



September 10, 2019

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

SENT VIA EMAIL

RE: NEETNY Comments on NYISO Straw Proposal for System Upgrades

NextEra Energy Transmission New York, Inc. (NEETNY) commends the NYISO for developing a comprehensive cost containment proposal and encourages the NYISO to advance the requisite tariff revisions expeditiously. However, NEETNY has serious concerns with the straw proposal for system upgrades as they will negatively impact the competitive transmission process and they will nullify the consumer benefits gained in the cost containment proposal. Many of the NYISO recommendations fail to recognize the unique characteristics of the New York transmission system and the chilling effects these changes will have on competitive transmission in New York. NEETNY offers the following comments to improve the upgrade proposal for the benefit of New York customers and to maintain a fair and competitive transmission process.

I. Upgrade Proposal Flaws

Negative Impact on Competition - Fewer Proposals in Future Solicitations

The NYISO and New York electric consumers have benefited from a robust menu of solutions offered into the past two competitive transmission solicitations. The solutions have included proposals with new transmission facilities as well as upgraded facilities. Developers have provided NYISO with innovative solutions that best met the system need while being designed within the parameters established by the New York Public Service Commission for use of existing rights of way. Stakeholders could be reasonably ensured that the most cost effective or efficient solution was one of the submitted proposals.

However, the adoption of the proposed upgrade proposal will likely impact the breadth of solutions offered into future solicitations. Developers spend millions of dollars in fees and development costs for each solution. It is not prudent for developers to aggressively pursue proposals without weighing factors such as the size of the investment opportunity, the cost of the proposal development, and each proposals chance for success. Solutions that consist principally of upgrades with little new facilities will be less attractive

to a developer because the bulk of the investment will be assigned to the transmission owner. We point to the Segment A proposals in the AC Proceeding where a broad range of innovative proposals were submitted ranging from the straight replacement of the existing 230kV transmission lines with a single 345kV line to the conversion of a 345kV line to 765kV. Per the proposed changes, most of the elements of these proposals would have been categorized as upgrades. We believe it is likely that fewer proposals would have been submitted had this upgrade proposal been in effect. In the future, the reduced incentive for developers to perform a comprehensive search for solutions may raise doubt as to whether the most cost effective or efficient solution has been proposed and selected.

Upgrade Proposal Nullifies Cost Containment Benefits to Consumer

NYISO and stakeholders have invested considerable time to develop a cost containment proposal that provides protection to consumers for project cost overruns. The cost containment proposal applies risk sharing provisions to any cost overruns incurred by the developer. Project elements that are assigned to the transmission owner, which are upgrades, will be excluded from any risk sharing provisions. The proposed upgrade definition is broad and, as discussed below, will classify the vast majority of future proposal elements as upgrades. Had the NYISO upgrade proposal been adopted prior to the AC competitive proceeding, approximately \$1 billion of the total \$1.2 billion project cost would not be subject to cost containment. This exposes the consumer to significant project cost overrun risk which the cost containment proposal sought to limit.

The experience in PJM should inform stakeholders that cost containment for upgrade projects will be highly unlikely. In 2018, PJM formally implemented cost containment in their competitive transmission process which provides developers an opportunity to offer cost containment in their bids on a voluntary basis. Since then there have been 15 proposals submitted for upgrade projects and none of those proposals offered any cost containment. It should be noted that only transmission owners can be assigned upgrade projects. Since Order 1000 has been implemented in PJM, there have been 140 competitive transmission projects approved and 132 of those projects were upgrade projects.

Under the NYISOs proposed definition, the vast majority of future project elements would be classified as upgrades for several reasons. First, the New York transmission system corridors are physically congested and aging infrastructure is prevalent across these corridors as reported in the New York State Transmission Assessment and Reliability Study (STARS) study. Future competitive proceedings will likely require the use of existing rights of way and give higher value to projects that replace aging infrastructure as has been the case in the past. Second, the NYISO-proposed definition of upgrades is overly broad and is being interpreted to mean that any work performed on an existing transmission owner asset will be classified as an upgrade and therefore be assigned to that transmission owner.

NYISO's proposed system upgrade definition, if adopted, will result in few projects with a cost containment proposal selected as part of the comparative evaluation process. This is the exact opposite of NYISO's intent to implement cost containment in the first place and New York consumers will see little benefit from the cost containment proposal.

