

February 21, 2023

By Electronic Delivery

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: New York Independent System Operator, Inc., Proposed Tariff Revisions
Related to the Treatment of Network Upgrade Facilities Associated with
Public Policy Transmission Projects, Docket No. ER23-____-000**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”)¹ and Part 35 of the regulations of the Federal Energy Regulatory Commission (“Commission”),² the New York Independent System Operator, Inc. (“NYISO”),³ respectfully submits proposed revisions to its Open Access Transmission Tariff (“OATT”) to align the development, funding, and cost recovery provisions of certain Network Upgrade Facilities identified through the NYISO’s Transmission Interconnection Procedures under Attachment P with the associated Public Policy Transmission Project that is selected as the more efficient or cost effective solution in the NYISO’s Public Policy Transmission Planning Process (“Public Policy Process”). In addition, the proposed revisions enhance the procedures in the Public Policy Process related to the designation of project components.

In the Public Policy Process, the NYISO performs a comparative analysis of competing transmission solutions to address an identified transmission need and selects the more efficient or cost-effective solution. The Designated Entity responsible for the selected project, or a part of the project, is eligible to recover its costs through the Regulated Transmission Facilities Charge (“Schedule 10”). The OATT also requires each proposed solution to be evaluated through the NYISO’s Transmission Interconnection Procedures under Attachment P to confirm that the project can reliably interconnect in accordance with the Transmission Interconnection Standard.

As described in detail in Part II below, the tariff revisions proposed herein establish clear and transparent rules to align the development and funding responsibilities and cost recovery provisions for Network Upgrade Facilities that satisfy the definition of “upgrade” under Section 31.6.4 of the OATT with the rules for the associated Public Policy Transmission Project. The proposed rules are similar to the Commission-accepted process in the Public Policy Process for

¹ 16 U.S.C. § 824e (2021).

² 18 C.F.R. § 35 *et seq.* (2023).

³ Capitalized terms that are not otherwise defined in this filing shall have the meaning specified in Attachment Y of the NYISO OATT and, if not defined therein, in Section 1 of the NYISO OATT.

identifying and assigning responsibilities for Public Policy Transmission Upgrades. If not otherwise rejected, the Transmission Owner becomes the “Designated Entity” that will be responsible for constructing, financing, owning, operating, and maintaining the Designated Network Upgrade Facilities and that will be eligible to recover the costs of those Network Upgrade Facilities through the Regulated Transmission Facilities Charge of the OATT.

As discussed herein, the proposed revisions presented in this filing are just and reasonable, consistent with the NYISO’s foundational agreements and Commission precedent, and comply with the requirements of Order Nos. 890 and 1000.⁴ The tariff revisions were developed by a group of New York Transmission Owners (“NYTOs”) through the stakeholder process. The revisions represent a reasonable alternative approach to the treatment of Network Upgrade Facilities associated with a selected Public Policy Transmission Project. The tariff revisions were unanimously approved by NYISO’s Operating Committee, Business Issues Committee, Management Committee with limited abstentions, and the Board of Directors approved their filing. Accordingly, all of the NYISO’s proposed tariff revisions should be accepted without modification or condition.

The NYISO respectfully requests that the proposed tariff revisions become effective the day immediately following the end of the statutory sixty-day notice period under Section 205 of the Federal Power Act (*i.e.*, April 23, 2023).

I. BACKGROUND

The NYISO’s Comprehensive System Planning Process (“CSPP”) establishes the rules in Attachments Y and FF to the OATT by which the NYISO solicits, evaluates, and selects more efficient or cost-effective solutions to address reliability, economic, and public policy driven transmission needs in New York for inclusion in the NYISO’s regional transmission plan for purposes of cost allocation. The Public Policy Process is the component of the CSPP that solicits, performs a comparative analysis of proposed solutions, and selects the more efficient or cost-effective solution to an identified Public Policy Transmission Need.⁵ While the NYISO evaluates the viability of each proposed transmission solution in the Public Policy Process, each proposed Public Policy Transmission Project must also be studied in the NYISO’s Transmission Interconnection Procedures under Attachment P.

