

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Central Hudson Gas & Electric Corp., et al.)	
)	Docket No. EL21-66-000
Complainants,)	
)	
v.)	
)	
New York Independent System Operator, Inc.)	
)	
Respondent.)	
)	
)	
Central Hudson Gas & Electric Corp., et al.)	Docket No. ER21-1647-000
)	(Not Consolidated)

**PROTEST OF THE
AMERICAN CLEAN POWER ASSOCIATION,
ALLIANCE FOR CLEAN ENERGY-NEW YORK,
INDEPENDENT POWER PRODUCERS OF NEW YORK,
NEW YORK BATTERY AND ENERGY STORAGE TECHNOLOGY CONSORTIUM,
AND ENERGY STORAGE ASSOCIATION**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”),¹ the American Clean Power Association (“ACP”),² Alliance For Clean Energy-New York (“ACE-NY”), Independent Power Producers Of New York (“IPPNY”), New York Battery and Energy Storage Technology Consortium (“NY-BEST”) and Energy Storage Association (“ESA,”³ collectively “NY Interconnection Customers”), submit this Protest in response to the Complaint⁴ and Tariff Filing⁵ submitted in the above-

¹ 18 C.F.R. § 385.211 (2021).

² The views and opinions expressed in this filing do not necessarily reflect the official position of each of ACP’s individual members.

³ The views and opinions expressed in this filing do not necessarily reflect the official position of each of ESA’s individual members.

⁴ *Central Hudson Gas & Electric Corp., et al. v. New York Indep. Sys. Operator*, Complaint Requesting Fast Track Processing, Docket No. EL21-66-000, April 9, 2021 (“Complaint”).

⁵ *The New York Transmission Owners*, Amendment to NYISO OATT Adopting TO Funding Mechanism, Docket No. ER21-1647-000, April 9, 2021 (“Tariff Filing”).

captioned dockets. NY Interconnection Customers respectfully request that the Commission deny the Complaint and reject the Tariff Filing for the reasons explained herein, which include:

- None of *Ameren*, *Bluefield* or *Hope* provide an unqualified right for the NYTOs to earn a rate of return on network upgrades;
- NYTOs provide no evidence to satisfy the standards in *Bluefield* and *Hope*;
- NYTOs ignore express determinations from the Commission that *Ameren* does not apply to all regions;
- Publicly available information clearly demonstrates that, notwithstanding the application of generator funding of System Upgrade Facilities (“SUFs”) and System Deliverability Upgrades (“SDUs”) and collectively as “SUFs/SDUs” (“Existing Funding Approach”) in the New York Independent System Operator (“NYISO”) region since at least 2009, no NYTO has had an issue attracting capital so as to serve the public interest. This shows that the standards of *Bluefield* and *Hope* in regard to SUFs/SDUs are not applicable here;
- The “risks” NYTOs identify are pure speculation. NYTOs do not identify a single risk from the Existing Funding Approach that has ever impaired their ability to attract capital or resulted in a rating agency downgrade that might impair serving the public interest; further, the examples of risk that the NYTOs identify have no relation to SUFs/SDU, have never involved SUFs/SDUs (or other network upgrades in other regions of the United States), and are of the type that are regularly recovered in rates approved by a state commission. Hence, these “risks” are “baked-in” and are already accounted for by prospective investors in the NYTOs;
- NYTOs ignore that the reason they no longer earn a rate of return on SUFs/SDUs *is because they requested it*. Following Order No. 2003, NYISO, with the support of the NYTOs, asked the Commission to approve “participant funding” in New York. Under this approach, the NYTOs no longer were required to reimburse an interconnection customer for amounts provided to fund SFUs/SDUs, and thereby *asked* that they no longer have an opportunity to earn a rate of return, as Order No. 2003 provided, by rolling the cost into transmission rate base. Should the NYTOs wish to return to the Order No. 2003 paradigm and earn that rate of return, they are free to seek approval to unwind the independent entity variation, but the Commission should not indulge a collateral attack on that decision here;
- The NYTOs’ requested relief would result in unjust and unreasonable rates (i) for interconnection customers, who would be subjected to a variety of increased costs for interconnection service and with no corresponding increased benefit,

and (ii) for consumers in New York who would bear the increase in costs in power purchase rates; and

- The NYTOs' requested relief would allow for undue discrimination among similarly situated interconnection customers that compete in the NYISO market because it will permit disparate treatment for similarly situated resources.

I. BACKGROUND

On April 9, 2021, a group of transmission owners (“Complainants” or “NYTOs”) in the NYISO region submitted dual filings with the goal of forcing NYISO to implement unilateral Transmission Owner Funding for transmission system upgrades associated with the generation interconnection process, namely “SUFs/SDUs.” NYTOs note that they presently earn no rate of return on SUFs/SDUs, and contend that the Commission must act to remedy this circumstance. NYTOs allege that the implementation of Transmission Owner Funding is necessary to “comply with judicial and Commission precedent.”⁶ The Commission’s evaluation of the NYTOs’ filings and the requested relief requires context, as discussed below.

A. Order No. 2003 And Its Application In NYISO

Order No. 2003⁷ set national standards for generation interconnection. Utilities were required to allow new, often independently-owned electric generation to connect to the facilities of transmission-owning utilities without undue discrimination. In Order No. 2003, the Commission identified two methods for initially funding network upgrades through the generation interconnection process. Under the “Generator Funding” option, the interconnection customer provides funds upfront to the transmission owner to cover all of the costs of engineering, procurement, construction and installation until the upgrades are fully constructed and operational.

⁶ Complaint at 2; Tariff Filing at 2.

⁷ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh’g*, Order No. 2003 A, FERC Stats. & Regs. ¶ 31,160, *order on reh’g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh’g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff’d sub nom., Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

Thereafter, because those network upgrades would be integrated with (and fortify) the transmission owner's transmission system, the transmission owner was required to repay the interconnection customer. The transmission owner would either credit back to the interconnection customer the amounts funded against the cost of transmission service taken or provide a cash reimbursement if the interconnection customer did not take transmission service.⁸ The transmission owner then would earn a return of rate on the now-reimbursed amounts by including the amount in its transmission rate base. The Commission indicated that it "would expect that the Transmission Provider would want to roll-in the costs of any Network Upgrades necessary to interconnect the new generator to enable its existing transmission customers to benefit from this overall lower average embedded cost rate."⁹

Second, Order No. 2003 allowed the transmission owner to initially fund the costs of engineering, procurement, construction and installation of the required network upgrades. The transmission owner could then roll that cost into its transmission rate base and develop a corresponding charge that would be assessed to the interconnection customer.¹⁰ Under that approach, the transmission owner also earns a rate of return on the capital it has invested.

However, Order No. 2003 and its successor orders also allowed RTOs/ISOs to seek an "independent entity variation" from the requirements of Order No. 2003.¹¹ As detailed below, the NYTOs supported forgoing the opportunity to earn a rate of return on SUFs/SDUs. The NYISO, with the support of the NYTOs, sought and was granted an independent entity variation from Order No. 2003, under which the NYTOs would not provide reimbursement for amounts funded for

⁸ Order No. 2003 at P 28.

⁹ Order No. 2003-A at P 581.

¹⁰ *Id.* at P 694; *see also Id.* at P 581 (Commission stating "would expect that the Transmission Provider would want to roll-in the costs of any Network Upgrades necessary to interconnect the new generator to enable its existing transmission customers to benefit from this overall lower average embedded cost rate").

¹¹ *See, e.g.*, Order No. 2003-A, 106 FERC ¶ 61,220 at P 657.

SUFs/SDUs.¹² Under this “participant funding” model, the interconnection customer must provide all of the funds up front for network upgrades; upon commercial operation, no funds are reimbursed, but the NYTO does not earn a rate of return because there is no utility investment that is rolled into transmission rate base. This is the current Existing Funding Approach.

B. The *Ameren* Proceeding And Its Applicability

In 2015, several transmission owners in the Midcontinent Independent System Operator, Inc. (“MISO”) region sought a further variance from Order No. 2003 to charge unilateral Transmission Owner Funding. Under Transmission Owner Funding in MISO, a transmission owner could elect - at its sole discretion - to fund network upgrades upfront and collect a return of and on the funded capital not through the transmission rate base, but *solely* from the interconnection customer.¹³ The Commission held that it was unjust and unreasonable and unduly discriminatory to allow a transmission owner in MISO to unilaterally choose between the Transmission Owner Funding option and the Generator Funding option, and ordered MISO to revise its tariff so that Transmission Owner Funding would be an option only if mutually agreed to by the interconnection customer. Among other things, the Commission noted that costs would increase to the interconnection customer, but with no increase in service.¹⁴ The MISO transmission owners appealed the Commission’s decision.

On appeal, in *Ameren Servs. Co. v. FERC*,¹⁵ the D.C. Circuit remanded the Commission’s orders. The Court in *Ameren* found that the Commission had failed to adequately consider whether denying unilateral Transmission Owner Funding was consistent with the principles in *FPC v Hope*

¹² See *New York Indep. System Operator and New York Transmission Owners*, 126 FERC ¶ 61,046 (2009).

¹³ See *Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,224 at P 13 (2014) (“MISO states that this is the first time a transmission owner has requested the self-fund option...”).

¹⁴ *Otter Tail Power Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,352 at P 32 (2015).

¹⁵ 880 F.3d 571 (D.C. Cir. 2018) (“*Ameren*”).

Natural Gas Co. (“*Hope*”)¹⁶ However, contrary to the NYTOs’ representation,¹⁷ the Court made no determination regarding how rates should be structured. Instead, the Court specifically found that there was “no need to reach the merits” of the funding issues the MISO transmission owners petitioners had raised, in part because the Commission failed to address petitioners arguments about *Hope*. The Court’s decision thus directed the Commission to further develop the record.¹⁸ The Commission confirmed this in Order No. 845-B. There, utilities in another Regional Transmission Organization (“RTO”) claimed that *Ameren* stands for the proposition that transmission owners are entitled to a rate of return on network upgrades through the generation interconnection process, so long as the RTO has adopted some form of participant funding.¹⁹ The Commission disagreed, explaining the “salient findings in *Ameren* were that the Commission did not adequately justify its removal of the option for transmission owners in MISO to fund network upgrades and did not adequately respond to transmission owners’ concern with the lack of opportunity to earn a return of, and on, the cost of network upgrades to the relevant transmission system.”²⁰

After the issuance of *Ameren*, the Commission also emphasized that “the concerns the D.C. Circuit identified in *Ameren* are present only in MISO because MISO's interconnection pricing policy is a unique variation from the Order No. 2003 crediting policy under which MISO directly assigns 90 or 100 percent of the network upgrade cost responsibility to interconnection customers.”²¹ When asked to apply the *Ameren* case outside of MISO, in *American Elec. Service*

¹⁶ *See Id.* at 585.

¹⁷ *See* Tariff Filing at 16; Complaint at 17.

¹⁸ *Ameren*, 880 F.3d at 582.

¹⁹ *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845-B, 168 FERC ¶ 61,092 at P 25 (2019).

²⁰ *Id.* at P 26.

²¹ *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845-A, 166 FERC ¶ 61,137 at P 20 (2019).

Corp. v. PJM Interconnection, L.L.C., the Commission again stated that the holding in that case was inapplicable because the PJM Tariff did “not include a generator up-front funding option like was at issue in *Ameren*.”²²

II. PROTEST

A. Judicial Precedent, Commission Precedent, And The Facts Cannot Support The Funding Mechanism the NYTOs Propose

Complainants characterize their Complaint and Tariff Filing as necessary to “comply with judicial and Commission precedent.”²³ This is flatly incorrect. Court decisions, Commission orders, and the factual record – as supplemented in this filing, and additional protests filed in these dockets – clearly show that the NYTOs have failed to make the affirmative case required as either the proponent of a rate change under Section 205 of the Federal Power Act (“FPA”), or a complainant assailing the current rate under Section 206 of the FPA.

1. The NYTOs’ Filings Are A Collateral Attack On NYISO’s Independent Entity Variation From Order No. 2003, And Ignore The NYTOs’ Ability To Construct Upgrades Receiving A Rate of Return

Assuming *arguendo* that the NYTOs have identified a valid problem - which they have not - it is clearly the NYTOs that created the “problem” (the lack of a return). As noted above, NYISO sought and was granted an independent entity variation from the Order No. 2003 paradigm. In that proceeding, the NYTOs supported no longer providing reimbursement to the interconnection customer for amounts funded for SUFs/SDUs, and thus chose no longer to roll

²² 167 FERC ¶ 61,121 at P 56 (2019); *see also PJM Interconnection L.L.C.*, 167 FERC ¶ 61,120 at P 67 (2019) (“Regarding AEP Ohio’s *Ameren* argument, we find the holding in that case inapplicable here. PJM’s Tariff does not include a generator up-front funding option like was at issue in *Ameren*, pursuant to which the transmission owner constructs, owns, and operates network upgrades that are funded by the interconnecting generator prior to construction.”).

²³ Complaint at 2; Tariff Filing at 2.

the amounts in rate base and earn a return on any SUF/SDUs.²⁴ The Commission accepted that proposal, over the request of Consolidated Edison to implement a joint funding option.²⁵ Hence, the Complaint and Tariff Filing are a collateral attack on their own variation request. Today, if NYTOs are truly concerned with their ability to earn a rate of return on SUFs/SDUs to compensate for alleged “risks” (or for any other reason), they need only return to the Order No. 2003 approach. That paradigm would be consistent with the Commission’s longstanding transmission pricing policy,²⁶ as it allows a transmission provider to roll-in the costs of any network upgrades into its transmission rate - which includes a rate of return.²⁷

But in fact, the NYTOs need not even go that far, because the NYISO Tariff, the New York Public Service Commission, and this Commission provide numerous opportunities for the NYTOs to propose, construct, own, and receive a rate of return on transmission facilities. First, the NYISO Tariff allows a NYTO to propose transmission projects that would resolve SUF/SDU needs through the NYISO transmission planning process,²⁸ which also would result in such projects being part of transmission rate base on which to earn a return. Second, despite the NYTOs’ invocation of New York’s Climate Leadership and Community Protection Act²⁹

²⁴ See *New York Independent System Operator, Inc.* 126 FERC ¶ 61,046 at P 46 (2009)(describing the proposal, stating “to the extent that incremental transmission congestion contracts are created by a System Deliverability Upgrade, the entities funding that upgrade would be awarded the transmission congestion contracts commensurate with their share of the cost responsibility for those upgrades.”).

