



April 23, 2019

Ms. Yachi Lin, Senior Manager, Transmission Planning  
New York Independent System Operator  
10 Krey Boulevard  
Rensselaer, NY 12144

*Sent Via Email to Public Policy Planning Mailbox*

RE: NYISO Straw Proposal for System Upgrades

Dear Ms. Lin:

NextEra Energy Transmission New York (“NEETNY”) supports NYISO’s effort to provide additional clarity on the treatment of Planning Upgrade Facilities<sup>1</sup> (“PUF”) and Network Upgrade Facilities (“NUF”) as defined in NYISO’s OATT Attachment P. However, NEETNY does not support NYISO’s proposal to establish an incumbent Transmission Owners (“TOs”) Right of First Refusal (“ROFR”) for PUF and NUF projects. Given the New York Public Service Commission’s (“Commission”) preference to replace aging infrastructure and/or utilize existing utility Rights-of-Way (“ROW”), the implementation of the proposed ROFR would severely limit developer competition for transmission projects in the future. This would likely result in greater transmission costs to New York customers.

**I. NEETNY supports NYISO’s proposal to use an independent consultant to estimate the cost and evaluate the feasibility of PUFs and NUFs**

In order to facilitate a fair and competitive process, TOs should not have an opportunity to influence the evaluation process. NEETNY supports NYISO’s proposal to utilize an independent consultant to evaluate the feasibility and cost estimate of PUFs and NUFs.

**II. NEETNY recommends NYISO work with incumbent TOs to identify system constraints prior to the issuance of a competitive transmission solicitation**

In order to facilitate a fair and competitive process, information on existing system constraints should be shared with developers prior to or at the same time that a competitive solicitation is issued. This will assist developers in determining if a less expensive upgrade is an appropriate fix (i.e., terminal equipment change) or a more expensive upgrade would be required (i.e., rebuild an existing line). As a result, developers will be able to more effectively analyze solutions and prepare cost effective proposals.

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<sup>1</sup> Planning Upgrade Facilities for the purposes of this discussion are defined as upgrades identified by a developer as part of their proposal in response to a competitive transmission solicitation

### **III. NEETNY does not support NYISO's proposal to grant incumbent transmission owners a ROFR for PUFs and NUFs**

In Order No. 1000, FERC sought to inject greater innovation and cost savings into the development of regional transmission facilities by adopting reforms that allow non-incumbent developers to compete for the right to construct regional projects. Specifically, Order No. 1000 directed public utilities to eliminate from FERC-jurisdictional tariffs and agreements provisions that establish a ROFR with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.<sup>2</sup> FERC recognized that it may be appropriate for incumbent utilities to maintain a ROFR for certain types of facilities, including (i) local transmission facilities,<sup>3</sup> which are defined as transmission located solely within a public utility transmission provider's retail distribution service territory or footprint that are not selected in the regional plan for purposes of cost allocation;<sup>4</sup> and (ii) upgrades to an incumbent's own transmission facilities, regardless of whether an upgrade has been selected in the regional transmission plan for purposes of cost allocation.<sup>5</sup>

While FERC allows public utility transmission providers to maintain a ROFR for local facilities and upgrades, FERC does not require ROFRs for such purposes. Public utility transmission providers remain free to eliminate ROFRs for these facilities, or any other facilities for which the benefits offered by non-incumbent developers outweigh countervailing concerns. With respect to network upgrades identified as necessary for the interconnection and integration of competitively awarded regional transmission projects, there are sound policy reasons for eliminating ROFRs. Projects awarded to competitive developers are constructed pursuant to bilateral development agreements between the developer and NYISO that establish contractual covenants obligating the developer to complete the project within a certain timeframe and, potentially, subject to binding cost containment commitments. Allowing incumbent TOs a ROFR could frustrate cost benefits secured by the NYISO through the competitive solicitation process.

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<sup>2</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 313.

<sup>3</sup> *Id.* at PP 226, 258, 318.