During the NYISO’s compliance with Order No. 1000, the Commission required the NYISO to revise its tariff to require all Order No. 1000 projects proposed in the NYISO’s Comprehensive System Planning Process under Attachment Y to be evaluated under the same

⁴ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000 at P 704, FERC Stats. & Regs. ¶ 31,323 (2011) (“Order No. 1000”), *order on reh’g*, Order No. 1000-A at P 625, 139 FERC ¶ 61,132 (“Order No. 1000-A”), *order on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014); *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12266 (2007) (“Order No. 890”), FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, 73 FR 2984 (2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g and clarification*, Order No. 890-B, 73 FR 39092 (2008), 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 74 FR 12540 (2009), 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 74 FR 61511 (2009), 129 FERC ¶ 61,126 (2009).

⁵ OATT § 31.1.5.

interconnection process.⁶ In response to the Commission's directives, the NYISO proposed new Transmission Interconnection Procedures under Attachment P of the OATT. These procedures were structured to be largely consistent with the existing Standard Large Facility Interconnection Procedures located in Attachment X of the OATT, with the exception of the specific interconnection standard used and the Transmission Interconnection Procedures facilities study remains an individualized study that further refines the Network Upgrade Facilities identified in the System Impact Study.

The Transmission Interconnection Procedures evaluate whether a Transmission Project can reliably interconnect to the New York State Transmission System under the NYISO's Transmission Interconnection Procedures.⁷ Attachment P mandates two studies for each Transmission Project—a System Impact Study and a Facilities Study. The analyses in the Transmission Interconnection Procedures differ in focus from the comparative evaluation performed under the Public Policy Process.⁸ Specifically, the studies under the Transmission Interconnection Procedures evaluate whether a Transmission Project can reliably interconnect to the New York State Transmission System under the NYISO's Transmission Interconnection Procedures.⁹ If the proposed Transmission Project does not satisfy the Transmission Interconnection Standard, the NYISO identifies Network Upgrade Facilities.

The Transmission Interconnection Procedures presume that the Connecting Transmission Owner or Affected Transmission Owner, as applicable, will be the entity to construct, own, operate, and maintain the Network Upgrade Facilities related to its respective system. Currently, the Transmission Interconnection Procedures require Transmission Developers to post Security with the Transmission Owners for the estimated cost of Network Upgrade Facilities and to reimburse the Transmission Owners for the actual cost of those facilities.¹⁰ Once the Network Upgrade Facilities are completed, the applicable Transmission Owner will own, operate, and maintain the upgrades to its facilities. In the case of a Public Policy Transmission Project selected by the Board of Directors as the more efficient or cost-effective solution, the Transmission Developer is eligible to allocate and recover the costs of the Network Upgrade

⁶ *New York Indep. Sys. Operator, Inc.*, Order Conditionally Accepting Tariff Revisions and Requiring Further Compliance, 153 FERC ¶ 61,051 (2015).

⁷ OATT § 22.2.1.

⁸ *New York Indep. Sys. Operator, Inc.*, 162 FERC ¶ 61,107, at P 36 (2018) (accepting the Transmission Interconnection Procedures as a study for the purpose of identifying and estimating the cost of required system upgrades outside of the regional transmission planning process). While the studies under the Transmission Interconnection Procedures differ in focus, the results of the System Impact Studies are given due consideration in the Public Policy Transmission Planning Process evaluation of the more efficient or cost-effective solution. OATT § 31.4.8.

⁹ OATT § 22.6.4. The NYISO Transmission Interconnection Standard requires a proposed Transmission Project to interconnect in a manner that is "consistent with Applicable Reliability Standards and will not degrade interface transfer capability by more than 25 MW." *Id.*

¹⁰ OATT § 22.11.1. The current mechanism is consistent with the Large Facility Interconnection Standard, which requires the Transmission Developer to post Security for the Network Upgrade Facilities and reimburse the applicable Transmission Owner for the actual costs. It does not currently provide a Connecting Transmission Owner or Affected Transmission Owner the opportunity to unilaterally elect to fund Network Upgrade Facilities or to reimburse the Transmission Developer for the facilities after completion. As a result, a Connecting Transmission Owner only recovers the actual costs of the Network Upgrade Facilities and, therefore, does not have the opportunity to earn a rate of return on its investment.

Facilities through the OATT.¹¹ The cost allocation and recovery for Network Upgrade Facilities uses the same mechanism as the selected Public Policy Transmission Project.