²⁵ *Id.* at P 50 (describing Con Edison’s request for joint funding); *Id.* at P 54 (“We disagree with Con Edison regarding the cost allocation provisions. We find that the joint investment proposal is beyond the scope of this compliance filing.”).

²⁶ Order No. 2003-A, P 580 (*citing* Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Act, Policy Statement, FERC Stats. And Reg. Preambles par. 31,005.).

²⁷ *Id.* at P 581.

²⁸ See NYISO Tariff, Attachment S, Section 25.6.1.1.1.1 (allowing the connected transmission owner to submit proposed revisions to the Applicable Reliability Requirements, which the “ISO will accept.” The Applicable Reliability Requirements are part of the Annual Transmission Baseline Assessment.); *and* NYISO Tariff, Attachment S, Section 25.5.4 (providing that projects identified in the Annual Transmission Baseline Assessment are entitled to a right to recover, plus a “reasonable rate on investments.”).

²⁹ N.Y. Statutes, Chapter 106 of the laws of 2019 (July 18, 2019).

as exposing NYTOs to increased risk from SUFs/SDUs,³⁰ the NYTOs are in fact seeking to comply with that law by significantly expanding transmission facilities which will provide a rate of return. In fact, the NYTOs³¹ have proposed over \$10 billion in Phase One and Phase Two transmission upgrades,³² and the NYPSC largely accepted the Phase One costs in a February 2021 order.³³ Finally, on April 15, 2021, this Commission issued an order specifically finding that the NYTOs have a federal right of first refusal to “build, own, and recover the cost of upgrades to their existing transmission facilities.”³⁴ This further increases the certainty of rate of return on these transmission upgrades and enhances the ability of the NYTOs to attract capital.

Taken as a whole, these factors clearly show that the NYTOs have robust opportunities to receive a rate of return on transmission facilities.

³⁰ Tariff Filing at 8-10.

³¹ Complainants filed with the NYPSC along with the Long Island Power Authority (LIPA), which did not join either filing at issue before this Commission. Therefore, LIPA’s estimated costs are subtracted from the total below.

³² See Utility Transmission & Distribution Working Group Report, New York Pub. Serv. Comm’n, Docket No. 20-E-0197 at 5 (Nov. 2, 2020), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={2794FC7E-D2A6-4C79-8834-4B60FA25ED1F}> (“Phase 1 projects are immediately actionable projects that satisfy Reliability, Safety, and Compliance purposes but that can also address bottlenecks or constraints that limit renewable energy delivery within a utility’s system. These projects may be in addition to projects that have been approved as part of the utility’s most recent rate plan or are in the utility’s current capital pipeline. Phase 1 projects will be financially supported by the customers of the utility proposing the project... Phase 2 projects may increase capacity on the local transmission and distribution system to allow for interconnection and delivery of new renewable generation resources within the utility’s system. These projects are not currently in the utility’s capital plans. Phase 2 projects tend to have needs cases that are driven primarily by achieving CLCPA targets. Broad regional public policy benefits suggest the likelihood that cost sharing across the Utilities may be appropriate...”). See *id.* at 5-6 (tables showing Phase One transmission costs of \$3,762,000 and Phase Two transmission costs of \$6,339,000, after subtracting LIPA’s portion).

³³ See Order on Phase 1 Local Transmission and Distribution Project Proposals, New York Pub. Serv. Comm’n, Docket No. 20-E-0197, 17 (Feb. 11, 2021), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F8CA2C7D-F6A9-480D-8329-AA0312C5F3E4}>.

³⁴ *New York Indep. Sys. Operator*, 175 FERC ¶ 61,038 at P1 (2021).

2. *Ameren* Does Not Support Granting The NYTOs' Complaint Or Accepting The NYTOs' Tariff Filing

The NYTOs rely heavily on the D.C. Circuit's decision in *Ameren* for the proposition that they are entitled to earn a rate of return on SUFs/SDUs. However, NYTOs fail to tell the whole story. In *Ameren*, the D.C. Circuit found that the Commission did not adequately consider the transmission owner petitioners' argument "that all costs, and risks, are not baked in – that, in fact, shareholders are forced to accept incremental exposure to loss with no corresponding benefit" from the network upgrades.³⁵ The Court emphatically did *not* find that the Commission *must* grant the relief that the *Ameren* petitioners had sought; instead, the *Ameren* panel found that the Commission had failed to respond to the argument that "generator-funded upgrades draft [transmission owners] into service to manage non-profit appendages to their network."³⁶ The Court found there was "no need to reach the merits" of the funding issues that were raised because the Commission had not done its job. Thus, the Court in *Ameren* vacated the underlying orders and remanded the matter to FERC to "provide reasoned consideration of these arguments by explaining whether all risks are truly 'baked in,' responding to the transmission owners' 'entire enterprise' argument, and addressing the effect of these orders on the ability of transmission businesses to attract future capital."³⁷ Hence, *Ameren* does not stand for the proposition the NYTOs contend.

On remand, the Commission reviewed the prior record and summarily reversed its decision, determining that there "was not enough evidence in the record to sustain the Commission's findings in the vacated orders."³⁸ However, in doing so, the Commission never

³⁵ *Ameren*, 880 F.3d at 581.

³⁶ *Id.* at 584.

³⁷ *Id.* at 582.

³⁸ *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,158, P 28 (2018) ("Ameren Remand Order").

squarely addressed the transmission owners' 'enterprise risk' argument or responded to the Court's charge. The factual record remains undeveloped.

In addition, *Ameren* dealt only with the specifics of Transmission Owner Funding in MISO and is therefore inapposite. After the issuance of *Ameren*, the Commission has repeatedly held that the concerns articulated in *Ameren* were "only [applicable] in MISO because MISO's interconnection pricing policy is a unique variation from the Order No. 2003 crediting policy."³⁹ The Commission has consistently held, "an approach that is just and reasonable in one RTO is not necessarily just and reasonable in another."⁴⁰ Despite NYTOs suggestions, the result in *Ameren* does not "compel" NYTOs to implement unilateral Transmission Owner Funding in NYISO. Even under the most charitable reading of the precedent the NYTOs cite, the Commission must make a *de novo* determination based on the facts of this particular proceeding; however, as demonstrated herein, NYTOs have failed to demonstrate that their proposal is just and reasonable and is not unduly discriminatory. Indeed, as discussed below, the NYTOs have failed to show that any alleged risks from applying the Existing Funding Approach with SUFs/SDUs (1) are actually occurring, (2) are not already compensated, i.e., "baked in," to rates and capital costs, and (3) have impeded (or even plausibly might impede) the ability of any NYTO to attract capital and thereby impede the ability to serve the public interest.

³⁹ Order No. 845-A, 166 FERC ¶ 61,137, P 20 (2019); see also *American Elec. Service Corp. v. PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,121, P 56 (2019); see also *PJM Interconnection L.L.C.*, 167 FERC ¶ 61,120, P 67 (2019).

⁴⁰ See, e.g., *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,152 at P 13 (2009).

3. The NYTOs Do Not Meet The Legal Or Factual Standards Of *Hope* and *Bluefield*, As The Evidence Shows They Can Readily Attract Capital

NYTOs cite *Hope*⁴¹ and *Bluefield*⁴² in support of their claim that the “Existing Funding Approach compels the Complainants to construct, own, and operate the SUFs/SDUs on a non-profit basis by not allowing them to earn a return on those assets.”⁴³ Complainants further assert “*Hope*, *Bluefield*, and *Ameren* all establish that the TOs have the right to earn a reasonable return, irrespective of whether this return increases or decreases developer costs.”⁴⁴

First, as noted above, NYTOs cannot truthfully claim they have been “compelled” to integrate SUFs/SDUs into the transmission grid without earning a rate of return. NYTOs are not earning a return on SUFs/SDUs *because they asked* the Commission to move away from the Order No. 2003 paradigm and use the Existing Funding Approach. If the NYTOs want to earn a rate of return on SUFs/SDUs, they can seek to revert to the Order No. 2003 base, reimburse the interconnection customer for amounts funded upfront, and roll the amount into transmission rate base. The absence of “compulsion” makes the NYTOs’ filings a poor fit with *Hope* and *Bluefield*.

Next, NYTOs’ supporting testimony shows that their arguments fail to meet the standard set forth in *Hope* and *Bluefield*. Witness Nowak quotes from *Hope* and asserts “it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business”⁴⁵ and that the return “should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and attract capital.”⁴⁶ What is missing in Witness Nowak’s testimony, or elsewhere in the Complaint and Tariff Filing, is *any evidence whatsoever*

⁴¹ *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

⁴² *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm’n of W.V.*, 262 U.S. 679 (1923).

⁴³ Complaint at 3.

⁴⁴ *Id.* at n.22.

⁴⁵ Nowak Testimony at 6:3-5.

⁴⁶ *Id.* at 6:7-9.

that NYTOs lack revenue for operating expenses or capital costs or that they cannot maintain their credit or attract capital for the ‘enterprise’ – let alone that SUFs/SDUs have harmed, or would harm their ability to attract capital. The best NYTOs can offer is speculation. Rates that are just and reasonable, and not unduly discriminatory or preferential, must have a foundation in substantial evidence and cannot be based on speculation.

The NYTOs present no evidence that the Existing Funding Approach “attack[s] their very business model and thereby create[s] a risk that new capital investment will be deterred,” as they allege.⁴⁷ In fact, NYTOs have not shown that the Existing Funding Approach is impeding the satisfaction of *Hope* and *Bluefield*. Nor have they provided any evidence that Transmission Owner Funding is needed to satisfy *Hope* and *Bluefield*. The Supreme Court in *Hope* explained that, in determining rates, “the fact that the method employed to reach that result may contain infirmities is not then important... It is the product of expert judgment which carries a presumption of validity. And he who would upset the rate order under the Act carries the heavy burden of making a convincing showing that it is invalid *because it is unjust and unreasonable in its consequences*.”⁴⁸ *Hope* is therefore notable because it requires the Commission to render a decision that is “the product of expert judgment” that results in just and reasonable “consequences.” That expert judgment must be based on facts. Here, NYTOs have not provided any facts to enable the Commission to make that assessment and determine that the Existing Funding Approach of SUFs/SDUs is *actually causing* (or will cause, or even *might* cause) unjust and unreasonable *consequences* to NYTOs. NYTOs have not met the “heavy burden” with any “convincing showing.”⁴⁹

⁴⁷ Nowak Testimony at 63 (citing *Ameren*, 880 F.3d at 581).

⁴⁸ *Hope*, 320 U.S. at 602 (internal citations omitted)(emphasis added).

⁴⁹ *Id.*

Additionally, *Hope* does not merely focus on the ability of a regulated entity to attract new capital, but also focuses on the financial health of the entire enterprise and whether its ability to serve the public interest will be impaired.⁵⁰ Even if a transmission owner's returns are meager, as the Court pointed out in *Hope*, that is sufficient for a finding that the entity does *not* face enterprise risk.⁵¹ An entity challenging a rate cannot merely state that a rate threatens its financial integrity, it has to meet a "heavy burden" in showing that a rate *actually* does so.⁵² Indeed, courts have rejected Commission orders that set rates or practices premised on the need to attract capital that lacked sufficient evidence.⁵³

In reviewing enterprise risk, courts ask "whether [the price] is high enough to both maintain the producer's credit and attract capital" and, to do this, it must "yield to equity owners a return 'commensurate with returns on investments in other enterprises having corresponding risks,' as well as cover the cost of debt and other expenses[.]"⁵⁴ NYTOs put forth no evidence whatsoever that this standard is not being met under the Existing Funding Approach. Indeed, NYTOs' argument that they are unable to attract capital under the Existing Funding Approach is undercut by the fact that the NYTOs have attracted *billions* of dollars of capital in recent years. A cursory review of recent applications submitted by individual NYTOs pursuant to Section 204 of the FPA⁵⁵ reveals that the NYTOs have collectively received authorization from

⁵⁰ See *Boroughs of Ellwood City v. FERC*, 731 F.2d 959, 967 (D.C. Cir. 1984) (citing *Hope* at 591, 603); *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n of W.V.*, 262 U.S. 679 (1923).

⁵¹ See *P.R. Tel. Co. v. Telecomms. Regulatory Bd. of P.R.*, 665 F.3d 309 (1st Cir. 2011); *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1949); *Fed Power Comm'n v. Texaco Inc.*, 417 U.S. 380, 391-92 (1974).

⁵² *P.R. Tel. Co. v. Telecomms. Regulatory Bd. of P.R.*, 665 F.3d 309, 323 (1st Cir. 2011).

⁵³ See e.g., *Farmers Union Cent. Exch., Inc. v. F.E.R.C.*, 734 F.2d 1486, 1503 (D.C. Cir. 1984) (rejecting oil pipeline rates where "FERC failed to forecast or otherwise estimate the dimensions of the need for additional capacity, and did not even attempt to calibrate the relationship between increased rates and the attraction of new capital.").

⁵⁴ *Id.* at 1502.