<sup>4</sup> *Id.* P 63. The Commission clarified in Order No. 1000-A that a local transmission facility is one that is located within the geographical boundaries of a public utility transmission provider's retail distribution service territory, if it has one; otherwise, the area is defined by the public utility transmission provider's footprint. In the case of an RTO or ISO whose footprint covers the entire region, local transmission facilities are defined by reference to the retail distribution service territories or footprints of its underlying transmission owning members. Order No. 1000-A, 139 FERC ¶ 61,132 at P 429.

<sup>5</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 226, 319; Order No. 1000-A, 139 FERC ¶ 61,132 at P 426. The Commission stated in Order No. 1000 that upgrades to transmission facilities included such things as tower change outs or reconductoring, regardless of whether or not an upgrade has been selected in the regional transmission plan for purposes of cost allocation. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319. The Commission clarified in Order No. 1000-A that the term "upgrade" means an improvement to, addition to, or replacement of a part of, an existing transmission facility. The term does not refer to an entirely new transmission facility. Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

**IV. NEETNY recommends that PUFs and NUFs should be treated in a similar manner as System Upgrade Facilities (“SUF”) under NYISO’s OATT Attachment X**

Instead of a TO ROFR, NYISO should consider how System Upgrade Facilities (“SUF”) will be treated through changes to NYISO’s OATT Attachment X. Following NYISO’s proposed compliance filing with FERC and its subsequent approval, Attachment X will subsequently allow developers to exercise the right to self-build SUFs. This potentially allows developers to either construct SUFs faster and/or cheaper than the Transmission Owner. As FERC observed in Order No. 845, limiting an interconnecting generator’s option to build could have negative consequences in terms of both timing and cost:

We conclude that this reform will benefit the interconnection process by providing interconnection customers more control and certainty during the design and construction phases of the interconnection process. Further, we find that limiting exercise of the option to build to circumstances where the transmission provider cannot meet the interconnection customer’s requested dates is not just and reasonable. The limitation restricts an interconnection customer’s ability to efficiently build the transmission provider’s interconnection facilities and stand-alone network upgrades in a cost-effective manner, which could result in higher costs for interconnection customers.<sup>6</sup>

The same option to self-build should be included in Attachment Y (PUFs) and Attachment P (NUFs) as is being considered for Attachment X for generators. If a developer does not exercise its right to self-build, as in Attachment X, the developer should be required to post security and pay for costs related to PUFs and NUFs. As a result, the developer should be allowed to recover costs related to PUFs and NUFs.

**V. NYISO’s proposed ROFR will stifle competition in New York, resulting in fewer innovative solutions as well as increased costs**

In a 2019 paper, the Brattle Group illustrated the benefits FERC Order 1000 has had in reducing transmission costs where competitive processes have taken place:

Based on the experience with competitive projects in the U.S. to date, we estimate that the potential cost savings from expanding competitive processes could range from approximately 20% to 30%, consistent with savings achieved with similar competitive transmission processes in Canada, the U.K., and Brazil. At an estimated cost savings of 25%, the potential customer value from expanding competitive processes from 3% to 33% of all planned U.S. transmission investments would be approximately \$8 billion over the course of five years.<sup>7</sup>

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<sup>6</sup> Order No. 845 163 FERC ¶ 61,043 at P 85 (2018).

<sup>7</sup> *Cost Savings Offered by Competition in Electric Transmission* by The Brattle Group, April 2019, page 1.

In past Public Policy Processes, the Commission has expressed a preference to replace aging infrastructure and utilize existing utility ROWs. In the Alternating Current (“AC”) PPTN process, the implementation of NYISO’s proposed ROFR would have automatically awarded both Segment A and Segment B to TOs, deterring any participation from developers. This means the award of a \$1.2 B project would have no competition, and without developer participation, a less cost effective and innovative solution would have been approved. This is evident in both the Western New York PPTN and AC PPTN, non-incumbent TO solutions were selected and approved as more cost effective and efficient projects. New York customers will ultimately benefit from continued developer participation, and competition among developers.

Sincerely yours,

JohnBinh Vu  
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NextEra Energy Transmission New York

Stephen Gibelli  
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