In March 2022, the Commission accepted revisions to the Public Policy Process that provided a mechanism by which NYTOs can exercise their federal right of first refusal (“ROFR”) under the NYISO’s foundational agreements and as reserved by Section 31.6.4 of the OATT.¹² Specifically the mechanism provides a procedure by which a NYTO can exercise its right to build, own, and recover the costs of upgrades to their existing transmission facilities that are part of a competitive transmission solution selected by the NYISO Board in the NYISO’s Public Policy Process (“ROFR Rights”).¹³ When an NYTO exercises its ROFR Rights over eligible facilities, the NYTOs are responsible for, among other things, funding the applicable Public Policy Transmission Upgrades.¹⁴ The NYTOs are also eligible to recover their costs, including a rate of return, through Schedule 10 of the OATT, subject to approval by the Commission.

Following the March 2022 Order accepting the mechanism implementing the ROFR Rights in the Public Policy Process, a group of NYTOs engaged NYISO stakeholders to align the development and funding responsibilities and the cost recovery eligibility of certain Network Upgrade Facilities associated with a Public Policy Transmission Project with the selected project. The incumbent NYTOs discussed the proposal with stakeholders at three working group meetings and revised the proposal based on stakeholder feedback.¹⁵ The NYTOs then brought the proposal to the NYISO committees to seek authorization for the NYISO to submit a filing with the Commission under Section 205 of the Federal Power Act. The three committees unanimously approved the proposed revisions with limited abstentions and recommended the NYISO Board of Directors to authorize a filing under Section 205 of the Federal Power Act.

II. DESCRIPTION OF PROPOSED TARIFF REVISIONS

A. Alignment of Development and Funding Responsibilities and Cost Recovery of Network Upgrade Facilities with those of Selected Public Policy Transmission Projects

The proposed revisions modify the existing rules in the NYISO’s Transmission Interconnection Procedures that assign responsibility among the Transmission Developer and applicable Transmission Owner (*i.e.*, either the Connecting Transmission Owner or Affected Transmission Owner) to construct, finance, own, operate, maintain, and recover the costs of a subset of Network Upgrade Facilities. The proposed revisions adopt the similar procedures and

¹¹ See OATT §§ 6.10, 31.4.8.3.3, 31.5.6.

¹² *New York Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,179 (2022) (“March 2022 Order”); *see also New York Indep. Sys. Operator, Inc.*, 175 FERC ¶ 61,038, at P 34 (2021) (issuing a declaratory order finding, among other things, that “NYTOs possess a federal ROFR for upgrades to their own existing transmission facilities and local transmission facilities, including upgrades that are part of another Developer’s proposed transmission project that NYISO selects in its regional transmission plan for purposes of cost allocation”).

¹³ March 2022 Order at P 53.

¹⁴ *Id.*

¹⁵ The proposed tariff revisions were discussed at meetings of the Electric System Planning Working Group and Transmission Planning Advisory Subcommittee on July 1, 2022, July 26, 2022, and October 25, 2022.

cost allocation and cost recovery mechanisms that the Commission approved in its March 2022 Order for upgrades proposed by a Developer as part of its proposed Public Policy Transmission Project.

Specifically, the change would apply to Network Upgrade Facilities that (i) identified in the Facilities Study for a Public Policy Transmission Project selected as the more efficient or cost-effective solution in Attachment Y to the OATT and (ii) meet the definition of “upgrade” under Section 31.6.4 of the OATT. The proposed revisions align the funding and cost allocation and recovery with the rules for the associated Public Policy Transmission Project. As described in this Part II, aligning the development, funding, and cost recovery provisions of Network Upgrade Facilities with the existing manner for the selected Public Policy Transmission Project provides a clear process and is a reasonable approach that is consistent with Commission precedent.

Moreover, the point in the process at which Network Upgrade Facilities would be designated to the applicable Transmission Owner will neither affect the selection of the more efficient or cost-effective solution nor result in disparate treatment among incumbent and non-incumbent transmission developers.¹⁶ Accordingly, the proposed tariff revisions are just and reasonable and not unduly discriminatory or preferential and comply with Order No. 1000.

