

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:  
New York Independent System  
Operator, Inc.  
Central Hudson Gas & Electric  
Corporation  
Consolidated Edison Company of New  
York, Inc.  
Niagara Mohawk Power Corporation  
New York State Electric & Gas  
Corporation  
Orange and Rockland Utilities, Inc.  
Rochester Gas and Electric Corporation  
Docket No. ER21-1647-000

Issued: June 8, 2021

Balch & Bingham LLP  
1710 Sixth Avenue North  
Birmingham, Alabama 35203

Attention: Andrew W. Tunnell, Esq.  
Attorney for the New York Transmission Owners

Reference: Amendment to NYISO OATT Adopting Transmission Owner Funding  
Mechanism

Dear Mr. Tunnell:

On April 9, 2021, pursuant to section 205 of the of the Federal Power Act (FPA), the New York Transmission Owners (NYTOs)<sup>1</sup> filed to revise section 25.5.4 of the New York Independent System Operator, Inc. (NYISO) Open Access Transmission Tariff (OATT)<sup>2</sup> to provide transmission owners the opportunity to fund the costs of System

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<sup>1</sup> The New York Transmission Owners include: 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 and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

Upgrade Facilities (SUFs) and System Deliverability Upgrades (SDUs) (collectively, System Upgrades) caused by generator interconnections. Under the proposal, the transmission owner would subsequently charge the interconnection customer over time to earn a rate of return for the System Upgrades and recover those costs (Core Amendment). The NYTOs state that, under the existing funding approach in the NYISO OATT, interconnection customers fund the System Upgrades and convey them to the transmission owners at nominal value to own, operate, and maintain. The NYTOs argue that the existing funding approach fails to provide transmission owners an opportunity to recover a return. The NYTOs contend that the Core Amendment is just and reasonable because it: (1) complies with current language in section 25.5.4, which provides that the implementation and construction of the System Upgrades is subject to the transmission owners' right to recovery of their costs plus a return; and (2) is consistent with precedent.<sup>3</sup>

Please be advised that your submittal is deficient and that additional information is required in order to process the filing. Please provide the information requested below. To the extent that some of the required information may contain confidential material, please submit a non-public version in addition to the public version for Commission review.

1. The NYTOs state that the Core Amendment is just and reasonable and not unduly discriminatory because it would allow transmission owners the right to elect to fund the costs of the System Upgrades and thereby be allowed to earn a reasonable return for those assets.<sup>4</sup> The NYTOs add that the Core Amendment is further just and reasonable because in it, the NYTOs voluntarily commit to a deadline by which to exercise their funding right within the Class Year process to not delay NYISO's interconnection process.<sup>5</sup>

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<sup>2</sup> NYISO submitted this filing on the NYTOs' behalf solely in NYISO's role as the Tariff administrator.

<sup>3</sup> NYTOs Filing to Amend NYISO OATT, Transmittal Letter at 2-3 (filed Apr. 9, 2021) (Transmittal).

<sup>4</sup> Transmittal at 5, 12.

<sup>5</sup> Transmittal at 26.

- a. The proposed revisions to section 25.5.4 provide that the transmission owner shall provide NYISO with written notice, prior to the commencement of the Initial Decision Period, as defined in the NYISO OATT, if the transmission owner elects to fund the capital costs of any System Upgrade.<sup>6</sup> Please describe the criteria for the decision-making process transmission owners will use to determine whether to exercise the transmission owner self-funding option.
  - b. Please provide details on how the Core Amendment can be applied in a not unduly discriminatory manner.
2. The NYTOs state that they make this filing under FPA section 205 in accordance with filing rights expressly reserved to them in the Independent System Operator Transmission Owner Agreement (NYISO-TO Agreement). The NYTOs explain that the NYISO-TO Agreement states that the transmission owners reserved “the right at any time unilaterally to file pursuant to Section 205 of the Federal Power Act to change the ISO OATT, a Service Agreement under the ISO OATT, or the ISO Agreement to the extent necessary... to recover all of its reasonably incurred costs, plus a reasonable return on investment related to services under the ISO OATT...”<sup>7</sup> The NYTOs’ answer adds that the provisions are intended to ensure that the utilities receive their authorized regulated return and to grant the utilities the right to file to receive that authorized return whenever they are deprived of it.<sup>8</sup>
  - a. Please explain and provide support for how the transmission owners’ obligation to own, operate, and maintain System Upgrades can be considered an “investment related to services under the ISO OATT.”
3. The NYTOs state that the Core Amendment is just and reasonable because it will provide transmission owners with a return to compensate them for certain risks and costs associated with the ownership, operation, and maintenance of System Upgrades. Specifically, the NYTOs state that the transmission owners face regulatory, reliability, cybersecurity,

