



be allocated on a regional basis under the provisions of the Open Access Transmission Tariff (“OATT”) of the New York Independent System Operator, Inc. (“NYISO”).<sup>3</sup> Accordingly, any regional allocation of Local Transmission upgrade costs such as that proposed in the September 2021 Order is preempted by FERC’s exclusive jurisdiction over transmission in interstate commerce under the Federal Power Act.<sup>4</sup>

In addition, LS Power requests that the Commission grant clarification of the September 2021 Order to confirm that facilities operating at over 200 kV, including certain transmission upgrades proposed by the Long Island Power Authority (“LIPA”) and the Consolidated Edison Company of New York, Inc. (“Con Edison”), do not constitute Local Transmission and therefore not qualify under the September 2021 Order.

### **BACKGROUND**

In the Accelerated Renewable Energy Growth and Community Benefit Act (“AREGCB Act”), the Legislature charged the Commission with development of policies to promote the development of the investments in new transmission and distribution facilities required to achieve the clean energy goals of the Climate Leadership and Community Protection Act of 2019 (“CLCPA”). The AREGCB Act requires the Commission to establish a “Distribution and Local Transmission Capital Plan” for each utility and a “State Bulk Transmission Investment Plan” to be submitted by the Commission to the state grid operator for appropriate incorporation into the state grid operator's public policy transmission planning process. “Local Transmission Upgrades”

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<sup>3</sup> *Transmission Planning and Cost allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011) (“Order No. 1000”), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132 (“Order No. 1000-A”), *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

<sup>4</sup> *See, e.g., New York v. FERC*, 535 U.S. 1, 16-17 (2001) (“Section 201(b) of the FPA states that FERC's jurisdiction includes ‘the transmission of electric energy in interstate commerce’ and ‘the sale of electric energy at wholesale in interstate commerce.’”).

are defined in the AREGCB Act as “upgrade[s] to a local transmission facility as defined in the tariff of the state grid operator.”<sup>5</sup>

The Commission addressed the distinction between these two planning requirements in its Order On Transmission Planning Pursuant To The Accelerated Renewable Energy Growth And Community Benefit Act issued in this proceeding on May 14, 2020 (the “May 2020 Order”), where it preliminarily defined Local Transmission in the following terms:

For purposes of this discussion, we understand “local transmission” to refer to transmission line(s) and substation(s) that generally serve local load, and transmission lines which transfer power to other service territories and operate at less than 200 kV. However, as the Utilities consider the issues outlined in this order, we recognize that an alternative definition may emerge.<sup>6</sup>

On November 2, 2020, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. (“Con Edison”), Long Island Power Authority (“LIPA”), Niagara Mohawk Power Corporation d/b/a National Grid, New York State Electric & Gas Corporation, Orange & Rockland Utilities, Inc. and Rochester Gas and Electric Corporation (collectively, the “Joint Utilities”) submitted their Transmission and Distribution Investment Working Group Report outlining the projects they proposed to construct to enhance transmission service for renewable energy. In that report, the Joint Utilities divided their proposed Local Transmission and Distribution (“LT&D”) projects into two phases based on the availability of regulatory approval and funding mechanisms.

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<sup>5</sup> Under the NYISO OATT, NYISO is responsible for planning Bulk Power Transmission Facilities (“BPTF”), defined by reference to the New York State Reliability Council, and the New York utilities are responsible for planning non-BPTF.

<sup>6</sup> Case 20-E-0197, *Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*, Order On Transmission Planning Pursuant To The Accelerated Renewable Energy Growth And Community Benefit Act, slip op. at 3 n.4 (Issued and Effective May 14, 2020) (the “May 2020 Order”).

Despite the guidance provided by the Commission in its May 2020 Order, several of the Phase 2 LT&D projects proposed by the Joint Utilities involve transmission facilities that would operate at voltages of 200 kV or above. For example, LIPA proposed a number of transmission projects that would operate at 345 kV, including converting existing 138 kV lines from East Garden City to Newbridge Road to Ruland Road from 138 kV to 345 kV and construction of a new 345 kV inter-tie between LIPA and Con Edison.<sup>7</sup> Similarly, Con Edison's proposed Phase 2 LT&D projects include its NYC Clean Energy Hub #1 and NYC Clean Energy Hub #2, estimated to cost billions of dollars, and expected to provide deliverability of over 5,000 MW.<sup>8</sup> While the Joint Utilities' filing does not detail the precise nature of these upgrades, the substantial deliverability increases resulting therefrom strongly suggest that the facilities will operate at voltages of 200 kV or more.

The September 2021 Order also directed the Joint Utilities to submit revised Phase 2 proposals for the construction of LT&D upgrades that would “fully eliminate the curtailment risk for the Near-Term CLCPA Need and potentially enable additional headroom availability beyond the Near Term CLCPA Need.” Meeting these requirements could well require the utilities to propose transmission upgrades of 200 kV or above.

In reviewing the proposals submitted by the Joint Utilities, the Commission found, among other things, that the benefit cost analysis developed by the Joint Utilities to support their transmission upgrade proposals was flawed and needed to be revised and that the Joint Utilities should thereafter develop and file a coordinated portfolio of Phase 2 LT&D projects.<sup>9</sup> The Commission also directed the Joint Utilities to develop and file the details of a mechanism to

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<sup>7</sup> New York Utilities Joint Report at 135.

<sup>8</sup> New York Utilities Joint Report at 116.

<sup>9</sup> September 2021 Order, slip op. at 48.

allocate the costs of these Phase 2 LT&D projects on a volumetric basis to all load statewide. Importantly, however, the Commission did not direct the Joint Utilities to remove from their Phase 2 LT&D proposals any facilities that would operate at voltages of 200 kV or above or that otherwise do not qualify as “Local Transmission.”