The proposed process steps are illustrated in the figure included in Attachment I of this filing. The proposed tariff revisions include:

- establishing a process by which the NYISO classifies whether Network Upgrade Facilities identified in the Transmission Interconnection Procedures for a selected Public Policy Transmission Project are eligible to be assigned to an applicable Transmission Owner for purposes of developing, financing, and recovering the costs consistent with the associated Public Policy Transmission Project, as described in Part II.A.1;
- modifying the Security posting requirements for Network Upgrade Facilities to accommodate the new process of assigning responsibilities for Designated Network Upgrade Facilities to the applicable Transmission Owner, as described in Part II.A.2;
- establishing post-designation requirements for an applicable Transmission Owner, which requires, among other things, the applicable Transmission Owner to enter into a Development Agreement for the Designated Network Upgrade Facilities, as described in Part II.A.3; and

¹⁶ In identifying Network Upgrade Facilities, the NYISO is required to identify 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.” OATT § 22.1. This approach avoids changes to the characteristics of the selected Public Policy Transmission Project.

- amending the cost recovery rules to allow the costs of Designated Network Upgrade Facilities to be eligible for recovery through the Regulated Transmission Facilities Charge under the OATT in the same manner as the selected Public Policy Transmission Project, as described in Part II.A.4.

1. Identification of Eligible Network Upgrade Facilities and Designation of Responsibilities

The Transmission Interconnection Procedures currently provide that the Connecting Transmission Owners and Affected Transmission Owners are responsible for constructing, owning, maintaining, and operating Network Upgrade Facilities identified for Transmission Projects, unless the Transmission Developer and applicable Transmission Owner mutually agree to a different arrangement.¹⁷ The existing mechanism to fund Network Upgrade Facilities requires the Transmission Developer to post Security at the time that the Transmission Project Interconnection Agreement is executed and then obtain funding and pay the actual costs of the facilities to the Connecting Transmission Owner or Affected Transmission Owner.¹⁸

The proposed revisions establish a process in a new Section 22.9.6 of Attachment P to the OATT to identify Network Upgrade Facilities eligible for the applicable Transmission Owner to construct, fund, own, operate, and maintain, as well as recover their costs, consistent with the approach for the associated selected Public Policy Transmission Project. This process will run concurrently with the finalization of the Facilities Study and only be performed when the Transmission Project is a Public Policy Transmission Project (or a part thereof) selected as the more efficient or cost-effective solution to an identified need.¹⁹ The eligible Network Upgrade Facilities are those that meet the definition of “upgrade” consistent with the definition in Section 31.6.4 of the OATT. The identification process will work as follows.

The NYISO will continue to identify Network Upgrade Facilities necessary for a Transmission Project to connect in accordance with the NYISO Transmission Interconnection Standard. When the Network Upgrade Facilities are for a Public Policy Transmission Project selected by the NYISO as the more efficient or cost-effective solution to a need, the NYISO will evaluate and identify the Network Upgrade Facilities that meet the definition of “upgrade” under Section 31.6.4 of the OATT, consistent with Commission precedent, and identify them in the Facilities Study report or update any previous identification of such Network Upgrade Facilities if the Facilities Study report is revised.²⁰

¹⁷ See generally, ISO-TO Agreement § 3.10(c) (providing that “[e]ach Transmission Owner retains all rights that it otherwise has incident to its ownership of its assets, including, without limitation, its transmission facilities including, without limitation, the right to build, acquire, sell, merge, dispose of, retire, use as security, or otherwise transfer or convey all or any part of its assets”).

¹⁸ OATT § 22.11.1.

¹⁹ Following selection of the more efficient or cost-effective transmission solution to a Public Policy Transmission Need, the NYISO will group components of the selected Public Policy Transmission Project into Designated Public Policy Projects based on the entities that are designated to undertake their development. See OATT § 31.4.8.3, 31.4.11. Accordingly, Network Upgrade Facilities could be identified for a Designated Public Policy Project, which is a component of the larger selected project.

²⁰ Proposed new OATT § 22.9.6.

The NYISO will share the draft Facilities Study with the Transmission Developer, the Connecting Transmission Owner(s), and Affected Systems (as applicable) for review and comment.²¹ Under the current procedures, the aforementioned parties may comment on the Facilities Study report. The proposed revisions will also allow parties to comment on the NYISO's classification of the Network Upgrade Facilities in the report.²² The NYISO will consider the parties' comments and finalize the Facilities Study report, which will contain the final characterizations of the identified Network Upgrade Facilities. Any disputes over the characterization of Network Upgrade Facilities will be handled through the procedures set forth in Section 22.13.5 of Attachment P to the OATT.

Within 30 calendar days of the NYISO's finalization and distribution of the Facilities Study report, the proposed process will require the Connecting Transmission Owner(s) and Affected Transmission Owner(s) to notify the NYISO if it declines the responsibility to fund and recover of the costs of one or more eligible Network Upgrade Facilities through the Regulated Transmission Facilities Charge under the OATT.

