

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

The New York Transmission Owners	)	Docket No.	ER21-1647-000
	)		
	)		

**COMMENTS OF WIRES**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure,<sup>1</sup> and the Commission’s notices issued on April 9, 2021 and April 22, 2021 in the above-captioned docket,<sup>2</sup> WIRES submits the following comments in support of the New York Transmission Owners’ (“NYTOs”)<sup>3</sup> request pursuant to Section 205 of the Federal Power Act (“FPA”)<sup>4</sup> to amend Attachment S to the New York Independent System Operator, Inc.’s (“NYISO”) Open Access Transmission Tariff (“OATT”) to adopt a transmission owner funding mechanism for certain System Upgrade Facilities and System Deliverability

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<sup>1</sup> 18 C.F.R. §§ 385.212 and 214 (2020).

<sup>2</sup> Combined Notice of Filings issued in Docket No. ER21-1647-000 (Apr. 9, 2021); Notice Denying Extension of Time, Docket Nos. EL21-66-000 and ER21-1647-000 issued on April 21, 2021.

<sup>3</sup> 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.

<sup>4</sup> 16 U.S.C. § 824d.

Upgrades (“interconnection upgrades”) to their transmission systems driven by generator interconnections (“TO Funding Mechanism”).<sup>5</sup>

## **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:

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## **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.<sup>6</sup> Since its inception, WIRES has

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<sup>5</sup> *The New York Transmission Owners*, Amendment to the NYISO OATT Adopting TO Funding Mechanism, Docket No. ER21-1647-000 (filed Apr. 9, 2021).

<sup>6</sup> For more information about WIRES, please visit [www.wiresgroup.com](http://www.wiresgroup.com).

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.

On April 9, 2021, the NYTOs filed to amend Section 25.5.4 of the NYISO OATT to provide the NYTOs the opportunity to fund the capital costs associated with interconnection upgrades driven by generator interconnections to earn a rate of return on those assets. In particular, the NYTOs’ request would conform the NYISO OATT to existing law<sup>7</sup> 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 TO Funding Mechanism.<sup>8</sup>

### **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

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<sup>7</sup> *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*”).

<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> 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 those 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.

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

<sup>10</sup> 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 TO Funding Mechanism is Just and Reasonable**

The TO Funding Mechanism is just and reasonable because it 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.<sup>11</sup> On remand of *Ameren*, the Commission corrected its prior orders that directed transmission owners to fund network upgrades on a non-profit basis and to accept additional risk-bearing responsibility through the expansion of their network with zero return, which violates *Hope* and *Bluefield*.<sup>12</sup> 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

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<sup>11</sup> *Ameren*, 880 F.3d at 581.

<sup>12</sup> *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”).

discriminatory manner, and the effect of its order on remand would not harm the ability of transmission owners to attract future capital.<sup>13</sup>

The TO Funding Mechanism is just and reasonable because it provides the NYTOs the opportunity to earn a rate of return on the capital costs associated with interconnection upgrades, consistent with *Ameren*. 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 is in harmony with and supports the ambitious federal and state climate policies that seek to reduce greenhouse gas emissions by ensuring the safe and reliable integration and interconnection of zero emission emitting clean energy resources on the New York Transmission System.

#### **IV. CONCLUSION**

For the foregoing reasons, WIRES urges the Commission to accept for filing the NYTOs' request to establish a TO Funding Mechanism in the NYISO OATT because it

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<sup>13</sup> *Ameren* Remand Order at P 28.

is just and reasonable, consistent with the law, and in harmony with federal and state public policy.

Respectfully submitted,

/s/ Larry Gasteiger

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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

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