and other Network Upgrade Facilities that do not meet the definition of upgrade in Section 3.1.6.4 of the OATT.

IV. Proposed Tariff Changes – Attachment P New Section 22.9.6 (Con't):

[5. TO and Developer may mutually agree on who shall build and pay for NUFs.]

The Connecting Transmission Owner or Affected Transmission Owner may mutually agree with the Transmission Developer for the Transmission Developer to build and/or own any of the Network Upgrade Facilities which the Connecting Transmission Owner or Affected Transmission Owner declined to build, own, and finance. Such rights and obligations will be documented in the Transmission Project Interconnection Agreement.

IV. Proposed Tariff Changes – Attachment P New Section 22.9.6 (Con't):

[6. Security for and payments of NUF costs are to be addressed in the Transmission Interconnection Agreement, as is the case today; and any disputes over designations of NUF Upgrades are subject to existing dispute resolutions procedures under OATT Attachment P.]

Security for the Network Upgrade Facilities shall be posted in accordance with Section 22.11.1 of this Attachment P. Any disputes concerning the classification of components of Network Upgrade Facilities as upgrades under Section 31.6.4 of the OATT shall be subject to dispute resolution under Section 22.13.5 of this Attachment P.

IV. Proposed Tariff Changes – Attachment P Section 22.9.3

22.9.3 Scope of Facilities Study

[7. The Developer is not required to post security for NUFs for which a TO functions as the Designated Entity.]

The Facilities Study shall update and refine the description of Network Upgrade Facilities identified in the System Impact Study, including the equipment, work and related cost and time estimates necessary to construct the required Network Upgrade Facilities. Transmission Developer will be responsible for posting Security in the amount of the cost estimates for the Network Upgrade Facilities documented in the final Facilities Study report pursuant to Section 22.11.1 of this Attachment P, except that security for Network Upgrade Facilities that satisfy the definition of upgrade under Section 31.6.4 of Attachment Y of the OATT as identified in the Facilities Study Report [PPT NUF Upgrades] shall not be required unless and until a Transmission Owner issues a timely declination notice pursuant to Section 22.9.6 of this Attachment P. The Facilities Study shall also contain a non-binding estimate as to the feasible TCCs resulting from the construction of the new facilities, as applicable.

IV. Proposed Tariff Changes – Attachment P Section 22.11.1

22.11.1 Tender [8. *The Developer is not required to post security for NUFs for which a TO acts as the Designated Entity.*]

After completion of the Facilities Study, the Transmission Developer may request the ISO tender a draft Transmission Project Interconnection Agreement together with draft appendices completed to the extent practicable; provided, however, that if a Transmission Developer's proposed Transmission Project is only interconnecting to its own, existing facilities, a Transmission Project Interconnection Agreement is not required. If a Transmission Project includes more than one Designated Public Policy Project as identified in accordance with Attachment Y to the ISO OATT, the ISO may treat each Designated Public Policy Project comprising the Transmission Project as a separate Transmission Project for purposes of this Section 22.11 and tender separate draft Transmission Project Interconnection Agreements together with draft appendices to each Designated Entity, as applicable. The draft Transmission Project Interconnection Agreement shall be consistent with the NYISO's Commission-approved Standard Large Generator Interconnection Agreement located in Appendix 6 to Attachment X of the OATT, modified to address a Transmission Project. The Transmission Project Interconnection Agreement shall provide the mechanism through which a Transmission Developer shall post Security for required Network Upgrade

IV. Proposed Tariff Changes – Attachment P Section 22.11.1 (Con't)

Facilities. A Transmission Developer will be required to post Security with the applicable Connecting Transmission Owner for Network Upgrade Facilities identified in the Facilities Study; however, (i) if the Transmission Developer and Connecting Transmission Owner are the same entity, the Transmission Developer need not post Security for Network Upgrade Facilities required on its own facilities; and (ii) if the NYISO identifies any Network Upgrade Facilities that satisfy the definition of upgrade under Section 31.6.4 of the OATT in the Facilities Study, then the Developer shall not be obligated to post security for such Network Upgrade Facilities until the deadline has passed for the applicable Transmission Owner to issue a timely declination notice in accordance with Section 22.9.6 of this Attachment P. Following such declination notice deadline, the Developer shall post security as specified in the Interconnection Agreement for all Network Upgrade Facilities except Designated Network Upgrade Facilities as determined in accordance with Section 22.9.6 of this Attachment P.

