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UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY

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

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Docket No. PP-230-4

MOTION TO INTERVENE AND INITIAL COMMENTS
OF PJM INTERCONNECTION, L.L.C.

On January 5, 2009, International Transmission Company, d/b/a ITC*Transmission* ("ITC") filed with the Department of Energy ("DOE") a request to amend Presidential Permit PP-230-3,¹ which authorizes ITC to own and operate specified electric transmission facilities at the Bunce Creek station that interconnect ITC with Hydro One Networks Inc.'s ("Ontario Hydro") electric transmission facilities at the Michigan-Ontario border ("Cross-Border Facilities"). Under its existing permit, ITC is authorized to own and operate a 675-MVA phase angle regulator ("PAR") facility installed at Bunce Creek station. That PAR facility failed in March 2003, and ITC seeks permission to replace it with two 700-MVA PAR facilities.

As discussed below, the operation of the PAR facilities, as proposed, will have a significant adverse impact on the transmission system operated by PJM Interconnection, L.L.C. ("PJM"). PJM understands that DOE has deferred consideration of the January 5 Filing pending ITC's submission of an operating agreement that details the protocols that will govern the operation of the new PAR facilities ("Operating Agreement"). Because PJM is concerned that these operating protocols may harm grid operations within the 13-state PJM Region and may be inconsistent with the public interest, PJM moves to intervene in this proceeding in order to alert

¹ Request of International Transmission Company d/b/a ITC*Transmission* To Amend Presidential Permit, Docket No. PP-230-4 (Jan. 5, 2009) ("January 5 Filing").

DOE of these potential harms and the public interest implications of the Operating Agreement. The public interest standard which governs the issuance of a Presidential Permit requires DOE (potentially through a delegation to the Federal Energy Regulatory Commission (“Commission” or “FERC”) as discussed below) to determine that the operation of the cross border facilities does not harm interconnected electric facilities in the United States. Yet, as proposed, the operation of the PAR facilities will have a negative impact on the transmission system potentially significant additional costs borne by the 51 million customers served by the grid operated by PJM.²

PJM’s request for relief is threefold. Specifically, PJM requests that the DOE:

- issue a formal notice of the submission of the Operating Agreement (once it is filed) and provide an opportunity for interested parties to comment on the agreement;
- convene a “technical meeting” at which interested parties can raise their concerns with DOE;
- consistent with its past precedent, formally refer the Operating Agreement to the Commission to determine whether conditions should be placed on the operation of the PAR facilities.

I. MOTION TO INTERVENE

PJM is an independent regional transmission system organization (“RTO”) that operates its members’ interstate transmission facilities in an area comprising all or portions of Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.³ PJM conducts the day-

² PJM serves over 51 million customers in 13 states including the District of Columbia. PJM is the largest grid operator in the United States with a peak demand of 144,644 MW.

³ See *Pennsylvania-Maryland-New Jersey Interconnection*, 81 FERC ¶ 61,257 (1997), *order on clarification*, 82 FERC ¶ 61,068 (1998), *order on reh’g and clarification*, 92 FERC ¶ 61,282 (2000), *remanded on other grounds sub. nom. Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002); *PJM Interconnection, L.L.C.*, 101 FERC ¶ 61,345 (2002).

to-day operations of the bulk power system in a multi-state electric control area in the Eastern Interconnection (“PJM Region”); it is the transmission provider under, and the administrator of, the PJM Open Access Transmission Tariff; and it administers energy, capacity, and ancillary services markets throughout the PJM Region. PJM has operational control of more than 56,350 miles of transmission lines and ensures the reliability of the largest centrally dispatched system in North America.

As described more fully below, the manner in which the new PAR facilities operate may harm PJM and its members and affect the open access transmission that PJM provides on its transmission system. Hence, PJM has a direct and substantial interest in the outcome of this proceeding that cannot be adequately represented by any other party. PJM, which independently operates a directly affected transmission system, has unique insight into whether the manner of operation of the new PAR facilities would be in the public interest. PJM’s intervention and participation in this proceeding is therefore justified and consistent with the public interest.