If the applicable Transmission Owner provides timely notice declining the responsibility and eligibility, the existing funding and cost recovery rules under Attachment P apply. In such case, the Transmission Owner will be responsible for constructing, owning, maintaining, and operating the Network Upgrade Facilities, while the Transmission Developer must post Security and reimburse the Transmission Owner the actual costs of the facility. The Developer and applicable Transmission Owner may mutually agree on the associated rights and obligations of the parties to be expressed in the Transmission Project Interconnection Agreement or an engineering, procurement, and construction agreement, as applicable.

If the applicable Transmission Owner does not provide notice declining the responsibility, then the Network Upgrade Facilities will be defined as "Designated Network Upgrade Facilities."²³ The applicable Transmission Owner will be responsible for constructing, funding, owning, and maintaining the Designated Network Upgrade Facilities. The applicable Transmission Owner will also be eligible to seek cost recovery under Section 31.5.6 of Attachment Y and Schedule 10 of the OATT.²⁴ Consistent with those cost recovery provisions, the Transmission Owner must submit a rate filing consistent with Schedule 10 to the Commission, which will determine the actual recovery of costs for, among other things, the Designated Network Upgrade Facilities.²⁵

²¹ See OATT § 22.9.5; proposed new OATT § 22.9.6.

²² Proposed new OATT § 22.9.6.

²³ "Designated Network Upgrade Facilities" is a new defined term in Attachments P and Y for those Network Upgrade Facilities "identified through the Transmission Interconnection Procedures for a Public Policy Transmission Project selected as the more efficient or cost effective solution to a Public Policy Transmission Need under Attachment Y to the ISO OATT; that meet the definition of upgrade under Section 31.6.4 of Attachment Y to the ISO OATT; and that are designated to the Connecting Transmission Owner or Affected Transmission Owner pursuant to Section 22.9.6 of this Attachment P." Proposed revisions to OATT §§ 22.1, 31.1.

²⁴ Proposed revisions to OATT §§ 6.10, 31.4.8.3.3, 31.5.6.

²⁵ Proposed revisions to OATT §§ 6.10, 31.4.8.3.3, 31.5.6.

2. Security Posting Requirements for Network Upgrade Facilities

The proposed revisions would also revise the requirements of Security for Network Upgrade Facilities identified for selected Public Policy Transmission Projects. Currently, the Transmission Interconnection Procedures require a Transmission Developer to post Security for Network Upgrade Facilities through the Transmission Project Interconnection Agreement. However, if the Transmission Developer is the same entity as the Connecting Transmission Owner, then there is no Security posting requirement.²⁶

Under the revised rules, a Transmission Developer will no longer be required to post Security for Designated Network Upgrade Facilities. When the applicable Transmission Owner does not decline the responsibilities in accordance with Section 22.9.6 of the OATT, that Transmission Owner is eligible to recover the costs for the Designated Network Upgrade Facilities through the Regulated Transmission Facilities Charge under the OATT. The risks associated with requiring Security are reduced given that the Transmission Owner accepts responsibility to fund the facilities and that the Transmission Owner is eligible to file for cost recovery under the OATT. Such cost recovery permits the ability to recover halting costs, as determined by the Commission, if necessary.²⁷

For Network Upgrade Facilities other than Designated Network Upgrade Facilities the current provisions governing the posting of Security will continue to apply. The proposed revisions, however, clarify that Security for Network Upgrade Facilities will not need to be posted until after the time period set forth in Section 22.9.6 of the OATT has expired.²⁸

3. Post-Designation Requirements for Designated Network Upgrade Facilities

The NYISO's current Public Policy Process establishes the post-selection responsibilities for a Designated Entity of a Designated Public Policy Project.²⁹ Consistent with the mechanism for the associated Public Policy Transmission Project, the proposed revisions to Attachment Y to the OATT will apply the same requirements to Designated Network Upgrade Facilities. For the purposes of the post-designation requirements, the proposed revisions modify the definition of "Designated Entity" to also include a Transmission Owner designated in accordance with Section 22.9.6 of Attachment P for Designated Network Upgrade Facilities.³⁰

a. Approvals and Authorizations

Consistent with its current requirements for a selected Public Policy Transmission Project, the Connecting Transmission Owner or Affected Transmission Owner will be required

²⁶ OATT § 22.11.1; *see also New York Indep. Sys. Operator, Inc.*, Compliance Filing, Docket No. ER13-102-007, -009, at 21 (March 22, 2016).

