

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System Operator, Inc.) Docket No. ER08-1281-___

**ANSWER OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
TO MOTION FOR ADDITIONAL RELIEF**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully submits the following answer to the Motion for Additional Relief submitted in this docket on January 27, 2010 by International Transmission Company d/b/a ITC *TRANSMISSION* (“ITC”).² ITC’s motion seeks to impose costs associated with Phase Angle Regulators that ITC has constructed at its Bunce Creek station on a transmission line connecting Michigan and Ontario (“Bunce Creek PARs”) on ratepayers in the regions surrounding Lake Erie. The Bunce Creek PARs would replace an earlier PAR that failed shortly after it was placed in-service in 2003. Their activation would restore control functionality that was supposed to have been in place for at least the last seven years, and that was expected to provide substantial benefits to Detroit Edison Company’s (“Detroit Edison’s”) and ITC’s Michigan customers. For the reasons set forth below, the cost allocation sought by

¹ 18 C.F.R. § 385.213 (2009).

² The NYISO notes that, pursuant to Rule 213(a)(3), 18 C.F.R. § 385.213(a)(3) (2009), it is permitted to answer ITC’s motion. If and only to the extent the Commission were to deem this Answer to be an answer not only to ITC’s motion, but also to its response, the NYISO respectfully requests leave to submit this pleading. The Commission has the discretion to accept answers to answers, and has done so when they help to clarify complex issues, provide additional information, or are otherwise helpful in the development of the record in a proceeding. *See e.g., New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 7 (2004) (accepting the NYISO’s answer because it provided information that aided the Commission in better understanding the matters at issue in the proceeding); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was “helpful in the development of the record...”). The NYISO submits that this answer will correct misstatements by ITC and assist in the development of a more complete record, and therefore should be accepted.

ITC is unprecedented, unjustified, and would be unjust and unreasonable. ITC's motion should therefore be rejected.

I. Executive Summary

As described in more detail below, ITC's motion is fatally flawed on a number of grounds:

- ITC's Motion is Procedurally Defective -- The motion is procedurally defective because it seeks relief that goes beyond the scope of this compliance proceeding, includes a *de facto* request for declaratory order that does not conform to Rule 207, and constitutes a *de facto* complaint that does not conform to Rule 206.³ ITC is also attempting to inject generic policy questions concerning inter-regional cost allocation into this proceeding, even though the Commission is already exploring them in Docket No. AD09-8-000 and the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") is discussing within its stakeholder process possible tariff changes to more broadly allocate the costs of the Bunce Creek PARs within the Midwest ISO.
- The Commission Has Repeatedly Rejected Proposals to Adopt Postage Stamp Rates⁴ for Existing Facilities -- For the entire seven year period that the Bunce Creek PARs have been in development, the Commission's policy has been to allocate the costs of existing transmission facilities to the relevant transmission owner's customers, even though, in many cases, such facilities provide benefits to ratepayers in other geographic locations. This policy is founded on equitable considerations and concern for economic and administrative efficiency that ITC's proposal does not satisfy. The Commission has repeatedly rejected efforts by transmission developers to reallocate costs of existing transmission facilities, such as the Bunce Creek PARs, through the use of "postage stamp rates," and has required instead that the costs of such facilities continue to be recovered through "license plate rates."⁵

³ 18 C.F.R. §§ 385.206 and 207 (2009).

⁴ Under a postage-stamp rate design, the costs of transmission facilities are spread broadly among identified beneficiaries of those facilities, including customers in geographic areas outside of the one where the facilities are located. See *American Electric Power Service Corp. v. Midwest Independent Transmission System Operator, Inc., et al.*, 125 FERC ¶ 61,341 at n.10 (2008). By contrast, "[u]nder a license-plate (or zonal) rate design, a customer pays the embedded cost of transmission facilities that are located in the same zone as the customer. A customer does not pay for other transmission facilities outside of the zone, even if the customer engages in transactions that rely on those zones." *PJM Interconnection, L.L.C.*, 130 FERC ¶ 61,052 at n.3 (2010). The costs of the Bunce Creek PARs are currently being recovered under a license plate rate, but ITC's motion asks for a reallocation of those costs under what amounts to a postage stamp rate that would be recovered across a three-ISO/RTO region.

⁵ See *American Electric Power Service Corp. v. Midwest Independent Transmission System Operator, Inc., et al.*, 122 FERC ¶ 61,083 at P 31, *order on rehearing*, 125 FERC ¶ 61,341 (2008); *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007), *order on reh'g*, Opinion No. 494-A, 122 FERC P 61,082 (2008).

