

**NYPA Comments on NYISO 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**

The New York Power Authority (NYPA) appreciates the opportunity to provide the following comments on the New York Independent System Operator's (NYISO's) *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* (Proposal) presented at the April 12, 2019 joint Electric System Planning Working Group/Transmission Planning Advisory Sub-committee (ESPWG/TPAS) meeting.<sup>1</sup> NYPA has an overarching concern that the Proposal cuts against the competitive nature of the Public Policy Transmission Planning Process (PPTP), as developed jointly by the NYISO and its stakeholders, and is contrary to the requirements and advantages that Order 1000's competitive transmission solicitation process was designed to provide.

The Proposal is comprised of two "Principal Proposals." Proposal One seeks to: a) revise OATT, Attachment P, Section 22.8 regarding the System Impact Study (SIS) process b) to include study findings relative to Non-Bulk Power Transmission Facilities (NBPTF) in the PPTP Evaluation and Selection (E&S). The revisions contained in Proposal One could provide an incumbent Transmission Owner (TO) with access to a competitor's confidential information and other anti-competitive advantages over other developers during the project review process.

Proposal Two establishes a procedure to administer Section 31.6.4 of OATT Attachment Y relating to the Rights of Transmission Owners extending the Right of First Refusal (ROFR) to upgrades that are part of a Developer's PPTP project. This proposal would undermine any incentive for developers to propose a substantial range of project elements and approaches if a TO would be granted the benefits from development of those elements due to the Proposal's over-broad application of a TO ROFR. NYPA offers the following comments including several suggestions to enhance the Proposal, supporting consistency of the Proposal with the current NYISO Open Access Transmission Tariff (OATT), and Federal Energy Regulatory Commission's (FERC) and the New York State Public Service Commission (PSC) guidance in relevant orders.

**1. Proposal One (Evaluation of Non-Bulk Upgrades)**

Proposal One is intended to ensure that the NYISO receives all necessary information regarding Non-Bulk Power Transmission Facilities (NBPTF) contained in, or required to support, a developer's proposal in a timely manner, for sufficient consideration of the feasibility and constructability of the proposed interconnection point **AND** the NBPTF upgrade itself in the PPTP process. NYISO proposes to eliminate the optionality of the "Optional Feasibility Study" in the Interconnection Process solely for PPTP projects while maintaining the optionality for all other reliability and economic projects.

The proposal revises the Interconnection SIS process to be conducted in two phases. The first phase is to study the feasibility and constructability of the proposed solutions, identify necessary network upgrade

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<sup>1</sup> These comments also generally apply to the presentation provided and discussed by certain Transmission Owners (Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation d/b/a National Grid, New York State Electric & Gas Corporation, Orange & Rockland Utilities, Inc., Rochester Gas & Electric Corporation) titled "Necessary Local Upgrades for Public Policy Transmission Need Projects" at the December 19, 2018 ESPWG meeting

facilities (NUF), and prepare cost estimates all as inputs to the Viability and Sufficiency (V&S) assessment. The second phase is to develop good faith cost estimates for NUFs to be included in the final SIS report.

**A. PPTP limitations are better addressed in the PPTP, Not the System Impact Study Process**

NYPA fully recognizes the importance of the NYISO having available to them all relevant information bearing on the feasibility and constructability of all projects proposed in the PPTP process in advance of its Viability and Sufficiency (V&S) determination. However, the interconnection process does not have to be revised to allow the NYISO to perform a feasibility assessment. Instead, the feasibility assessment could be built in to the PPTP process, and feed into the V&S assessment. The changes proposed by some of the NYTOs (see footnote 1 regarding the TO presentation “Necessary Local Upgrades for Public Policy Transmission Projects”) and the NYISO are to address limitations in the current PPTP process and therefore the changes should be limited to that process. NYPA recommends that the Proposal be revised to provide that a procedure to address feasibility and constructability be established as an early step in the PPTP process.

