

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

US Department of Energy

APR 25 2011

Electricity Delivery and
Energy Reliability

International Transmission Company)
d/b/a ITCTransmission)

Docket No. PP-230-4

**MOTION TO INTERVENE OUT OF TIME AND COMMENTS OF
FIRSTENERGY SERVICE COMPANY**

FirstEnergy Service Company, on behalf of its load-serving affiliates – The Cleveland Electric Illuminating Company, Jersey Central Power & Light Company (“JCP&L”), Metropolitan Edison Company (“MetEd”), Ohio Edison Company, Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company, The Toledo Edison Company, Monongahela Power Company (“Mon Power”), The Potomac Edison Company (“Potomac Edison”) and West Penn Power Company (“West Penn”) (collectively, the “FirstEnergy Utilities”), its power marketing affiliate – FirstEnergy Solutions Corp. (“Solutions”), and its electric transmission affiliates – American Transmission Systems, Incorporated (“ATSI”) and Trans-Allegheny Interstate Line Company (“TrAILCo”) (collectively, “the FirstEnergy Companies”), hereby respectfully submits this *Motion to Intervene Out of Time and Comments* in the above-captioned proceeding in response to International Transmission Company d/b/a ITCTransmission’s (“ITC”) *Request to Amend Presidential Permit*.¹

I. BACKGROUND

On January 5, 2009, ITC filed with the Department of Energy (“DOE”) a request to amend Presidential Permit PP-230-3 (“Amendment Request”), which “among other things, authorized ITC to operate and maintain the Interconnection Facilities [interconnecting ITC with Hydro One Networks Inc. (‘Hydro One’) on the United States-Canada border], including . . . one

¹ *Int’l Transmission Co. d/b/a ITCTransmission*, Request of International Transmission Company d/b/a ITCTransmission to Amend Presidential Permit, filed Jan. 5, 2009, DOE Docket No. PP-230-4 (“January 5 Filing”).

675-[Megavolt Ampere (“MVA”)] phase shifting transformer connecting ITC’s Bunce Creek Station located in Maryville, Michigan with Hydro One’s Scott Transformer Station located in Sarnia, Ontario.”² In March 2003, the above-referenced Bunce Creek transformer failed while in service. Thus, in the January 5 Filing, ITC requests that the DOE amend Presidential Permit PP-230-3 to replace the failed Bunce Creek phase shifting transformer “with two 700-MVA phase shifting transformers connected in series.”³

II. DESCRIPTION OF INTERVENORS

The FirstEnergy Companies respectfully move to intervene in this proceeding because they have interests which may be directly affected by the outcome of the proceeding. All of the FirstEnergy Companies are affiliates of FirstEnergy Corp. The FirstEnergy Utilities are load-serving entities (“LSEs”) within the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”) and PJM Interconnection, L.L.C. (“PJM”) regions. The FirstEnergy Utilities operate distribution facilities and collectively provide electric service in franchised service territories in New Jersey, Ohio, Pennsylvania, Maryland and West Virginia. Solutions, a wholesale and retail marketing affiliate, controls affiliated generating facilities that operate in the Midwest ISO and PJM regions and sell power at wholesale to Solutions to serve load within the Midwest ISO and PJM markets. Solutions is a supplier of competitive retail load within the Midwest ISO and PJM regions, and, thus, in this capacity, serves as an LSE. Mon Power also owns generation facilities used to provide cost-based retail electric service in West Virginia. ATSI and TrAILCo are transmission-only affiliates of FirstEnergy and their transmission

² *Id.* at 1.

³ *Id.*

facilities are subject to the functional control of the Midwest ISO and PJM, respectively.⁴ JCP&L, MetEd, Penelec, Mon Power, Potomac Edison and West Penn also own transmission facilities subject to the functional control of PJM.

