Comments of LS Power Grid New York, LLC on
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
April 26, 2019

LS Power Grid New York, LLC ("LS Power") offers the following comments in response to the 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 ("Straw Proposal") as discussed at the April 12, 2019 joint meeting of the Transmission Planning Advisory Subcommittee ("TPAS") and Electric System Planning Working Group ("ESPWG"). These comments also apply to the Transmission Owners Proposal Regarding Necessary Local Upgrades for Public Policy Transmission Need Projects ("TO Presentation") discussed at the December 19, 2018 ESPWG meeting.

I. Definitions

The Straw Proposal would benefit by having a clear set of defined terms. Below are LS Power's understanding of the key terms used in the discussion, based on tariff definitions.

Non-BPTF – Section 31.1.1 of the NYISO Tariff defines New York State Bulk Power Transmission Facilities ("BPTFs") as "The facilities identified as the New York State Bulk Power Transmission Facilities in the annual Area Transmission Review submitted to NPCC by the ISO pursuant to NPCC requirements." LS Power understands that similarly, "Non-BPTF" means facilities not included as BPTFs, and generally means facilities under 200 kV, but with some exceptions.

Attachment Facilities – generally defined in the Tariff to include the Connecting Transmission Owner's Attachment Facilities and the Developer's Attachment Facilities. Collectively, Attachment Facilities include all facilities and equipment between the Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Facility to the New York State Transmission System. Attachment Facilities are sole use facilities and shall not include Stand Alone System Upgrade Facilities, Distribution Upgrades, System Upgrade Facilities or System Deliverability Upgrades.

Network Upgrade Facilities ("NUFs") – defined in Section 22.1 of Attachment P as: **"**shall mean 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."

Further, the Straw Proposal distinguishes between upgrade facilities that are included in the proposal under Attachment Y and upgrade facilities identified in the interconnection process under Attachment P:

Proposed NUFs – NUFs included as an element of a PPTN proposal. If a bidder proposes an NUF then it is part of its proposal and will be evaluated as a fixed element of the proposal for all purposes– electrically, for purposes of cost estimates, and for purposes of risk evaluation of the proposal.

SIS NUFs – NUFs identified in the system impact study as required for reliable interconnection. A NUF not part of the bidders proposal, but identified in the SIS will be defined by NYISO including for purposes of cost estimates and risk evaluation of the proposal.

LS Power appreciates the distinction offered by NYISO between Proposed NUF and SIS NUF. Bidders should have the opportunity to evaluate the benefits and include an NUF as part of its proposal as it deems necessary or beneficial to achieve a desired level of transfer or proposal certainty. Alternatively, a required NUF left out of its proposal should be addressed in a least cost manner during the interconnection and evaluation process by NYISO.

The April 12 ESPWG also included a presentation by the Transmission Owners regarding the definition of "Upgrades" related to Section 31.6.4, regarding upgrades that have not been selected in the regional transmission plan for purposes of cost allocation. LS Power does not agree that the overly broad definition presented by the Transmission Owners is appropriate for the limited intent of Section 31.6.4. Further, FERC has recently provided additional guidance as to what constitutes a local "upgrade" compared to a project included in a regional plan. In an Order related to a complaint against PG&E, FERC clarified that an upgrade project, such as rebuild or replacement due to asset condition which results in an incidental increase in capacity, could be performed outside the regional planning process. However, when a transmission owner determines the rebuild or reconductor will meet a regional transmission need, it is no longer simply a local upgrade and requires different treatment (164 FERC ¶ 61,161 at 68-69). Clearly, Section 31.6.4 relates to a Transmission Owner's right to an upgrade, such as a rebuild or replacement due to condition assessment, that does not displace a need in the regional plan, and for which the Transmission Owner is not seeking to be included in the regional transmission plan for the purpose of cost allocation. The NUFs contemplated by the PPTN process are not these types of upgrades. They instead are being performed in order to provide more than an incidental increase in rating, and are explicitly being included under Rate Schedule 10.

LS Power has one final clarification regarding terms used in the Straw Proposal. While the Straw Proposal title refers to "Non-BPTF Upgrades", the subject matter of the Straw Proposal is broader than just Non-BPTF facilities and includes Attachment Facilities and NUFs that could be BPTF.

II. Examples

LS Power agrees that the examples provided in the Straw Proposal, provided in the December 19, 2018 TO Presentation, and from the Western NY and AC Transmission PPTNs can provide helpful context to the discussion.