IV. Proposed Tariff Changes – Attachment Y:

31.4.6.5.1 Identification of Public Policy Transmission Upgrades in Proposed Public Policy Transmission Projects [9. *The ISO shall post a non-binding list of NUFs identified by Developers.*]

31.4.6.5.1.1 At least 30 Calendar Days prior to the ISO's presentation of the initial draft of the Viability and Sufficiency Assessment, the ISO shall post a list of the facilities that make up the Public Policy Transmission Projects (but not including potential interconnection facilities) that were evaluated in the Viability and Sufficiency Assessment. The list will identify which facilities are new transmission facilities and which facilities satisfy the definition of a Public Policy Transmission Upgrade. For those facilities that satisfy the definition of a Public Policy Transmission Upgrade, the list will also specify the Transmission Owner that owns the existing transmission facility that would be modified by an identified Public Policy Transmission Upgrade, to the extent such information is available. The ISO shall also include in the list any Network Upgrade Facilities identified by the ISO or Developer as referenced in Section 31.4.5.1.8.2 of Attachment Y. Such lists of Network Upgrade Facilities are not binding and are subject to revision in the ISO interconnection study process and pursuant to Section 22.9.6 of Attachment P to the OATT. The list of Public Policy Transmission Upgrades shall not identify any listed facility as associated with

IV. Proposed Tariff Changes – Attachment Y, Section 31.4.6.5.1.1

[10. Developer “volunteered NUFs” are not binding; only NUFs as required in the Facilities Study report and associated updates are official.]

any specific Public Policy Transmission Project. Any interested party may dispute the ISO’s determination to identify, or not identify, a facility as a Public Policy Transmission Upgrade by providing the ISO with written notice within 20 Calendar Days of the ISO’s posting of the list pursuant to this Section 31.4.6.5.1.1, which notice shall be posted on the ISO’s website. The ISO and the disputing party(ies) should attempt to resolve such dispute(s) through the ISO governance procedures in discussing the Viability and Sufficiency Assessment and as provided in Section 31.1.8.4 of this Attachment Y. The ISO shall post the final list pursuant to this Section 31.4.6.5.1.1 on or before the ISO’s filing of the Viability and Sufficiency Assessment at the NYPSC and shall note whether any of the facilities still have pending disputes at the time the list is posted and that any Network Upgrade Facilities identified by a Developer and not yet identified in the Facilities Study for a project are not to be confirmed, removed or modified as Network Upgrade Facilities until the Facilities Study for a project is completed and subject to the process contained in Section 22.9.6 of Attachment P of the OATT.

IV. Proposed Tariff Changes – Schedule 10

6.10.1.1 Eligible Projects

[11. Add Designated Network Upgrade Facilities so TOs can use Schedule 10 as they are already permitted for upgrades that are part of a Developer’s proposed PPT project.]

This Schedule establishes the Regulated Transmission Facilities Charge (“RTFC”) for the recovery of the costs of a regulated transmission project that is eligible for cost recovery in accordance with the Comprehensive System Planning Process requirements set forth in Attachment Y of the ISO OATT. A Transmission Owner, Unregulated Transmitting Utility, or Other Developer may recover through the RTFC the costs that it is eligible to recover pursuant to Attachment Y [and Attachment P](#) of the ISO OATT related to: (i) a regulated backstop transmission solution...; (ii) an alternative regulated transmission solution that the ISO has selected pursuant to Section 31.2.6.5.2 of Attachment Y of the ISO OATT as the more efficient or cost-effective solution to a Reliability Need; or (iii) a regulated transmission Gap Solution...; (iv) an alternative regulated Transmission Gap Solution...; (v) a Regulated Economic Transmission Project...;

