

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

)	
Central Hudson Gas & Electric Corp.)	
Consolidated Edison Company of New York, Inc.,)	
Niagara Mohawk Power Corp. d/b/a National Grid,)	
New York State Electric & Gas Corp.,)	
Orange & Rockland Utilities, Inc., and)	
Rochester Gas and Electric Corp.)	Docket No. EL21-66-000
)	
Complainants)	
)	
v.)	
)	
New York Independent System Operator)	
)	
Respondent)	

COMMENTS OF WIRES

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure,¹ and the Commission’s notices issued on April 16, 2021 and April 22, 2021 in the above-captioned dockets,² WIRES submits the following comments in support of the New York Transmission

¹ 18 C.F.R. §§ 385.212 and 214 (2020).

² Notice of Complaint, Docket No. EL21-66-000 issued on April 12, 2021; 86 *Fed. Reg.* 20,142 (Apr. 16, 2021); Notice Denying Extension of Time, Docket Nos. EL21-66-000 and ER21-1647 issued on April 21, 2021.

Owners’ (“NYTOs”)³ complaint under Section 206 of the Federal Power Act (“FPA”)⁴ against the New York Independent System Operator, Inc. (“NYISO”).⁵ In the complaint, the NYTOs seek relief in the form of a Commission order (1) finding that the NYISO’s Open Access Transmission Tariff, and Market Administration and Control Area Services Tariff (together, “NYISO Tariffs”) are unjust and unreasonable and (2) directing the NYISO to amend certain provisions of the NYISO Tariffs within 90 days of the Commission’s order to fully implement a just and reasonable replacement rate that allows the NYTOs to self-fund certain System Upgrade Facilities and System Deliverability Upgrades (“interconnection upgrades”) on their transmission systems driven by generator interconnections (“TO Funding Mechanism”).

³ The NYTOs include: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation d/b/a National Grid; New York State Electric & Gas Corporation; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

⁴ 16 U.S.C. § 824e.

⁵ *Central Hudson Gas & Elec. Corp., et al. v. NYISO*, Docket No. EL21-66-000 (filed Apr. 9, 2021).

I. COMMUNICATIONS

In accordance with Rule 203(b)(3) of the Commission’s Rules of Practice and Procedure, all communications and correspondence regarding these proceedings should be directed to:

Larry Gasteiger
Executive Director
WIRES
529 Fourteenth Street, NW
Suite 1280
Washington, DC 20045
lgasteiger@exec.wiresgroup.com
(703) 980-5750

II. INTRODUCTION

WIRES is an international non-profit trade association of investor-, publicly-, and cooperatively-owned transmission providers and developers, transmission customers, regional grid managers, and equipment and service companies. WIRES promotes investment in electric transmission and consumer and environmental benefits through development of electric transmission infrastructure.⁶ Since its inception, WIRES has focused on supporting investment in needed and beneficial transmission infrastructure – investments that Congress and the Commission have recognized are critical to establish a resilient, reliable, cost-effective, modern, and clean bulk power system.

⁶ For more information about WIRES, please visit www.wiresgroup.com.

On April 9, 2021, the NYTOs filed the instant complaint against the NYISO seeking a Commission order finding the NYISO Tariffs unjust and unreasonable, and directing the NYISO to submit amendments to its tariffs to fully implement the TO Funding Mechanism within 90 days of the Commission order. The TO Funding Mechanism would provide the NYTOs the opportunity to self-fund the capital costs associated with interconnection upgrades driven by generator interconnections, allowing them to earn a reasonable rate of return on those assets. In particular, the TO Funding Mechanism would conform the NYISO Tariffs with existing law⁷ and provide the NYTOs an opportunity to earn a rate of return on transmission property that they are obligated to own, operate, and maintain to compensate them for the risks that they undertake in doing so. WIRES hereby submits the following comments in support of the NYTOs' complaint.⁸

III. COMMENTS

A. The TO Funding Mechanism Aligns with the Biden Administration's Climate Goals and the State of New York's Nation-Leading Climate Targets.

Both the Biden administration and the State of New York have ambitious greenhouse gas emission reduction goals, and to be achieved, these goals require expedient interconnection of over 18,000 megawatts of clean energy resources by 2035 in

⁷ *Ameren Servs. Co. v. FERC*, 880 F.3d 571 (D.C. Cir. 2018) (“*Ameren*”); *Fed. Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (“*Hope*”); *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm’n*, 262 U.S. 679 (1923) (“*Bluefield*”).

⁸ This filing is supported by the full supporting members of WIRES but does not necessarily reflect the views of the RTO/ISO associate members of WIRES.

the State of New York alone. Swift and unprecedented expansion of the New York Transmission System is required to interconnect thousands of megawatts of renewable electric generation to replace aging generation facilities that are nearing retirement.