⁵⁵ 16 U.S.C. § 824c.

the Commission to issue over *four billion dollars of new securities since 2019 alone*.⁵⁶ Further, in each instance in which each respective NYTO requested authorization from the Commission under Section 204 of the FPA since 2019, the Commission authorized the full amount of securities requested by each NYTO.⁵⁷ The NYTOs' publicly available Securities and Exchange Commission ("SEC") filings further demonstrate the NYTOs' borrowing capabilities by showing that the companies have issued hundreds of millions of dollars of debt in recent years.⁵⁸

NYTOs refer to credit rating agencies and equity analysts, and the manner in which they acknowledge regulatory risk.⁵⁹ However, the NYTOs make absolutely no showing that the lack of a rate of return on SUFs/SDUs has caused, or even conceivably might cause, a downgrade in rating for any transmission owner. NY Interconnection Customers are unaware of any credit downgrade to any NYTO based upon the absence of a return for SUFs/SDUs since the Commission approved the Existing Funding Approach. The table in Attachment C to this protest lists information on each NYTO's credit rating and/or borrowing capability as reported in the NYTOs' SEC filings and credit reports going back two years. This information and the

⁵⁶ See, e.g., *Mass. Elec Co.*, 174 FERC ¶ 62,011, at 1-2 (2021) (authorizing Niagara Mohawk Power Corporation to issue \$1 billion in short-term debt); *Consol. Edison Co. of N.Y.*, 172 FERC ¶ 62,043, at 1-2 (2020) (authorizing Consolidated Edison Company of New York to issue \$2.25 billion in short-term debt); *Orange and Rockland Utils.*, 172 FERC ¶ 62,044, at 1 (2020) (authorizing Orange & Rockland Utilities, Inc. to issue \$250 million in short-term debt) (2020); *N.Y. State Elec. & Gas Corp.*, 168 FERC ¶ 62,012, at 1-2 (2019) (authorizing New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation to issue \$500 million and \$400 million in short-term debt, respectively).

⁵⁷ See *supra*, preceding footnote.

⁵⁸ See e.g. *2020 Avangrid 10-K*, SEC, 66 (Mar. 1, 2021), available at: <https://sec.report/Document/0001634997-21-000024/agr-20201231.htm> (describing NYSEG as having issued \$200 million of debt on May 2, 2020 and \$200 million of debt on September 25, 2020; describing RG&E as having issued \$200 million of debt on November 23, 2020); *2020 Fortis Form 40-F*, SEC, (Feb. 12, 2021) (section on "Long-Term Debt"), available at: <https://sec.report/Document/0001666175-21-000007/> (describing Central Hudson as having currently issued over one billion dollars of debt); *2020 ConEd Form 40-F*, SEC, 34 (Feb. 18, 2021), available at: <https://sec.report/Document/0001047862-21-000049/ed-20201231.htm> (describing ConEd as having currently issued over \$16.9 billion in long-term debt and Orange & Rockland as having currently issued \$900 million in long-term debt); *2020 National Grid USA, Form 20-F*, SEC, 178 (June 25, 2020) (indicating that National Grid and its subsidiaries' current borrowings of approximately \$30.7 billion as of the fiscal year ending March 31, 2020, increased from approximately \$28.7 billion in 2019), available at: <https://sec.report/Document/0001004315-20-000053/>.

⁵⁹ Nowak Testimony at 22:10-16.

attached testimony of Michael Goggin indicates that each of the transmission owners has a high level of creditworthiness and has been capable of borrowing sufficient amounts needed to meet their needs.⁶⁰ Indeed, when Witness Nowak compares the relative risk of merchant generators and regulated utilities, Witness Nowak notes that rating agencies classify regulated utility operations as “very low risk.”⁶¹

NYTOs also argue that their proposal is justified due to the increase of projects in the NYISO queue stemming from New York’s clean energy targets, which allegedly increases their risk. However, the NY Interconnection Customers’ review of the NYTOs’ SEC filings – which, by law, must disclose any material risk to investors⁶² - found precisely the opposite. NY Interconnection Customers are unaware of *any* filing in which *any* of the NYTOs have identified the lack of a rate of return on SUFs/SDUs as a material risk; instead, NYTOs have repeatedly cited the investments associated with attaining those same state targets as revenue *opportunities*.⁶³ This marked inconsistency may explain why Complainants offer no evidence

⁶⁰ See Attachment A, Testimony of Michael Goggin at 7 (“Goggin Testimony”).

⁶¹ See Nowak Testimony at 71:9-16.

⁶² See e.g. 17 CFR § 229.105 (2020).

⁶³ See Goggin Testimony at 6-7. See also, e.g. Avangrid 2020 10-K at 168, available at <https://sec.report/Document/0001634997-21-000024/agr-20201231.htm> (“On April 8, 2019, New York Transco was selected as the developer for Segment B of the AC Transmission Public Policy Project by the NYISO. The selected project, New York Energy Solution (NYES), replaces nearly 80-year old transmission assets located in the upper to mid-Hudson Valley with streamlined, modernized technology, *to enable surplus clean energy resources in upstate New York* and help achieve the State’s energy goals. The total project cost is \$600 million plus interconnection costs. NYSEG’s contribution as 20% co-owner is \$120 million.”)(emphasis added); ConEd 2020 10-K at 37, <https://sec.report/Document/0001047862-21-000049/ed-20201231.htm> (“In August 2019, following the enactment of the [Climate Leadership and Community Protection Act (“CLCPA”)], *the NYS PSC initiated a proceeding to ‘reconcile resource adequacy programs with New York State’s renewable energy and environmental emission reduction goals.’* In May 2020, the NYS PSC initiated a proceeding implementing the Accelerated Renewable Energy Growth and Community Benefit Act to align New York State’s electric system with CLCPA goals. In November 2020, New York’s investor-owned utilities (including the Utilities) and LIPA filed a comprehensive report in this proceeding, identifying proactive local transmission and distribution investments in their systems to achieve the goals of the CLCPA and setting out policy recommendations for how they will identify, prioritize and allocate costs of these and future such projects going forward. [*Consolidated Edison Company of New York*] and [*Orange and Rockland*] have identified approximately \$4,500 million and \$400 million, respectively, in local transmission investment.”) (emphasis added); National Grid 2019-2020 Form 20-F at 43, <https://sec.report/Document/0001004315-20-000053/>, (“In April 2019, New York Transco’s New York Energy

that rating agencies have downgraded ratings (or might downgrade them in the future) because of an increase of generation in the queue that would result in increased amounts of SUFs/SDUs. Indeed, RTOs that have a form of the Existing Funding Approach have experienced similar increases in interconnection requests from clean energy developers,⁶⁴ and NY Interconnection Customers are unaware of any occasion when transmission owners in those regions have suffered any rating downgrade or an inability to attract capital linked to a lack of a rate of return on network upgrades.

In short, the NYTOs spill considerable ink identifying potential risks, discussing generalized disclosures to investors in SEC filings and rating agency positions - but none of that so-called “evidence” *actually identifies* the absence of a rate of return for SUFs/SDUs as impairing their ability to attract capital. Moreover, the NYTOs’ SEC filings show that the very factors they cite as “risks” before this Commission are framed as revenue opportunities elsewhere, and their securities filings and credit ratings show healthy enterprises with an ongoing ability to attract capital.⁶⁵ NYTOs have not met their factual or legal burden under *Hope and Bluefield* – or the FPA, as discussed next.

Solution (NYES) was selected by the New York Independent System Operator to provide transmission upgrades that will relieve congestion of New York's bulk electric power system, while enhancing reliability and facilitating upstate clean energy resources to the downstate demand centers. The upgrades will be taking place on an existing 54.5-mile (88-kilometre) utility corridor and on utility-owned land. New York Transco is well into the consenting and permitting process for the NYES project, which remains on track for a late 2023 service date. *[National Grid Ventures] expects to participate in additional public policy electric transmission projects in New York that will be necessary to accommodate increasing amounts of renewable energy, in particular offshore wind.*” (emphasis added).

⁶⁴ See Generation, Storage, and Hybrid Capacity in Interconnection Queues, Lawrence Berkeley Lab (2020), available at <https://emp.lbl.gov/generation-storage-and-hybrid-capacity>.

⁶⁵ See Attachment C (citing 2019 and 2020 SEC filings of the NYTOs).

B. The Commission Should Reject The Complaint And Tariff Filing As Unsupported And Patently Deficient

The Complaint and the Tariff Filing should be rejected outright because they are completely unsupported and do not meet the requirements of FPA Sections 205 or 206. Under FPA Section 205, NYTOs bear the burden of proving that the proposed tariff change is just and reasonable and not unduly discriminatory or preferential.⁶⁶ Where, as here, the Tariff Filing is devoid of supporting information, the Commission may reject the filing or issue a deficiency letter requiring the filer to submit additional information.⁶⁷ In this case, because the Tariff Filing is paired with the filing of the Complaint, a deficiency letter would be an inappropriate vehicle to allow NYTOs a second chance at remedying the errors in their original Complaint. Accordingly, the Commission should reject the Tariff Filing as it does not contain sufficient supporting information for the Commission to make a determination that the proposal is just and reasonable and not unduly discriminatory or preferential.⁶⁸

Under FPA Section 206, “the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon . . . the complainant.”⁶⁹ Mere generalizations in the form of purported expert testimony do not meet this standard. The Commission has consistently found “that a party challenging a rate pursuant to FPA section 206 will have failed to provide a sufficient evidentiary record showing the filed rate to be unjust, unreasonable or

⁶⁶ 16 U.S.C. § 824d.

⁶⁷ See, e.g. *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER20-941-000 (Mar. 9, 2020) (finding that MISO’s tariff filing was deficient and requiring MISO to submit additional information).

⁶⁸ *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017) (The Commission may accept or reject a proposal under section 205 of the Federal Power Act in its entirety but may not unilaterally impose a new rate scheme under FPA Section 205).

⁶⁹ 16 U.S.C. § 824e(b); see also *Californians for Renewable Energy*, 174 FERC ¶ 61,204 at P 31 (2021)(“*CARE*”); *FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 353 (D.C. Cir. 2014); *Md. Pub. Serv. Comm’n v. FERC*, 632 F.3d 1283, 1285 n.1 (D.C. Cir. 2011).

unduly discriminatory if the entirety of the challenging party’s submittal is comprised of unsubstantiated speculation.”⁷⁰ FPA Section 206 requires a complaint to consist of more than “conclusory generalizations and speculation.”⁷¹ Entities challenging tariff provisions pursuant to FPA Section 206 must demonstrate that the existing tariff provisions, previously accepted as just and reasonable, “have become unjust and unreasonable or are unjust and unreasonable as applied to them.”⁷² Complaints that fail to make such a demonstration are denied by the Commission.

Here, the Complaint fails on every one of these FPA Section 206 requirements. As explained herein, the Complaint is completely devoid of supporting facts and consists completely of unsupported generalizations. Further, NY Interconnection Customers’ witness, Mr. Michael Goggin, explains that the “examples” of risk identified in the testimony of NYTOs’ Witness Nowak are entirely inapposite. In sum, Mr. Goggin explains:

- There is no evidence of regulatory risks distinct to SUFs/SDUs, or of transmission O&M more broadly being disallowed;⁷³
- The NYTOs rely on examples of reliability violations that apply to control rooms where the presence or absence of SUFs/SDUs make no difference, while simultaneously failing to account for the reliability improvements associated with network upgrades;⁷⁴
- The facilities associated with SUFs/SDUs do not pose any incremental cybersecurity risk, meaning that there is no gap in the compensation available to NYTOs;⁷⁵

⁷⁰ *CARE* at P 31; *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,239 at P 35 (2007); *AES Ocean Express, LLC v. Fla. Gas Transmission Co.*, 119 FERC ¶ 61,075 at P 97 (2007).

⁷¹ *CARE* at P 32.

⁷² *Indicated SPP Transmission Owners v. Southwest Power Pool, Inc.*, 162 FERC ¶ 61,213 at P 60 (2018).

⁷³ Goggin Testimony at 3-7.

⁷⁴ *Id.* at 7-11.

⁷⁵ *Id.* at 11-12.

- Any environmental risks associated with SUFs/SDUs are most salient for transformers, which would typically either remain the responsibility of generators or would have a reduced risk profile as a result of upgrading older facilities;⁷⁶
- The NYTOs cite a single out-of-state example of operational risk, again without noting that upgraded facilities actually reduce that risk profile; and⁷⁷
- Investors are fully aware of the negligible risks associated with SUFs/SDUs, and this assessment is “baked in” to the NYTOs’ existing financing costs.⁷⁸

Indeed, Mr. Goggin notes that, if the risks NYTOs identify in regard to SUFs/SDUs truly were material, the NYTOs would have had an obligation to disclose this to investors in SEC reports; yet to his knowledge, and the knowledge of the NY Interconnection Customers, none has done so since the Existing Funding Approach began.⁷⁹

Because the Tariff Filing and Complaint are unsupported by facts in evidence, the Commission should reject the Tariff Filing and Complaint outright rather than subject Commission Staff and the parties to a lengthy process of reviewing and analyzing a half-baked proposal.

C. The NYTOs’ Requested Relief Would Result In Unjust And Unreasonable Rates, Terms, And Conditions Of Service for Interconnection Customers And Ratepayers

As noted above, the NYTOs’ filings are disingenuous (because the NYTOs supported adoption of the Existing Funding framework), are unsupported by evidence, and are inconsistent with the requirements necessary for the Commission to grant relief under either Section 205 or Section 206. Additionally, the NY Interconnection Customers strenuously object to the filings

⁷⁶ *Id.* at 12-14

⁷⁷ *Id.* at 14-17.

⁷⁸ *Id.* at 5-6.

⁷⁹ *Id.*

because Transmission Owner Funding would prove far more costly to generation developers, with no corresponding benefit. Evidence in the instant proceeding, as well as past dockets, shows that on a net present value basis, the cost to the generation developer can increase by 30-50%.⁸⁰ When costs increase, proposed generation becomes uneconomic.⁸¹ Indeed, certain members of the NY Interconnection Customers explain that the increased cost will impair the development of new generation in NYISO and has impaired the development of new generation in MISO.⁸² If that occurs, it will undermine the purpose of the CLCPA, which seeks to ensure development of new clean energy resources.