III. GROUNDS FOR LATE INTERVENTION

The FirstEnergy Companies have interests that are directly affected by the outcome of this proceeding and that cannot be represented adequately by any other party. ITC's proposal calls for the implementation of new phase-angle regulating transformers ("PARs"), the operation of which will impact reliability in PJM, and, therefore, directly affect the FirstEnergy Companies' interests. Some of the FirstEnergy Companies are parties to FERC proceedings concerning the same issues raised in this proceeding.⁵ Furthermore, the DOE has accepted motions to intervene out of time in this proceeding, where the intervening party "ha[s] a unique and direct interest in the outcome of this proceeding," and "granting [such party] leave to intervene out of time does not prejudice the outcome of this proceeding."⁶

Intervention by the FirstEnergy Companies will not cause undue delay in the proceeding and will not prejudice or burden any party. This proceeding was initiated over two years ago upon ITC's application. However, ITC has not yet supplemented its application with operating agreements that will be critical to reasoned analysis of the proposal's benefits and disadvantages, and the DOE has not acted on the application. Indeed, despite its age, there has been little

⁴ FirstEnergy has been authorized by the Federal Energy Regulatory Commission ("FERC" or "Commission") to integrate its facilities currently in the Midwest ISO into PJM, effective June 1, 2011. *Am. Transmission Sys., Inc.*, 129 FERC ¶ 61,249 (2009), *order on reh'g*, 130 FERC ¶ 61,171 (2010).

⁵ Specifically, FERC is evaluating ITC's proposed revisions to the Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff to determine if the cost allocation methodology therein is consistent with principles of cost causation. *Midwest Indep. Transmission Sys. Operator, Inc.*, Section 205 Filing, filed Oct. 20, 2010, FERC Docket No. ER11-1844-000. In a second docket, the Commission is considering the New York Independent System Operator, Inc.'s ("NYISO") interim proposal to address market distortions resulting from loop flows. *See New York Indep. Sys. Operator, Inc.*, 133 FERC ¶ 61,276 at PP 3-8 (2010).

⁶ *Int'l Transmission Co.*, Presidential Permit, Order No. PP-230-2 at 5, issued Apr. 19, 2001, DOE Docket No. PP-230-2.

substantive activity in this proceeding, and it will be ITC's filing of the operating agreements that will permit legitimate commentary on and analysis of ITC's proposal. Considering that ITC has not demonstrated any urgency in filing its operating agreements, it should not be heard to complain that it will suffer any hardship as a result of the FirstEnergy Companies' late intervention. The FirstEnergy Companies will accept the record as it stands, and, thus, their intervention will not delay the proceedings or otherwise burden any party.

Therefore, good cause exists for the DOE to grant the FirstEnergy Companies motion to intervene out of time.

IV. CORRESPONDENCE AND COMMUNICATION

The following persons should be included on the official service list in this proceeding. All correspondence and communications concerning this matter should be sent to:

Randall B. Palmer
Senior Corporate Counsel II
FirstEnergy Corp.
800 Cabin Hill Drive
Greensburg, PA 15601-1689
Tel: (724) 838-6894
rpalmer@alleghenyenergy.com

G. Philip Nowak
Elisabeth S. Walden
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036-1564
Tel: (202) 887-4000
Fax: (202) 887-4288
pnowak@akingump.com
ewalden@akingump.com

V. COMMENTS

Executive Order ("EO") 10485, as amended by EO 12038, requires that any entity constructing, operating, maintaining, or connecting transmission facilities used to transmit electric energy between the United States and a foreign country do so only as authorized by a Presidential Permit.⁷ The DOE is entrusted with authority to issue such a Presidential Permit upon a finding that the applicant's proposal is consistent with the public interest. In determining

⁷ Exec. Order No. 10,485, 18 Fed. Reg. 5,397 (Sept. 3, 1953), *amended by*, Exec. Order No. 12,038, 43 Fed. Reg. 4,957 (Feb. 3, 1978).

whether an application serves the public interest, the DOE considers the proposed project's environmental impacts,⁸ the proposed project's impacts on electric reliability, and any other factors the DOE deems relevant to the public interest.⁹ In considering the anticipated impact on electric reliability, the DOE seeks to determine whether the proposed project would adversely impact the operation of the United States electric system under normal and contingency conditions.¹⁰