The Straw Proposal provides an example of a new 345 kV transmission line and substation. In this scenario there are Attachment Facilities at three existing substations, and an NUF required to a parallel 115 kV line.

The example included in the TO Presentation provides a real-world example of a bid that included as a Proposed NUF reconductoring and rebuilding a Non-BPTF facility, estimated to have a cost of $40 million. However, the actual work necessary to upgrade the subject Non-BPTF facility to the required rating had a much smaller scope, estimated to cost approximately $100,000.

In the Western NY PPTN, some proposals had Attachment Facilities at the existing Stolle substation, and one proposal included a new East Stolle substation adjacent to the Stolle substation.

Segment B in the AC Transmission PPTN had several NUFs. All proposals included a required NUF from Shoemaker to Sugarloaf, which included a change in voltage and a significant increase in rated capacity. Clearly this Proposed NUF is not simply an upgrade of an existing facility. One proposal included a Proposed NUF consisting of a replacement of the Middletown transformer. All proposals also resulted in impacts to the NE-NY interface which resulted in a SIS NUF.

III. Process Comments

LS Power observes that there is general consensus around several key elements of the Straw Proposal:

- Non-BPTF Upgrades are Important – even though the NYISO planning process relates to the BPTF, all parties seem to agree that non-BPTF overloads should not be ignored, and the cost and risk of such upgrades necessary to achieve the target transfer should be included in the evaluation process.
- TO Input – it is beneficial for the process to include an opportunity for the transmission owner to review and provide input on the scope and issues related to Attachment Facilities, Proposed NUFs, and SIS NUFs.
- Independent Evaluation – it is important that scope, feasibility and cost estimates provided by bidders and provided by Transmission Owners are not taken at face value but reviewed by NYISO and its independent consultant. As expressed by several stakeholders in the meeting, it is not appropriate to have a Transmission Owner, which is likely a competitor in the process, make a final determination regarding elements of a competing bid. This clear conflict of interest must be avoided.
- Fair Analysis – a key goal of the process is to ensure a fair process for bidders while also identifying all necessary elements of each proposal, in order to identify the most efficient or cost effective solution. In the TO Presentation example, the evaluated cost of the NUF would have been reduced from $40 million to $100,000. It is also easy to imagine this example going the other way, where a bidder estimates a $100,000 upgrade that more appropriately should have an estimated scope of $40 million. In either case, there is consensus that the goal is to have a process that results in the most accurate estimate possible given a reasonable level of due diligence.

However, there remain several areas of disagreement. The primary disagreement is related to an attempt for someone other than the bidder to recover costs of elements of a proposal under Rate Schedule 10, which is not allowed under that Tariff. Attachment Y only allows for the Developer of a PPTP to recover costs for the proposed project.

LS Power's comments on the Straw Proposal are organized according to the various phases of the PPTN process.

A. Prior to Proposal Submittal

LS Power and other developers try to identify the best proposal based on publicly available information including the posted system models and gold book data. That being said, there may be information gaps, particularly related to the limiting element for the rating of a specific circuit. The proposed $40 million reconductoring when a $100,000 solution was available is a perfect example of a situation that would be addressed by addressing this information gap. Addressing this information gap was not directly addressed in the Straw Proposal but was discussed at the April 12 ESPWG meeting and in other ESPWG meetings. These discussions included references that other RTOs, such as PJM, make available a database of the limiting element on each circuit. While this approach is not perfect, in that it is still not known what the next limiting element may be, it is still a significant step forward in leveling the playing field for bid development. LS Power supports NYISO's proposal, of providing information on the most limiting element for all circuits in the area during the technical conference and problem definition phase of the process. In fact, the approach should be clearly defined.

In order to provide a level playing field, LS Power proposes that the following information should be provided for the first 20 elements that are limiting to transfer in the NYISO basecase for the public policy transmission need:

- Current circuit rating
- Conductor limited circuit rating
- Upgrades necessary to achieve conductor rating
- Cost of upgrades necessary to achieve conductor rating

In addition, if the bidder is including a Proposed NUF, the proposal should be required to clearly identify the target rating of the upgraded circuit, and all assumptions related to the proposed rating increase.

Taking these steps prior to proposal submittal should help avoid situations such as identified in the TO Presentation example, where the scope of an upgrade is estimated at $40 million rather than $100,000.