PJM is aware that these comments are being submitted after the close of the comment period. However, the Operating Agreement was not provided with the original application and still has not been provided. Moreover, ITC recently commenced a proceeding before the FERC concerning the benefits of the PAR facilities and the appropriate cost allocation to others (including PJM) for them.⁴ DOE’s action on the Presidential Permit could have a significant impact on the determination of who benefits from the PAR facilities – information that would be relevant to FERC in its determination of cost allocation questions. No party will be prejudiced by PJM’s intervention in this DOE proceeding at this time, because DOE deferred action on the

⁴ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,275 (2010).

January 5 Filing, pending ITC's supplementing its filing with the Operating Agreement, which is the very matter that PJM wishes to address.

Granting PJM's motion to intervene is consistent with DOE precedent. In the proceeding for ITC's Presidential Permit PP-230-2, DOE granted motions to intervene out of time filed by New York Power Pool and American Electric Power System.⁵ DOE found that "these [transmission] systems are integral members of the Eastern Interconnection and, therefore, each could potentially be impacted by the actions proposed [i.e., operation of the PAR facility] by [ITC]. DOE considers each to have a unique and direct interest in the outcome of this proceeding."⁶ Accordingly, PJM's motion to intervene should be granted.

II. COMMUNICATIONS

Correspondence and communications with respect to this proceeding should be sent to the following persons:

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⁵ American Electric Power System is a member of PJM and a signatory to the PJM Transmission Owner Agreement and, as such, its transmission system is under PJM's operational control.

⁶ Presidential Permit PP-230-2 at 5.

PJM requests that the e-mail addresses of all three individuals named above as representatives of PJM be added to the e-mail service list in this proceeding.

III. INITIAL COMMENTS

A. The Manner of Operation of the New PAR Facilities Has a Significant Impact on Whether the Issuance of an Amended Presidential Permit is in the Public Interest.

Although electricity transactions generally have scheduled delivery routes from receipt points to delivery points, electricity does not always follow its scheduled route. Instead, the laws of physics, rather than contracts, apply, as electrons follow the path of least resistance. Consequently, due to the very nature of the interconnected electric transmission grid in the Eastern Interconnection, flows arising from transactions scheduled to or from the PJM market may travel on other systems, including around Lake Erie and across the Michigan-Ontario border and ITC's Cross-Border Facilities. This is true even if such flows are scheduled to travel by a different path.

In modern organized electricity markets, such as those operated by PJM and others, system operators manage transactions and their associated routes so as to limit or avoid producing congestion on transmission facilities, thereby minimizing costs associated with such congestion. For example, PJM and the neighboring Midwest Independent Transmission System Operator, Inc. ("Midwest ISO"), of which ITC is a part, have comprehensive arrangements in place to manage the naturally occurring "loop" flows arising from transactions in the two RTOs' markets. When their systems are uncongested, PJM and Midwest ISO simply permit these naturally occurring flows on each other's systems. When systems are congested, they do not necessarily curtail the flows, but rather ensure that resulting congestion costs are minimized and then borne by the parties placing the flows on the system. These arrangements are embodied in a

Commission-accepted Joint Operating Agreement (“JOA”), comprehensively regulated by the FERC.⁷