IV. Proposed Tariff Changes – Schedule 10 (Con't)

(vi) a Designated Public Policy Project that is a Public Policy Transmission Project, or a part of a Public Policy Transmission Project, that the ISO has selected pursuant to Section 31.4.8.2 of Attachment Y of the ISO OATT as the more efficient or cost-effective solution to a Public Policy Transmission Need and associated Designated Network Upgrade Facilities identified in accordance with Section 22.9.6 of Attachment P of the ISO OATT; (vii) a Public Policy Transmission Project proposed by a Developer in response to a request by the NYPSC or Long Island Power Authority...

IV. Proposed Tariff Changes – Schedule 10 (Con't)

[12. The NUF Upgrades need to be consistent with the Facilities Study and Transmission Interconnection Agreement.]

6.10.4.2 The period for cost recovery will be determined by the Commission and will begin if and when the Eligible Project enters into service, is halted, or as otherwise determined by the Commission, including for the recovery of CWIP or other permissible cost recovery. The Transmission Owner/Other Developer, or, at its request, the ISO, shall either make a Section 205 filing with the Commission or make an informational filing under a formula rate to provide for the Commission's review and approval or acceptance of the project cost and resulting revenue requirement to be recovered through the RTFC. The filing may include all reasonably incurred costs specified in Section 6.10.4.1 of this Schedule that are related to the Transmission Owner's or the Other Developer's undertaking an Eligible Project.

IV. Proposed Tariff Changes – Schedule 10 (Con't)

The filing must be consistent with the Transmission Owner's or the Other Developer's project proposal made to and evaluated by the ISO pursuant to Attachment Y, or with respect to NUFs, any applicable Facilities Study and Interconnection Agreement requirements. If the Eligible Project is a Designated Public Policy Project for which the Developer proposed a Cost Cap, the Developer must also satisfy the requirements in Section 6.10.6 in its filing. The Transmission Owner or Other Developer shall bear the burden of resolving all concerns about the contents of its rate the filing that might be raised in such proceeding. The ISO will begin to calculate and bill the RTFC in accordance with the period for cost recovery determined by the Commission after the Commission has accepted or approved the filing or otherwise allowed the filing to go into effect pursuant to a formula rate.

V. Next Steps

- Comments
 - Please provide any comments by November 1st if possible.
 - Email Comments to: katherine.okonski@troutman.com, antonia.douglas@troutman.com and stuart.caplan@troutman.com .
 - The NYTOs will consider comments.
- If indications are favorable for stakeholder votes, the NYTOs will pursue BIC and/or OC and MC votes in November 2022.
- If successful, the NYTOs will not make a unilateral section 205 filing with FERC, and the NYISO, subject to Board approval, can make a section 205 filing
 - With a proposed effective date to make implementation procedures applicable to the Long Island OSW PPT project at the Facilities Study stage and future PPT projects.

Questions

Thank You!

Appendix A - Citations

- “On April 15, 2021, the Commission granted in part NYISO’s petition for declaratory order (Petition), confirming that the NYTOs have a federal ROFR under NYISO’s foundational agreements and section 31.6.4 of NYISO’s OATT to build, own, and recover the cost of upgrades to their existing transmission facilities, as permitted under Order No. 1000.” *NYISO*, 178 FERC ¶ 61,179 at P 4 (March 11, 2022) (footnotes omitted); *id.*, P 50 (same), discussing *NYISO*, 175 FERC ¶ 61,038 (2021).
- “[W]e grant the Petition on Issue 1, in which NYISO sought confirmation that the NYTOs have a federal ROFR under NYISO’s foundational agreements and OATT section 31.6.4 to build, own, and recover the costs of upgrades to their existing transmission facilities, as permitted under Order No. 1000, *including upgrades that are part of another Developer’s proposed transmission project that NYISO selects in its regional transmission plan for purposes of cost allocation.*” *Id.* at P 30 (emphasis added), see also P 33, 35 (same).