B. During Proposal Evaluation

Proposal No. 1 of the Straw Proposal, which identifies how NUFs (including Attachment Facilities) will be evaluated in the SIS and PPTN process is a reasonable approach. As identified above, the Straw Proposal provides an avenue for TO input into the process while preserving the independent evaluation. As discussed above, the distinction between Proposed NUFs and SIS NUFs is beneficial.

C. After Selection

It is a fundamental tenet of the NYISO Tariff that individual Transmission Owner ratepayers not be required to bear the costs of interconnecting another entity. This is true for generation facilities, true for merchant transmission facilities, and should be true for PPTP facilities. Attachment P of the NYISO Tariff requires that the transmission developer pay the costs of interconnection facilities and NUFs, whether they be Proposed NUFs or SIS NUFs. Similar to the generator interconnection process, Attachment P requires the transmission developer to bear costs with no distinction between merchant transmission interconnections or interconnection of PPTP projects. This approach, that the bidder under the PPTN process will make all investments associated with its proposal, seems to be consistent with the understanding of most parties based on the discussion at the April 12 ESPWG. This is also consistent with the explicit provisions of the December 17, 2015 Order Finding Transmission Needs Driven by Public Policy Requirements from the Public Service Commission regarding NUFs which states:

> Orange and Rockland Utilities, Inc. (O&R) is the owner of the Shoemaker to Sugarloaf facilities and should do the necessary upgrades to those facilities. Central Hudson Gas & Electric Corporation (Central Hudson) is the owner of the Rock Tavern Substation and should do the necessary upgrades to the substation. O&R and Central Hudson should be reimbursed by the developer of the Segment B transmission solution for their actual reasonable costs in performing the upgrades. The developer in turn should recover those costs as a pass-through from the beneficiaries of the Segment B transmission solution through the NYISO Open Access Transmission Tariff. (p. 62)
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> …Orange and Rockland Utilities, Inc. (O&R) as the owner of the Shoemaker to Sugarloaf facilities shall work with the developer of any selected transmission solution regarding Segment B and shall pursuant to a written agreement to be negotiated between the two, design, obtain approvals and perform the necessary upgrades to those facilities identified in this order and shall be reimbursed by the developer of the Segment B transmission solution for the actual reasonable costs to design, obtain approvals and perform the upgrades. (p. 72)
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> …Central Hudson Gas & Electric Corporation (Central Hudson) as the owner of the Rock Tavern Substation shall work with the developer of any selected transmission solution regarding Segment B and shall pursuant to a written agreement to be negotiated between the two, design, obtain approvals and perform the necessary upgrades to the substation identified in this order and shall be reimbursed by the developer of the Segment B transmission solution for the actual reasonable costs to design, obtain approvals and perform the upgrades. (p. 73)

LS Power and all other bidders submitted their proposals in the AC Transmission PPTN under this premise, with the understanding that NUFs would be to the account of the selected developer. There is no reason why other NUFs and Attachment Facilities would receive any other treatment.

The Straw Proposal cites Section 31.6.4 of the tariff to support an assertion that a TO has a right of first refusal for all upgrades. Section 31.6.4 is irrelevant to Attachment Facilities, Proposed

NUFs, and SIS NUFs. Section 31.6.4 has a long history, with five different versions of the provision having been filed at FERC (see NYISO filings in Docker ER13-102 on October 11, 2012, October 15, 2013, September 15, 2014, September 13, 2016, and March 19, 2018). Beginning with the Transmittal Letter accompanying NYISO's initial Order No. 1000 compliance, on October 11, 2012, NYISO clearly stated because Order No. 1000's requirement to eliminate rights of first refusal was "not intended to interfere with upgrades made by incumbent TOs *to meet their local needs*" that the purpose of the provision is "..to explicitly provide that incumbent TOs have the right to make upgrades to their own facilities or use existing ROWs to meet their *local system needs*." (emphasis added, p.56). None of the subsequent versions of the provision filed with the Commission changed this initial purpose declaration nor describe a right of first refusal for an incumbent Transmission Owner to build elements of a PPTP proposal, or upgrades approved as part of the regional plan.