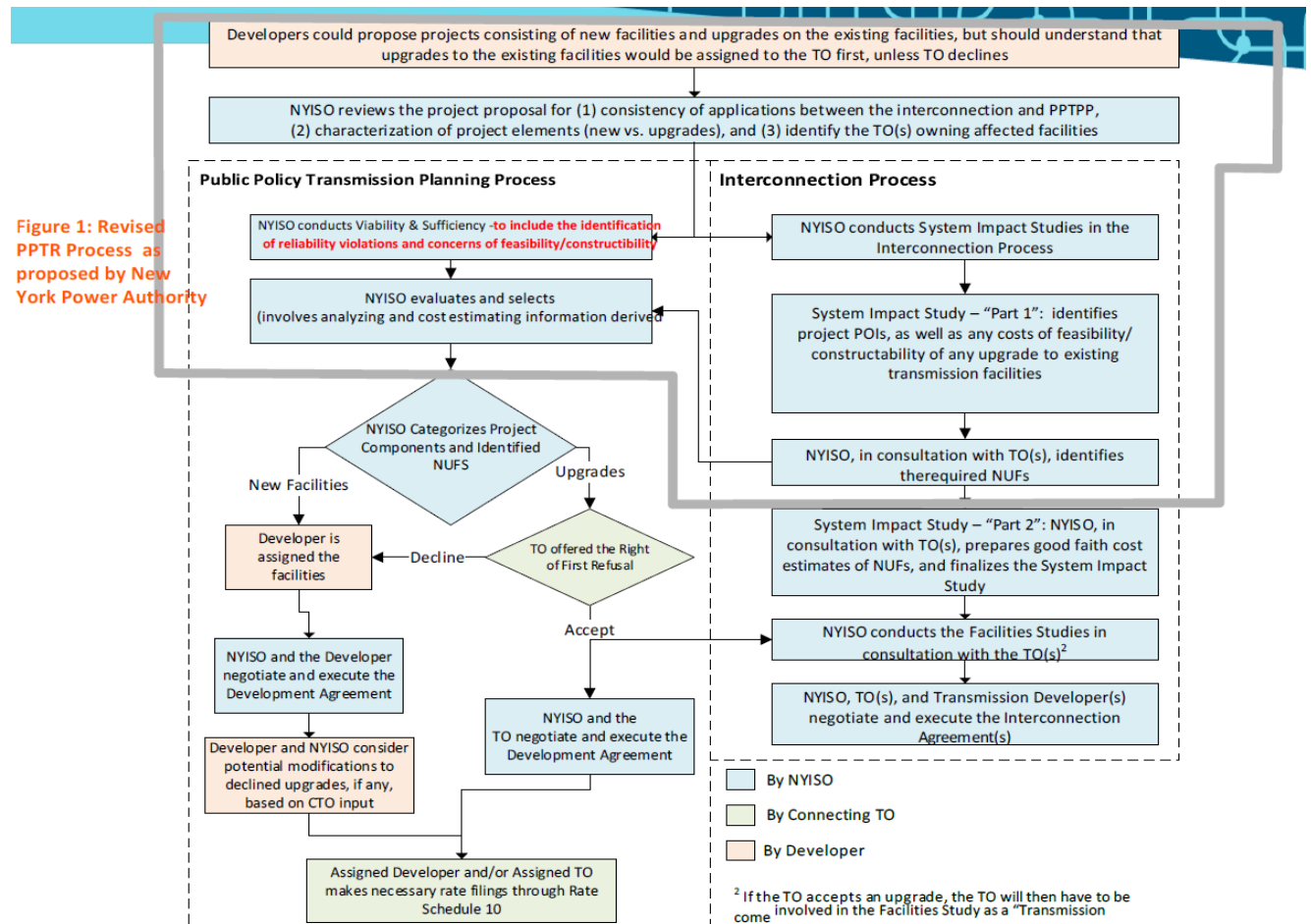


Figure 1 – NYPA proposed revision to PPTP Process

**B. Do Not Add to Transmission Owner Competitive Advantage and Retain Transparency and Integrity in the Feasibility and Constructability Assessment**

A New York Transmission Owner proposing a PPTP project may be seen as holding an inherent competitive advantage over all other Developers through its unique position of possessing the specific, unique and complex Planning Criteria, long-term goals, reliability metrics (e.g. standard transformer design and a program of available spares) and operations of its NBPTFs. This knowledge could inform its project submission by giving it insight into potentially the most beneficial, least risky and lowest cost NBPTF upgrades.

The proposed revisions to the NYISO Interconnection System Impact Study (SIS) increases the risk that the TOs may act in an anti-competitive manner by influencing the evaluation and selection of a competing proposal through the feasibility process. The TOs, as a Connecting Transmission Owner (CTO), has the potential to offer subjective input into the feasibility and constructability of competing proposals. It was stated in the NYTO December 19, 2018 ESPWG presentation that it is their intention that all risks identified by the CTO for all Necessary Local Upgrades proposed by competing Developers be included as Project risk(s) by the NYISO in the PPTP evaluation and selection process. The revisions to the tariff must include rules and procedures that reinforce or create safeguards protecting every competitor's confidential information and innovative work product.

The PPTP process must safeguard all parties from any other party gaining any unfair competitive advantage. The Proposal must fully align with the intent and action of the vast array of stakeholders who, along with the NYISO staff, designed and approved a competitive PPTP process compliant with the requirements of Order 1000's competitive transmission solicitation process. NYPA encourages the NYISO to continue its diligence in seeking to optimize competition and transparency throughout the PPTP process.

NYPA proposes the following measures to improve the Proposal in its current form:

1. The feasibility and constructability assessment be performed by the NYISO's independent consultant ("Consultant").
2. Provide all Developers notice and opportunity to participate in meetings conducted by the Consultant with the Connecting TO and Affected TO (ATO) for purposes of performing the feasibility and constructability assessment of each Developer's proposal, including any proposal advanced by one or more TOs or affiliates thereof. This provides sufficient checks and balances to insure concerns about risks and costs identified by the CTO and ATO are valid and all mitigations considered are properly identified and fully disclosed to and discussed with the project Developer, Consultant and all other appropriate stakeholders.
3. The Consultant will prepare and provide a draft feasibility report to the stakeholders for their review and input. The project Developer should be afforded the ability to have its response to concerns identified be included in the final assessment report

In addition, although we believe this is an existing element of the Proposal, NYPA respectfully requests that the NYISO confirm that it is the singular entity making all the feasibility and constructability determinations.