²⁷ OATT §§ 31.4.8.3.3, 31.5.6.

²⁸ OATT § 22.11.1. The proposed revisions also contemplate that the possibility that the funding responsibility may revert to the Transmission Developer if the Transmission Owner defaults in the development of Designated Network Upgrade Facilities and the Development Agreement is terminated. *See* Part II.3.b.

²⁹ *See* OATT §§ 6.10, 31.4.8.3.4, 31.4.12, 31.4.13, 31.4.14, 31.5, 31.7 (Appx. D).

³⁰ Proposed revisions to OATT § 31.1.

to obtain the required project approvals and authorizations following acceptance of the responsibilities for Designated Network Upgrade Facilities under Section 22.9.6 of the OATT.³¹ Placing this requirement on the Connecting Transmission Owner or Affected Transmission Owner follows with the responsibility to develop, fund, own, operate, and maintain the Designated Network Upgrade Facilities. Having a specific requirement for the applicable Transmission Owner to seek approvals and authorizations following the process under Section 22.9.6 of the OATT will allow the timely development of those facilities.

b. Development Agreement

Under the proposed revisions, the Connecting Transmission Owner or Affected Transmission Owner responsible for Designated Network Upgrade Facilities will be eligible to allocate and recover the costs of the transmission facility through the OATT consistent with the associated Public Policy Transmission Project. The proposed revisions, therefore, modify Section 31.4.12.2 of the OATT to require the development of the Designated Network Upgrade Facilities to be subject to the requirements in the Public Policy Transmission Planning Process Development Agreement (“Development Agreement”) in the form contained in Section 31.7 (Appendix D) of Attachment Y to the OATT. That agreement governs the terms by which a Designated Entity must develop and place into service the facilities for the selected Public Policy Transmission Project to meet the identified need.³²

The proposed revisions incorporate and conform provisions of the Development Agreement to apply to a Transmission Owner that is responsible for developing and constructing Designated Network Upgrade Facilities. For instance, the proposed revisions modify the defined terms, recitals, and definitions in the Development Agreement so that it applies to Designated Network Upgrade Facilities, as applicable. Notably, the “Designated Project” will be defined to include a Designated Public Policy Project designated pursuant to Section 31.4.11 as well as Designated Network Upgrade Facilities designated pursuant to Section 22.9.6 of Attachment P to the OATT, if applicable.³³ The proposed revisions align the completion of the Designated Network Upgrade Facilities with the in-service dates set forth in the Development Agreement for the Designated Project and the selected Public Policy Transmission Project.

Additionally, the proposed revisions amend the default and termination provisions to address defaults related to Designated Network Upgrade Facilities.³⁴ For instance, the proposed revisions amend Article 8.3 of the Development Agreement to specify the treatment of Designated Network Upgrade Facilities in the event that the Designated Entity defaults and the Development Agreement is terminated. If the default by the Designated Entity is unrelated to the development of the Designated Network Upgrade Facilities, then the Development Agreement

³¹ Proposed revisions to OATT § 31.4.12.1.

³² OATT § 31.7 (Appx. D), Development Agreement.

³³ Proposed revisions to OATT § 31.7 (Appx. D), Development Agreement Article 1 (defining “Designated Project” as “the Designated Public Policy Project that the Designated Entity has been designated to develop and place into service pursuant to Section 31.4.11 of Attachment Y and the Designated Network Upgrade Facilities that the Designated Entity has been designated to develop and place into service pursuant Section 22.9.6 of Attachment P to the ISO OATT, as described in the Project Description set forth in Appendix A to this Agreement”).