Developers Penalized in the Evaluation Process

As NEETNY understands the NYISO's upgrade proposal, if the transmission owner accepts the assignment of the upgrades, the NYISO will use NYISO's independent consultants' estimate in the evaluation for the upgrades as opposed to the developers' proposed cost capped estimate for those upgrades. NEETNY's proposed cost bids in the past two solicitations have been lower than the independent consultants' estimate. It is reasonable to expect that this will be true in future solicitations. This provides an unfair advantage to the Transmission Owners (TOs) because (1) the TOs can disadvantage any non-incumbent proposal by accepting the Upgrades and increase the overall cost at which the developer's project is evaluated and (2) the TOs' proposals are not impacted because the upgrade components of their cost proposals are not defaulted to the independent consultant estimates in the evaluation, allowing TOs to propose a lower cost for their own upgrades for consideration by the NYISO.

II. Upgrade Proposal: Proposed Improvements

While other regions have included more expansive definitions of "upgrade" than what is currently contained in Section 31.6.4 of the NYISO Tariff,¹ the NYISO is not obligated to follow suit. Indeed, Order No. 1000 and 1000-A merely create a category of regionally cost-allocated projects – "upgrades" – for which a tariff-based federal right of first refusal is *permissible*. Individual regions have the discretion to decide whether or not to create such a right-of-first-refusal, based on the objectives of that region and the characteristics of the transmission system found therein. NEETNY urges the NYISO to take a different approach than PJM and MISO to the definition of upgrade. As discussed above, the benefits of competition, including cost containment simply will not be realized by New York consumers if the definition of an upgrade is expanded as contemplated in the straw proposal.

NEETNY's upgrade proposal, described in detail below, is further informed by a 2015 FERC Order involving a NYISO Order 1000 compliance filing.² In that order, FERC rejected, "as a collateral attack on Order No. 1000, the New York Transmission Owners' assertion that the replacement of any existing transmission facility is properly characterized as an upgrade, so long as the facilities are not entirely new."³ The NYISO upgrade proposal effectively designates the replacement of any transmission facility as an upgrade, which appears to contradict the NYISO Compliance Order and Order No. 1000.

Upgrade Cost Responsibility Remains with the Developer

The cost responsibility or investment opportunity in Order 1000 projects is a significant incentive for developers to seek innovative solutions and aggressively compete in pricing for new projects. As the investment opportunity is minimized due to the expected designation of most project elements as upgrades, NEETNY is concerned this will limit the participation and innovation in the competitive

¹ See, e.g. MISO Tariff, Attachment FF, Section VIII.A.2.

² *New York Independent System Operator, Inc.*, 151 FERC ¶ 61,040 at PP 95-97 (2015) ("NYISO Compliance Order").

³ *Id.* at P 95.

transmission process. This concern can be mitigated if the NYISO adopts the provision that the successful developer will finance the upgrades and be able to earn a return of and on the investment. Ownership for upgrades may still remain with the TO while the developer can record the investment on its books and records as an intangible asset, and earn a return on and of the intangible asset over the underlying asset's useful life. Meanwhile, the TO would earn a return on and of any capital improvements to the upgrade, and recover ongoing operations and maintenance expense, property tax expense, and other expenditures related to its ownership of the upgrade.⁴ This model is not new and is consistent with the financing of a few past transmission improvement projects in New York. This properly incentivizes the developer to seek the most cost effective or efficient solution without regard to the ultimate upgrade ownership.

Proposed Revised Upgrade Interpretation to Maintain Competitive Process

Section 31.6.4 defines 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*. This language is overly broad and subject to multiple interpretations. NEETNY proposes that the NYISO interpret the definition in a manner that satisfies the State's policy goals and maintains a competitive transmission process.

NEETNY proposes the following guidelines as to what constitutes an upgrade:

- Replacement of part of a transmission facility (i.e. rebuilding part of a 115 kV line, changing insulators on a transmission line)
- Reconductor of a transmission line
- Replacement in an existing substation (i.e. circuit breaker replacement, disconnect replacement)

NEETNY proposes the following guidelines as to what is NOT considered an upgrade:

- New greenfield facility (i.e. switchyard, substation, transmission line, Static Var Compensator, Series Compensation)
- New electrical path (i.e. upgrading a 115kV line to 345 kV, adding a new 345 kV to a double circuit tower)
- Full replacement of a transmission asset (i.e. new towers for an entire line, relocating switchyard to a new location)