The NYTOs state that there will not be a dramatic cost increase because a transmission owner's cost of capital might be lower than a generation developer's costs of capital, arguing that it is less expensive to the generation developer to allow the transmission owner to fund the

⁸⁰See Declaration of Stephane Desdunes for EDF Renewables, Attachment B at P4 (“Desdunes Testimony”) (“From EDFR’s experience, total payments over a 20 year period are easily exceeding twice the “sticker price” of the network upgrades, and with an impact of over 30% on a net present value (“NPV”) basis.

With the majority of larger transmission owners in MISO now electing Transmission Owner Funding, the effective cost of all anticipated network upgrades allocated to generation developers in MISO has increased exponentially.”); Protest of NextEra Energy Resources, Dockets No. EL21-66 and ER21-1647, Pawlowski Declaration. at P7 (May 7, 2021) (“ With a 20-year payment term and carrying charges that include the transmission owner’s return on equity (“ROE”), the total amount paid by the project owner for network upgrades can double.”)(“Pawlowski Testimony”). See also Motion to Intervene Out-of-Time and Rehearing Request of Apex Clean Energy, Docket No. EL15-68 *et al* at Att. I (Oct. 1, 2018)(showing that Transmission Owner Funding in MISO for four projects would increase costs by 39.3% relative to generator funding, from \$30.1 million to roughly \$49.6 million); *Otter Tail Power Co.*, 153 FERC ¶ 61,352 at P 33 (2014) (“Border Winds compared the net present value of its own cost of capital to the net present value of Otter Tail's cost of capital Border Winds stated that, at Otter Tail's proposed fixed rate of 15.8 percent applied over a 20-year term, Border Winds' approximately \$3.9 million in network upgrades would result in total costs of nearly \$6.6 million. However, if Border Winds were applying its own cost of capital to the network upgrades under Option 2 funding, Border Winds stated that it would save over \$1.8 million as compared to Otter Tail electing the initial funding option Therefore, the case record in Border Winds provided evidence that, under the unilateral election of the initial funding option by a transmission owner, a transmission owner's cost on capital could significantly increase costs to an interconnection customer relative to the interconnection customer's cost on capital under Option 2.”) (*citing* Motion to Intervene and Protest of Border Winds Energy, LLC, Docket No. ER14-2464-000, at 5 (Aug. 8, 2014)), *case vacated and remanded on other grounds in Ameren Servs. Co. v. FERC.*

⁸¹ Desdunes Testimony, Att. B at P5 (“With the NPV impact of Transmission Owner Funding, it can be enough of a material risk to contribute to a decision to cancel a project.”).

⁸² See Desdunes Testimony, Att. B at P5; See also Pawlowski Testimony at P7 (May 7, 2021) (“Hence, the self-funding proposal submitted in these dockets will add to the cost of power purchased by New York consumers or introduce significant risk for the project developer, or both, and could lead to the termination of a project altogether.”).

investment and earn a return.⁸³ NYTOs have not supported their argument. First, no comparison to a generation developer's cost of capital has been made to demonstrate the cost may be lower to the generation developer. Second, even if the Complainants' claim was accepted, there is no denying that the overall cost to the generation developer on a net present value basis will be more than the generation developer now pays for SUFs/SDUs. Third, if Complainants truly believe their cost of capital is less expensive to the generation developer, then they should seek to make Transmission Owner Funding available *if mutually agreed* with the interconnection customer. After all, if a transmission owner's cost of capital is truly less than the interconnection customer's cost of capital, common sense dictates that the interconnection customer would gladly elect Transmission Owner Funding every time.

Fourth, the proposal will increase costs to consumers in NYISO. NYTOs propose to collect the Transmission Owner Funding rate through a Facilities Service Agreement ("FSA") similar to what has been adopted in MISO.⁸⁴ However, that type of FSA is not based on a fixed carrying charge, but allows for a variable carrying charge that can change from year to year over the 20 year term.⁸⁵ That means the amount that the generation owner actually will pay is not known, and that cost could increase. The generation owner will have to account for this unknown by adding to the rate in a power purchase agreement or in bids in the New York State Energy Research and Development Authority ("NYSERDA") Renewable Energy Credit ("REC") procurement process.⁸⁶ Independent generation owners do not have a regulatory backstop of their costs from the state commission; hence, by necessity, each generation owner will have to

⁸³ Nowak Testimony at 65-74.

⁸⁴ See Complaint at 30-32; Tariff Filing at 5-6.

⁸⁵ See *Midcontinent Indep. Sys. Operator, Inc.*, 171 FERC ¶ 61,075 at PP 36, 49.

⁸⁶ See Desdunes Testimony at P11 ("EDFR is going to have to assess how to recoup these costs. The likely vehicle is in an increased rate under a PPA/REC contract that will be passed to consumers in New York. EDFR suspects that this same increased costs in PPA/REC rates will be passed on from all generation developers in New York to consumers.").

account for any FSA payment variability which will result in increased rates to New York consumers.⁸⁷ It is not just and reasonable to subject consumers to increased costs on this basis.

Consumers in NYISO will face increased REC costs if the Commission grants either of the NYTOs' filings. Transmission Owner Funding is more costly to the generation developer. That increase in cost will cause developer bids in New York State Energy Research and Development Authority ("NYSERDA") REC solicitations to increase, which will cause REC prices to increase, and in turn, raise rates for consumers in New York.⁸⁸ Under the status quo, that will not occur. Moreover, basic supply and demand dictates that, if projects withdraw from the queue because they become uneconomic with the cost of Transmission Owner Funding, fewer clean energy resources will produce fewer RECs - which can also translate to higher prices for RECs.

Fifth, SUFs/SDUs are integrated with the transmission grid. Witness Nowak acknowledges this numerous times.⁸⁹ NYTOs fail to explain why it is just and reasonable for *only* an interconnection customer to bear the cost of these upgrades, with an additional rate of return for the local NYTO, when it is undeniable that these integrated upgrades bring benefit to load and users of the grid. As the testimony of Michael Goggin makes clear, the new equipment associated with SFUs/SDUs frequently result in a more reliable and resilient grid, reducing risk to transmission owners while providing means for interconnection consumers to access a competitive market.⁹⁰ It is precisely because of these benefits that, in Order No. 2003, the

⁸⁷ See Pawlowski Testimony. at P8.

⁸⁸ See Desdunes Testimony at P11.

⁸⁹ Nowak Testimony at 17 ("SUFs/SDUs are integrated with the TOs' other transmission assets..."); 39 ("SUFs/SDUs are integrated with the remainder of the TOs' electric transmission system."); 44 ("SUFs/SDUs are integrated with the TOs' other transmission assets..."); 54 ("SUFs/SDUs are integrated into the remainder of the TOs' transmission system."); 57 ("SUFs/SDUs [sic] integrated with the remainder of the TOs' electric transmission systems...").

⁹⁰ Goggin Testimony at 9 (reduced reliability risks); 12-13 (environmental risks); 14-15 (operational risks).

Commission determined that the interconnection customer could bear the burden to initially fund the upgrades - but would then be reimbursed with the cost borne in transmission rates among all who benefit.

D. The NYTOs' Proposal Risks Creating Undue Discrimination and Preference.

The NYTOs incorrectly contend that their filings would not raise the prospect of undue discrimination or preference. The NYTOs note that “neither the TOs nor their affiliates own or develop affiliate generation within the affiliate TO’s transmission district in New York, with only minor exceptions.”⁹¹ NYTOs then take the position that “adopting the TO Funding Mechanism raises no such concerns [of undue discrimination] in NYISO,”⁹² as compared to MISO. However, undue discrimination can still occur under the NYTOs’ proposed relief.

Because all generation developers in NYISO compete to sell output at market-based rates, a contributing factor in those rates is the cost the interconnection customer is assigned for SUFs/SDUs. If all generation developers are not subjected to the same funding pricing – or are not able to exercise the same discretion regarding the appropriate funding approach - there will be disparate treatment for similarly situated resources.

As a simple hypothetical, consider a situation in which two developers propose identical projects, with developer A connecting to transmission owner Y and developer B connecting to transmission owner Z. However, only transmission owner Y elects and charges Transmission Owner Funding, which means that the cost to developer B for SUFs/SDUs will be less than developer A. This provides developer B with a competitive advantage vis-à-vis developer A, despite these projects being similarly situated. As the DC Circuit explained in *Dynegy Midwest Generation, Inc. v. FERC*, equal treatment of generators’ costs “is critical to giving meaning to

⁹¹ Complaint at 38.

⁹² *Id.*

the zonal rate system’s apparent intent to assure competitive equality between generators.”⁹³ If the Transmission Owner Funding proposal were adopted, hypothetical developer A would have “an increased risk of being undersold”⁹⁴ by developer B. The *Dynegy* Court held that, when the Commission failed to consider claims of undue discrimination when addressing the impact of a structurally similar compensation proposal, the Commission “violated § 205(b)’s ban on undue discrimination.”⁹⁵

E. The NYTOs’ Proposal Is Inconsistent With Order No. 845, Including the Option to Build

In the proceeding resulting in Order No. 845, the Commission acknowledged that the interconnection process must to “provide interconnection customers more control and certainty during the design and construction phase of the interconnection process.”⁹⁶ In contrast, for the reasons set forth in this protest, adopting Transmission Owner Funding could require customers to “pay more and wait longer” and would act against the control and certainty the Commission provided to interconnection customers in Order No. 845.⁹⁷ The Transmission Owner Funding mechanism proposed by the NYTOs would vest each transmission owner with the unilateral right, based solely on its business judgement, to determine how to fund certain network upgrades for some, but not all, customers. This is antithetical to Order No. 845’s goals of providing the interconnection customer with certainty and control. Adoption of the NYTOs’ proposal is likely to result “in longer delays in generation development, higher costs to customers, more uncertainty in the process, and less competition in the market.”⁹⁸

⁹³ *Dynegy Midwest Generation, Inc. v. FERC*, 633 F.3d 1122, 1128 (D.C. Cir. 2011).

⁹⁴ *Id.* at 1127.

⁹⁵ *Id.* at 1129.

⁹⁶ *Reform of Generator Interconnection Procedures and Agreements*, 157 FERC ¶ 61,212, P 58 (2016) (“Order 845 NOPR”).

⁹⁷ Order No. 845 at P 86; *see also N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,117 (2020).

⁹⁸ Order No. 845 at P 37.

NYTOs also propose to apply Transmission Owner Funding to the interconnection customer’s “option to build” right.⁹⁹ The Commission should deny this request for the same reason that it did when others sought to apply *Ameren* to the option to build outside of MISO. The Commission explained:

[W]e first note that the Commission adopted the option to build in Order No. 2003 as part of the *pro forma* LGIA and that it did so in conjunction with the establishment of the Order No. 2003 crediting policy. Viewing the option to build in this context, we find that Order No. 845 does not deprive transmission providers of the ability to earn a return of, and on, network upgrades, including stand alone network upgrades constructed pursuant to the option to build as outlined in the *pro forma* LGIA. On the contrary, Order No. 2003 established the Order No. 2003 crediting policy, a mechanism that explicitly allows transmission providers to earn a return of, and on, the costs of network upgrades. To this end, under the Commission’s policy as outlined in Order No. 2003, a transmission provider has the ability to earn a return of capital expenditure for network upgrades to the extent that it has reimbursed an interconnection customer with transmission credits. Additionally, when the transmission provider includes in its rate base the cost of a network upgrade, the transmission provider earns a return on the costs of this facility.

In contrast to the option to build set forth in the *pro forma* LGIA, *the concerns the D.C. Circuit identified in Ameren are present only in MISO because MISO’s interconnection pricing policy is a unique variation from the Order No. 2003 crediting policy under which MISO directly assigns 90 or 100 percent of the network upgrade cost responsibility to interconnection customers.* Commission precedent makes clear that, for variations from the Commission’s *pro forma* provisions, it is the transmission provider that has the burden to demonstrate that it qualifies for the variation. Thus, we find that the Commission’s Order No. 845 option to build revisions, which do not alter the Order No. 2003 crediting policy, do not conflict with the *Ameren* decision because they do not deprive transmission owners of the ability to earn a return on, and of, stand alone network upgrade costs.¹⁰⁰

The Commission affirmed this is in Order No. 845-B and continued, “nothing prevent[s] RTOs/ISOs from addressing whether the relevant provisions in their tariffs implicate *Ameren* and ensuring that they address such concerns when they submitted their filings to comply with Order

⁹⁹ See Complaint at 32.

¹⁰⁰ Order No. 845-A at PP 19-20 (footnotes omitted)(emphasis added).

Nos. 845 and 845-A.”¹⁰¹ NYISO submitted compliance filings to address the Order No. 845 option to build revisions. NYISO did not seek to vary from the Order No. 845 revisions and address *Ameren*. Hence, NYTOs’ attempt to apply *Ameren* to the option to build right in the NYISO Tariff is a collateral attack on the prior Commission orders and NYISO’s compliance filings.

Moreover, as noted, Transmission Owner Funding is more costly to the interconnection customer. Hence, any increase in cost applied to the option to build will result in the same harms to consumers as discussed above. Accordingly, the Commission should reject both filings.

F. Further Facets Of NYTOs’ Proposal Are Not Just and Reasonable Because They Are Completely Unworkable

1. The NYTOs’ Proposal Is Inconsistent With Timelines For Interconnection Decisions And Would Prove Unmanageable For Interconnection Customers

NYISO uses a “class year” (“CY”) process for analyzing upgrades needed to interconnect generation. This takes 15-24 months to complete and determines the upgrades and approximate costs. At the end of the initial study, the projects in the CY must decide whether to accept their assigned costs for SUFs/SDUs over an initial 30-day period; any rounds after the first round last 21 days. If an interconnection customer does not accept its assigned costs, its project is removed; when this occurs, the NYISO undertakes a restudy, publishes new SUF/SDU costs, and the acceptance period begins again. As an example, the recently completed CY19 had three selection periods. Once all the remaining SUF/SDU cost allocations are accepted, the CY is done and interconnection customers must post deposits within five days to move forward.