- The Commission Has Permitted Postage Stamp Rates Only Under Very Limited Circumstances -- In the limited instances in which the Commission has permitted transmission costs to be allocated broadly to designated beneficiaries in a given region, the Commission has been careful to place constraints on the applicability of such mechanisms. For starters, the Commission has only permitted the use of postage stamp rates on a prospective basis, where the facilities to which such postage stamp rates apply are constructed after the rates are accepted by the Commission.⁶ Postage stamp rates are not available for existing facilities that were constructed prior to the implementation of a postage stamp rate. Furthermore, the Commission has repeatedly insisted that postage stamp rates apply only to facilities that are planned pursuant to an organized, regional process in which *all* ratepayers who might have to bear the costs of such facilities have both (1) notice that they might be expected to pay for such facilities, and (2) an opportunity to participate fully in the planning of such facilities.⁷
- The Bunce Creek PARs Are Existing Facilities for Which Postage Stamp Rates Are Not Available -- The Commission has made clear that where a transmission developer has proceeded to undertake substantial planning or construction of transmission facilities under a license plate rate mechanism -- as ITC has done here -- it will not be permitted later to reallocate the costs of those facilities on a postage stamp basis.⁸ Given that ITC's facilities were planned and constructed under a license plate rate mechanism, the after-the-fact, expanded cost allocation now sought by ITC is prohibited.
- ITC Planned and Constructed the Bunce Creek PARs for the Benefit of its Ratepayers, and to Satisfy Michigan's Retail Access Statute; Not to Provide Broader Regional Benefits -- The history of the Bunce Creek PARs, as evidenced by public statements by ITC and its predecessor-in-interest, Detroit Edison, highlights that the original Bunce Creek PAR was constructed to benefit ITC's ratepayers, and to satisfy requirements of Michigan's retail access statute. The benefits to ITC ratepayers included the control of parallel path flows between Michigan and Ontario, and the increase of transmission capacity in Michigan. Recent statements by ITC make clear that the new PARs are intended to serve the same purposes as the original PAR. Although the Bunce Creek PARs are expected to convey broader regional benefits, they were constructed principally to benefit ITC ratepayers.
- The Bunce Creek PARs Were Not Planned and Constructed in Accordance With the Kind of Regional Process That is a Prerequisite to the Cost Allocation Sought by ITC -- To the extent that the NYISO and New York ratepayers have had any discussions with ITC, the Midwest ISO, or any other entity regarding the Bunce Creek PARs, those discussions have been informal, and have not been part of the type of formalized,

⁶ See Opinion No. 494, 119 FERC ¶ 61,063 at P 53.

⁷ See *American Electric Power Service Corp. v. Midwest Independent Transmission System Operator, Inc., et al.*, 122 FERC ¶ 61,083 at P 99.

⁸ See Opinion No. 494, 119 FERC ¶ 61,063 at P 53.

regional planning process that is a prerequisite to the cost allocation sought by ITC. Neither the NYISO nor New York ratepayers have been brought into, or been asked to seriously participate in, the design, planning, or installation process for the Bunce Creek PARs, and have had absolutely no say over the nature or amount of the PARs expenditures incurred by ITC. There has been no formalized process in place to elicit participation by the NYISO or New York consumers, and any discussions that the NYISO or New York ratepayers have had with other entities regarding the Bunce Creek PARs have been informal communications, largely at the operational (as opposed to joint system planning) level. The NYISO's position is borne out by the limited documentation that ITC cites in its motion -- a joint PJM Interconnection, LLC ("PJM")-Midwest ISO report on loop flow, and documentation of the Midwest ISO Board's approval of the 2006 Midwest ISO Regional Transmission Plan ("MTEP"), which incorporated the Bunce Creek PARs as an MTEP project. The PJM -Midwest ISO report is (as its title suggests) just that -- a report, and not a formalized planning document. In any case, the NYISO was not a sponsor of that study, nor was it a participant in the MTEP process. ITC does not identify any formal multi-regional planning process that resulted in the construction of the Bunce Creek PARs, to which the NYISO was a party. ITC has failed to demonstrate that the Bunce Creek PARs were the subject of a regional planning process that included New York ratepayers.