³⁴ Proposed revisions to OATT § 31.7 (Appx. D), Development Agreement Articles 7.2, 8.1, 8.3.

allows the assignment of the Designated Public Policy Project to another entity, while requesting the Designated Entity to continue with the development of the Designated Network Upgrade Facilities. However, if a default of the Development Agreement relates to Designated Network Upgrade Facilities or the inability to develop Designated Network Upgrade Facilities (other than obtaining the necessary permits for its project), the Network Upgrade facilities will then be subject to finalization through the procedures in the Transmission Interconnection Procedures.³⁵

4. Cost Allocation and Recovery

In its March 2022 Order, the Commission approved revisions to the OATT to permit a Transmission Owner that becomes the Designated Entity with respect to a Public Policy Transmission Upgrade to allocate costs under Section 31.5 consistent with the selected Public Policy Transmission Project and to use Schedule 10 of the OATT to recovery its cost, subject to appropriate filings with and review by the Commission. The proposed revisions to Section 31.5 and Schedule 10 of the OATT will allow a Connecting Transmission Owner or Affected Transmission Owner, when designated under Section 22.9.6 of the OATT, to use the same cost allocation and recovery mechanism with respect to Designated Network Upgrade Facilities.³⁶

Designated Entities eligible to recover the costs of Designated Network Upgrade Facilities are responsible for satisfying the requirements to obtain cost recovery through the OATT. Consistent with the existing cost recovery eligibility for Designated Public Policy Projects, actual project cost recovery, as well as issues related to cost recovery, for Designated Network Upgrade Facilities will be submitted to and decided by the Commission.³⁷

B. Proposed Process Improvements to the Identification of New Transmission Facilities and Public Policy Transmission Upgrades

The proposed revisions also seek to modify Section 31.4.6.5.1.1 of the OATT to increase transparency when providing the list that identifies which facilities are new transmission facilities and which satisfy the definition of a Public Policy Transmission Upgrade.³⁸ Currently, at least 30 calendar days prior to the NYISO's initial presentation of the draft Viability and Sufficiency Assessment, the NYISO is required to post a list of facilities that constitute the Public Policy Transmission Projects.³⁹ The list is exclusive to facilities that make up the Public Policy Transmission Projects and does not include any potential interconnection facilities that a developer may choose to include in its proposed Public Policy Transmission Project for informational purposes.⁴⁰ The NYISO identifies the facilities contained in the list as either new

³⁵ See new proposed OATT § 22.9.6.

³⁶ Proposed revisions to OATT §§ 6.10, 31.5.1.1, 31.5.1.7, 31.5.5.1, 31.5.5.3.

³⁷ Proposed revisions to OATT §§ 31.4.8.3.3, 31.5.6.3.

³⁸ See generally, *New York Indep. Sys. Operator, Inc.*, Section 206 Filing of Tariff Revisions to Implement the New York Transmission Owners' Right of First Refusal Regarding Upgrades to Their Transmission Facilities Identified in the Public Policy Transmission Planning Process, Docket No. EL22-2-000, at 21-23 (October 8, 2021).

³⁹ OATT § 31.4.6.5.1.1.

⁴⁰ Section 31.4.5.1.2 of the OATT permits a Developer, at its option, the ability to identify potential interconnection facilities in its project submittal. Those potential interconnection facilities (*e.g.*, Network Upgrade Facilities) are for informational purposes only. Network Upgrade Facilities for a proposed Public Policy

transmission facilities or transmission facilities that satisfy the definition of a Public Policy Transmission Upgrade.

In administering the process for the recent Long Island Public Policy Transmission Need, the limitations on not identifying proposed interconnection facilities, as well as identifying facilities associated with the proposed Public Policy Transmission Project, appeared to create some confusion from interested parties. For instance, some modifications to existing substations were not included in the list of facilities because the Developer identified them as potential interconnection facilities. Some parties, however, believed that they should have been classified as a Public Policy Transmission Upgrade.

The proposed revisions to Section 31.4.6.5.1.1 of the OATT would further increase transparency by also including a list of proposed interconnection facilities identified in the proposals submitted by a Developer for informational purposes only.⁴¹ This list will be included with the list of new facilities and Public Policy Transmission Upgrades. The NYISO will simply provide a list of facilities that have been identified by Developers in their submitted proposals. Unlike facilities that comprise the Public Policy Transmission Projects, the NYISO will not characterize those facilities as either new facilities or Public Policy Transmission Upgrades.

This enhancement will allow an interested party to better understand how the NYISO made its characterization determinations for the components of the proposed Public Policy Transmission Projects. This proposed revision does not change the ultimate purpose of the list in Section 31.4.6.5.1.1 of the OATT. Moreover, the inclusion of this information in the list will not affect the competitiveness of the process or the NYISO's evaluation of the more efficient or cost-effective solution. At the time that the NYISO would make this list available, interested parties have the ability to request redacted project information in accordance with Section 31.4.4.3.11 of the OATT. More importantly, the design-related information of the proposed solutions cannot be modified at this point in the process and, therefore, competing Developers will not be able to gain a competitive advantage in the evaluation process with this information.

