

# Applying the TO ROFR to Network Upgrade Facility “Upgrades”

Proposed Tariff Amendments Under FPA Section 205

New York Transmission Owners  
NYISO BIC and OC Meetings

November 16 & 17, 2022

# I. Agenda

- I. Agenda
- II. Previous NUF Upgrade Presentations and Discussions
- III. Project Background
- IV. Proposed NUF Upgrade Tariff Changes
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## II. Previous NUF 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-f840a5aef33>)
- 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

## II. Previous NUF Upgrade Presentations and Stakeholder Outreach (Cont'd)

- In the absence of comments, we engaged in extensive stakeholder outreach.
- **October 25, 2022 ESPWG/TPAS**
  - ([https://www.nyiso.com/documents/20142/33978817/Applying the TO ROFR to Network Upgrade Facilities Upgrades Draft Tarrif Provisions.pdf/d9825304-616c-9e75-d5be-2b362e97c8da](https://www.nyiso.com/documents/20142/33978817/Applying_the_TO_ROFR_to_Network_Upgrade_Facilities_Upgrades_Draft_Tariff_Provisions.pdf/d9825304-616c-9e75-d5be-2b362e97c8da))
  - Presented proposed draft tariff changes in presentation and requested any comments by November 1
  - No comments from stakeholders; feedback from NYISO in the nature of clarifications and conforming changes

### 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 following the tariff redline presentation to ESPWG.

## II. Project Background (Cont'd)

- 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 Right 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 is applying the ROFR procedures to the pending Long Island PPT solicitation.

<sup>1</sup> See Appendix A for citations.

### III. Project Background (Cont'd)

- The ROFR applies to upgrades as defined in OATT Attachment Y Section 31.6.4 (“upgrades”).<sup>1</sup>
- 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.

<sup>1</sup>“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.”

<sup>2</sup>See Appendix A for citations.