NEETNY has provided additional examples in the appendix, illustrating different scenarios and how the

⁴ This approach will parallel the treatment of Upgrades under the NYISO's generator interconnection process (Attachment X). This is also supported by a series of FERC orders involving Ameren Illinois, which recognize that transmission owners are not entitled to earn a return on system upgrade costs in zonal transmission rates where the transmission owner recovers a return on its investment (or the investment is initially funded) by an interconnecting generator. See, e.g. Midcontinent Independent System Operator, Inc., 154 FERC ¶ 61,101 (2016).

proposed definition would apply in those scenarios. NEETNY believes this will result in a competitive transmission process that will take full advantage of NYISO's proposed cost containment.

III. Closing

NEETNY thanks the NYISO for consideration of these comments and looks forward to further discussion on this matter. NEETNY also encourages the NYISO to move forward with the cost containment proposal independent of the system upgrade proposal.

Sincerely,

A handwritten signature in cursive script that reads "Richard W. Allen".

Richard Allen
President
NextEra Energy Transmission New York

APPENDIX

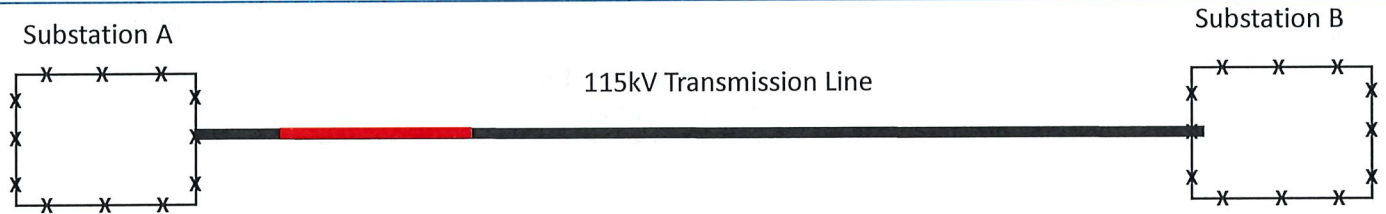
Proposed System Upgrade Definition - Application

Category	Type of Project	Assignment	Reason
Transmission Line Replacements	Replace existing transmission line only with same voltage using same structures	Transmission Owner	Not a new electrical path Changes to part of a transmission facility
	Replace existing transmission line and structures with same voltage	Developer	Full replacement of a transmission asset
	Replace existing transmission line only with higher voltage using same structures	Developer	New electrical path
	Replace existing transmission line and structures with higher voltage	Developer	New electrical path Full replacement of a transmission asset
Modifications to existing substation	Change out circuit breakers, switches, or other terminal equipment	Transmission Owner	Not a new electrical path Changes to part of a transmission facility
	Reconfigure existing substations to accommodate new lines	Transmission Owner	Not a new electrical path Changes to part of a transmission facility
Expansions of existing substations	Expand existing substation to accommodate new lines at the same voltage	Developer	New electrical path
	Expand existing substation to accommodate new voltage levels	Developer	New electrical path
	Expand existing substation to accommodate new electrical equipment (SVC, PAR, Series Comp, etc)	Developer	New electrical path
Replace existing substations	Retire existing substation and replace with new substation of different voltage	Developer	New electrical path Full replacement of a transmission asset
Add new major electrical equipment (SVC, series compensation, PAR, transformers etc)	New major electrical equipment tied into existing substation, located within existing substation footprint	Developer	New electrical path
	New major electrical equipment tied into existing substation, located outside of existing substation footprint	Developer	New electrical path

Example 1a:

Transmission Line: Existing 115kV transmission consists of conductors with different sizes. The project proposes to replace with larger conductor the smallest piece of transmission line conductor. The larger conductor requires replacement and strengthening of some structures.

Substation: No work required at either substation.