The NYTOs’ proposal would require interconnection customers to evaluate and sign onto a new FSA within the highly compressed acceptance and security posting timetable. The NYTOs also have proposed to notify interconnection customers regarding which SUFs/SDUs will be

¹⁰¹ *Id.* at P 28.

subject to Transmission Owner Funding at the time of the start of the CY allocation decision period. The NYTOs have proposed to include the notification of the Transmission Owner Funding with the NYISO notice asking developers to accept or reject their cost allocations. This would give interconnection customers the same 30 days' notice for both the Transmission Owner Funding and allocation decision. Thus, the interconnection customer would have to decide not only whether upgrades are too expensive, but – in the absence of a FSA, as discussed below - would also have to negotiate the funding agreement *before* the clock runs out on a 30 (or subsequent 21-day) period. That will, of course, include a reassessment of the costs to deliver power. Without a FSA, or an earlier window to determine whether to proceed using Transmission Owner Funding (which might allow the negotiation of the funding agreement ahead of the decision period), the decision period will be too burdened. Some customers will drop out due to insufficient time to consider and negotiate – after years of analysis and preparation to move projects forward. Should the Commission adopt any form of the NYTOs' requested relief, it should require the NYTOs to specify the upgrades they will fund using Transmission Owner Funding well ahead of the start of the first decision period for the CY and open negotiations of the agreement at that time.

2. A FSA Requires More Detail Than the NYTOs Have Provided

An individually negotiated FSA – in the context of the brief acceptance window noted above - adds unreasonable complexity. Should the Commission accept any part of the NYTOs' filings, it should require a *pro forma* FSA to minimize burdens for interconnection customers.¹⁰² NYTOs state they will use a FSA similar to what has been adopted in MISO.¹⁰³ However, NYTOs fail to provide *any of* the terms of this *pro forma* FSA in either the Tariff Filing or the Complaint.

¹⁰² The Tariff Filing does not include a *pro forma* FSA. See Tariff Filing at 15, n.60. However, in the Complaint, the NYTOs request that the Commission direct NYISO to develop a *pro forma* FSA.

¹⁰³ See Complaint at 30-32; Tariff Filing at 5-6.

Hence, key elements are missing, and the Commission should decline to consider either filing without further substance regarding the FSA.

In MISO, the FSA is an integral part of Transmission Owner Funding. The terms of the FSA are the vehicle that identify the cost. However, if a still-hypothetical FSA in NYISO mimics the MISO version, then there are significant flaws the Commission should be aware of with this model.

First, as noted, the carrying cost can vary from year to year. This undermines the ability of the interconnection customer to predict costs. In Order No. 845 and its successor orders, the Commission made it very clear that interconnection customers need information during the study process to make informed business decisions about whether to proceed and develop the generating project.¹⁰⁴ Interconnection customers are unable to do so with a variable rate, and the Commission should find that annual variations in carrying cost are inconsistent with Order No. 845.

Second, the MISO version requires the interconnection customer to provide security over the term of the FSA to backstop the payments that would be owed.¹⁰⁵ Thus, at the outset, security

¹⁰⁴ See, e.g., Order No. 845 at P 212 (“We adopt the NOPR proposal, subject to modification, and require the transmission provider to provide, upon request of the interconnection customer, the estimated network upgrade costs and estimated in-service completion time associated with each identified contingent facility when this information is readily available and not commercially sensitive. We are persuaded by comments that contend that this information helps interconnection customers to better assess the business risks associated with contingent facilities and may prevent instances of late-stage withdrawal. We find that these benefits, in turn, lead to a more efficient and informed interconnection process.”) Order No. 845 at P 204 (“The system impact study considers generating facilities and identified network upgrades associated with higher-queued interconnection requests, and an accompanying list of contingent facilities can contextualize these results. We find that this timing allows interconnection customers to access contingent facility information early enough to better understand their potential risk exposure and to expedite decisions on queue withdrawal, resulting in a more efficient interconnection process.”); Order No. 845-A at P 1 (“The Commission expected [the Order No. 845] reforms to provide interconnection customers with better information and more options for obtaining interconnection service and that, as a result, there would likely be fewer interconnection requests overall and fewer interconnection requests that do not reach commercial operation.”)

¹⁰⁵ See Desdunes Testimony at P7 (“The MISO pro forma FSA requires EDFR to post security covering the full amount of payments due under the FSA. Thus, in the first year of the FSA, EDFR must post security covering 20 years of payments. These are not just the cost of the network upgrades. These are the costs of the network upgrades plus amounts the transmission owner has identified for its carrying costs, that is, a rate of return on the cost of the network upgrades.”).

for 20 years of payments must be posted, which then can be reduced as each year is completed. The posting of security comes at a great cost to the interconnection customer. This security is expensive to maintain. Additionally, the dedicated security limits the ability of the interconnection customer or parent company to finance other generation development. If the goal in New York is to increase the development of clean energy resources – a goal that the Commission should not inhibit - the requirement to post security over the term of the FSA (based upon the MISO model) will send the wrong signal.

3. The Proposed Implementation Would Be Far Too Rapid And Would Actively Harm Planned Projects

NYTOs ask the Commission to accept their proposal effective June 9, 2021, so it may be implemented before the commencement of the Initial Decision Period in the 2021 Class Year.¹⁰⁶ This is unreasonable and will cause severe harm to generation developers that have invested millions of dollars based on the cost provisions in the NYISO Tariff as it currently exists. Generation developers have sunk costs to have projects studied, have made payments to land owners, and have made commitments under equipment purchase agreements based on the likely cost of SUFs/SDUs.¹⁰⁷ From this, some generation developers have entered into, or are close to entering into, power purchase agreements.¹⁰⁸ Additionally, NYSERDA has issued its 2021 Tier 1 RFP,¹⁰⁹ and developers are preparing bids at present. The potential for unilateral Transmission Owner Funding adds significant uncertainty.¹¹⁰ If the Commission does not reject the Tariff Filing

¹⁰⁶ Complaint at 7.

¹⁰⁷ See Desdunes Testimony at P13.

¹⁰⁸ See Pawlowski Testimony at P9.

¹⁰⁹ See *NYSERDA 2021 Tier 1 RFP, Solicitations for Large-Scale Renewables*, available at <https://www.nyserra.ny.gov/all-programs/programs/clean-energy-standard/renewable-generators-and-developers/res-tier-one-eligibility/solicitations-for-long-term-contracts>.

¹¹⁰ See Desdunes Testimony at P13 (“Suffice it to say, the proposal to apply Transmission Owner Funding to Class Year 2021 projects is causing significant uncertainty and threatens to render the millions in dollars that have been spent to date to be for naught.”).

and Complaint outright, it should find that any changes ultimately accepted by the Commission should not be imposed any earlier than the 2023 Class Year, to ensure that interconnection customers can sufficiently account for likely upgrade costs *prior* to the commencement of future RFPs.¹¹¹

G. Absent Outright Rejection, The Commission Should Deny Fast Track Processing Of The Complaint And Set The Matter For Paper Hearing Or Technical Conference Procedures

The heart of NYTOs' filings is their claimed need for Transmission Owner Funding to earn a rate of return on SUFs/SDUs. NY Interconnection Customers have demonstrated that the NYTOs have failed to provide any evidence to support their claim legally and factually, and the Commission should therefore reject both filings. However, even if the Commission finds that NYTOs might have legal bases to *conceivably* apply Transmission Owner Funding, the NY Interconnection Customers have shown that the facts supporting those bases - including the satisfaction of the *Hope* and *Bluefield* standards - is in dispute.

First, the Commission should deny Fast Track processing. The Commission has denied Fast Track processing where, as here, the Complainants fail to justify the request.¹¹² Complainants allege that Fast Track processing is necessary to address the “on-going financial harms” experienced by Complainants.¹¹³ As clearly demonstrated herein, Complainants have provided absolutely no factual evidence of financial harms that must be remedied by the Commission, and certainly no basis for the Commission to act quickly to remedy phantom harm. Any action on the Complaint should allow for an expanded time for processing so these complex issues can be vetted.

¹¹¹ See Desdunes Testimony at P15.

¹¹² See *Sage Grouse Energy Project, LLC v. PacifiCorp*, 153 FERC ¶ 61,272 at P 96 (2015) (“We will deny the request for fast-track processing because the complaint failed to justify the request.”).

¹¹³ Complaint at 45.

When there are material facts in dispute, the Commission may order a hearing to resolve the matter. Here, a paper hearing on these issues – including evaluation of whether the Commission’s past approval of an independent entity variation allowing participant funding in NYISO remains just and reasonable - would be appropriate. Additionally, NY Interconnection Customers note that the PJM Transmission Owners have indicated their intent to seek Transmission Owner Funding in that region as well.¹¹⁴ At such time as the PJM Transmission Owners make a filing with the Commission, NY Interconnection Customers anticipate that such a proceeding will raise extremely similar issues of law and fact. Given this, a combined paper hearing or technical conference would allow for greater economy of stakeholder and Commission resources in determining disputed issues of material fact.

Thus, absent outright rejection of both the Complaint and the Tariff Filing, the Commission should institute a paper hearing or technical conference on its own initiative to comprehensively review these issues. Such a process would address multiple issues including:

- whether NYTOs have shown any actual harm, such as an inability to attract capital as needed to serve the public interest, under the current Existing Funding Approach;
- how much capital each Complainant has actually raised each year since the Commission accepted the NYISO Independent Entity Variation;
- whether any NYTO has ever disclosed in a SEC filing that SUFs/SDUs could impair the financial viability of the overall ‘enterprise,’ and whether that deterred any investment or harmed any NYTO’s creditworthiness;

¹¹⁴ See *PJM Transmission Owners’ Proposal Regarding TO-Funding of Network Upgrades* (April 27, 2021) available at <https://www.pjm.com/-/media/committees-groups/committees/toa-ac/2021/20210427-special/20210427-item-02-pjm-transmission-owners-proposal-regarding-to-funding-of-network-upgrades-presentation.ashx>.

- whether any NYTO has actual evidence that investors failed to acquire new securities of the transmission owner specifically because of the Existing Funding Approach and SUF/SDU treatment, or even considered the Existing Funding Approach and SUFs/SDUs as anything other than “baked in” to each NYTO’s overall business;
- whether there will be an increased cost to interconnection customers, and what impact that might have on the development of new generation in New York, on competition in NYISO markets, and on costs to consumers; and
- whether NYISO should revert to the baseline Order No. 2003 reimbursement policy - particularly because of the integrated nature of the SUFs/SDUs which benefit all users of the New York grid in the form of reliability, resiliency and access to lower cost generation.

The Commission has initiated similar processes with complex issues.¹¹⁵

¹¹⁵ See, e.g., *Anbaric Development Partners LLC v. PJM Interconnection LLC*, 171 FERC ¶ 61,241 (2020) (denying complaint against PJM, and initiating technical conference to explore issues raised by complaint); *EDF Renewable Energy, Inc. v. Midcontinent Indep. Sys. Operator, Inc., et al.*, 162 FERC ¶ 61,085 at P 69 (2018) (establishing technical conference to develop a more complete record concerning complex RTO issues); *N. Ind. Pub. Serv. Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,248, at P 1 (2014) (directing Commission staff to convene a technical conference to explore issues raised in complaint related to MISO-PJM seam); *Ass’n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,118, at P 1 (2018) (establishing a paper hearing on whether and how new precedent on calculating return on equity (“ROE”) should apply to the proceedings pending before the Commission involving MISO TOs’ ROE).

III. CONCLUSION

NY Interconnection Customers respectfully urge the Commission to deny the Complaint outright and reject the Tariff Filing. If the Commission deems the matters raised in the Complaint worthy of further inquiry, NY Interconnection Customers request that the Commission establish a technical conference or paper hearing (or both) where the factual issues can be fully explored. As evidenced by the MISO proceeding, which has spanned eight years and two rounds of appeal to the D.C. Circuit, implementation of Transmission Owner Funding is extremely complex and can only be assessed by scrutinizing the facts.

Respectfully submitted,

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May 7, 2021

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this pleading has been served this day upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 7th day of May 2021.

/s/ Gabe Tabak

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ATTACHMENT A

Affidavit of Michael S. Goggin

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UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

**New York Transmission Owners v.
New York Independent System) EL21-66-000
Operator, Inc.**

New York Transmission Owners) ER21-1647-000

(not consolidated)

AFFIDAVIT OF

MICHAEL S. GOGGIN

I. INTRODUCTION

Q. Please state your name and job title.

A. My name is Michael Goggin. I am Vice President at Grid Strategies, LLC, a consulting firm based in the Washington, D.C. area.

Q. What is your background and educational experience?

A. I have served as an expert on transmission and renewable energy issues for over fifteen years. At Grid Strategies, I consult on these topics for a range of clients interested in clean energy. For the preceding ten years, I was employed by the American Wind Energy Association (“AWEA”), which has since merged with the American Clean Power Association. At AWEA I provided technical analysis and advocacy on renewable energy and transmission matters, including leading AWEA’s research and analysis team from 2014–2018. Prior to that, I was employed at a firm serving as a consultant to the U.S. Department of Energy, and at two environmental groups before that.

1 I have testified before state regulatory commissions across the United States and
2 the Federal Energy Regulatory Commission (“FERC”) several dozen times on
3 topics related to transmission and renewable energy. I have also served as a
4 technical reviewer for over a dozen national laboratory reports, academic articles,
5 and renewable integration studies, and have published academic articles and
6 conference presentations on renewable energy, transmission, and policy. I have
7 also served as an elected member of the Standards, Planning, and Operating
8 Committees of the North American Electric Reliability Corporation (“NERC”). I
9 hold an undergraduate degree with honors from Harvard University.