II. Answer

A. ITC's Motion Should Be Rejected Because It Seeks Relief that is Beyond the Scope of a Compliance Proceeding, Violates the Commission's Procedural Rules, and Would Prematurely Involve the Commission in Issues that Are Already Being Addressed Elsewhere

1. ITC Seeks Relief that Goes Beyond the Scope of this Compliance Proceeding

ITC asks the Commission to order the NYISO, other system operators, and other interested stakeholders "to promptly commence good faith negotiations to develop a reasonable cost-sharing plan."⁹ In effect, it seeks a ruling that ratepayers in other regions must pay at least some portion of the costs associated with the Bunce Creek PARs.

ITC's request must be rejected because it is beyond the scope of this proceeding. The Commission directed the NYISO to "develop and file a report on long-term comprehensive solutions to the loop flow problem, including addressing interface pricing and congestion

⁹ ITC motion at 2.

management, and any associated tariff revisions, within 180 days of the date of this order.”¹⁰

The Commission subsequently clarified that the NYISO should “address, in its 180-day report, *all* solutions to the Lake Erie loop flow problem, including but not limited to: (i) the implementation status of the Ontario-Michigan PARs; (ii) the progress that has been made on the operating agreements for the Ontario-Michigan PARs; and, (iii) the complementary role that physical controls will play in the comprehensive solution to the Lake Erie loop flow problem.”¹¹

The NYISO has done exactly this in its *Report on Broader Regional Markets; Long-Term Solutions to Lake Erie Loop Flow* (“Report”). The fact that the *Report*, of necessity, described ITC’s refusal to be part of a comprehensive solution unless its cost allocation demands were satisfied does not mean that ITC may now use this compliance proceeding as a vehicle to impose costs on unwilling ratepayers that are not its customers. The Commission has previously rejected third party attempts to raise new requests for relief in compliance proceedings on the ground that they are beyond the scope of such proceedings.¹² The Commission should follow its precedent in this case.

2. ITC’s Motion Constitutes a *De Facto* Complaint, and Includes a *De Facto* Petition for Declaratory Order, Neither of which Comply with the Commission’s Procedural Rules

ITC acknowledges that the NYISO, with the concurrence of its stakeholders, previously declined to voluntarily enter into negotiations that might lead to the allocation of costs associated with the Bunce Creek PARs to New York ratepayers. The NYISO’s position has not changed and it continues to believe that ITC’s proposal to unilaterally impose such costs on ratepayers

¹⁰ *New York Independent System Operator, Inc.*, 128 FERC ¶ 61,049 at Ordering Paragraph B (2009).

¹¹ *New York Independent System Operator, Inc.*, 128 FERC ¶ 61,239 at P 9 (2008).

¹² *See, e.g., Consol. Edison Co. of N.Y., et al.*, 119 FERC ¶ 61,070 at P 48 (2007).

that are not its customers is inequitable and unlawful.¹³ It therefore falls on ITC, as the entity seeking to compel action by others, and to overturn established cost allocation precedent in the process, to demonstrate that current arrangements are unjust and unreasonable. ITC has not made any such showing in its motion and, even if it had, a motion would not be the proper vehicle for its claims. ITC should instead be required to carry the evidentiary burden, and comply with the procedural requirements, that the Commission expects of complainants under Rule 206 of the Commission's Rules of Practice and Procedure¹⁴ and Section 206 of the Federal Power Act.

In addition, ITC has asked the Commission to issue a "declaration" that a super-regional cost-sharing arrangement for the Bunce Creek PARs would be consistent with Commission policy and precedent. Under Rule 207 of the Commission's Rules of Practice and Procedure,¹⁵ any person seeking a declaration to "remove uncertainty" must submit a petition and include the required filing fee. ITC's request clearly falls within the ambit of Rule 207.

3. ITC Improperly Seeks to Raise Policy Issues that are Already Being Addressed in Other Venues

ITC's motion raises questions regarding the inter-regional allocation of transmission costs that are already pending before the Commission in Docket No. AD09-8-000. ITC is an active participant in that proceeding. Such policy issues are appropriately addressed in that generic policy-making proceeding rather than this case, which focuses on specific regional issues that are not of interest to the electric utility industry as a whole.

¹³ ITC mischaracterizes the NYISO's position when it implies that the NYISO believes that voluntary regional cost sharing agreements are unlawful. *See* ITC motion at 7. In reality, the NYISO believes that unilateral attempts by a transmission owner to involuntarily impose costs on ratepayers that are not its customers are inequitable and inconsistent with current Commission precedent.

¹⁴ 18 C.F.R. § 385.206 (2010).

¹⁵ 18 C.F.R. § 385.207 (2010).

