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August 17, 2011

By Hand Delivery

Anthony J. Como
Director, Siting and Permitting
Office of Electricity Delivery and Energy Reliability
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

**Re: Petition to Intervene and Request for Comment Period of New York
Independent System Operator, Inc.**

Dear Mr. Como:

Enclosed please find fifteen copies of the "Petition to Intervene and Request for Comment Period of New York Independent System Operator, Inc." for filing in Docket No. PP-230-4.

Please date-stamp the extra copy of the petition and return it to the messenger making this filing. Please contact the undersigned if you have any questions concerning this matter.

Very truly yours,


Howard H. Shafferman

cc: Parties to Docket No. PP-230-4

Enclosures

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

International Transmission Company
d/b/a ITC*Transmission*

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Docket No. PP-230-4

**PETITION TO INTERVENE AND REQUEST FOR COMMENT PERIOD OF
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

The New York Independent System Operator, Inc. ("NYISO") submits this Petition to Intervene and Request for Comment Period in the above-captioned proceeding. While the NYISO continues to support the commissioning of International Transmission Company's d/b/a ITC*Transmission* ("ITC's") replacement Bunce Creek Phase Angle Regulators, the NYISO is concerned that: (1) by accepting the documentation that ITC has submitted as sufficient, DOE will be granting ITC, the Midwest Independent Transmission System Operator, Inc. ("MISO") and the Independent Electric System Operator of Ontario ("IESO") substantial autonomy in developing operating rules that will apply to those PARs; and (2) that some of the proposed rules developed by ITC, MISO and IESO for operating the PARs at the Ontario/Michigan interface could adversely affect the reliability of transmission service in New York.

I. BACKGROUND

On September 26, 2000, the United States Department of Energy ("DOE") issued a Presidential Permit to ITC in Order No. PP-230, authorizing it to construct, operate, maintain, and connect electric transmission facilities at the international border of the United States and Canada. Those facilities are currently authorized by Presidential Permit No. PP-230-3 and include:

- One 230,000-volt (230-kV) transmission line, including one 675-MVA phase-shifting transformer connecting the Bunce Creek Station, located in Marysville, Michigan, with Hydro One's Scott Transformer Station, located in Sarnia, Ontario (identified as the B3N facility)
- One 230-kV transmission line connecting the Waterman Station, located in Detroit, Michigan, with Hydro One's J. Clark Keith Generating Station, located in Windsor, Ontario (identified as the J5D facility)
- One 345-kV transmission line connecting the St. Clair Generating Station, located in East China Township, Michigan, with Hydro One's Lambton Generating Station, located in Moore Township, Ontario (identified as the L4D facility); and
- One 230-kV transmission line connecting the St. Clair Generating Station with Hydro One's Lambton Generating Station (identified as the L51D facility).

In March 2003, the phase shifting transformer installed on the B3N facilities failed. On January 5, 2009, ITC applied to DOE to amend Presidential Permit PP-230-3 by authorizing it to replace the failed 675-MVA transformer with two 700-MVA phase shifting transformers connected in series (the "Replacement PARs").¹

On March 9, 2009, at the request of ITC and the MISO, the NYISO's Vice President of Operations, Ricardo T. Gonzales, submitted brief comments in support of ITC's application. On March 31, 2009, ITC filed a response to these and other comments, in which it stated:

Going forward, there will be a new interconnection agreement between ITC and Hydro One Networks ("Hydro One"), the owner of the Canadian facilities. Functional control of those facilities, however, will reside with IESO, not Hydro One, and IESO is not a party to the new interconnection agreement. When ITC transfers control, functional control of the U.S. interface facilities will reside with the Midwest ISO which is also not a party to the interconnection agreement. IESO has a contractual relationship with the Midwest ISO covering the interface facilities in the form of a Coordination Agreement executed in October, 2008. The draft Operating Instruction appended to the Midwest ISO's comments in this case was negotiated pursuant to the Coordination Agreement. ITC was consulted regarding the Operating Instruction and has no substantive objection to it. ITC, however, is not a party to either that agreement or the Coordination Agreement, and IESO is unwilling to agree to ITC becoming a party. For ITC, the major challenge in the ongoing discussions is to resolve how it can reliably insure

¹ See 74 Fed. Reg. 6606 (February 10, 2009).

compliance with its Presidential Permit and its ability to protect its interests, without having a direct contractual relationship with IESO, the Canadian entity that controls the interface facilities in Canada.