10 **Q. Can you please summarize your testimony?**

11 **A.** My testimony explains that the “uncompensated risks” that the New York
12 Transmission Owners (“NYTOs”) claim are associated with their ownership of
13 System Upgrade Facilities (“SUFs”) and System Deliverability Upgrades
14 (“SDUs”) are immaterial, and in many cases these upgrades actually *reduce* those
15 risks. Regardless, even if the claimed risk increases were real, the NYTOs would
16 already be compensated for these risk increases through standard state ratemaking
17 processes. As a result, there is no merit to the NYTOs’ claims that the current
18 system of ownership for SUFs/SDUs is not just and reasonable. I also explain how
19 the self-funding of SUFs/SDUs will increase the cost and risk associated with the
20 interconnection of new generation resources, to the detriment of ratepayers in New
21 York.

22 **II. SDUs and SUFs do not pose material risks for the NYTOs**

23 **Q. What categories of “uncompensated risks” do the NYTOs claim are associated**
24 **with their ownership of SUFs/SDUs?**

1 A. The NYTOs' filings, including the affidavit of Joshua C. Nowak, claim the
2 following categories of uncompensated risks associated with their ownership of
3 SUFs/SDUs: 1) regulatory, 2) reliability, 3) cybersecurity, 4) environmental, and 5)
4 operational. In the following sections I explain how each of these claimed
5 additional risks are immaterial.

6 **A. Regulatory Risk**

7 **Q. What do the NYTOs claim regarding regulatory risk?**

8 A. The NYTOs point to examples of other utility costs being found imprudent, and
9 therefore disallowed by state regulators, and then attempt to imply that such risk
10 exists and is material for SUFs/SDUs. However,, none of the examples of
11 disallowed costs cited by the NYTOs relate to the costs of building or operating
12 and maintaining transmission upgrades, or even transmission lines generally.¹
13 Instead, the examples of disallowed costs that the NYTOs cite are (i) California
14 state regulators' disallowance of premature distribution system pole replacements,
15 (ii) excess costs related to operating a utility customer service center in
16 Connecticut, (iii) excess utility employee salaries in Nevada, (iv) excess
17 information technology and rent expenses in Massachusetts, and (v) New Mexico's
18 disallowance of emissions technology installed at a coal plant.²

¹ Operating and Maintenance ("O&M") costs are the only costs paid by NYTOs for SUFs/SDUs because the cost of the investment is paid by the interconnecting generator. The NYTOs' cost of O&M for SUFs/SDUs is recovered through rates imposed by the state regulatory commission.

² Nowak Testimony at 27-29.

1 Had the NYTOs been able to produce an example of unrecovered transmission-
2 related costs, they presumably would have included it in their filing. Without any
3 quantification of such costs, or even a single example, the NYTOs' argument
4 related to regulatory risk of SUFs/SDUs is entirely unsupported.

5 The NYTOs claim that per the NYISO tariff, "the TOs are at risk of bearing certain
6 cost overruns in their construction of SUFs/SDUs."³ However, the tariff makes
7 clear that the generation developer is responsible for essentially all cost overruns,
8 including a. "changes to the design or operating characteristics" of the generation
9 project, b. an expansive provision for "any costs that were not within the scope of
10 the Class Year Study or Additional SDU Study, as applicable, that subsequently
11 become known as part of the final construction design," and c. "cost escalation of
12 materials or labor."⁴ The tariff provides that the Transmission Owner is only
13 responsible for cost overruns caused by factors within its control, such as failures
14 related to management or equipment scope deficiencies. The NYTOs have failed to
15 quantify the impact of such cost overruns, or even provide a single example.

16 Based on the irrelevant examples of disallowed costs discussed above, the NYTOs
17 also appear to be unable to provide an example of a regulator disallowing
18 transmission O&M costs, presumably because it is extremely unlikely for a state
19 regulator to disallow recovery of transmission O&M costs for being imprudent. It
20 is widely understood that O&M costs are a prudently incurred cost. For such costs

³ Nowak Testimony at 19

⁴ NYISO Tariff, section 25.8.6.4, available at
<https://nyisoviewer.etariff.biz/ViewerDocLibrary/MasterTariffs/9FullTariffNYISOOATT.pdf>

1 to be disallowed, the state regulator would presumably have to find severe
2 negligence on the part of the utility. Even in that situation, the utility action
3 resulting in the disallowance would likely be a systemic problem across most if not
4 all of its transmission fleet, making the incremental impact of any disallowed
5 SUFs/SDUs a small share of the utility's total costs.

6 **Q. At pages 21-23, Mr. Nowak quotes statements pertaining to regulatory risk**
7 **from utility SEC filings and credit rating agencies. Do any of these statements**
8 **refer to regulatory risks related to recovering costs related to generator**
9 **interconnection upgrades, or transmission costs generally?**

10 **A.** No, they do not.

11 **Q. Were you able to find any mention of risks related to generator**
12 **interconnection upgrades in recent NYTO SEC filings?**

13 **A.** No, I was not. I reviewed the most recent 10-K/40-F/20-F SEC filings (the risk
14 disclosure forms for domestic and foreign public companies, respectively) for
15 Avangrid, Inc. (parent company of NYSEG and RG&E); Consolidated Edison, Inc.
16 (parent company of Con Edison and O&R); Fortis, Inc., parent company of Central
17 Hudson); and National Grid plc (parent company of National Grid). There is no
18 mention of regulatory risks related to the recovery of costs related to generator
19 interconnection upgrades. Moreover, there is no discussion of regulatory,
20 reliability, cybersecurity, environmental, or operational risks associated with
21 SUFs/SDUs, the five categories of risk the NYTOs claim are not compensated.

1 **Q. Would risks related to SUFs/SDUs have been discussed in the SEC filings if**
2 **they were material?**

3 **A.** Yes. SEC rules require that all material risks be disclosed to investors in publicly
4 owned companies.

5 **Q. Do the SEC filings discuss financial benefits associated with transmission**
6 **upgrades driven by the growth of renewable energy?**

7 **A.** Yes, the NYTOs' SEC filings discuss financial benefits associated with rate-basing
8 public policy transmission upgrades driven by the growth of renewable energy.
9 The NYTOs' disclosures to investors about the financial benefits of transmission
10 expansion driven by renewable energy growth contrast with the story they are
11 telling FERC about the risks associated with generator interconnection upgrades.
12 Specifically, ConEd's SEC filing discusses New York's report "identifying
13 proactive local transmission and distribution investments in their systems to
14 achieve the goals of the CLCPA and setting out policy recommendations for how
15 they will identify, prioritize and allocate costs of these and future such projects
16 going forward. [Consolidated Edison Company of New York] and [Orange and
17 Rockland] have identified approximately \$4,500 million and \$400 million,
18 respectively, in local transmission investment."⁵ Similarly, Avangrid's SEC filing
19 highlights how its "New York Transco was selected as the developer for Segment
20 B of the AC Transmission Public Policy Project by the NYISO... to enable surplus

⁵ ConEd 2020 10-K at 37, <https://sec.report/Document/0001047862-21-000049/ed-20201231.htm>

1 clean energy resources in upstate New York and help achieve the State’s energy
2 goals. The total project cost is \$600 million plus interconnection costs. NYSEG’s
3 contribution as 20% co-owner is \$120 million.”⁶ Finally, National Grid’s SEC
4 filing highlights how it “expects to participate in additional public policy electric
5 transmission projects in New York that will be necessary to accommodate
6 increasing amounts of renewable energy, in particular offshore wind.”⁷

7 **Q. Do the NYTOs have good credit ratings?**

8 **A.** As indicated in Attachment C of the joint protest of ACPA, ACE-NY, NY-BEST,
9 ESA, and IPPNY, the NYTOs have very good credit ratings. This undermines the
10 NYTOs’ claim that SUFs/SDUs pose enterprise risk that will undermine their
11 ability to raise capital.

12 **B. Reliability Risk**

13 **Q. What do the NYTOs claim about the reliability risk associated with**
14 **SUFs/SDUs?**

15 **A.** The NYTOs point to examples of NERC and state regulatory commission penalties
16 imposed on New York utilities for causing customer outages and other reliability
17 problems. However, none of these examples are relevant to the NYTOs’ claim of
18 uncompensated costs for SUFs/SDUs or similar types of facilities.

⁶ See e.g. Avangrid 2020 10-K at 168, <https://sec.report/Document/0001634997-21-000024/agr-20201231.htm>

⁷ National Grid 2019-2020 Form 20-F at 43, <https://sec.report/Document/0001004315-20-000053/>

1 **Q. What examples of NERC violations do the NYTOs cite?**

2 **A.** The NYTOs point to a single example of a \$450,000 fine that was levied on a New
3 York utility for violating NERC Standard TOP-001, which addresses transmission
4 system control room operations. NERC’s database reveals that the violation was of
5 Requirements 9 and 13 of the standard, which respectively require that “[e]ach
6 Balancing Authority and Transmission Operator shall notify its Reliability
7 Coordinator and known impacted interconnected entities of all planned outages,
8 and unplanned outages of 30 minutes or more, for telemetering and control
9 equipment, monitoring and assessment capabilities, and associated communication
10 channels between the affected entities,” and that “[e]ach Transmission Operator
11 shall ensure that a Real-time Assessment is performed at least once every 30
12 minutes.”⁸ Like most NERC transmission standards, these requirements apply to
13 transmission system control room operators, and the required activities must be
14 conducted regardless of the size of the transmission system. Thus, there is no
15 reason to expect that a marginal expansion of the transmission system from
16 SUFs/SDUs will increase the risk of a violation of the NERC standards that relate
17 to the transmission system. It should also be noted that even a relatively large
18 NERC fine, like the \$450,000 example cited by the NYTOs, is not material to
19 utilities whose shareholder profits are typically in the hundreds of millions or even
20 billions of dollars per year.

⁸ North American Electric Reliability Corporation, *TOP-001-4 - Transmission Operations*,(n.d.), available at: <https://www.nerc.com/pa/Stand/Reliability%20Standards/TOP-001-4.pdf>.

1 The NYTOs also note that three other New York utilities have been fined by
2 NERC.⁹ However, the NERC database reveals that these were not violations of
3 transmission standards, but rather standards that apply to generation and other parts
4 of the electric system.¹⁰ Thus, these violations also are not relevant for supporting
5 NYTOs' claim of an incremental reliability risk associated with SUFs/SDUs.

6 **Q. What other reliability risk examples do the NYTOs cite?**

7 **A.** The NYTOs point to examples of state regulators penalizing utilities for customer
8 outages.¹¹ However, analysis of U.S. Department of Energy data reveals that over
9 90% of customer outage minutes are caused by failures on the lower-voltage
10 distribution system,¹² and thus are not caused by the transmission system,
11 including SUFs/SDUs.

12 Even for customer outages originating from the transmission system, failures of
13 SUF/SDU facilities are unlikely to be a causal factor. Most new interconnections
14 are for renewable generators, which are typically electrically distant from load and
15 accredited with relatively low capacity value, so the loss of transmission facilities
16 built to interconnect these resources is unlikely to result in customer outages.

⁹ Nowak Testimony at 35.

¹⁰ North American Electric Reliability Corporation, "Searchable Notice of Penalty (NOP) Spreadsheet," updated April 29, 2021, available at: https://www.nerc.com/pa/comp/CE/Enforcement%20Actions%20DL/Searchable_Enforcement_Page_1230200.xlsx.

¹¹ Nowak Testimony at 36-39.

¹² John Larsen, Trevor Houser, and Peter Marsters, "Electric System Reliability: No Clear Link to Coal and Nuclear," October 23, 2017, available at: <https://rhg.com/research/electric-system-reliability-no-clear-link-to-coal-and-nuclear/>.

1 Moreover, the expanded transmission capacity, upgraded equipment, and network
2 redundancy provided by SUFs/SDUs are likely to reduce customer outages, rather
3 than increase them. As discussed later, the failure rate for many transmission
4 components, like transformers and switches, increases dramatically with age. As a
5 result, the equipment replacements and upgrades paid for by generators through
6 SUFs/SDUs are likely to reduce reliability risks, rather than increase them. In the
7 recent grid resilience proceedings at FERC, representatives of several of the
8 nation’s Regional Transmission Organizations and NERC unanimously agreed that
9 transmission expansion improves electric reliability.¹³ For example, NYISO
10 explained that grid “interconnections support and bolster reliability and resilience
11 by creating a larger and more diverse resource pool available to meet needs and
12 address unexpected and/or disruptive events throughout an interconnected
13 region.”¹⁴ Researchers have also modeled theoretical power systems and
14 demonstrated that strengthening the grid by adding network paths significantly
15 increases the electric system’s overall resilience and prevents power outages.¹⁵ As
16 another example, Kansas utility Westar has reported that recent transmission
17 expansion has been associated with a 40% reduction in transmission-related
18 customer outages.¹⁶

¹³ For a summary of these comments, see American Wind Energy Association, *Grid Vision: The Electric Highway to a 21st Century Economy*, at 16-17, May 2019, available at: <https://cleanpower.org/wp-content/uploads/2021/01/Grid-Vision-The-Electric-Highway-to-a-21st-Century-Economy.pdf>.

¹⁴ *Response of the New York Independent System Operator, Inc.*, Docket No. AD18-7-000, at 10-12, March 9, 2018, available at: <https://elibrary.ferc.gov/IDMWS/common/opennat.asp?fileID=14838205>.

¹⁵ Harsha Nagarajan et al., *Optimal Resilient Transmission Grid Design*, (n.d.), available at: http://public.lanl.gov/rbent/pscc_resilience.pdf.

¹⁶ Southwest Power Pool, *The Value of Transmission*, at 15, January 26, 2016, available at: <https://www.spp.org/documents/35297/the%20value%20of%20transmission%20report.pdf>.