Facility Assignment According to NEETNY Proposal:

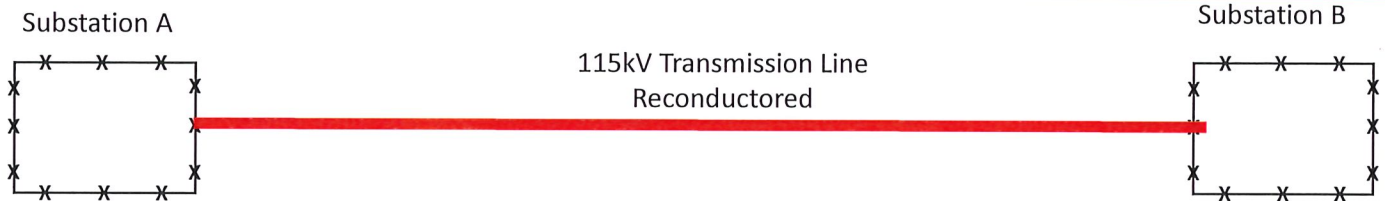
Transmission Line: The new transmission line upgrade is assigned to the **Transmission Owner** since these are changes to part of an existing transmission facility, and does not add a new electrical path.

Substation: Not applicable

Example 1b:

Transmission Line: The conductor on an existing 115kV line is replaced with larger conductor and the insulators are replaced as well. However the structures are capable of supporting the new conductor and hardware and do not need to be replaced.

Substation: At each substation the circuit breakers and switches are replaced with larger CBs and switches to accommodate the higher rating of the transmission line.



Facility Assignment According to NEETNY Proposal:

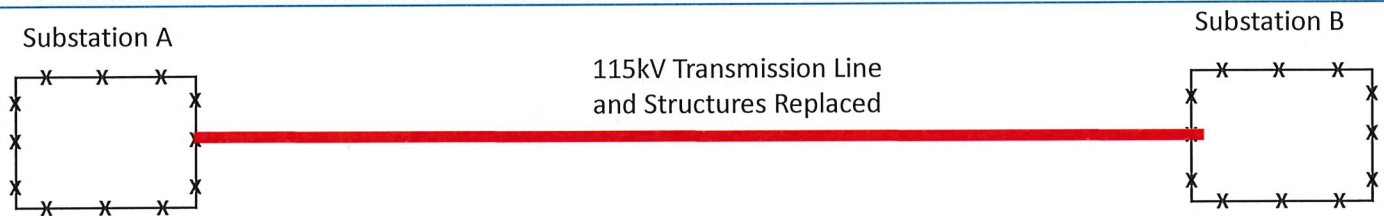
Transmission Line: The transmission line improvements are assigned to the **Transmission Owner** since these are changes to part of an existing transmission facility and does not add a new electrical path.

Substation: The substation replacements are assigned to the **Transmission Owner** since these are changes to part of an existing transmission facility and does not add a new electrical path.

Example 1c:

Transmission Line: Existing 115kV transmission line removed and replaced with a new 115kV transmission line. The new 115kV line uses conductor with greater size and weight which requires the replacement of the structures. The new transmission line is constructed on the same centerline as the existing line with no additional ROW required.

Substation: At each substation the circuit breakers and switches are replaced with larger CBs and switches to accommodate the higher rating of the transmission line.



Facility Assignment According to NEETNY Proposal:

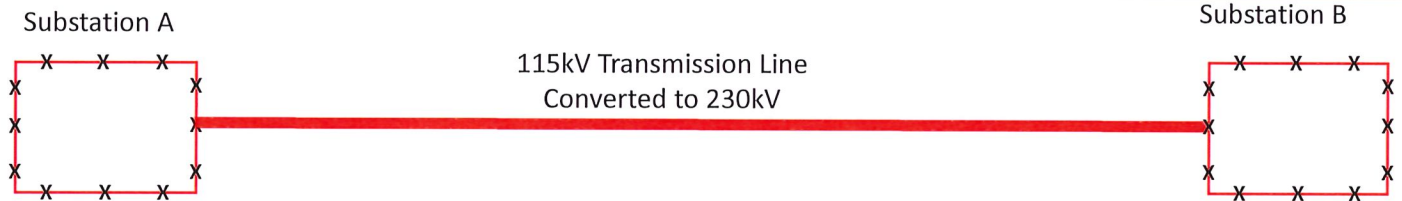
Transmission Line: The new transmission line is assigned to the **Developer** as the entire transmission line is replaced.

Substation: The substation replacements are assigned to the **Transmission Owner** since these are changes to part of an existing transmission facility, and does not add a new electrical path.

Example 2a: (NYISO Example 2)

Transmission Line: The existing 115kV transmission line is supported on structures that are designed to operate at 230kV. The proposal is to convert the operation of the transmission line to 230kV. This will require the installation of a second conductor per phase and the replacement of the existing insulators. The structures and shield wire remain and are not replaced.