These are not simple issues, but the parties are continuing to work on them and, in ITC's view, it would not be helpful for DOE to intercede in the contractual negotiations at this point. The new phase shifting transformers will be needed at Bunce Creek in any event, so there is no need for DOE to delay or encumber its approval of those facilities because of the unresolved contractual issues. However those issues are resolved, *ITC will file with DOE all agreements relating to the future operation of the interface facilities, before the new transformers are energized*, so that they can be properly reviewed by DOE and incorporated into ITC's Permit.²

Consistent with the foregoing, ITC filed (with its Supplemental Reply Comments) additional information with DOE in support of its request on August 9, 2011 (collectively, the "August 9 Documents"). The August 9 Documents include:

- A letter agreement between ITC and the MISO dated August 8, 2011, assigning to MISO functional control over the facilities covered by ITC's Presidential Permit, including the new PARs;
- An Amended and Restated Interconnection Facilities Agreement ("IFA") between ITC and Hydro One dated August 8, 2011;
 - Schedule "I" to the IFA specifies the Operating Principles for the PARs
- Revisions to Articles 3, 9 and 10 of ITC's Presidential Permit; and
- "For informational purposes," an Operating Instruction entitled "Operation of the Michigan-Ontario Tie Lines and Associated Facilities" (the "CO2 Agreement").³

ITC describes this filing as completing ITC's responses to the comments previously submitted by the NYISO, IESO and MISO, and asserts the August 9 Documents "eliminate the

² See Reply Comments of ITC filed in Docket No. PP-230-4, at 4-5 (March 31, 2009) (emphasis added).

³ As explained in greater detail below, DOE should require ITC to incorporate many of the rules that appear in the CO2 Agreement into Schedule "I" to the IFA, and should expressly consider all of the proposed operating rules in reaching its decision. It is not appropriate for ITC, MISO and IESO to retain substantial discretion to determine or to change the fundamental operating rules that will apply to border facilities that are operated pursuant to a Presidential Permit and subject to the DOE's jurisdiction. For example, Schedule "I" should explicitly address how the Ontario/Michigan PARs will be operated when some of the PARs at the interface are out on maintenance, or otherwise unavailable.

needed for any of the operations-related conditions initially requested by IESO and MISO to be incorporated into DOE's approval of ITC's pending application in this proceeding."⁴

Despite its delay of almost 2-1/2 years in completing its application, ITC nonetheless requests DOE to deny the many parties with a critical interest in this proceeding the opportunity to analyze the August 9 Documents and to file comments. Instead, ITC asks DOE to rush to grant approval of the Presidential Permit.⁵ For the reasons explained herein, DOE should reject ITC's request, grant a comment period of at least 21 days from the August 9 filing date, and consider the comments filed in response to the August 9 Documents prior to taking action on the pending application.

II. MOTION TO INTERVENE OUT-OF-TIME

As noted above, the NYISO has already submitted comments in this proceeding at ITC and MISO's request. It now respectfully moves to intervene officially in the proceeding.

The NYISO is the independent body responsible for maintaining reliability, providing open access transmission service, and administering competitive wholesale markets for electricity, capacity, and ancillary services in New York State. When actual power flows at the Ontario/Michigan border are not closely aligned with transmission schedules at that interface, a consequence of the failure to control actual power flows to match scheduled power flows is, at times, parallel-path or "loop" flows over the New York State Transmission System ("NYSTS"). In some cases, these unscheduled power flows can become so severe that they adversely impact the NYISO's ability to operate the NYSTS to reliably serve load.

⁴ ITC's Supplemental Reply Comments, at 4.

⁵ *Id.*, at 4-5.

In this initial pleading the NYISO raises two, intertwined, concerns for DOE to consider. The NYISO's first concern is that many key rules for operating the Replacement PARs are not included in the documents that ITC has submitted for formal review by the DOE. Instead, most of the key PAR operating rules are set forth in the proposed CO2 Agreement; a contract that ITC is not a signatory to, and that ITC has only included with its application for informational purposes. It is not clear to the NYISO whether the DOE is able to, or why the DOE should choose to effectively delegate its authority to direct the operation of the Replacement PARs to a FERC-jurisdictional RTO (MISO) and to a Canadian entity (IESO).