Similarly, the Midwest ISO's comments in this proceeding state that it is "currently working with ITC to identify cost causation and allocation principles" and related changes to the Midwest ISO tariff structure "that would be required for ITC to recover its identified capital, maintenance and operating expenses" related to the Bunce Creek PARs. ITC's requests for relief therefore appear to be, at a minimum, premature. Unlike the other regions that ITC has targeted for involuntary cost allocations, the Midwest ISO and its stakeholders had an opportunity to consider the Bunce Creek PARs as part of the Midwest ISO's 2006 Transmission Expansion Plan.¹⁶ As is noted in Section II.B.2.b, below, the Bunce Creek PARs were not classified as facilities eligible for cost-sharing. The Commission should not override the Midwest ISO's previous determination that the costs of the Bunce Creek PARs should be borne by ITC's customers based solely on the record in this case. Nor should the Commission preempt the Midwest ISO process by concluding that those costs should be spread not just across the Midwest ISO but beyond its borders as well.

B. There is No Basis in Commission Precedent for Granting the Cost Allocation Remedy Sought by ITC

1. The Commission Has Placed Strict Limits on the Type of Regional Cost Sharing Sought by ITC

The Commission's default cost allocation mechanism is the license plate rate, which requires that the costs of a transmission provider's facilities be paid for by that transmission provider's customers, irrespective of the benefits those facilities might provide to customers on other interconnected systems. Although the Commission has expressed a desire to move away from license plate rates, and toward postage stamp rates that might better reflect the regional

¹⁶ The difference is clear from ITC's motion which emphasizes the Midwest ISO Board's approval of the Bunce Creek PARs but does not mention any other ISO/RTO stakeholder processes that considered them. *See* ITC motion at 6.

benefits that certain transmission facilities provide, it has repeatedly endorsed -- for reasons of equity and efficiency -- the use of license plate rates in its efforts to facilitate the development of ISOs and RTOs.¹⁷ In recent years, the Commission has gradually moved toward the use of postage stamp rates, but only for facilities that are to be constructed in the future and that are developed in accordance with a Commission-accepted regional joint planning process.¹⁸ Most significantly, the Commission's movement toward limited postage stamp rates has been accompanied by an insistence that license plate rates be retained for existing facilities.

a. The Commission has repeatedly rejected a shift to postage stamp rates for existing facilities, particularly where they have been constructed by individual transmission owners to benefit their own customers

Contrary to ITC's assertions in its motion,¹⁹ recent Commission decisions addressing the allocations of transmission costs in PJM and the Midwest ISO are directly applicable to ITC's request. These decisions, which have repeatedly rejected efforts to impose postage stamp rates for existing transmission facilities, strongly undercut ITC's request that the Commission instruct stakeholders around Lake Erie to discuss reallocation of the cost of ITC's PARs.

i. Opinion No. 494

In Opinion No. 494, the Commission's resolution of rate design issues in PJM, the Commission affirmatively rejected a request to implement postage stamp rates for existing facilities. Instead, the Commission required that license plate rates remain in effect for existing

¹⁷ See *PJM Interconnection, L.L.C.*, 96 FERC ¶ 61,060 at 61,220 (2001); *Cleco Power LLC*, 103 FERC ¶ 61,272 at P 28 (2003); *Southwest Power Pool, Inc.*, 111 FERC ¶ 61,118 at P 35 (2005); *Bonneville Power Administration*, 112 FERC ¶ 61,012 at P 96 (2005).

¹⁸ See, e.g., *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007), *order on reh'g*, Opinion No. 494-A, 122 FERC P 61,082 (2008); *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,106, *order on reh'g.*, 117 FERC ¶ 61,241 (2006).

¹⁹ See ITC motion at 5-6.

transmission facilities, even though many of those facilities provide benefits to ratepayers outside of their local zones.²⁰

The Commission’s rationale for mandating the use of license plate rates for existing facilities is premised on four core factors. The first is the fact that “existing facilities represent sunk costs that were built primarily by individual utilities to serve their own internal needs and were financed by those utilities.”²¹ The Commission explained that because “transmission owners in PJM built their existing infrastructure primarily to accommodate the needs of their own customers,”²² it is appropriate to require that those customers bear the costs of that infrastructure. The Commission rejected arguments that ancillary beneficiaries should bear a portion of the costs of such facilities, even if those benefits are a result of unanticipated or new uses of the system, because the “fact that the transmission system is used today in ways that differ from when the facilities were first constructed does not, standing alone, provide a basis for finding that a license plate rate design is no longer just and reasonable.”²³

The second, related, factor revolves around the fact that the “sunk transmission costs in question were not planned and constructed to maximize benefits on a region-wide basis”²⁴ as part of a region-wide planning process. Instead, as noted above, they were constructed by each individual transmission owner for the benefit of their own ratepayers. In the absence of a region-wide planning process intended to maximize benefits on a regional basis, the Commission held

²⁰ Opinion No. 494, 119 FERC ¶ 61,063 at P 49.