For example, after the provision was originally filed, FERC required NYISO to clarify the definition of upgrade in Section 31.6.4 to be consistent with the definition FERC provided in Order No. 1000-A (April 18, 2003 Order para.169-172), meaning "an improvement to, addition to, or replacement of a part of, an existing transmission facility. The term upgrades does not refer to an entirely new transmission facility." NYISO's compliance filing adopted this definition. Subsequent filings of this provision made several changes to the provision, but in all cases the intent was clearly to apply Section 31.6.4 to Transmission Owner identified projects to meet local needs. There is no evidence that Section 31.6.4 was represented as applying to allow a Transmission Owner to assert a right to an upgrade that arises from a Developer proposal under Attachment Y or Attachment P.

In addition, the interpretation of Section 31.6.4 included in Proposal No. 2, that the incumbent transmission owner will have a right to recover costs through Rate Schedule 10 for elements of a bidder's proposal, contradicts provisions of Attachment Y regarding the Public Policy Transmission Process. Attachment Y states in both the evaluation and selection provisions that the *Developer* shall be eligible for cost recovery of the Public Policy Transmission Project under the Tariff, without mention of a similar right to a Transmission Owner.

> **31.4.8 ISO Selection of More Efficient or Cost Effective Public Policy Transmission Project to Satisfy a Public Policy Transmission Need**
> A proposed regulated Public Policy Transmission Project submitted by a Developer that the ISO has determined has provided the required notification to proceed under Section 31.4.6.6 shall be eligible under this Section 31.4.8 for selection in the Public Policy Transmission Planning Report for the purpose of cost allocation under the ISO Tariffs.
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> **31.4.8.2 ISO Selection of More Efficient or Cost Effective Regulated Public Policy Transmission Project to Satisfy a Public Policy Transmission Need**
> The ISO shall identify under this Section 31.4.8 the proposed regulated Public Policy Transmission Project, if any, that is the more efficient or cost effective transmission solution proposed in the planning cycle for the Public Policy Transmission Planning Process to satisfy a Public Policy Transmission Need. The ISO shall include the more efficient or cost effective transmission solution in the Public Policy Transmission Planning Report. *The Developer of a regulated Public Policy Transmission Project shall be eligible to recover costs for the project* only if the project is selected by the ISO, except as otherwise provided in Section 31.4.3.2 or as otherwise determined by the Commission. Costs will be recovered when the project is completed pursuant to a rate schedule filed with and accepted by the Commission in accordance

with the cost recovery requirements set forth in Section 31.5.6.5, or as otherwise determined by the Commission. Actual project cost recovery, including any issues related to cost recovery and project cost overruns, will be submitted to and decided by the Commission. (emphasis added)

A Public Policy Transmission Project is defined as shown below

> **Public Policy Transmission Project:** A transmission project or a portfolio of transmission projects proposed by Developer(s) to satisfy an identified Public Policy Transmission Need and for which the Developer(s) seek to be selected by the ISO for purposes of allocating and recovering the project's costs under the ISO OATT.

Nowhere do these provisions provide for costs of a portion of a Public Policy Transmission Project proposal to be recovered by anyone other than the Developer selected in the process.

Clearly the Tariff contemplates that the Developer funds all costs related to its proposal, including Attachment Facilities and NUFs, whether such NUFs are proposed or arise from the SIS, and that the Developer recovers such costs under Rate Schedule 10. As discussed above, it is not necessary to reconcile Section 31.6.4 with this approach, as they are compatible. If 31.6.4 would apply, the existing Transmission Owner could still "build, own, and recover the costs" for Attachment Facilities and NUFs. The Transmission Owner would recover the costs from the Developer, who would in turn recover the capital under Rate Schedule 10, just as described in the PSC December 17, 2015 Order.

As stated by several entities in the ESPWG, it is unfair to bidders and will adversely impact the process if significant elements of a bidder's proposal are instead awarded to the incumbent Transmission Owner for the purpose of cost recovery. LS Power has accepted an approach where the incumbent TO performs such work, with the understanding that the cost would be assessed to the Developer and recovered in its rates. Proposal No. 2 in the Straw Proposal represents a fundamental change in the NYISO's Transmission Interconnection Procedures and the Public Policy Transmission Process and will negatively impact the process. In addition to discouraging participation in the process, Proposal No. 2 of the Straw Proposal is prejudicial to non-incumbent bidders and also results in inefficiencies. This approach would encourage bidders to expand the scope of its proposals, such as proposing a new switchyard rather than connecting to the existing switchyard, or building a new circuit rather than an upgrade of an existing circuit, which results in higher costs. This will not necessarily result in the best planning solution.