Substation: At each substation the existing 345kV:115kV transformers are retired and removed and new 345kV:230kV transformers are added for 230kV operation. In addition some circuit breaker replacements, relay replacements, and bus conductor work is required.



Facility Assignment According to NEETNY Proposal:

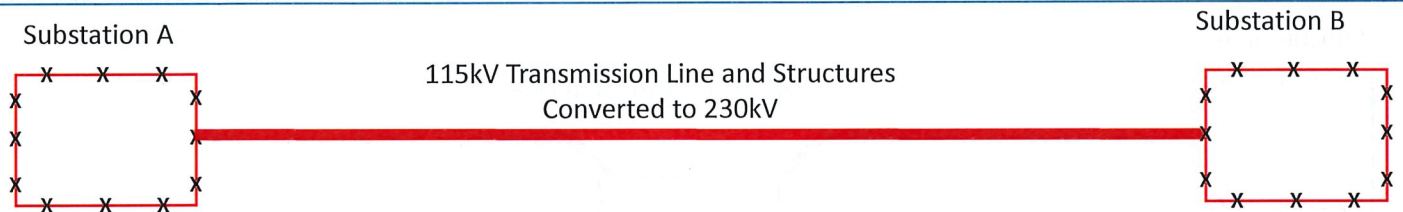
Transmission Line: The transmission line work is assigned to the **Developer** as this is a new transmission facility with a new electrical path at 230kV. The structures and shield wire continue to be owned by the **Transmission Owner**.

Substation: The 230 kV substation additions are assigned to the **Developer** as this is a new transmission facility with a new electrical path at 230 kV. Any upgrades to the existing 345kV or 115kV facilities are assigned to the **Transmission Owner** as this is an upgrade to existing electrical facilities.

Example 2b: (NYISO Example 3)

Transmission Line: Similar to Example 2a except that the structures need to be replaced to accommodate the conversion. Thus the project scope is the replacement of structures, foundations, insulators, shield wire, and conductor.

Substation: At each substation the existing 345kV:115kV transformers are retired and removed and new 345kV:230kV transformers are added to accommodate the new 230kV operation. In addition some circuit breaker replacements, relay replacements, and bus conductor work is required.



Facility Assignment According to NEETNY Proposal:

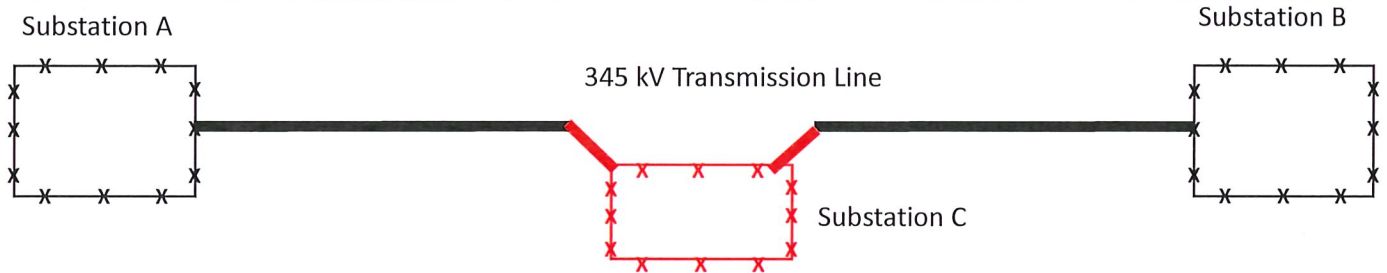
Transmission Line: The transmission line work, including the foundations and structures, is assigned to the **Developer** as this is a new transmission facility with a new electrical path at 230kV.

Substation: The 230 kV substation additions are assigned to the **Developer** as this is a new transmission facility with a new electrical path at 230 kV. Any upgrades to the existing 345kV or 115kV facilities are assigned to the **Transmission Owner** as this is an upgrade to existing electrical facilities.

Example 3:

Transmission Line: Existing 345kV transmission line between substation A and B. The transmission line is broken to interconnect a new substation containing a SVC.

Substation: A new substation C is installed between Substation A and B on and adjacent to existing transmission line ROW. The new substation C will contain the SVC. Protective relay replacements, control building addition, and switch replacements will be required at substation A and B.