ITC has requested that the DOE amend Presidential Permit PP-230-3 to permit the substitution of two 700 MVA PARs connected in series for the failed 675 MVA PAR authorized by that Permit. ITC asserts that the new PARs will greatly increase ability to redirect power around the southern side of Lake Erie, permitting redirection of as much as 600 Megawatts ("MW") of power flow in either direction.¹¹ As ITC points out, the impact of the proposed equipment substitution on regional power flows will be significant. Accordingly, the proposed substitution necessitates close review of the potential effects on interconnected transmission systems, particularly those operated by PJM and NYISO.

Despite its benefits, potential disadvantages to ITC's proposal warrant close scrutiny before an amended Presidential Permit is granted. First, the enhanced ability to control power flows around Lake Erie may affect loading on other transmission systems in the electrical path of the redirected flows and negatively effect reliability.¹² Second, assuming that, upon further

⁸ The DOE evaluates environmental impacts pursuant to the National Environmental Policy Act of 1969.

⁹ *Montana-Alberta Tie, Ltd.*, Record of Decision, 73 Fed. Reg. 67,860, DOE Docket No. PP-305 (2008).

¹⁰ *Id.*

¹¹ *New York Indep. Sys. Operator, Inc.*, Response of International Transmission Company d/b/a ITC Transmission to Lake Erie Loop Flow White Paper Filed by the New York Independent System Operator, Inc. and Motion for Additional Relief at 3 n.2, filed Jan. 27, 2010, FERC Docket Nos. ER08-1281-000, *et al.*

¹² See *New York Indep. Sys. Operator, Inc.*, Request for Clarification or, in the Alternative, Rehearing of the New York Independent System Operator, Inc., filed Aug. 14, 2009, FERC Docket No. ER08-1281-000 (discussing the problem of unanticipated loop flows).

analysis, it is determined that ITC's proposed operation of the new PARs provides net reliability benefits, it is not clear that it will be possible to operate them in the fashion ITC has outlined.

In order to ensure that the new PARs do not adversely impact the ability of the existing generation and transmission system to remain within acceptable voltage, loading, and stability limits during normal and emergency conditions, the pattern of the PARs' redirected power flow must be closely examined. Depending on system conditions, the operation of the PARs to control and redirect power flows around Lake Erie may impact flows on neighboring RTOs' systems and have a detrimental effect on overall system reliability.

To avoid this result, coordination between ITC and neighboring RTOs, particularly PJM and NYISO, will be critical. Complimentary exercise of all available means of controlling power flows will be essential to comprehensively controlling loop flows and avoiding detrimental impacts on reliability.¹³ The forthcoming operating agreements that ITC is expected to file in this proceeding will provide considerable insight into how operation of the new PARs will take these concerns into account and ensure cooperation with neighboring RTOs. These operating agreements should be closely examined to ensure against unanticipated power flow problems.

Based on the materials ITC has provided to date, it appears that ITC may contemplate operating the new PARs in a manner that is practically impossible. The intended use of the new PARs will be the same as their predecessor which failed under these demands. Particularly, ITC identifies the purpose of the new PARs as "to control unscheduled flows so that actual flow

¹³ See *New York Indep. Sys. Operator, Inc.*, New York Independent System Operator, Inc.'s Report on Broader Regional Markets; Long Term Solutions to Lake Erie Loop Flow, Attachment C, filed Jan. 12, 2010, FERC Docket No. ER08-1281-000 ("Since uncoordinated operation of physical devices could increase circulation flows, it is important that the operation of such devices by the four markets around Lake Erie be coordinated to avoid detrimental impacts.").

matches scheduled flow, to the maximum extent possible.”¹⁴ Taken literally, this purpose would require virtually constant adjustments to the PARs and would be a management-intensive means of operating the facility. Even if ITC is willing to undertake such an effort, the ability to achieve the stated goal for these PARs is subject to the inherent limitations of the facilities and system. Among other potential pitfalls are limitations in the equipment itself including the range of the phase angles and safety limitations on the frequency of adjustment. Furthermore, even if the equipment were able to perform in an ideal fashion, the need for these facilities to interact with the larger interconnection in a complimentary fashion creates additional difficulties. Thus, the demands placed on these new PARs and the job they are expected to perform is daunting.