The "Operating Principles for the Phase Angle Regulators" that ITC included in Schedule "I" to its proposed IFA ("Operating Principles") sketch out an incomplete set of rules for operating the PARs at the Ontario/Michigan interface. The CO2 Agreement sets forth a more complete set of rules.⁶ However, for the reasons explained below, operating the Replacement PARs in accordance with the proposed CO2 Agreement would not be consistent with NERC's rules as they are currently being implemented, and could place the reliability of the NYSTS in jeopardy.

Today, the NYISO relies on the North American Electric Reliability Corporation ("NERC") Transmission Line Loading Relief ("TLR") procedure to provide a remedy when extreme parallel path flows enter the NYSTS at the NYISO's interconnection with the IESO, and exit the NYSTS over the NYISO's various interconnections with PJM Interconnection, LLC ("PJM"). The proposed rules for operating the Ontario/Michigan PARs (including but not limited to the Replacement PARs), as outlined in Schedule "I" to the IFA and set forth in the

⁶ Neither the proposed Operating Principles nor the more complete CO2 Agreement clearly address how the PARs at the Ontario/Michigan interface will be operated when one PAR, or one set of PARs, is out for maintenance or unavailable for other reasons.

CO2 Agreement,⁷ purport to specify how the PARs will be reflected in the NERC TLR process.⁸ However, the rules set forth in the CO2 Agreement have not been approved by NERC. The rules proposed in the CO2 Agreement would jeopardize the NYISO's ability to utilize TLR at times when it might be needed to protect the NYSTS and to ensure reliable service to loads in New York.

The NYISO has informed ITC and MISO of its concerns with some of the rules that are proposed in the CO2 Agreement. It appears that MISO and ITC have chosen to largely ignore the NYISO's concerns, despite the NYISO's identification of a clear reliability issue.

Because the manner in which ITC, MISO and IESO propose to operate the Replacement PARs (along with the rest of the Ontario/Michigan interface) could have an adverse impact on the NYISO's ability to protect the transmission system that it is expected to safeguard, and to provide reliable transmission service in New York, the NYISO has a direct and substantial interest in this proceeding that cannot be adequately represented by any other party.

Only with the filing of the August 9 Documents is it finally clear how ITC, Hydro One, IESO and MISO propose to operate the Replacement PARs. This is the NYISO's first opportunity to review the "final" proposed operating rules and to submit comments concerning

⁷ See n. 3 to ITC's Supplemental Reply Comments (stating that the operating principles set forth in the revised Schedule "I" to the Amended and Restated IFA are consistent with those agreed to by MISO and IESO in the CO2 Agreement). See also item #7 on page 3 of the August 8, 2011 letter agreement between ITC and MISO (Tab 1 of the August 9 Documents), which states "ITC and MISO recognize that in addition to this letter agreement between MISO and ITC, the Coordination and CO2 Agreements between MISO and IESO and the IFA between ITC and Hydro One also apply to the U.S. Interface Facilities. ITC and MISO agree that promptly following the execution of this letter agreement, their respective representatives will meet to review and appropriately coordinate and allocate the various rights, responsibilities and obligations included in each of those agreements in order to ensure that all such responsibilities and obligations can and will be properly fulfilled."

⁸ See Section 3.4.3 of the CO2 Agreement, which states "IESO shall set the [NERC] IDC status flag for the Michigan-Ontario Interface to Regulated, Non-Regulated or Bypass Mode, reflecting the ability of the PARs to maintain the Interface Deviation within the Control Band."

the manner in which the proposed operating arrangements could affect the NYSTS and the NYISO's ability to provide reliable transmission service in New York.

DOE should not consider this a late intervention. The NYISO's 2009 comments signaled, unmistakably, its interest in this proceeding. The filing of the August 9 Documents amounts to a significant, substantive amendment to ITC's application; a situation in which due process requires a renewed opportunity to intervene. Even if the DOE considers this pleading a late request for intervention, permitting the NYISO's participation at this stage, and DOE's consideration of its comments prior to taking action on the pending application, will not disrupt or delay the proceeding or prejudice any party, as other interested parties will likely seek an opportunity to comment on the August 9 Documents. The NYISO accepts the record as it currently stands.