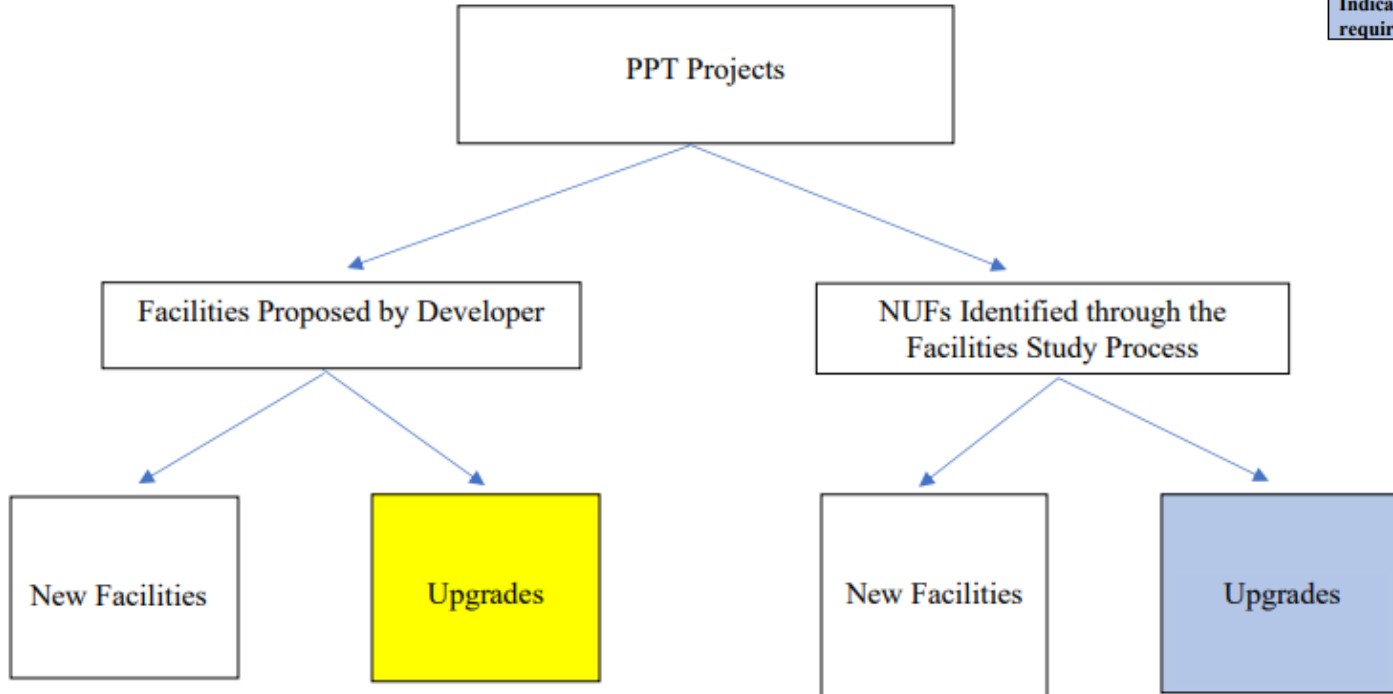


### III. Project Background (Cont'd)

- 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 (for ease of reference: “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 (Cont'd)

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



### III. Project Background (Cont'd)

- This proposal addresses NUF Upgrades for a PPT project selected by the NYISO Board in accordance with OATT Attachment Y (for ease of reference: “PPT NUF Upgrades”)
- Like all upgrades pursuant to Section 31.6.4 of OATT Attachment Y, PPT NUF 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 (Cont'd)

- 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

- The primary implementation provisions appear in new Section 22.9.6 of OATT Attachment P
  - 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.

## IV. Proposed Tariff Changes

- **There Are Six Key Areas of Tariff Changes:**

1. Implementation Mechanics based on the recently approved NYISO implementation process.
2. Adjusting Security Posting so a Developer does not have to post security if a TO is going to build, fund and own a PPT NUF Upgrade.
3. If a Developer voluntarily (not required) identifies possible NUFs with its project proposal, the ISO will include the non-binding list when it identifies upgrades and new facilities under its current process. The actual NUFs will be identified in the Facilities Study for the PPT project selected by the NYISO Board.
4. OATT Schedule 10 is currently available for Developers and TOs constructing PPT projects. It will also be available to a TO acting as the Designated Entity for a PPT NUF Upgrade.
5. OATT Schedule 10 requires facilities to be consistent with the Developer's proposal, but for NUFs that are identified in the later Facilities Study process, they must be consistent with the Facilities Study.
6. A TO acting as the Designated Entity for a PPT NUF Upgrade is subject to the NYISO Development Agreement.

## IV. Proposed Tariff Changes (Primary Implementation Mechanics)

The ROFR implementation process appears in OATT Attachment P (Transmission Interconnection) in a new section -- Section 22.9.6: “Designation of Network Upgrade Facilities for Selected Public Policy Transmission Projects”

- Applies only to PPT projects selected by the NYISO Board.
- Applies only to Network Upgrade Facilities that meet the definition of “upgrade” under existing Section 31.6.4 of Attachment Y to the ISO OATT which is unchanged by this proposal.
- Tracks closely the process the NYISO is using at the project proposal stage.

## IV. Proposed Tariff Changes – Attachment P New Section 22.9.6 (Cont'd)

- NUFs are identified under Attachment P in the interconnection study process and officially identified in the Facilities Study, which may be updated, for the selected PPT project.
- In the Facilities Study, the NYISO shall determine whether NUFs are upgrades or New Facilities after considering comments.
- The relevant connecting or affected TO must notify the NYISO and Developer if it declines to act as the designated entity for the NUF upgrades within 30 days (“declination”), same time frame as in the current process at the project proposal stage.
- Absent a declination, a TO is responsible for building, owning and funding the PPT NUF Upgrades on/to its system and may use Schedule 10 cost allocation and recovery applicable to PPT projects (the same treatment FERC approved for upgrades identified in Developer project proposals).
- TO must enter into an ISO Development Agreement.



## IV. Proposed Tariff Changes – Attachment P New Section 22.9.6 (Cont'd)

- If a TO declines to act as the Designated Entity for a PPT NUF Upgrade, Developer posts security for the upgrade in accordance with Attachment P (Section 22.11.1) and the Transmission Project Interconnection Agreement.
- The TO and Developer may mutually agree on who shall build and pay for NUFs and document this in the Transmission Interconnection Agreement.
- Security for and payments of NUF costs are to be addressed in the Transmission Interconnection Agreement, as is the case today.
- Any disputes over designations of NUF Upgrades are subject to existing dispute resolution procedures under OATT Attachment P.