²¹ *Id.* at P 50.

²² *Id.* at P 51.

²³ *Id.*

²⁴ *Id.* at P 54.

that it was just and reasonable for the costs of existing transmission facilities to be recovered through license plate rates.

The third factor involves economic efficiency, and the provision of appropriate incentives for construction of new transmission facilities. The Commission noted that “one of the goals in allocating costs is to promote economic efficiency, [and] reallocation of the sunk costs of already built facilities will not affect future investment decisions.”²⁵ The Commission went on to explain that:

the allocation of the sunk costs of existing transmission facilities has no significant impact on investment decisions associated with new transmission facilities. A reallocation of costs for existing facilities will not affect a transmission owner's future decision about whether and where to build new transmission facilities. Rather, it is the cost allocation method for new transmission facilities that influences the incentive to invest.²⁶

The fourth factor is the fact that “[a]n abrupt shift away from license plate rates would . . . result in inequities within PJM.”²⁷ Specifically, the Commission is concerned that the use of postage stamp rates for existing facilities would abruptly impose additional costs on third parties that had no notice that such costs would be imposed on them, and that had no input into whether, or how, such facilities should be constructed.²⁸

ii. AEP Complaint

More recently, the Commission reiterated these holdings in its rejection of a complaint by American Electric Power (“AEP”) seeking the imposition of a postage stamp rate for existing facilities in both PJM and the Midwest ISO. Similar to the arguments made by ITC in this case,

²⁵ *Id.* at P 53.

²⁶ *Id.*

²⁷ *Id.* at P 57.

²⁸ *Id.*

AEP argued that its existing high voltage transmission facilities in the combined PJM/Midwest ISO region provided substantial benefits to customers outside of AEP's zones, and that those customers therefore should bear a portion of the costs of those existing facilities.²⁹

The Commission began its discussion by explaining why postage stamp rates are permissible for future facilities, but not for existing facilities. The Commission first contrasted the planning process that led to the construction of AEP's existing facilities with the process used to construct prospective facilities in PJM and the Midwest ISO. The Commission explained that, unlike the process that led to the construction of AEP's existing facilities, "Midwest ISO and PJM plan the construction of new facilities based on each RTO's independent planning process, which helps to ensure that new projects are necessary to meet the reliability and economic needs of each RTO's system as a whole."³⁰ Equally importantly, "[s]takeholders in each RTO can participate in the RTO's regional planning process and, thus, can be part of the discussion that leads to the decision to build new facilities in which they will share the cost."³¹ By "contrast, decisions to build existing facilities were not made as part of any regional planning process."³²

The Commission also explained that "unlike existing facilities, the rate design for new facilities has efficiency implications."³³ Specifically, "rate design for new facilities is important because it provides incentives for construction and provides sufficient certainty, so that

²⁹ See *American Electric Power Service Corp. v. Midwest Independent Transmission System Operator, Inc., et al.*, 122 FERC ¶ 61,083 at P 31, *order on rehearing*, 125 FERC ¶ 61,341 (2008).

³⁰ *Id.* at P 96.

³¹ *Id.*

³² *Id.*

³³ *Id.* at P 97.

developers can obtain financing and the projects can be constructed.”³⁴ By contrast, “reallocating the cost of existing facilities would neither provide economic efficiencies nor promote the goal of increasing necessary transmission investment.”³⁵

The Commission then went on to address AEP’s arguments that its facilities were, in fact, planned on a regional basis that justified a postage stamp rate, again, similar to the argument raised by ITC in this proceeding. In response to AEP’s argument that it “in fact did coordinate the development of its [high-voltage] system with other utilities in the region,” the Commission stated that “AEP has not shown that the level and type of coordination it says occurred in the development of its existing high-voltage facilities is comparable to the RTO regional planning processes currently in place.”³⁶ The Commission went on to note that while “AEP’s facilities were likely not planned in isolation, there is no evidence in the record to show that they were planned to address regional needs of either the Midwest ISO or PJM wholesale market, and therefore they are not comparable to each RTO’s regional planning process.”³⁷

The Commission also addressed the general argument that customers throughout PJM and the Midwest ISO should pay for AEP’s existing high voltage facilities because they all benefit from them. In particular, the Commission stated that “[w]e do not dispute that some of AEP’s existing facilities provide benefits outside of their local zone, including for Midwest ISO customers.”³⁸ However, the Commission concluded that, “consistent with the Commission’s findings in Opinion No. 494, this fact by itself does not establish that the current license-plate

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at P 98.

