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US Department of Energy

DEC 8 2011

**Electricity Delivery and
Energy Reliability**

Patricia Hoffman
Assistant Secretary
Office of Electricity Delivery and Energy Reliability
Department of Energy
1000 Independence Avenue
Washington, D.C. 20585

Re: Presidential Permit Docket No. PP-230-4 (Michigan/Ontario PARS)

Dear Pat:

As you know, on November 4, 2011, a number of the parties to this proceeding filed a comprehensive settlement of this matter. The settlement is designed to achieve the mutual goals of allowing the Michigan/Ontario PARS to go into operation but also condition any Presidential Permit governing these facilities on a procedural course for a future fact finding process, if necessary, to address the impacts of the PARS operations on costs to U.S. consumers using the U.S. transmission grid. Only with this agreement were the interested parties willing to forego their opposition to the issuance of the Permit, withdraw their prior opposition comments, and forego filing additional comments regarding the Operating Protocols for the PARs. The record will demonstrate that ITC submitted the Operating Protocols after parties had intervened and after comments on this matter had been filed.

Specifically, PJM, the Ohio Public Utilities Commission, American Municipal Power, Inc., Old Dominion Electric Cooperative, Pepco Holdings, Inc., Baltimore Gas & Electric Company, American Electric Power Service Corporation, and First Energy Service Company, indicated in preliminary filings that, absent the settlement, the proposed Operating Protocols governing the PARs, which have been filed with the Department in this proceeding, could lead to a result which would cause adverse impacts and harms to parties on the U.S. side of the border. To balance competing concerns, PJM, ITC, the Midwest ISO, and the other parties identified above, in good faith entered into a settlement agreement which recognizes these claims and provides a cooperative path forward to address them, if that becomes necessary, including exchanges of data and a fact finding investigation if and only if necessary after cooperative discussions. The settlement agreement incorporates these procedures as a condition on the Permit. No party has opposed this settlement agreement.

Moreover, prior to filing the settlement agreement, ITC provided to the Department, with PJM's support, its evaluation that the procedures proposed in the settlement agreement, including the Department's referral to FERC to conduct initial fact finding processes, are supported by DOE precedent. ITC informed the Department as follows:

DOE has authority to delegate matters of this nature to the FERC pursuant to section 642 of the DOE Reorganization Act, which allows the Secretary to "delegate any of his functions to such officers and

employees of the Department as he may designate." In the past, DOE has delegated to the FERC questions concerning open access to Presidential Permit facilities. See, e.g., 2006 DOE Delegation Order. A partial delegation procedure also was used in the past in the *Pacific Indonesia* case when DOE was first established in 1978. That was a pending LNG import case that the Federal Power Commission was adjudicating prior to the establishment of DOE. Under the DOE Act, the case was given to the Secretary of Energy. The Secretary delegated the case to the FERC for development of the evidentiary record and an initial decision, after which the case would be returned to DOE for final decision. See 10 C.F.R. 1000.1(c)(3). (copy attached). ITC and PJM believe the DOE's approval of the procedures the settlement describes would be consistent with these authorities.

Indeed, before filing the settlement agreement, we sought advice from both the FERC's general counsel and DOE's counsel to make sure there were no legal impediments to the Department accepting this settlement agreement as a resolution of this matter.

I am writing with two purposes in mind. For one, we would like to suggest a meeting, with all parties invited, so that any questions or issues that the Department might have with the proposed settlement may be discussed with the parties prior to Department action. The Department's action in this case will be critical to sending a signal that the Department encourages the parties to work together and settle complex matters. On the other hand, modification or rejection of all or parts of the settlement could send a very different signal — inviting a more litigious approach to this and future Permit applications. We believe that a meeting, even if formally transcribed, could help to address questions concerning the intrrelated provisions of the settlement.

Second, I wanted to bring to your attention that paragraph 9 of the settlement agreement provides:

If DOE makes changes to this Settlement Agreement that are not acceptable to any signatory, then DOE shall reopen the comment period in this proceeding for an additional 21 days and shall thereafter rule on the merits of ITC's application to amend its Presidential Permit without regard to this Settlement Agreement which shall otherwise be considered null and void.

In short, the parties and the applicant, ITC, have agreed that should the Department modify the settlement in any way, PJM, the State of Ohio, and other parties should have a full and complete opportunity to comment upon the Operating Protocols which were filed subsequent to motions to intervene in this proceeding. PJM and other parties held off, at the urging of ITC, from filing their concerns with the underlying Operating Protocols in order to underscore our support for the settlement. As ITC, with PJM's concurrence, expressly stated in its transmittal of the settlement agreement to the Department:

Since a settlement is now being submitted which, if approved, will resolve this case, it is unnecessary and could be counterproductive for additional comments (and reply comments) on ITC's permit amendment application to be filed At the same time, ITC

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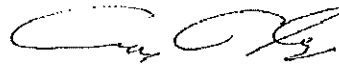
understands that potential commenters may be reluctant to forego submitting comments without some assurance that they will be able to do so later if the settlement is not approved. Accordingly, ITC requests that upon receipt of this filing, DOE suspend the present comment period until after the settlement is acted upon, with the understanding that a comment period will be reinstated if the settlement is not approved.

Should the Department desire to change the settlement or otherwise refuse to accept its provisions in their entirety, then fundamental due process requires that the Department put the Operating Protocols out for comment before ruling on the overall Permit application, as requested by ITC. The applicant's agreement to this approach (and the lack of any opposition to it) underscores the recognition of the need for a fair and balanced process to address the Permit application, if the Department does not accept the settlement agreement.

We hope the Department can recognize the value of the settlement reached by all parties, in good faith, in this complex matter. We hope that a meeting and further discussion can help resolve any lingering issues that may arise and allow this good faith effort at compromise to be recognized, which takes account of the interests of all parties on the U.S. side of this cross-border facility and is consistent with the public interest.

Thank you for your consideration of this request.

Very truly yours,



Craig Glazer
Vice President, Federal Government Policy
PJM Interconnection, L.L.C.

CC: Lauren Azar, DOE Office of the Secretary
Steven Porter, DOE Office of General Counsel
Bryan Mills, DOE
Christopher Lawrence, DOE
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All Parties of Record