

United States of America  
Before the  
Department of Energy

SEP 23 2011

Electricity Delivery and  
Energy Reliability

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INTERNATIONAL TRANSMISSION	)	
COMPANY d/b/a	)	Docket No. PP-230-4
ITC TRANSMISSION	)	

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COMMENTS OF BALTIMORE GAS AND ELECTRIC COMPANY  
ON SUPPLEMENTAL FILING

Pursuant to the "Notice Of Supplemental Filing" ("Notice") issued herein on August 18, 2011 by the Department of Energy ("DOE"), Baltimore Gas and Electric Company ("BGE") hereby respectfully submits comments on the supplemental documents filed by International Transmission Company, d/b/a ITC *Transmission* ("ITC") in furtherance of its application to amend Presidential Permit No. PP-230-3.

ISSUES PRESENTED

1. Should the proposed Phase Angle Regulators ("PARs") be operated in such a way as to control loop flows across the international border at the interface of the various affected facilities to match actual flows with scheduled flows at all times, that is, so as to prevent **any** loop flows across the Michigan-Ontario border at all times, including **periods of no congestion** on Canadian systems, even though this deliberate manipulation of flows increases costs to PJM Interconnection, L.L.C. ("PJM") (and the New York Independent System Operator transmission system) in return for no benefit to anyone else, or in return for a benefit exclusively to ITC and Hydro One Networks, Inc. ("Hydro One") to be subsidized by American load in non-ITC service areas?

2. Should the existing experience with the PAR that has been in operation under this operational feature be examined to answer Issue No. 1 before acting on ITC's amendment application?
3. Should DOE exercise its Delegation Authority to the Federal Energy Regulatory Commission ("FERC") to reach this factual determination?

### **SUMMARY**

ITC is proposing to replicate a flawed operational procedure with its newly proposed PARs that can be shown to be flawed from data adduced by ITC's operation of the PAR approved in the Presidential Permit that ITC seeks to amend. ITC is incorrect in stating that it is necessary to first approve its amendment application in order to obtain data to evaluate if there is a flaw in its proposed operations of the PARs.

Instead, ITC can be shown to be causing unjustified congestion on the PJM system by the PAR operations that it has worked out with Hydro One and Midwest Independent Transmission Systems Operator, Inc. ("MISO") without consultation with PJM and its members. FERC possesses the expertise to render factual determinations on whether unjust cost impositions are resulting from ITC's preferred operational methodology. DOE has the authority to delegate to FERC the role of making these factual determinations, and DOE should exercise this authority before processing ITC's amendment application any further.

### **BACKGROUND**

On April 5, 2011, BGE filed a petition to intervene and comments herein. By that pleading, BGE explained that it is a transmission owner member of PJM, a Regional Transmission Owner ("RTO") that is directly affected by this Presidential Permit to

construct, operate, maintain and connect electric transmission facilities across the United States international border with Canada, and ITC's proposed amendment thereto. BGE further expressed its concern with the incomplete aspects of ITC's proposed amendment to replace a failed 675-MVA PAR, a phase-shifting transformer, with two 700-MVA PARs, which connect the Bunce Creek Station, located in Marysville, Michigan, with Hydro One's Scott Transformer Station, located in Sarnia, Ontario (identified as the B3N facility).

Specifically, BGE noted that the proposed ITC-Hydro One joint operating agreement to govern the proposed PARs had not yet been filed by ITC. By its Notice, the DOE announced that ITC submitted a supplemental filing on August 9, 2011 that contains the proposed operational agreements required to complete the ITC amendment application, including (1) a letter of agreement between ITC and MISO, an RTO adjoining PJM, assigning functional control of the subject facilities at the Bunce Creek Station to MISO, and (2) an amended Interconnection Facilities Agreement ("IFA") between ITC and Hydro One by which actual flows will equal scheduled flows on the Michigan-Ontario facilities after the proposed PARs go into operation. The Notice further indicates that ITC has requested that the proposed replacement PARs be put into effect now subject to the possible establishment of modified operational procedures after parties have been better able to assess the impacts of PARs operations.

### **DISCUSSION**

The supplemental documents propose to give operational control of the proposed PARs to MISO with PJM being the passive recipient of whatever congestion costs are imposed on the PJM rate zones. Essentially, MISO has been directed by ITC to

operate the PARs to protect ITC and other MISO rate zones. Indeed, the ITC/MISO letter agreement (p. 3, Item 6) ties ITC's hands so that no matter what experience shows to be wrong with the operations of the PARs if DOE approves the letter agreement, MISO has an apparent veto over ITC's ability to agree to any change in the operations. ("ITC agrees that, following execution of this letter agreement, and for so long as the U.S. Interface Facilities remain under MISO's functional control, ITC will not agree to any amendments of or modifications to the IFA or the Presidential Permit without first consulting with MISO.").