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<sup>6</sup> Transmittal at 13.

<sup>7</sup> Transmittal at 6 (quoting NYISO, NYISO Agreements, Foundation Agreements, ISO-TO Agreement (0.0.0), § 3.10(a)).

<sup>8</sup> NYTOs Answer at 24.

environmental, operational, and other unknown risks for the System Upgrades.<sup>9</sup> The NYTOs also state that the increasing amount of System Upgrades in turn increases a transmission owner's overall risk profile by adding additional elements to their respective electric systems.<sup>10</sup>

- a. Please explain and support what rate of return the NYTOs intend to use under the Core Amendment. Also explain how applying the chosen rate of return to an initial capital investment in System Upgrades under the Core Amendment is the appropriate return necessary to compensate for the purported increasing regulatory, reliability, cybersecurity, environmental, operational and other expected risks and losses associated with owning and operating System Upgrades.
  - b. Also, provide support that the NYTOs' approved retail and transmission rates have not already incorporated the risk of owning, maintaining, and operating the transmission system with the System Upgrade additions. Please describe the conditions under which transmission owners may not recover some or all their operations and maintenance costs, including costs associated with System Upgrades.
4. The NYTOs state that the transmission owners' inability to earn a return on the capital investment associated with the System Upgrades they own and operate will inhibit the transmission owners' ability to raise necessary capital.<sup>11</sup>
  - a. Considering that the capital for System Upgrades is currently required to be provided by the interconnection customers, please explain if there are concerns specifically related to attracting capital to fund System Upgrades. If so, please explain how the capital attraction concerns arise.
5. Under the current NYISO OATT, interconnection customers pay for System Upgrades up-front. To the extent that the System Upgrades increase the transfer capability of the transmission system, interconnection customers are able to receive incremental transmission congestion contracts

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<sup>9</sup> Transmittal at 5, 17-23, Nowak Test. at 14-60.

<sup>10</sup> Transmittal at 18, Nowak Test. at 18-19.

<sup>11</sup> Transmittal at 11, Nowak Test. at 62-65.

as compensation for the funding of the System Upgrades in accordance with the relevant provisions of the NYISO OATT.<sup>12</sup> In the order accepting participant funding in NYISO related to these NYISO OATT provisions, the Commission explained that the ability for interconnection customers to receive transmission congestion contracts for funding System Upgrades was consistent with Order No. 2003.<sup>13</sup>

- a. Please explain if interconnection customers will still be able to seek transmission congestion contracts for the System Upgrades that they are required to pay for under the Core Amendment. As part of your explanation, provide a description of any changes to the transmission congestion contract compensation process for System Upgrades under the Core Amendment, and explain how the changes are just and reasonable.
6. The NYTOs state that System Upgrades are a significant portion of their business, and in support of this assertion present a graph that shows rising initial cost estimates for System Upgrades from Class Year 2009 to 2019.<sup>14</sup> However, while the initial cost estimate for the 2019 System Upgrades is \$1.2 billion, the graph does not reflect the final costs of the System Upgrades accepted by interconnection customers. For Class Year 2019, the interconnection customers have accepted responsibility for \$248,797,424 of the initial System Upgrades identified, according to the NYTOs.<sup>15</sup>

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<sup>12</sup> NYISO, NYISO Tariffs, NYISO OATT, § 19.2 OATT Attach. M Award of TCCs Other Than Through TCC Auctions: Fixed Price TCCs and Incremental TCCs (8.0.0), § 19.2.4; *see generally*, NYISO, NYISO Tariffs, NYISO OATT, § 25 OATT Attach. S Rules To Allocate Responsibility for the Cost of New Interconnection Facilities (0.0.0).