On April 22-23, 2021, President Biden and Vice President Harris hosted forty foreign leaders at the Leaders' Summit on Climate where President Biden announced that the United States will target reducing emissions by 50-52 percent by 2030 compared to 2005 levels. To achieve this goal, the President boldly proclaimed that the U.S. electric power sector will need to go further and work faster to transform its energy systems.⁹ In corresponding fashion, the State of New York through its Climate Leadership and Community Protection Act requires a transition to a zero emitting electricity sector by 2040.¹⁰ Neither of these targets can be met without the expedient expansion of the New York Transmission System necessary to allow for the reliable and economic interconnection of the significant amounts of renewable generation required to attain these goals. However, the NYTOs, through their efforts to coordinate the system planning and solutions necessary for the prompt and reliable interconnection of network resources can make the necessary accommodations to support this exciting clean energy transition.

⁹ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/23/fact-sheet-president-bidens-leaders-summit-on-climate/> (*last visited*, Apr. 24, 2021).

¹⁰ N.Y. Statutes, Chapter 106 of the laws of 2019 (July 18, 2019).

These efforts will be made but cannot continue to be made on a nonprofit basis or achieved if significant enterprise risks are left uncompensated because it would undermine the TOs' ability to attract the capital required to provide safe and reliable service and maintain the financial soundness of the Companies' operations. The TO Funding Mechanism remedies this deficiency in the NYISO OATT and is a solution that will help enable the achievement of state and federal climate targets.

B. The NYISO Tariffs Are Unjust and Unreasonable Because They Are Not Consistent with the Law as Set Forth in *Ameren*

The existing approach to funding generator interconnection driven interconnection upgrades in NYISO compels the NYTOs to own and operate expansions to their transmission networks on a non-profit basis by denying them the opportunity to earn a rate of return on those transmission assets. This outcome is clearly unlawful; as the D.C. Circuit recognized in *Ameren*, requiring a public utility to own and operate generator interconnection driven network upgrades on a non-profit basis violates the capital attraction standards of *Hope* and *Bluefield*. The Supreme Court has long held that a public utility shall be afforded the opportunity to earn a reasonable rate of return that is sufficient to attract capital and to sustain the financial integrity of the enterprise,¹¹ and the NYISO Tariffs, as currently written, fail to meet this standard. Specifically, they compel the NYTOs to assume certain uncompensated risks and costs associated with their ownership and operation of interconnection upgrades. For instance, the NYTOs face

¹¹ *Ameren*, 880 F.3d at 581 (citing *Hope*, 320 U.S. at 603).

regulatory risks, reliability risks, cybersecurity risks, environmental risks, and operational risks through their ownership and operation of interconnection upgrades for which they currently do not earn a rate of return. As such, the NYISO Tariffs are unjust and unreasonable.

C. The TO Funding Mechanism and Implementing Amendments Would Ensure a Just and Reasonable Replacement Rate

The TO Funding Mechanism and implementing amendments would lead to a just and reasonable replacement rate that is consistent with the law. Court and Commission precedent clearly establish that a public utility must be afforded the right to earn a reasonable rate of return for the risks and costs associated with its ownership, operation and maintenance of network upgrades.¹² On remand of *Ameren*, the Commission corrected its prior orders that directed transmission owners to fund network upgrades on a non-profit basis and accept additional risk-bearing responsibility through the expansion of their network with zero return, which violates *Hope* and *Bluefield*.¹³ The Commission took care to ensure that a transmission owner could not exercise its right to self-fund network upgrades in a preferential or unduly discriminatory manner, and the effect of its

¹² *Ameren*, 880 F.3d at 581.

¹³ *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,158 (2018), *order on briefing, compliance and reh'g*, 169 FERC ¶ 61,233 (2019) (“*Ameren* Remand Order”).

order on remand would not harm the ability of transmission owners to attract future capital.¹⁴

Consistent with the *Ameren* Remand Order, the TO Funding Mechanism is a just and reasonable replacement rate and the implementing amendments would cure all other unjust and unreasonable deficiencies related to the funding of interconnection upgrades in the NYISO Tariffs because they would provide the NYTOs the opportunity to earn a reasonable rate of return on the capital costs associated with interconnection upgrades. This rate of return would ensure the NYTOs are compensated for the risks and costs associated with owning, operating, and maintaining interconnection upgrades driven by generator interconnections. Recovery of a rate of return on this basis is consistent with the law and the *Hope* and *Bluefield* capital attraction standards. Moreover, the TO Funding Mechanism and associated implementing amendments would ensure the NYISO Tariffs are in harmony with and support the ambitious federal and state climate policies to reduce greenhouse gas emissions by expediting the integration and interconnection of zero emission emitting clean energy resources.

IV. CONCLUSION

For the foregoing reasons, WIRES urges the Commission to grant the NYTOs' complaint, find the NYISO Tariffs unjust and unreasonable, and direct the NYISO to submit implementing amendments to the NYISO Tariffs to fully implement the TO

¹⁴ *Ameren* Remand Order at P 28.

Funding Mechanism as a just and reasonable replacement rate that is consistent with the law and in harmony with federal and state public policy.

Respectfully submitted,

/s/ Larry Gasteiger

Larry Gasteiger
Executive Director
WIRES
529 Fourteenth Street, NW
Suite 1280
Washington, DC 20045
lgasteiger@exec.wiresgroup.com
(703) 980-5750

May 7, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

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

/s/ Larry Gasteiger

Larry Gasteiger
Executive Director
WIRES
529 Fourteenth Street, NW
Suite 1280
Washington, DC 20045