### ANALYSIS

#### **I. THE COMMISSION SHOULD GRANT REHEARING OF ITS DETERMINATION TO APPROVE REGIONAL ALLOCATION OF LOCAL TRANSMISSION COSTS OUTSIDE OF THE REGIONAL PLANNING PROCESS IN THE NYISO OATT**

Under Order No. 1000, regional transmission facilities are those that must be regionally planned, competitively selected, and eligible for regional cost allocation.<sup>10</sup> As FERC explained in Order No. 1000-A, any allocation of transmission costs to more than one transmission owning entity is by definition a regional cost allocation subject to the requirements of Order No. 1000:

In general, any regional allocation of the cost of a new transmission facility outside a single transmission provider’s retail distribution service territory or footprint, including an allocation to a “zone” consisting of more than one transmission provider, is an application of the regional cost allocation method and that new transmission facility is not a local transmission facility.<sup>11</sup>

In addition, the definition of “LTP” provides further support for this conclusion. Section 31.1 of the NYISO OATT defines the term “LTP” to mean “The Local Transmission Owner Plan, developed by each Transmission Owner, which describes its respective plans that may be under consideration or finalized for its own Transmission District.”

By providing its own system of *regional* cost allocation for upgrades, the Commission has moved those facilities to the regional transmission category and thereby subjected them to the regional planning requirements of the NYISO OATT. Indeed, the Commission was quite clear in

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<sup>10</sup> Order No. 1000 at PP 63-64.

<sup>11</sup> Order No. 1000-A at P. 424.

the September 2021 Order that the upgrades it seeks to fund through its proposed new regional cost allocation mechanism are being undertaken because of their benefits to the New York region as a whole and not just for the benefit of the customers of the individual utilities making such investments:

The Commission agrees with the Utilities that, in this context, the statewide allocation to all customers of the Phase 2 investment costs is appropriate – both for new projects and incremental investments to “business as usual” projects that capture CLCPA benefits. Allocating these costs pursuant to a volumetric load share ratio is consistent with the funding principles underlying the existing REC, OREC and ZEC purchase obligations.<sup>12</sup>

Because these upgrades will benefit customers state-wide and are proposed to be allocated on a state-wide load ratio share basis, they cannot be classified as Local Transmission upgrades exempted from the NYISO’s regional transmission planning processes. Instead, any upgrades to these FERC-jurisdictional transmission facilities must be planned and allocated through the regional planning procedures and cost allocation provisions of the NYISO OATT, including the requirement for competitive solicitations.<sup>13</sup>

This is particularly important in light of the Commission’s previously noted directive to the New York utilities to propose transmission upgrades that “fully eliminate the curtailment risk for the Near-Term CLCPA Need and potentially enable additional headroom availability beyond the Near Term CLCPA Need.”<sup>14</sup> The upgrades required to meet these ambitious goals are likely to require substantial investments in new facilities beyond what is contemplated as eligible for the

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<sup>12</sup> September 2021 Order, slip op. at 22-23 (footnotes omitted).

<sup>13</sup> New York State’s experience with the NYISO competitive transmission process has been a success. In the two processes completed to date, proposals were selected that each included innovative technical features, and in each case also included cost containment, reducing risk and costs for consumers, and included milestones for timely completion of projects.

<sup>14</sup> September 2021 Order, at 37-38.

Distribution and Local Transmission Capital Plan under the AREGCBA Act. This objective can be accomplished through the existing planning process without a need to create a new category of Phase 2 LT&D Upgrades. If the Commission desires transmission facility proposals designed to completely eliminate renewable energy curtailment, a Public Policy Transmission Need must be declared and the need referred to the NYISO, which also provides for regional cost allocation as desired by the Commission.

**II. THE COMMISSION SHOULD CLARIFY THAT FACILITIES OPERATING AT 200 kV AND ABOVE MAY NOT PARTICIPATE IN ITS PROPOSED NEW REGIONAL COST ALLOCATION SCHEME**

The failure of the September 2021 Order to address proposals by LIPA and Con Edison to seek approval of transmission upgrades in excess of 200 kV in the Commission's LT&D process is likely to be seen by the Joint Utilities and others as an expansion of the LT&D definition in the May 2020 Order. The Commission should act promptly to grant clarification to dispel this impression. Any Commission decision to permit New York utilities to recover the costs of such high-voltage projects through a state-wide assessment established by the Commission would clearly interfere with FERC's exclusive jurisdiction over transmission services under the FPA.<sup>15</sup> The Commission should make clear to all the New York utilities that they should not undertake needless and expensive planning for such projects.

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<sup>15</sup> See, e.g., *New York v. FERC*, 535 U.S. 1, 16-17 (2001).

## CONCLUSION

**WHEREFORE**, for the foregoing reasons, LS Power Grid New York Corporation I respectfully requests:

1. that the Commission grant rehearing of its determination in the September 2021 Order to establish a state-wide cost allocation process for Local Transmission upgrades; and
2. that the Commission clarify that nothing in the September 2021 Order permits projects operating at over 200 kV to qualify for consideration as Phase 2 Local Transmission projects.

Respectfully submitted,

/s/

George M. Pond, Esq.  
Barclay Damon, LLP  
80 State Street  
Albany, New York 12207  
TEL: 518.429.4232  
FAX: 518.427.3486  
[gpond@barclaydamon.com](mailto:gpond@barclaydamon.com)

Attorney for LS Power Grid New York  
Corporation I

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