C. Miscellaneous Modifications

The proposed tariff also makes additional clarifications and clean-up revisions to the OATT in connection with the revisions to Attachments P and Y to the OATT. These changes seek to align the development and funding responsibilities and cost recovery provisions for Designated Network Upgrade Facilities and the associated Public Policy Transmission Project, as well as several non-substantive changes, such as ministerial corrections in the portions of the revised tariff. The proposed revisions also update the general description of the Public Policy Process consistent with the modifications to the process described in this filing and revise the

Transmission Project will be determined by the NYISO in the applicable study under the Transmission Interconnection Procedures.

⁴¹ See generally, *New York Indep. Sys. Operator, Inc.*, Section 206 Filing of Tariff Revisions to Implement the New York Transmission Owners' Right of First Refusal Regarding Upgrades to Their Transmission Facilities Identified in the Public Policy Transmission Planning Process, Docket No. EL22-2-000, at 15 & n 54 (October 8, 2021) (explaining that the Network Upgrade Facilities for a Public Policy Transmission Project are identified by the NYISO through the Transmission Interconnection Procedures).

summary of the Public Policy Process in Section 31.4.1 of the OATT to update the process description to account for the recovery of costs by a Transmission Owner for Designated Network Upgrade Facilities.

III. REQUESTED EFFECTIVE DATE

The NYISO requests that the Commission accept the proposed tariff revisions with an effective date of the date of this filing—April 23, 2023. With the requested effective date, the tariff revisions will be available for Public Policy Transmission Projects selected in 2020-2021 planning cycle of the Public Policy Process, as well as the recently commenced 2022-2023 cycle.

IV. LIST OF DOCUMENTS SUBMITTED

The NYISO respectfully submits the following documents with this filing letter:

- Figure regarding “Overview of Proposed Process for Network Upgrade Facilities for a Selected Public Policy Project” (Attachment I);
- A clean version of the proposed revisions to the OATT (Attachment II); and
- A blacklined version of the proposed revisions to the OATT (Attachment III).

V. COMMUNICATIONS AND CORRESPONDENCE

All communications, pleadings, and orders with respect to this proceeding should be directed to the following individuals:

Robert E. Fernandez, Executive Vice President,
General Counsel, & Chief Compliance Officer
Karen Georgenson Gach, Deputy General Counsel
Raymond Stalter, Director of Regulatory Affairs
* Brian R. Hodgdon, Senior Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-6000
Fax: (518) 356-4702
rfernandez@nyiso.com
kgach@nyiso.com
rstalter@nyiso.com
bhodgdon@nyiso.com

*Designated to receive service.

VI. REQUISITE STAKEHOLDER APPROVAL

The tariff revisions proposed in this filing were discussed with stakeholders at multiple meetings of the Electric System Planning Working Group and Transmission Planning Advisory Subcommittee from July 2022 through October 2022. The revisions were approved at a meeting of the Business Issues Committee on November 16, 2022, a meeting of the Operating Committee on November 17, 2022, and a meeting of the Management Committee meeting on November 30, 2022. Each committee approved the proposed tariff revisions unanimously with limited abstentions. On January 9, 2023, the NYISO Board of Directors approved the NYISO filing the proposed tariff revisions with the Commission pursuant to Section 205 of the Federal Power Act.

VII. SERVICE

A complete copy of this filing will be posted on the NYISO's website at www.nyiso.com. The NYISO will send an electronic link to this filing to the official representative of each of its customers and to each participant on its stakeholder committees. In addition, the NYISO will send an electronic copy of this filing to the New York Public Service Commission and to the New Jersey Board of Public Utilities.

VIII. CONCLUSION

Wherefore, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept the proposed tariff changes identified in this filing.

Respectfully submitted,

/s/ *Brian R. Hodgdon*

Brian R. Hodgdon
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
*Counsel for the New York Independent System
Operator, Inc.*

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|-----|----------------------|-----------------|
| cc: | Janel Burdick | Kurt Longo |
| | Matthew Christiansen | David Morenoff |
| | Robert Fares | Douglas Roe |
| | Jignasa Gadani | Eric Vandenberg |
| | Jette Gebhart | Gary Will |
| | Leanne Khammal | Adria Woods |
| | Jaime Knepper | |