Facility Assignment According to NEETNY Proposal:

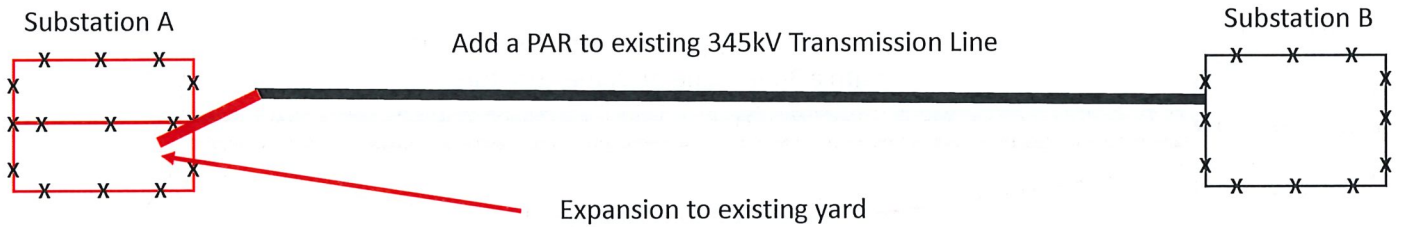
Transmission Line: Not applicable.

Substation: Substation C is assigned to the **Developer** as it is a new transmission facility. Substation A and B work is assigned to the **Transmission Owner** since these are changes to part of an existing transmission facility.

Example 4:

Transmission Line: Proposal is to add a Phase Angle Regulator (PAR) to an existing transmission line. No work required on the transmission line other than to re-terminate the line to a different location in the expanded substation.

Substation: At Substation A, expand the substation (within or expansion of existing fence line) to install the PAR and associated circuit breakers, switches, bus work, etc.



Facility Assignment According to NEETNY Proposal:

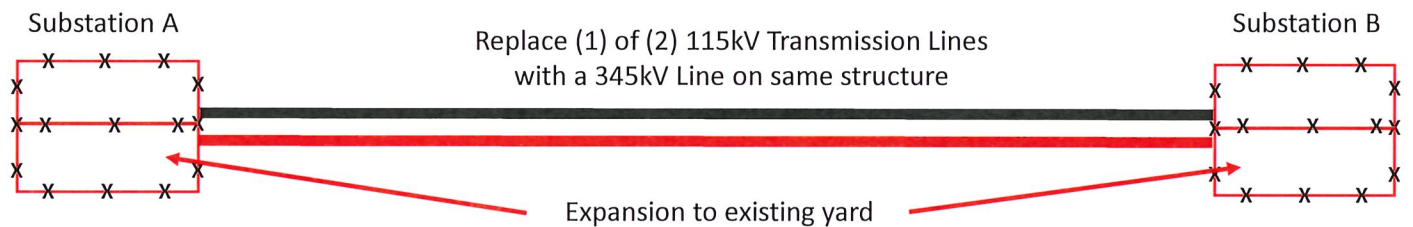
Transmission Line: Not applicable.

Substation: The substation expansion to accommodate the new PAR and associated equipment would be assigned to the **Developer** as this is a new transmission facility and a new electrical path.

Example 5:

Transmission Line: Proposal is to replace one 115kV line on a double circuit structure with a new 345kV transmission line. The other 115kV transmission line is to remain. The structures do not need to be replaced as they are designed for 345kV operation however new conductor, insulators and associated hardware will be replaced/added.

Substation: At each 115kV substation, there is an expansion to add 345kV facilities including a new transformer, circuit breakers, connections into existing high voltage bus work, and addition of a new control building. Retirement of existing 115kV interconnection.



Facility Assignment According to NEETNY Proposal:

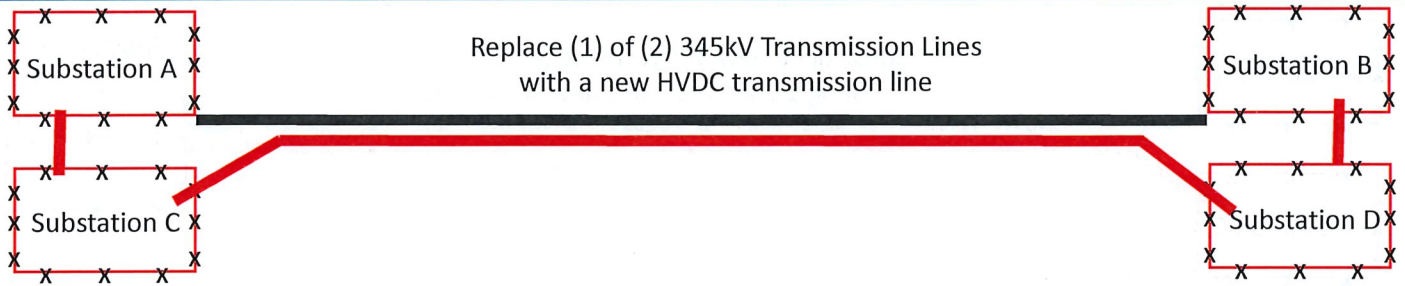
Transmission Line: The new 345kV transmission line is assigned to the **Developer** as one 115kV transmission circuit is entirely replaced. The transmission owner will continue to own the existing structures and the remaining 115kV transmission line.

