

MAY 10 2011

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF ELECTRICITY DELIVERY AND ENERGY RELIABILITY

Electricity Delivery and  
Energy Reliability

International Transmission Company d/b/a/ ) Docket No. PP-230-4  
ITC*Transmission* )

RESPONSE OF THE NEW YORK TRANSMISSION OWNERS TO ANSWER OF  
ITCTRANSMISSION COMPANY

On April 20, 2011, International Transmission Company d/b/a ITC*Transmission* ("ITC") filed an answer opposing the intervention filed by Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation (referred to herein as the "New York Transmission Owners") in the above-captioned proceeding. The New York Transmission Owners hereby respond to ITC's answer.

I. BACKGROUND

On September 26, 2000, the Department of Energy ("DOE") issued a Presidential Permit to ITC authorizing it to construct, operate, maintain and connect electric transmission facilities at the international border of the United States and Canada pursuant to Presidential Permit No. PP-230-3. On January 5, 2009, ITC applied to the DOE to amend Presidential Permit No. PP-230-3 ("Amendment Application") to authorize it to replace two phase shifting transformers and a third transformer ("replacement PARs"). On February 10, 2009, the DOE issued notice of the Amendment Application in the Federal Register noting that it is accepting comments, protests or

requests to intervene by March 12, 2009.<sup>1</sup> On April 20, 2011, ITC opposed the April 5, 2011 motion to intervene of the New York Transmission Owners arguing that the New York Transmission Owners should have intervened by March 12, 2009 as it was “obviously ‘reasonably foreseeable’ that operational issues would be addressed” in the operational documents that would be subsequently submitted.

## **II. RESPONSE**

Even though the DOE issued notice of ITC’s application to put the replacement PARs in service on February 10, 2009, it was not until October 20, 2010 that ITC and the Midwest Independent System Operator, Inc. (“MISO”) submitted a filing before the Federal Energy Regulatory Commission (“FERC” or “Commission”) to allocate costs of the replacement PARs to other regions, including the New York Independent System Operator (“NYISO”).<sup>2</sup> On December 30, 2010, after denying numerous protests of the October 20 Filing, the Commission set the October 20 Filing for hearing and settlement discussions on January 31, 2011. Until this FERC proceeding calling for partial allocation of the replacement PARs’ costs to the NYISO was initiated, there was no need for the New York Transmission Owners to intervene in the DOE proceeding or to comment on operational matters relating to the replacement PARs. In 2009, any “reasonably foreseeable” operational matters relating to the replacement PARs remained a matter between the MISO, the Independent Electricity System Operator, and MISO stakeholders.

Furthermore, it was only recently that ITC took the position that DOE, and not FERC, has exclusive jurisdiction over the replacement PARs operating agreements. Thus, while ITC is seeking FERC approval to require the NYISO and affected parties to pay the costs of the

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<sup>1</sup> Application to Amend Presidential Permit; International Transmission Company, d/b/a ITC Transmission, 74 Fed. Reg. 6606 (Feb. 10, 2009).

<sup>2</sup> Proposed Revisions to the Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff, Docket No. ER11-1844-000 (Oct. 20, 2010) (“October 20 Filing”).

replacement PARs based on the way the replacement PARs will operate, ITC has also now taken the position that the operating agreements are solely under DOE jurisdiction and that DOE should not allow the New York Transmission Owners to intervene in the proceeding in which the operating agreements will be considered. ITC cannot have it both ways. Having sought to force the NYISO and its stakeholders to partially pay for the replacement PARs, they should not be allowed to preclude the New York Transmission Owners from intervening in the DOE proceeding or being heard with respect to the operation of the replacement PARs.

The New York Transmission Owners would prefer to allow ITC to control the operation of the replacement PARs in their sole discretion and for their sole benefit if ITC would be content to pay for the privilege of doing so. Absent ITC's agreement to withdraw its request at FERC to force New York parties to pay for a portion of the replacement PARs, our intervention is entirely appropriate and should be granted.

### III. CONCLUSION

WHEREFORE, in view of the foregoing, the New York Transmission Owners respectfully request that the DOE disregard ITC's answer and grant the New York Transmission Owners' request to intervene with all the rights that attend to such status.

Respectfully submitted,

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Dated: May 10, 2011

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Washington, D.C. this 10th day of May 2011.

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