1 **C. Cybersecurity Risk**

2 **Q. What do NYTOs allege with regard to uncompensated cybersecurity risk**
3 **associated with SUFs/SDUs?**

4 **A.** The NYTOs point to a single example of a Western utility being fined for a data
5 disclosure violation in which information like IP addresses and server names for
6 30,000 unidentified utility assets were posted online. The NYTOs then offer the
7 unsupported speculation that “[a]s components of the electric transmission system,
8 SUFs/SDUs could be hacked or used to expose critical data.”¹⁷ This claim is
9 questionable given that SUFs/SDUs are typically comprised of components like
10 transmission lines, transformers, and other equipment that are not electronically
11 controlled. Any communication and control equipment associated with operating
12 the generator would be owned by, and be the responsibility of, the generator and
13 not the transmission owner.

14 There is no reason to believe that SUFs/SDUs materially increase cybersecurity
15 risk. Transmission owner cybersecurity risk does not generally scale proportionally
16 with the size of the transmission system, in that much of the risk of intrusion, and
17 particularly risk that can affect electricity reliability, is on centralized cyber
18 systems with access to a significant share of the whole system. This centralized
19 risk is confirmed by NYTOs’ example in which centralized information for 30,000
20 assets was inadvertently posted online due to one failure.

¹⁷ Nowak Testimony at 43.

1 As a result, most NERC cybersecurity standards focus on cybersecurity for control
2 rooms and computer systems, as well as employee training and cybersecurity
3 processes. These requirements are generally fixed, in that they do not scale with
4 the size of the transmission system. Only CIP-006, which governs physical security
5 at Bulk Electric System Cyber Systems, stands out as an example of risk that could
6 scale with the size of the transmission system. However, even that standard only
7 applies to equipment that sheds load to customers or Protection Systems that are
8 “subject to one or more requirements in a NERC or Regional Reliability
9 Standard,”¹⁸ making it very unlikely that a grid upgrade related to generator
10 interconnection would create a new risk of violating the standard.

11 **D. Environmental Risk**

12 **Q. What do the NYTOs allege with regard to uncompensated environmental risk**
13 **associated with SUFs/SDUs?**

14 **A.** The NYTOs discuss the risks of 1. climate change and severe weather affecting the
15 transmission system, and 2. environmental liabilities.¹⁹ With regard to the risk of
16 climate change and severe weather affecting the transmission system, the NYTOs
17 never present an argument why New York regulators would deny recovery of such

¹⁸ North American Electric Reliability Corporation, *CIP-006-6 – Cyber Security – Physical Security of BES Cyber Systems*, (n.d.), available at: <https://www.nerc.com/layers/15/PrintStandard.aspx?standardnumber=CIP-006-6&title=Cyber%20Security%20-%20Physical%20Security%20of%20BES%20Cyber%20Systems&Jurisdiction=United%20States>.

¹⁹ Nowak Testimony at 45.

1 costs. In fact, all of the New York examples provided by the NYTOs show state
2 regulators providing full recovery for such costs.²⁰

3 With regard to environmental liabilities, the NYTOs point to costs associated with
4 remediation due to construction activities, yet the generator currently pays for the
5 transmission upgrade and thus covers those costs. The NYTOs discuss emissions
6 from new equipment, yet the vast majority of transmission equipment, including
7 transmission towers and conductors, do not cause any air or water emissions that
8 would increase environmental liabilities.

9 Transformers and substation switching equipment can leak. However, the main
10 transformer added to interconnect a new generator, the generator step-up
11 transformer, is owned and maintained by the generator so it would not increase the
12 NYTOs' environmental risks and is not part of SFUs/SDUs.

13 More importantly, any upgrades to network transformers and switching equipment
14 are likely to reduce the risk of leaks, not increase it. Transformer failure is almost
15 entirely predicted by the age of the transformer, with minimal failures during the
16 first 30 years of transformer operations.²¹ In particular, leaks from transformers
17 and switches are driven by the age-related failure of rubber components like
18 gaskets and O-rings. Thus, even if existing network transformers and switches need
19 to be replaced or otherwise upgraded to allow for the interconnection of new

²⁰ Nowak Testimony at 51.

²¹ Ibrahim Metwally, "Failures, Monitoring and New Trends of Power Transformers," IEEE Potentials, 30(3):36-43, July 2011, available at: https://www.researchgate.net/figure/Transformer-failure-rate-as-a-function-of-the-number-of-service-years_fig2_224236270.

1 resources, this would reduce the risk of leakage relative to the status quo of the
2 older NYTO equipment continuing to operate. Accordingly, SFUs and SDUs
3 reduce the NYTOs' environmental risk.

4 **E. Operational Risk**

5 **Q. What is NYTOs' claim regarding operational risks?**

6 **A.** The NYTOs point to the risk of physical accidents.²² However, the NYTOs note
7 that utilities carry insurance that covers such accidents,²³ and never present a
8 compelling argument why state regulators would deny the recovery of insurance
9 premium costs. With regard to the recovery of insurance deductible costs, the
10 NYTOs quote an Arizona commission finding "that payment of deductibles for
11 injuries and damages is typical for the utility industry,"²⁴ but offer that as a single
12 example of regulators denying recovery of the cost of an insurance deductible. That
13 out-of-state example has limited relevance for New York regulators and utilities.
14 The remote risk of paying an insurance deductible in the extremely unlikely event
15 that transmission owner negligence was so severe that regulators denied recovery
16 of the deductible cost is hardly a material risk to a large utility, or one that justifies
17 a drastic change to how network upgrades are funded.

18 Regardless, older transmission equipment is more prone to failure, as documented
19 above. As with the reliability and environmental risks discussed above, new or

²² Tariff Filing at 22-23; Nowak Testimony at 54-58.

²³ Nowak Testimony at 56-57.

²⁴ *Id.* at 57.

1 upgraded equipment paid for by generators as part of SFUs/SDUs will most likely
2 reduce the NYTOs' operational risks by reducing the risk of failures that can cause
3 damages.

4 **Q. In any of the above categories of risk, did the NYTOs establish the existence of**
5 **uncompensated risk associated with SUFs/SDUs?**

6 **A.** No, they were not. The NYTOs never attempt to quantify the impact of the claimed
7 risks as they pertain to SUFs/SDUs. As this claim is essential to their case, the
8 NYTOs have not met their burden of proof. The most likely explanation for why
9 they were not able to provide that evidence is that there is no incremental risk
10 associated with SUFs/SDUs, or alternatively because the net impact of SFUs/SDUs
11 is actually to reduce risks that the NYTOs face.

12 Not only do the NYTOs fail to quantify the claimed risks, they also fail to provide
13 a single example that illustrates an incremental risk associated with SUFs or SDUs.
14 None of their examples identify a risk that increases with expansion of the
15 transmission system, presumably because they were unable to find any such
16 examples. As a result, the NYTOs have not met the burden of proof to establish a
17 need for their proposed changes, and certainly not one that is sufficient to justify a
18 policy change that would impose significant costs on ratepayers and
19 interconnecting generators.

20 **III. Even if there were any incremental costs or risks associated with SUFs/SDUs,**
21 **they would already be compensated through ratemaking processes**

22 **Q. How are risks accounted for in ratemaking processes?**

23 **A.** Utilities are typically financed with a mix of approximately half debt and half
24 equity. Interest costs for utility debt is typically fully recovered through state

1 commission-approved rates. As a result, if a utility's interest rate increases because
2 lenders or credit rating agencies perceive it to be riskier, that cost is recovered
3 from ratepayers and not borne by the utility.

4 For the equity half, regulators approve a regulatory rate of return on equity that is
5 also based on the actual rate of return set by market conditions, so investors'
6 perceptions of risk are also accounted for in the rate of return a utility earns. As
7 Nowak explains at page 63 of his testimony, if risks did increase, investors would
8 demand a higher rate of return (likely achieved by some of them investing their
9 money elsewhere, reducing the share price until the return on equity increased) to
10 make the risk/reward payoff high enough for them to continue investing. Thus,
11 even if the uncompensated risks associated with ownership of SUFs/SDUs claimed
12 by NYTOs were real, the NYTOs would also have to prove that investors and
13 lenders were not accounting for such risks. However, a primary point of the
14 NYTOs' filing is that investors and lenders account for regulatory, reliability,
15 cybersecurity, environmental, and operational risks, with Nowak specifically
16 stating, "[i]s there evidence that investors are aware of these risks and consider
17 them when making investment decisions? Yes, there is."²⁵ He repeats a similar line
18 for each of the categories of risk, and also discusses how credit rating agencies
19 evaluate each of those categories of risk. Therefore, based on the NYTOs' own
20 argument, any incremental risk the NYTOs face would be recovered by earning a
21 higher return on equity and recovering higher interest payments in their state
22 commission-approved rates. Thus, even if the NYTOs were correct that

²⁵ See for example, Nowak Testimony at 16.

1 SUFs/SDUs increase risks, such risks would be properly, and in many cases
2 automatically, addressed by standard state ratemaking processes.

3 **IV. The self-funding of upgrades will undermine the interconnection of new**
4 **resources, to the detriment of New York ratepayers**

5 **Q. What is the impact of self-funding on the costs and risks of interconnection for**
6 **generation developers?**

7 **A.** The cost of interconnection will increase to the detriment of ratepayers. The
8 generation developer will continue to pay for the SUFs/SDUs, as they do today. On
9 top of that they will also pay the transmission owner a rate of return over time.

10 This increased cost of the transmission upgrades will be rolled into the cost of the
11 generation project, resulting in a higher Power Purchase Agreement price that will
12 flow to utility ratepayers as a higher cost of energy.²⁶

13 In addition, self-funding adds risk stemming from uncertainty about the future
14 regulated cost of capital for the utility. The rate of return the generation developer
15 pays to the transmission owner will vary over time depending on the utility's
16 regulated cost of capital. This risk is not hedged or compensated by the fixed PPA
17 price, so the risk translates into a higher cost for investors in the generation project
18 that similarly flows through to ratepayers as a higher cost of energy.²⁷

19 **Q. For renewable projects, how does this affect ratepayer costs?**

20 **A.** For renewable projects, these higher costs and risks translate into higher costs for
21 ratepayers through two mechanisms. First, as explained above, the higher cost
22 flows directly through to ratepayers. In addition, the higher risk and cost of

²⁶ See Desdunes Testimony, Att. B at PP6-7; NextEra Protest, Pawlowski Testimony at P9.

²⁷ See Desdunes Testimony, Att. B at P6; NextEra Protest, Pawlowski Testimony at P8.

1 renewable interconnection deters renewable project development, reducing the
2 supply of renewable energy. New York has aggressive clean energy requirements
3 that are satisfied by the purchase of renewable energy credits (“RECs”). By
4 reducing the supply of RECs while the demand stays high, self-funding increases
5 the price of all RECs sold in the market. This cost also directly flows through to
6 ratepayers.

7 **Q. Does this conclude your affidavit?**

8 **A.** Yes.

9

10

[Signature on following page]

1 I declare under penalty of perjury that, to the best of my knowledge, information,
2 or belief, the foregoing is true and correct.

3

4 Executed on May 7, 2021

5

6



7

8

Michael Goggin

9

Vice President, Grid Strategies, LLC

ATTACHMENT B

Declaration of Stephane Desdunes

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Central Hudson Gas & Electric Corp., et al.)	
)	Docket No. EL21-66-000
Complainants,)	
)	
v.)	
)	
New York Independent System Operator, Inc.)	
)	
Respondent.)	
)	
)	
Central Hudson Gas & Electric Corp., et al.)	Docket No. ER21-1647-000
)	(Not Consolidated)

DECLARATION OF STEPHANE DESDUNES

I, Stephane Desdunes, do hereby declare as follows:

1. I have personal knowledge of the information set forth herein and, if called upon as a witness, am competent to testify hereto.
2. I am the Senior Director, Development, US Northeast, Grid Scale Power of EDF Renewables North America, which is a wholly-owned subsidiary of EDF Renewables, Inc. (“EDFR”) and have served in lead development role since February, 2010. EDFR develops, owns and operates renewable generation throughout the United States.
3. In my role as Senior Director of Development, I am responsible for the development activities in New York on behalf of EDFR. In this role, I am familiar with the policies to pay for network upgrade costs required to obtain interconnection service in the New York Independent System Operator (“NYISO”) region and am part of a leadership team that discusses the implications of network upgrade cost policy in other regions, such as the Midcontinent Independent System Operator, Inc. (“MISO”) region.
4. EDFR has experience with unilateral Transmission Owner Funding in MISO and that funding mechanism has proven to be costly and harmful to EDFR. From EDFR’s experience, total payments over a 20 year period are easily exceeding twice the “sticker price” of the network upgrades, and with an impact of over 30% on a net present value (“NPV”) basis. With the majority of larger transmission owners in MISO now electing Transmission Owner Funding, the effective cost of all anticipated network upgrades allocated to generation developers in MISO has increased exponentially.