<sup>13</sup> *N.Y. Indep. Sys. Operator, Inc.*, 108 FERC ¶ 61,159, at P 57 (2004), *order on reh'g*, 111 FERC ¶ 61,347 (2005)

<sup>14</sup> Transmittal at 9.

<sup>15</sup> Transmittal at 5 and n. 23.

- a. Did the final costs of the System Upgrades accepted by interconnection owners rise from Class Year 2009 to 2019? Please provide and explain the final costs of the System Upgrades accepted by interconnection customers for the Class Years 2009 to 2019. As part of your response, please provide a comparison of the final System Upgrade costs to the NYTOs' net transmission plant over the same time period.
7. The NYTOs state that the increasing amount of System Upgrades in turn increases a transmission owner's overall risk profile. In addition, the NYTOs assert that there are numerous risks and costs associated with owning and operating System Upgrades, which include both modifications and additions to the transmission system.<sup>16</sup>
  - a. Please state (and provide any available support for) the proportion of System Upgrades that are modifications or replacements of existing transmission facilities rather than additions to the NYTOs' transmission system. Please explain whether there is any difference between the risks and costs associated with the modification or replacement of existing transmission facilities versus the addition of new transmission facilities.
8. The proposed revisions in section 25.5.4 of the NYISO OATT appear to apply only to large generating facilities being processed under the Large Facility Interconnection Procedures (LFIP) and a subset of small generating facilities that are required to undergo a Class Year Study.<sup>17</sup>

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<sup>16</sup> Transmittal at 18, Nowak Test. at 10-13.

<sup>17</sup> Transmittal at 13-14, NYISO Comments at 10.

- a. Would the Core Amendment apply to Small Generating Facilities outside of the Class Year process in Attachment Z to the OATT and/or Transmission Projects studied under the Transmission Interconnection Procedures in Attachment P to the OATT.
- b. If so, please explain how the Core Amendment would be applied to those Small Generating Facilities and/or Transmission Projects. If not, please explain how the different treatment of small generating facilities and transmission projects under the Core Amendment will not lead to undue discrimination amongst similarly situated entities.

This letter is issued pursuant to 18 C.F.R. § 375.307 (2020) and is interlocutory. This letter is not subject to rehearing under 18 C.F.R. § 385.713 (2020). A response to this letter must be filed with the Secretary of the Commission within 30 days of the date of this letter by making a deficiency filing in accordance with the Commission's electronic tariff requirements. For your response, use Type of Filing Code 170 if your company is registered under program code "M" (Electric Market Based Rate Public Utilities) or Type of Filing Code 180 if your company is registered under program code "E" (Electric Traditional Cost of Service and Market Based Rates Public Utilities).<sup>18</sup>

In addition, submit an electronic version of your response to Adria M. Woods at [adria.woods@ferc.gov](mailto:adria.woods@ferc.gov). The information requested in this letter order will constitute an amendment to your filing and a new filing date will be established.<sup>19</sup> A notice will be issued upon receipt of your filing.

Pending receipt of the above information, a filing date will not be assigned to your filing. Failure to respond to this letter order within the time period specified may result in a further order rejecting your filing.

Issued by: Kurt M. Longo, Director, Division of Electric Power Regulation – East

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<sup>18</sup> The filing must include at least one tariff record to restart the statutory timeframe for Commission action even though a tariff revision might not otherwise be needed. *See generally Electronic Tariff Filings*, 130 FERC ¶ 61,047, at PP 3-8 (2010) (explaining that the Commission uses the data elements resulting from the tariff filing process to establish statutory filing and other procedural dates).

<sup>19</sup> *See Duke Power Co.*, 57 FERC ¶ 61,215, at 61,713 (1991) ("[T]he Commission will consider any amendment or supplemental filing filed after a utility's initial filing . . . to establish a new filing date for the filing in question.").