In contrast to these arrangements to address “loop” flow, according to ITC, the objective of installing the new PAR facilities between Michigan and Ontario is to restrict flows across the Michigan-Ontario border *at all times* “so that actual flow matches scheduled flow, to the maximum extent possible.”⁸ Restricting flows in this manner would likely have significant and unnecessary negative impacts on transactions in organized wholesale electric markets administered in the United States. If the new PAR facilities are operated in a manner that restricts *all* “loop” flows across the Michigan-Ontario border, parties with transactions arising in PJM, Midwest ISO, and the New York Independent System Operator, Inc. (“NYISO”) could find themselves worse off than they are today. By selectively preventing naturally occurring “loop” flows in the Eastern Interconnection, transmission congestion on the PJM, NYISO, and Midwest ISO transmission systems will increase, raising costs for transactions on those systems. As ITC operations are apparently contemplated, this increased congestion and its associated costs in the U.S. will occur *regardless* whether Canadian systems are congested at any given time, warranting relief from “loop” flows. In short, it appears that the PAR facilities will be operated in a manner that may benefit ITC and Ontario Hydro, but leave other interconnected systems, such as PJM, worse off than today. This is clearly not a result that is in the public interest.

As a result, operation of the new PAR facilities at the Bunce Creek station will directly impact PJM’s management of the electric transmission grid and administration of the markets in the PJM Region. Operation of the new PAR facilities will affect open access transmission

⁷ Joint Operating Agreement Between the Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C., PJM Second Revised Rate Schedule FERC No. 38, MISO Second Revised Rate Schedule FERC No. 5.

⁸ January 5 Filing at 6.

transactions on the PJM system, raising the costs of providing transmission service. Operation of the new PAR facilities also may significantly affect charges under the JOA between Midwest ISO and PJM, as congestion on the PJM and Midwest ISO systems increase from the blocked flows to Ontario.

PJM estimates that the increased congestion costs resulting from the planned operation of the PARs could be at least *\$12 million annually* on the PJM system alone. Therefore, it is important that, prior to the issuance of any Presidential Permit, the Operating Agreement be reviewed with an eye towards impacts on the public interest that may arise from these effects on transmission service and transmission costs across the Eastern Interconnection and specifically in PJM. Because consideration of the Operating Agreement is a key component in the issuance of a Presidential Permit, a thorough review of the parties' arrangements by the appropriate regulatory bodies is needed before DOE can make a proper "public interest" determination. Because the Operating Agreements are a key component of approval of a Presidential Permit, a thorough review of these agreements by the appropriate regulatory bodies is needed before DOE can make its final "public interest" determination.

For these reasons, PJM requests that DOE direct ITC to involve the affected interconnected systems (PJM and NYISO) in discussions with Ontario Hydro regarding the operating protocols for the PAR facilities, before they are finalized. This will help move this matter toward resolution. In addition, once ITC has supplemented the January 5 Filing with the Operating Agreement, DOE should issue a formal notice and provide an opportunity for interested parties to comment on the Operating Agreement. In the interim, PJM respectfully requests that DOE consider convening a technical meeting of interested parties to address the public interest issues implicated by the Operating Agreement.

B. DOE Should Require FERC Review of the Operating Agreement

Under Executive Order 10485,⁹ DOE has jurisdiction over electric transmission facilities at the US border.¹⁰ However, to further its policy in favor of competitive energy markets and open access transmission service and in recognition of the FERC's expertise in these fields, DOE has delegated to the FERC the authority to "[c]arry out such functions as are necessary to implement and enforce" DOE's policy requiring Presidential Permit holders "to provide non-discriminatory open access transmission services."¹¹ The FERC "is specifically authorized . . . to regulate access to, and the rates, terms, and conditions for, transmission services over permitted international electric transmission facilities to the extent the Commission finds necessary and appropriate to the public interest."¹² Pursuant to this delegated authority, the FERC may modify and condition Presidential Permits for border facilities "to provide for open access transmission service over the facilities covered by the Presidential Permits and *to regulate the rates, terms and conditions for such service.*"¹³

Because operation of the new PAR facilities may affect the provision of open access transmission services in large areas of the Eastern Interconnection, DOE should make sure that the FERC has the opportunity to apply its expertise in ensuring open access transmission service and in regulating electricity transactions in organized wholesale electricity markets. DOE may

⁹ Issued on April 3, 1953, as amended by Executive Order 12038.