Substation: The 345kV substation improvements is assigned to the Developer as these are new transmission facilities with a new electrical path. Existing 115 kV substation improvements are assigned to the **Transmission Owner** since these are changes to part of an existing transmission facility.

Example 6:

Transmission Line: Convert one 345kV transmission line on a double circuit structure to a high voltage direct current transmission line. Existing structures and foundations will remain with some structure modification to accommodate the new HVDC line. The second 345 kV circuit on the structure will remain.

Substation: Converter stations (Substation C and D) will be constructed adjacent to Substation A and B. There will be an AC connection between the existing stations and the new converter stations. Relay modifications, switch and circuit breaker additions at the existing substations.



Facility Assignment According to NEETNY Proposal:

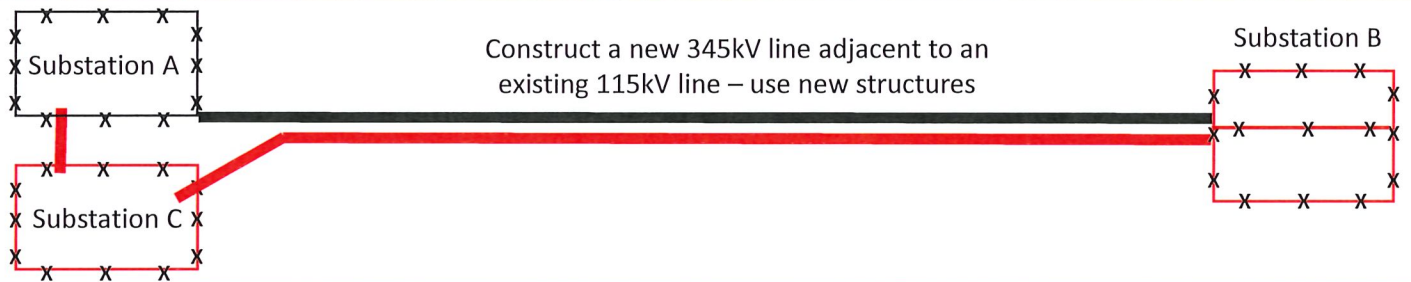
Transmission Line: The new HVDC transmission line is assigned to the **Developer** as one 345 kV transmission circuit is entirely replaced and adds a new electrical path. The transmission owner will continue to own the existing structures and the remaining 345 kV transmission line.

Substation: The HVDC converter substations are assigned to the **Developer** as these are new transmission facilities and electrical paths. Upgrades and retirements to the existing transmission facility equipment will be assigned to the **Transmission Owner** since these are changes to part of an existing transmission facility, and does not add a new electrical path.

Example 7: (NYISO Example 6)

Transmission Line: Construct a new 345 kV transmission line between new substation C and substation B. New line to be collocated on ROW with an existing 115kV transmission line. Structures for 115kV line will be removed and new structures will be installed to support both the 345 kV line and the 115kV line. New insulators, hardware, etc will be installed for 115kV line.

Substation: A new 345kV substation C will be constructed for the beginning of the new transmission line and a 345kV transformer with associated equipment will be installed in an expanded Substation B.



Facility Assignment According to NEETNY Proposal:

Transmission Line: The new 345kV transmission line is assigned to the **Developer** including the new structures. The 345kV line is a new facility and electrical path and the structures are part of that facility (without the structures the line could not be built). The 115kV transmission line and insulators will also be assigned to the **Developer** as this is an entirely new transmission facility.

Substation: Existing 115 kV substation improvements are assigned to the **Transmission Owner** since these are changes to part of an existing transmission facility. The 345 kV substation work is assigned to the **Developer** as this is a new transmission facility with a new electrical path at 345 kV.