For the foregoing reasons, the NYISO respectfully requests the opportunity to intervene and participate in this proceeding.

III. COMMUNICATIONS AND CORRESPONDENCE

Communications regarding this filing should be directed to:

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IV. REQUEST FOR COMMENT PERIOD

The NYISO respectfully requests that the DOE establish a relatively brief 21-day comment period so that it, and other interested parties, have time to analyze the August 9 Documents, ascertain their impacts, and submit a complete and informed set of comments for consideration by DOE prior to its action on the pending Presidential Permit application.

Providing an adequate review period and opportunity for comment is essential to ensure DOE's careful consideration of the possible reliability impacts of granting ITC's application.

As mentioned in the NYISO's Motion to Intervene (above), the NYISO's initial review indicates that the operation of the PARs at the Ontario/Michigan interface pursuant to the provisions of the August 9 Documents could have an adverse impact on the reliability of the NYSTS. Briefly stated, the NERC's Interchange Distribution Calculator ("IDC") is a computer model that is used to identify generation and transaction schedules that significantly impact modeled transmission constraints. Using the IDC, Balancing Area Authorities like the NYISO can curtail transactions by initiating TLR actions ("TLRs") to protect vulnerable transmission facilities, and to ensure reliable transmission service to loads.

The rules set forth in the CO2 Agreement that address when the Ontario/Michigan PARs should be set in "Regulated Mode," "Non-Regulated Mode," or "Bypass Mode" reflect the proposed method of ITC, MISO and IESO for determining when the Ontario/Michigan PARs should be modeled as "regulating" or controlling power flows to match transmission schedules in the NERC IDC power flow model. The proposed CO2 Agreement rules are very similar to a set of IDC modeling rules/revisions that the MISO presented to NERC's IDC Working Group in a meeting that was held on October 5-7, 2010.⁹ NERC's IDC Working Group rejected MISO's proposal and instructed the MISO to work with NYISO, PJM and IESO to develop appropriate rules. The necessary discussions have not been completed and the rules proposed in the CO2 Agreement are not acceptable to the NYISO.

Under the rules proposed in the CO2 Agreement (*see* Section 3.4.3), IESO will determine when the Ontario/Michigan PARs are modeled in the NERC IDC as "regulating" (controlling)

⁹ Link to the posted NERC IDC Working Group's October 5-7, 2010 meeting minutes. Presentations by MISO and NYISO are included with the minutes: http://www.nerc.com/docs/oc/idcwg/IDCWG_Miinutes_5-7Oct10.pdf

power flows across the Ontario/Michigan interface. At times when IESO sets the Ontario/Michigan PARs (including the Replacement PARs) to be in “Regulated Mode” (see Section 2.0 of the CO2 Agreement) the NERC IDC model will artificially assume that all unscheduled power flows at the Ontario/Michigan interface are being blocked by the Ontario/Michigan PARs and the IDC will only reflect power flows that have been scheduled across the Ontario/Michigan interface as crossing that interface.

While the NYISO expects that IESO and MISO will strive to operate the Ontario/Michigan interface reliably, the artificial modeling construct that has been proposed presents a clear, real world, reliability risk if IESO fails to timely and accurately change the modeling to “Non-Regulated Mode” at times which the Ontario/Michigan PARs (including the Replacement PARs) are not successfully matching actual power flows to scheduled power flows. The NYISO is concerned that the proposed CO2 Agreement operating rules (that ITC states are “consistent with” its proposed Schedule “T” to the IFA, and that the August 8 letter agreement between ITC and MISO arguably requires MISO to implement), grant IESO significant discretion to choose the operating mode that it, alone, will be able to set in the NERC IDC model.¹⁰

Under the rules proposed in the CO2 Agreement, IESO will not be obligated to engage “Non-Regulated Mode” whenever power flows over the interface exceed (or are reasonably expected to exceed) the +/- 200 MW Control Band proposed in Schedule “T” to the IFA and in the CO2 Agreement. Instead, ITC, MISO and IESO propose an additional pre-condition to setting the PARs to Non-Regulated Mode. In addition to exceeding the +/- 200 MW Control Band, the “Interface” (which is defined as all four of the circuits that comprise the

¹⁰ See the definitions of Interface Control Modes in Section 2.0 of the CO2 Agreement and Sections 3.4.2 and 3.4.3 of the CO2 Agreement.