Again, the FirstEnergy Companies expect that the forthcoming operating agreements will illuminate how ITC plans to handle these challenges. Among other details, the operating agreements should give some indication how close ITC expects the PARs to come in attempting to match actual flow to scheduled flow. Specifications, including any limitations on the frequency with which ITC will operate the PARs, the maximum phase angle shift, and any contingency plans ITC may have in the event of equipment failure, should all be disclosed in the operating agreements. Thus, again, a detailed review of the operating agreements will be critical to a full understanding of ITC’s proposal and evaluation of whether it may adversely affect the operation of the United States power supply system under normal and contingency conditions.

The potential reliability concerns associated with ITC’s January 5 Filing involve technical matters that FERC routinely addresses and on which FERC has unique expertise. Accordingly, FERC would be well-qualified to administer a process to evaluate the January 5 Filing and associated operating agreements with the participation of potentially-affected

¹⁴ January 5 Filing at 6.

stakeholders. Indeed, FERC has recent experience with the loop flow issues in the Lake Erie region and the operational solutions to those problems, including ITC's proposed PARs.¹⁵ Investigation of how the PARs will operate will illuminate who benefits from the PARs or caused their costs. This determination of how the PARs will be operated and what their effects will be is an integral part of FERC's application of the cost causation principle to determine how project costs should be allocated. FERC's informed determination about the reliability impacts of ITC's proposal should be valuable in assisting the DOE with its larger determination of whether the requested amendment to Presidential Permit PP-230-3 should issue. Accordingly, the FirstEnergy Companies request that the DOE delegate to FERC the task of evaluating the reliability impacts of the proposed new PARs as they would function pursuant to the forthcoming operating agreement.

VI. CONCLUSION

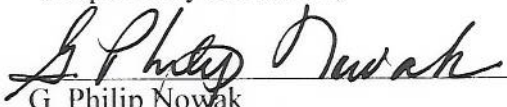
The FirstEnergy Companies respectfully request that the DOE accept this motion to intervene out of time, and give consideration to the comments herein. The FirstEnergy Companies note that PJM has filed a Motion to Intervene and Comments¹⁶ in this proceeding and support that filing and the relief requested therein. Additionally, for the reasons stated herein, the FirstEnergy Companies respectfully request that the DOE take advantage of FERC's unique expertise in this area by delegating to FERC the task of examining the potential reliability impacts of ITC's January 5 Filing.

¹⁵ See *New York Indep. Sys. Operator, Inc.*, 132 FERC ¶ 61,031 at P 41 and Appendix A at PP 12-13, 20-22 (2010) (investigating, among other things, how the operation of the Michigan-Ontario PARs will affect scheduling on transmission systems of the NYISO and its neighboring RTOs).

¹⁶ *Int'l Transmission Co. d/b/a ITCTransmission*, Motion to Intervene and Initial Comments of PJM Interconnection, L.L.C., filed Mar. 25, 2011, DOE Docket No. PP-230-4.

Randall B. Palmer
Senior Corporate Counsel II
FirstEnergy Corp.
800 Cabin Hill Drive
Greensburg, PA 15601-1689
Tel: (724) 838-6894
rpalmer@alleghenyenergy.com

Respectfully submitted,


G. Philip Nowak
Elisabeth S. Walden
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036-1564
Tel: (202) 887-4000
Fax: (202) 887-4288
pnowak@akingump.com
ewalden@akingump.com

*Attorneys for FirstEnergy Service
Company*

Dated: April 21, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing *Motion to Intervene Out of Time and Comments of FirstEnergy Service Company* to all parties of record in this proceeding.

Dated at Washington, D.C., this 21st day of April, 2011.



Elisabeth S. Walden
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036-1564
Tel: (202) 887-4475