## IV. Proposed Tariff Changes – Attachment P Section 22

- Added definition of “Designated Network Upgrade Facilities” which are:
  - only those NUFs that are necessary to interconnect a PPT project that was selected by the NYISO Board and
  - that meet the definition of upgrade and
  - for which the NYISO designated a TO as the Designated Entity responsible for building, owning and funding the upgrades pursuant to Section 22.9.6 (described above).
- The Developer is not required to post security for NUFs for which a TO acts as the Designated Entity
  - Sections 22.9.3 and 22.11.1 of Attachment P contain conforming changes.

## IV. Proposed Tariff Changes – Attachment Y Section 31

- Modified the definition of Designated Entity (the entity responsible to build, own and finance specified facilities) to include a TO with respect to Designated Network Upgrade Facilities.
- Added the same definition of Designated Network Upgrade Facilities noted above.
- Recognize that cost allocation for Designated Network Upgrade Facilities is provided on the same basis as PPT projects for which the upgrades are necessary (Section 31.1.5).

## IV. Proposed Tariff Changes – Attachment Y Section 31.4

- When a Developer identifies interconnection facilities, including upgrades, in its proposal, the ISO will post a list of such interconnection facilities at the same time it posts a list of the upgrades and new facilities.
  - The list of interconnection facilities is informational only because the interconnection facilities and upgrades are not officially identified until the appropriate point in the interconnection studies process, and NUFs are not officially identified until the Facilities Study is completed.
- Conforming changes recognizing cost allocation and recovery are available for Designated Network Upgrade Facilities, in the manner determined by FERC.
- Conforming changes to subject the TO to the Development Agreement rights and obligations with respect to Designated Network Upgrade Facilities.
- Other minor conforming changes to implement the provisions described above.

## IV. Proposed Tariff Changes – Attachment Y Section 31.5

- Conforming changes to make section 31.5 consistent with the availability of cost allocation and recovery for Designated Network Upgrade Facilities on the same basis as a PPT project, including recovery through Schedule 10.

## IV. Proposed Tariff Changes – Attachment Y Section 31.7 Development Agreement

- Appendix D is the *pro forma* PPT Planning Process Development Agreement.
- Based on feedback from the NYISO, we have adopted conforming changes to make clear that the *pro forma* agreement applies to TOs when they are the Designated Entities responsible for Designated Network Upgrade Facilities.
  - Most of the changes are adding this term to the agreement.
  - All of the changes are consistent with making the Development Agreement applicable to the NUFs that are subject to the ROFR in PPT projects only.

## IV. Proposed Tariff Changes – OATT 6.10: Schedule 10 and Other Changes

- There are only two changes.
  - First, Schedule 10 cost allocation and recovery are available for Designated Network Upgrade Facilities as noted in other sections of the OATT and described above.
  - Second, Schedule 10 provides that a Developer's rate filing must be consistent with the selected PPT project's proposal. NUFs are not identified until the project's Facilities Study is complete. Accordingly, the insert provides that filings to recover Designated Network Upgrade costs must be consistent with the Facilities Study report.
- Posted with this presentation is a complete set of tariff redlines including other conforming changes to implement the proposal.
- Also posted with this presentation is a comparison showing the changes made to the tariff provisions reviewed with TPAS/ESPWG.

## V. Next Steps

- BIC Motion November 16, 2022 (motion in Section VI)
- OC Motion November 17, 2022 (motion in Section VI)
- MC Motion November 30, 2022
- NYISO FERC filing under FPA section 205
  - Subject to board approval, the NYISO will file the tariff amendments under FPA section 205
  - 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.



### Business Issues Committee Meeting

November 16, 2022

Agenda #     

Motion:

The Business Issues Committee (“BIC”) hereby approves changes to the Open Access Transmission Tariff as more fully described in the presentation titled “Applying the TO ROFR to Network Upgrade Facility ‘Upgrades,’ Proposed Tariff Amendments Under FPA Section 205” presented to and discussed with the BIC on November 16, 2022, and recommends that the Management Committee and the NYISO Board of Directors authorize the NYISO staff to file such revisions under Section 205 of the Federal Power Act.

### Operating Committee Meeting

November 17, 2022

Agenda #     

Motion:

The Operating Committee (“OC”) hereby approves changes to the Open Access Transmission Tariff as more fully described in the presentation titled “Applying the TO ROFR to Network Upgrade Facility ‘Upgrades,’ Proposed Tariff Amendments Under FPA Section 205” presented to and discussed with the OC on November 17, 2022, and recommends that the Management Committee and the NYISO Board of Directors authorize the NYISO staff to file such revisions under Section 205 of the Federal Power Act.

# 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).