¹⁰ See, e.g., *Enron Pwr. Mktg., Inc. v. El Paso Elec. Co.*, 83 FERC ¶ 61,213, at 61,944 (1998).

¹¹ 2006 Delegation Order § 1.3; *accord Proposed Open Access Requirement for International Electric Transmission Facilities and Delegation to the Federal Energy Regulatory Commission*, FE Docket No. 99-1, 64 FR 40586, 40587 (July 27, 1999) ("As a matter of policy, the Department strongly supports the emergence of a more competitive wholesale electricity market and considers comparable open access and non-discriminatory transmission service for both domestic and international transactions a critical factor in creating and sustaining a competitive market. Thus, the Department supports the application of the Commission's domestic open access policy to the U.S. international transmission facilities.").

¹² 2006 Delegation Order § 1.3.

¹³ *Enron Pwr. Mktg., Inc. v. El Paso Elec. Co.*, 83 FERC ¶ 61,213, at 61,941 (1998) (emphasis added).

seek the FERC's input via two options. First, DOE may stay its review of the January 5 Filing, and any supplements thereto, and request that the FERC review, approve, modify, condition or reject the to-be-filed Operating Agreement in accordance with the public interest and the FERC's open access transmission standards and practices. DOE could then consider and attach to the Presidential Permit any conditions the FERC deemed necessary. Alternatively, DOE could condition any Presidential Permit for the new PAR facilities on ITC submitting the Operating Agreement to FERC for review and authorize the FERC to impose terms and conditions as necessary.

Both of these options are consistent with DOE's past practice and Executive Order 10485, which allows DOE to place conditions on a permit that it finds are in "the public interest."¹⁴ As discussed, DOE has already generally delegated to the FERC the authority "to regulate access to, and the rates, terms, and conditions for" the use of permitted facilities. Thus, DOE can confirm the FERC's authority over these matters in this proceeding and require the necessary FERC reviews. To the extent that DOE believes that allowing FERC to condition or modify the Presidential Permit would in any way fall outside the scope of its current Delegation Order to FERC, a case-specific delegation also would be consistent with DOE precedent. *See* Notice of Delegation Order No. 0204-163, 61 FR 56,525 (1996). Prior to DOE's general delegation to FERC, DOE specifically authorized FERC to modify, revoke or attach terms and conditions to another Presidential Permit, issued to El Paso Electric Company.¹⁵ Thus, DOE has in the past, and may here, properly allow FERC to condition or modify any Presidential Permit issued for the new PAR facilities.

¹⁴ Executive Order 10485 § 1(a)(3).

¹⁵ *Enron Pwr. Mktg., Inc. v. El Paso Elec. Co.*, 77 FERC ¶ 61,013, at 61,048 (1996), *order denying reh'g and conditioning Presidential Permits*, 83 FERC ¶ 61,213 (1998).

Moreover, delegation to the FERC for evaluation of the Operating Agreement is appropriate given that the new PAR facilities are already the subject of an ongoing proceeding before the FERC.¹⁶ There, Midwest ISO and ITC jointly filed to establish a methodology to allocate and recover the costs of the new PAR facilities among PJM, NYISO, and Midwest ISO. That matter is currently in settlement discussions, pending a hearing on the issues raised. The same parties as are already involved in the FERC proceedings are the parties with interests in this DOE proceeding. It therefore is sensible for DOE to delegate to the FERC the issues discussed above related to the operation of the PAR facilities, which the FERC can consider along with the ongoing FERC cost allocation proceedings.

IV. CONCLUSION

DOE should notice, and provide an opportunity for interested parties to comment on, the Operating Agreement when it is submitted. It also should consider convening a technical meeting to address the public interest issues implicated by the Operating Agreement. DOE also

¹⁶ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,275 (2010).

should ensure that the FERC's expertise is applied in this matter through FERC review of the Operating Agreement.

Respectfully submitted,



/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 25th day of March, 2011, the foregoing document was served, by electronic mail or first class postage prepaid mail, upon all parties.



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