5. EDFR undertakes extensive research before a project enters the MISO queue and assesses likely network upgrade costs. That assessment is used to make decisions about whether to enter the queue, whether to sink non-refundable deposits for studies, and whether to put Milestone payments at-risk (now beginning with the start of studies). To the extent network upgrade costs from studies are in line with expectations, projects proceed. However, when a MISO transmission owner unilaterally chooses to elect Transmission Owner Funding, the costs for the EDFR project increase significantly. As noted, when that occurs, the expected economics of a project change dramatically. This has put EDFR in a difficult position because, to the extent EDFR has made arrangements either to sell the project to a third party or to operate the project and sell power under a power purchase agreement (“PPA”), EDFR must consider how to address this additional cost. With the NPV impact of Transmission Owner Funding, it can be enough of a material risk to contribute to a decision to cancel a project.
6. MISO uses a Facilities Service Agreement (“FSA”) that allows the cost to change per year based on the transmission owner’s current carrying costs. This too has directly impacted the development of generation in MISO. EDFR cannot know the true cost impact because of the annual rate variability. A fixed rate would help, but that was disallowed by the Commission, instead leaving it to the discretion of the MISO transmission owner whether a fixed rate will apply. As noted, EDFR sells power under PPAs. To account for this unknown FSA cost variability, EDFR has had to weigh whether to increase the price under a PPA and by how much. This can be a difficult decision. On one hand, if the variability is not included in the PPA rate and the annual FSA rate increases, EDFR must bear the cost increase and reduce expected project profitability. On the other hand, EDFR competes in market-based regime. If EDFR raises its PPA rate to account for the cost variability, it might lose a potential PPA-based project. EDFR has had difficulty navigating this variability, all caused by the uncertainty of pricing under Transmission Owner Funding in MISO.
7. The FSA has also added another layer of costs to EDFR projects. The MISO pro forma FSA requires EDFR to post security covering the full amount of payments due under the FSA. Thus, in the first year of the FSA, EDFR must post security covering 20 years of payments. These are not just the cost of the network upgrades. These are the costs of the network upgrades plus amounts the transmission owner has identified for its carrying costs, that is, a rate of return on the cost of the network upgrades. The amount of security will decrease each year, such as in the second year when only 19 more years remain under the FSA. However, the requirement to post security is another cost that EDFR must navigate when deciding whether to proceed with the development of a project and if so, how to address the PPA price. There is a two-fold cost to EDFR to post security. One, EDFR must maintain the security, such as a letter of credit with a financial institution. Financing institutions charge a fee for a letter of credit. This is a fee that EDFR must pay every year. By way of example, if EDFR must post security of \$20 million, on average, the fee will be 1 to 2 million dollars over the term of the FSA. That is an additional \$1-2 million in cost to EDFR and the project. Two, a letter of credit tied up for 20 years directly impacts EDFR’s ability to develop other clean energy resources. As EDFR must post a letter of credit for project after project in MISO, the extent of EDFR exposure begins to mount with fee upon

fee for each required letter of credit, along with each outstanding letter of credit, and it begins to impact the calculus for EDFR to obtain debt to finance other projects. All of this stems from Transmission Owner Funding and the FSA in MISO.

8. In sum, Transmission Owner Funding in MISO has had a tremendous and deleterious impact on EDFR.
9. In the dockets here, New York transmission owners seek to replicate what has been introduced in MISO.
10. EDFR has successfully developed a significant amount of clean energy projects in NYISO region and is committed to developing more projects and resources to help New York reach its Climate Leadership and Community Protection Act goals. EDFR has been awarded four Renewable Energy Credit (“REC”) contracts by the New York State Energy Research and Development Authority (“NYSERDA”), or a total of 480 MWs. EDFR has one of the largest solar generation development pipelines in New York with over 1.6 GW in the NYISO queue. EDFR is concerned about the impact to its business model in New York from Transmission Owner Funding. EDFR will face increased costs for System Upgrade Facilities (“SUFs”) and System Deliverability Upgrades (“SDUs”). EDFR will be required to enter into a FSA, provide security to backstop 20 years of payments that include a rate of return and carry fees to maintain that security. Further, EDFR will have to carry the security, security fees and 20 years of payments on its books. These are significant cost increases that EDFR will have to navigate.
11. Notably, in return for these costs increases, EDFR will not receive any increased benefit in terms of any change in interconnection service. The costs will simply increase. EDFR is going to have to assess how to recoup these costs. The likely vehicle is in an increased rate under a PPA/REC contract that will be passed to consumers in New York. EDFR suspects that this same increased costs in PPA/REC rates will be passed on from all generation developers in New York to consumers.
12. EDFR has four solar projects under long-term contracts with NYSERDA. As noted, combined, the projects total 480 megawatts (MWac) of clean energy for the state and all are expecting to deliver clean electricity by the end of 2023. The projects are as follows:
 - a. Morris Ridge Solar: 177 MWac, which may include up to 83 MW of energy storage, sited on approximately 1,000 acres in the Town of Mount Morris, Livingston County, New York.
 - b. Tracy Solar: 119 MWac sited on approximately 1,000 acres in the towns of Orleans and Clayton in Jefferson County, New York.
 - c. Moraine Solar: 94 MWac sited on approximately 650 acres in the Town of Burns, Allegany County, New York.
 - d. Homer Solar: 90 MWac sited on approximately 600 acres in the Towns of Homer, Cortlandville, and Solon, Cortland County, New York.

Morris Ridge Solar, Morris Ridge Storage, Tracy Solar and Moraine Solar are all part of the current Class Year 2021.

13. New York transmission owners' proposal to apply Transmission Owner Funding to Class Year 2021 will cause substantial harm to EDFR as significant investment capital has been sunk into our Class Year 2021 projects. Since 2018, millions of dollars have been spent on environmental studies, geotech assessment campaigns, detailed engineering work, NYISO interconnection studies, multiple dozens of open houses, negotiations and commitments to local communities, charities, schools, local partners and landowners, deposits on long-term procurement equipment in order to reach contractual commercial operation dates in a manner that ensures safety for the seven hundred workers who, at the peak of construction, will be on our project sites. EDFR did so based on the provisions in the NYISO tariff as they currently exist. Transmission Owner Funding will bring dramatic and unexpected increased costs to EDFR that could render these projects uneconomic. Further, New York transmission owners have not even filed the pro forma FSA with the Commission for review and acceptance. Hence, EDFR cannot even assess the full extent of the cost impact. Suffice it to say, the proposal to apply Transmission Owner Funding to Class Year 2021 projects is causing significant uncertainty and threatens to render the millions in dollars that have been spent to date to be for naught.
14. Further, this increase costs for all contracted projects could not be addressed under the current construct because the buyer, NYSERDA, would have to seek approval from the New York State Department of Public Service and New York Public Service Commission to renegotiate them. Again, this would leave dozens of generation developers, the host towns, landowners and communities exposed to a very high level of uncertainty.
15. At most, if unilateral Transmission Owner Funding is to be allowed in the NYISO, it should apply no earlier than Class Year 2023 in order to avoid uncertainty about upgrade costs for the dozens of projects that were recently awarded REC contracts by NYSERDA. These contracted projects were bid by EDFR and other generation developers based on the current cost provisions in the NYISO tariff, which resulted in the awarding of 20-year contracts. NYSERDA contracted projects are part of Class Year 2021, and other projects awarded contracts last year will be part of Class Year 2022. Therefore, implementing Transmission Owner Funding before the commencement of the Initial Decision Period in the Class Year 2021, as the New York transmission owners propose, would cause severe and irreparable harm to generation developers that have invested millions of dollars to develop their projects. If implemented as suggested, it is EDFR's belief that several contracted projects will have to be abandoned.
16. Last, such an expedited implementation will also harm NYSERDA's current Tier 4 and Tier 1 RFP procurements for which bids are due May 12, 2021 and August 26, 2021, respectively. Generation developers would face significant uncertainty and need to consider how to include this higher cost in submitted bids. A 2023 Class Year implementation would allow for a clean slate and participants would have full knowledge of the applicable funding mechanism while preparing their bids. It would also allow for NYSERDA to plan its budget accordingly.

I declare under penalty of perjury that, to the best of my knowledge, information, or belief, the foregoing is true and correct.

Executed on May 7, 2021



Stephane Desdunes
Senior Director, Development,
US Northeast, Grid Scale Power
EDF Renewables North America

ATTACHMENT C

2020 & 2019 Credit Ratings and/or Borrowing Capabilities of the New York Transmission Owners as Reported on the Companies’ Public Filings Before the Securities and Exchange Commission (“SEC”)

Company	2020 Credit Rating or Other Statements Regarding Borrowing Capability	2019 Credit Rating or Other Statements Regarding Borrowing Capability
<p>Central Hudson Gas & Electric Corp.*</p> <p>*A subsidiary of Fortis Inc.</p>	<p>S&P Senior Unsecured Debt Rating: A-</p> <p><i>2020 Fortis Inc. Form 40-F, SEC, (Feb. 12, 2021) (section titled Credit Ratings), available at:</i></p> <p>https://sec.report/Document/0001666175-21-000007/</p>	<p>S&P Senior Unsecured Debt Rating: A-</p> <p><i>2019 Fortis Inc. Form 40-F, SEC, (Feb. 13, 2020) (section titled Credit Ratings), available at:</i></p> <p>https://sec.report/Document/0001666175-20-000006/</p>
<p>Consolidated Edison Company of New York, Inc. (“ConEd”)</p>	<p>S&P Senior Unsecured Debt Rating: BBB+</p> <p><i>2020 ConEd Form 10-K, SEC, 36 (Feb. 18, 2021) (section titled Capital Resources), available at:</i></p> <p>https://sec.report/Document/0001047862-21-000049/ed-20201231.htm</p>	<p>S&P Senior Unsecured Debt Rating: BBB+</p> <p><i>2019 ConEd Form 10-K, SEC, at 35 (Feb. 20, 2020) (section titled Capital Resources), available at:</i></p> <p>https://sec.report/Document/0001047862-20-000041/ed-20191231x10k.htm</p>
<p>Niagara Mohawk Power Corp. d/b/a</p>	<p>“To support our liquidity requirements and provide backup to commercial paper and other borrowings, we agree loan facilities with financial institutions over and above the value of borrowings that may be required. These committed credit</p>	<p>“To support our liquidity requirements and provide backup to commercial paper and other borrowings, we agree loan facilities with financial institutions over and above the value of borrowings that may be required. These committed</p>

Company	2020 Credit Rating or Other Statements Regarding Borrowing Capability	2019 Credit Rating or Other Statements Regarding Borrowing Capability
<p>National Grid</p>	<p>facilities have never been drawn At 31 March 2020, we had bilateral committed credit facilities of £5,495 million £5,463 million All committed credit facilities were undrawn in 2020 and 2019 . . . Of the unused facilities at 31 March 2020 , £5,495 million (2019: £5,463 million) is available for liquidity purposes, while £277 million (2019: £264 million) is available as backup to specific US borrowings.”</p> <p><i>2019-2020 National Grid USA, Form 20-F, SEC, 195 (June 25, 2020) (for fiscal year ending March 31, 2020), available at:</i> https://sec.report/Document/0001004315-20-000053/.</p>	<p>credit facilities have never been drawn. . . . At 31 March 2019, we had bilateral committed credit facilities of £5,463 million All committed credit facilities were undrawn in 2019 and 2018. . . . Of the unused facilities at 31 March 2019, £5,463 million (2018: £5,438 million) is available for liquidity purposes, while £264 million (2018: £245 million) is available as backup to specific US borrowings.”</p> <p><i>2018-2019 National Grid USA, Form 20-F, SEC, 173 (June 25, 2020) (for fiscal year ending March 31, 2019), available at:</i> https://sec.report/Document/0001004315-20-000053/.</p>
<p>New York State Electric & Gas Corp.,*</p> <p>*A subsidiary of Avangrid</p>	<p>“We have investment grade ratings from Standard and Poor’s, Moody’s and Fitch and we believe that we can raise capital on competitive terms in the investment grade debt capital and/or bank markets.”</p> <p>“AVANGRID and its subsidiaries, NYSEG, RG&E, CMP, UI, CNG, SCG and BGC, each of which are joint borrowers, have a revolving credit facility with a syndicate of banks, or the AVANGRID Credit Facility, that provides for maximum borrowings of up to \$2.5 billion in the aggregate.”</p> <p><i>2020 Avangrid 10-K, SEC, 65 (Mar. 1, 2021), available at:</i></p>	<p>“We have investment grade ratings from Standard and Poor’s, Moody’s and Fitch and we believe that we can raise capital on competitive terms in the investment grade debt capital and/or bank markets.”</p> <p><i>2019 Avangrid 10-K, SEC, 68 (Mar. 2, 2020), available at:</i> https://sec.report/Document/0001634997-20-000017/agr201910-k.htm</p>

Company	2020 Credit Rating or Other Statements Regarding Borrowing Capability	2019 Credit Rating or Other Statements Regarding Borrowing Capability
	https://sec.report/Document/0001634997-21-000024/agr-20201231.htm	
Orange & Rockland Utilities, Inc.* *A subsidiary of ConEd	S&P Senior Unsecured Debt Rating: A- 2020 ConEd Form 10-K, SEC, 36 (Feb. 18, 2021) (section titled Capital Resources), <i>available at:</i> https://sec.report/Document/0001047862-21-000049/ed-20201231.htm	S&P Senior Unsecured Debt Rating: A- 2019 ConEd Form 10-K, SEC, 35 (Feb. 20, 2020) (section titled Capital Resources), <i>available at:</i> https://sec.report/Document/0001047862-20-000041/ed-20191231x10k.htm
Rochester Gas and Electric Corp.* *A subsidiary of Avangrid	““We have investment grade ratings from Standard and Poor’s, Moody’s and Fitch and we believe that we can raise capital on competitive terms in the investment grade debt capital and/or bank markets.” “AVANGRID and its subsidiaries, NYSEG, RG&E, CMP, UI, CNG, SCG and BGC, each of which are joint borrowers, have a revolving credit facility with a syndicate of banks, or the AVANGRID Credit Facility, that provides for maximum borrowings of up to \$2.5 billion in the aggregate.” 2020 Avangrid 10-K, SEC, 65 (Mar. 1, 2021) (section titled Long-Term Capital Resources), <i>available at:</i> https://sec.report/Document/0001634997-21-000024/agr-20201231.htm	““We have investment grade ratings from Standard and Poor’s, Moody’s and Fitch and we believe that we can raise capital on competitive terms in the investment grade debt capital and/or bank markets.” 2019 Avangrid 10-K, SEC, 68 (Mar. 2, 2020), <i>available at:</i> https://sec.report/Document/0001634997-20-000017/agr201910-k.htm