Ontario/Michigan interface) must have reached Max Tap (meaning there is no longer any remaining control capability on any of the PARs operated by MISO/ITC or IESO/Hydro One). If any of the PARs at the interface still have control capability (taps) remaining, IESO will not be required to change the NERC IDC flag from “Regulated” to “Non-Regulated”; not even if 700 MWs (for example) of unregulated loop flow are, in fact, crossing the Ontario/Michigan interface. Until IESO changes the NERC IDC flag to Non-Regulated, the artificial modeling convention that MISO, IESO and ITC propose to adopt for the Ontario/Michigan PARs in the NERC IDC will prevent the NYISO from using TLRs to protect New York from the impacts of unscheduled power flows that could be causing reliability concerns in the real world.

In other words, even if the NYISO is seeing 700 MWs of unscheduled power flows entering New York from Ontario, TLR will not be available to reduce flows over the interface if the NERC IDC modeling indicates that the Ontario/Michigan PARs are still in “Regulated Mode.” Based on the language of the CO2 Agreement’s Operating Instruction, it appears that the Ontario/Michigan PARs may permissibly be modeled in Regulated Mode even when the Interface Deviation is outside the proposed Control Band of +/- 200 MW. When the Ontario/Michigan PARs are not controlling power flows at the Ontario/Michigan interface, and loop flow entering New York from Ontario is causing an adverse impact on the New York transmission system, the NYISO must be able to promptly issue TLRs to relieve adverse reliability impacts of the unscheduled power flows. DOE should find the contrary provisions of the CO2 Agreement unacceptable.

In Article 3 of the orders that DOE has previously issued in PP-230-2 and PP-230-3 it has required ITC to operate its facilities in compliance with all NERC policies and standards. DOE should continue to include this requirement in its orders addressing the operation of the

Replacement PARs and should not permit a contract between third parties (MISO and IESO) to govern how the Replacement PARs are operated.


This pleading raises the NYISO's most significant/glaring concern regarding proposed Schedule "I" to the IFA that is intended to permit ITC to effectuate the CO2 Agreement. The NYISO's brief review has identified other concerns with the August 9 Documents. For example, in Schedule "I" to the IFA, on page 1 under item #1, the language of the first bullet does not make sense. The term "Interface Deviation" either needs to be replaced with the term "Interface Schedule," or a reference to the Control Band needs to be added. In addition, Schedule "I" to the IFA should include a more complete set of rules specifying the circumstances under which the PARs at the Ontario/Michigan Interface will be bypassed and specifying how the remaining PARs will be operated when one PAR or set of PARs at the Ontario/Michigan Interface is unavailable.

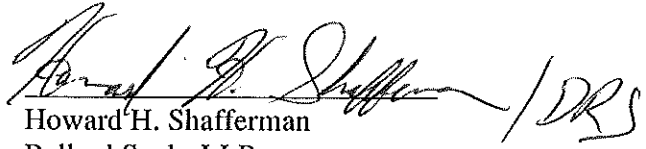
The NYISO respectfully request additional time to complete further analysis and prepare a fuller set of comments for the DOE's consideration. Granting the NYISO's request for a comment period will protect due process in this proceeding.

V. CONCLUSION

For the foregoing reasons, the NYISO respectfully requests that the Department of Energy grant its motion to intervene and establish a 21-day comment period with respect to the Supplemental Reply Comments and the August 9 Documents.

Respectfully submitted,


Alex M. Schnell
New York Independent System Operator, Inc.


Howard H. Shafferman
Ballard Spahr LLP

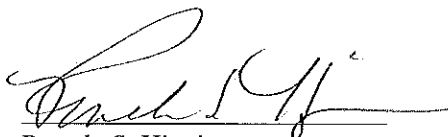
Dated: August 17, 2011

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

International Transmission Company)
d/b/a ITCTransmission)
)

Docket No. PP-230-4

I hereby certify that I have this day caused a copy of the foregoing document to be served on the parties on the attached service list.


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