## **2. Proposal Two (Assignment Process)**

Proposal Two sets forth NYISO's suggestion for implementing section 31.6.4 of Attachment Y and provides for (1) identification of transmission solution elements as Project elements (if they constitute "New Transmission Facilities") or Upgrades (if they do not constitute New Transmission Facilities), and (2) a presumptive assignment of Upgrades to the TO that owns the facility to be upgraded (the ROFR Assignment).

In its current form, Proposal Two raises three primary concerns: (A) the need for clear definitions, (B) developer proposal risk, and (C) assigned upgrades are not subject to cost containment.

### **A. The Proposal Needs Clear Definitions Consistent with FERC and NYISO Tariff**

The NYISO Proposal needs to include clear and concise definitions of terms, including but not limited to, "Upgrades" and "New Facilities". Order No. 1000 and the current NYISO OATT Attachment Y define an "Upgrade" as: *"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."* The NYISO proposes to interpret this definition, as presented on Slide 13 of the NYISO Presentation on April 12, 2019, to include the complete reconductoring of a 115kV line as an Upgrade to which the Right of First Refusal (ROFR) Assignment would apply and the TO would benefit by earning a return on this investment. This interpretation may chill competition as non-incumbent developers will not receive a return for the investment they make in developing solutions incorporating partial transmission facilities.

In establishing rules for distinguishing between Upgrades and New Facilities, NYISO should limit, to the maximum extent consistent with FERC precedent, the circumstances that will constitute Upgrades. Adopting a broad definition of Upgrades would greatly diminish the incentive for a developer to propose innovative, beneficial and, potentially least-cost, solutions to Transmission Needs. For example, no developer would incur the very substantial expense of designing and submitting a proposed solution to a PPTP RFP using NBPTF facilities or reconductoring of facilities, only to have the TO gain the benefit of its design through a ROFR Assignment.

Beyond the definitions of Upgrades and New Facilities, the NYISO needs to define what constitutes a BPTF (given the lack of a bright line voltage determination). The NYISO should refer to an objective standard, such as the facilities lists included as Appendix A of the Area Transmission Review that NYISO develops and submits annually pursuant to NPCC requirements.

### **B. Developer Proposal Risk**

Developers invest tremendous time, effort and sums of money seeking a complete range of innovative and cost effective solutions. In order to incent such Developer investments, the benefit of preparing the proposal must, to the maximum extent possible, remain with the Developer if its project is selected. Therefore, NYISO should clarify that the selected Developer will have the right to earn a return of and on the capital investment represented by its proposed project. If an element of such project is deemed an Upgrade and the TO exercises its ROFR for such element, the developer should nonetheless retain the regulatory asset representing the right to recover the capital investment and a return thereon for such facility by recovering the costs of the upgrade charged to it by the TO. The ownership interest would remain with the TO, the TO would build the facility, but the TO would bill the developer the costs and

the Developer would include those costs paid in its cost recovery tariff and earn a return on the capital investment. In this way, the ROFR is respected -- the TO has the right to construct, own and operate the facility -- but the merchant developer retains the incentive to design and propose the least-cost solution without fear of losing the benefit of its investment.<sup>2</sup>

It may be asserted that the assignment of the ownership interest in the facility to the TO may in some circumstances constitute a contribution in aid of construction (CIAC) on which the TO would be obligated to pay income taxes. However, this is an issue that may be addressed by the developer in its proposal (for example, the developer may obtain a private letter ruling from the IRS). If the NYISO finds that a tax gross-up would be required, and the developer fails to provide mitigation of this expense in its proposal, then that will be a cost factor the NYISO will take into consideration in its selection of the more efficient and cost effective solution.

### **C. Cost Containment**

Finally, NYISO must address how cost containment will be handled. If a developer proposes an Upgrade for which it agrees to accept cost containment, the TO should not be permitted to exercise its ROFR to construct, own and operate the Upgrade free of the cost containment that applied to it in the developer's proposal. Instead, the TO should be bound to the same cost containment for the Upgrade as was contained in the developer's proposal. Further, cost overruns incurred by the TO should not be borne by the Developer.

### **3. Conclusion**

NYISO should exercise great care to ensure that its rules addressing feasibility/constructability analysis and implementing section 31.6.4 are designed to maximize the competitive efficiency of the transmission solicitation process. NYPA looks forward to working with NYISO and other stakeholders to fashion rules that will benefit all parties.

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<sup>2</sup> The New York State Public Service Commission December 17, 2015 Order Finding Transmission Needs Driven by Public Policy Requirements explicitly stated this concept: "The developer...should recover those (NUF/NBPTF) costs as a pass-through from the beneficiaries...through the NYISO Open Access Transmission Tariff."