BGE understands that adverse financial consequences will befall each and every PJM rate zone, including the BGE rate zone, if the PARs are operated in the fashion that ITC and MISO (of which ITC is a member) have agreed to between themselves without any negotiating input from PJM being sought or allowed by these two parties. The congestion costs to the PJM rate zones are projected by PJM to be \$12 million per year or more under the operational terms that have been submitted in ITC's supplemental filing.

These are significant impositions of costs that should not be overlooked or only lightly considered in DOE's review. In fact, BGE requests that DOE avail itself of the congestion cost mitigation expertise of FERC by referring the operational issues to FERC for a factual determination of whether the operational benefits are commensurate with the accumulation of congestion costs that will result thereby under the ITC/MISO/Ontario Hydro proposals. DOE has exercised such Delegation Authority before with FERC (and other administrative agencies) and should do so here as well. See, e.g., *Enron Power Marketing, Inc. v. El Paso Electric Co.*, 83 FERC ¶ 61,213,

61,942 (1998) (FERC modifications to border facility Presidential Permits are intended “to provide for open access transmission service over facilities covered by the Presidential Permits and to regulate the rates, terms and conditions for such service.”).

While ITC states in its supplemental filing (p. 4) that the operations of the PAR to be replaced and the proposed operations of the new PARs are “substantially identical,” ITC fails to acknowledge that the experience of all parties with the current operations of the existing PAR is capable of being evaluated to determine if a change in operations is warranted. ITC instead is suggesting (p. 5) that any evaluation of operations should occur only at some unspecified later date under some unspecified future proceedings. Rather than rubber-stamp the proposed operations in order to gain experience, BGE proposes that the experience that has already been gained be analyzed before approving the operational method to be utilized on a going-forward basis.

In that connection, the degree of congestion in the affected regions is far greater now and into the foreseeable future than it was when the Presidential Permit was issued in DOE Order No. PP-230-3 on February 26, 2003. To the extent that past experience shows a flaw in the PAR operations in terms of a misapplication of costs to benefits, then it is essential that this flaw be corrected now rather than compounded by any precipitate approval of the supplemental filing as though we need to experiment with an unknown proposal in order to acquire necessary data to make an informed judgment, as ITC falsely depicts the situation in its supplemental filing.

The specific factual determinations, with which FERC possesses the requisite expertise to make on the basis of record evidence that FERC can compile in an evidentiary proceeding, is whether the ITC proposal will result in PARs being operated

so that the PJM region will incur congestion costs without any other region, be it in MISO or in Canada, receiving any corresponding benefit. That is, will the PARs be operated in a way that does selective harm that is unjustified because no one else benefits from the infliction of that harm? PJM's experts have studied the existing operations of the PAR and have concluded that this is the case now, and this will continue to be the case if the supplemental filing is approved. In other words, unjust and unreasonable, and unduly discriminatory rate treatment will result by replicating existing unjust and unreasonable, and unduly discriminatory rate treatment under ITC's supplemental filing.

To reiterate, rather than argue that this is an untrue allegation, ITC pretends that the allegation cannot be proven or disproven until its proposal is approved and put into effect. Again, this claim is belied by the fact that ITC admits that it proposes to continue to operate the new PARs as it has operated the old PAR. See ITC "Supplemental Reply Comments" at p. 3 ("It should be emphasized that the basic operational goal set forth in the proposed Article 3 is the same as that approved by DOE when the original Bunce Creek PAR was approved in 2001, namely, controlling loop flow so that actual flows across the interface match scheduled flows to the maximum extent."). Since we have operational experience by which to judge the truth or falsity of PJM's allegation, the data already compiled should be subjected to an evidentiary proceeding at FERC to make the findings of fact with respect to PJM's averments. The conclusions of law can also be delegated to FERC, or else DOE can reserve that responsibility to itself once it is armed with the independent factual findings of FERC.

The costs are too great, ITC's filing is too unsupported, and the existence of the relevant data by which to make requisite cost impact findings is too extant, for DOE to summarily approve ITC's proposed operations of the PARs given the objections that have been interposed by PJM and its members, including BGE. Rather than rush to judgment first, and evaluate the facts afterwards, DOE should take steps to have the necessary fact-finding take place at FERC, and then provide for a final and proper ruling thereafter.

### **CONCLUSION**

WHEREFORE, BGE requests that the proposed joint operating agreement between ITC and One Hydro and the proposed letter agreement between ITC and MISO be referred to FERC under DOE's Delegation Authority in accordance with established precedent for purposes of making binding factual determinations on the congestion costs to be imposed on PJM by the proposed operations of the PARs in ITC's pending Presidential Permit amendment application before any final determination is made on that application.

Respectfully submitted,

  
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On Behalf of Baltimore Gas and Electric Company

September 23, 2011

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing "Comments of Baltimore Gas and Electric Company on Supplemental Filing" upon each person designated on the official service list in this docket.

Dated at Baltimore, Maryland this 23rd day of September 2011.

A handwritten signature in black ink, appearing to read "Gary E. Guy", is written over a horizontal line.

Gary E. Guy

On Behalf of Baltimore Gas and Electric Company