³⁷ *Id.*

³⁸ *Id.* at P 133.

rate design for existing facilities is unjust or unreasonable, nor does it provide justification for reallocating the cost of existing facilities throughout the combined Midwest ISO/PJM region.”³⁹

These decisions are the most recent Commission pronouncements on the permissibility of reallocating sunk transmission costs, and establish clearly that such costs, having been incurred pursuant to a license plate rate cost allocation methodology, should not later be reallocated to unsuspecting third parties under a postage stamp rate. Beginning in 2008, ITC identified the replacement of the Original Bunce Creek PAR as a capital project to be included in ITC’s Attachment O rate – the license plate rate in the Midwest ISO tariff for recovery of ITC’s transmission costs from ITC’s own customers.⁴⁰ There is no reason for the Commission to reach a different conclusion in this case.

b. The Commission’s decisions limit postage stamp rates to prospective transmission facilities constructed pursuant to an organized regional planning process

Just as important as the Commission’s repeated rejection of the application of postage stamp rates to existing facilities are the limited circumstances under which the Commission has permitted the use of postage stamp rates. The Commission’s decisions establish two fundamental prerequisites for the applicability of postage stamp rates -- that they be applied to

³⁹ *Id.*

⁴⁰ ITC has included replacement of the Original B3N in its Attachment O as a capital project. *See* International Transmission Company, *ITC Partners in Business 2009 Attachment O* at 9 (listing Midwest ISO Project ID #1308 – B3N ITC-Hydro One Interconnection (Bunce Creek) as a 2009 Planned Capital Addition) and International Transmission Company, *ITC Transmission 2010 Attachment O* at 10. ITC has also discussed the project in several presentations as a replacement of the Original Bunce Creek PAR. *See, e.g.,* International Transmission Company, *ITC Partners in Business Meeting Presentation* at 21 (dated December 13, 2007 (describing it as a project to “Replace the failed B3N phase shifting transformer at Bunce Creek with two phase shifting transformers to be operated in series. Justification Includes – Replace failed equipment.”); Spring 2008 ITC Presentation at 9 (stating that “[w]ith PARs on 3 of 4 interconnections, it will not be possible to achieve the goal of flow equal to schedule, particularly when external transactions cause heavy flow conditions. The interconnection will be operated to control flow to schedule as much as possible. This will be the case for Summer 2008. The B3N transformer will be replaced by two (in series) phase angle regulating transformers which are expected to be delivered in late 2008 and early 2009. Once operational, the interconnection flow can be optimally controlled to flow equals scheduled.”).

facilities constructed after the relevant postage stamp methodology has been put into effect, and that they be constructed pursuant to a formal, system-wide planning methodology which takes into consideration the needs of the entire region, and which permits all affected stakeholders to participate meaningfully before they are allocated transmission upgrade costs.

i. Prospective Transmission Facilities

As outlined above, one of the core lessons of Opinion No. 494 is that cost allocation for existing transmission facilities is different from cost allocation for proposed/future transmission facilities. Among the reasons for this is the need to encourage efficient construction and siting of new transmission assets. As the Commission observed, the “reallocation of costs for existing facilities will not affect a transmission owner’s future decision about whether and where to build new transmission facilities.”⁴¹ Rather, “it is the cost allocation method for new transmission facilities that influences the incentive to invest.”⁴²

Another significant reason for the distinction between existing and proposed facilities is the desire to avoid the inequitable result of unanticipated cost shifts to unsuspecting third party transmission customers. The Commission has consistently sought to avoid the imposition of additional costs on third parties that had no notice that such costs would be imposed on them, or input into whether, or how, such facilities should be constructed.⁴³

Largely for these reasons, the Commission has limited the applicability of postage stamp rates to transmission facilities planned and constructed after the implementation of a postage

⁴¹ 119 FERC ¶ 61,063 at P 53.

⁴² *Id.*

⁴³ *Id.*

stamp cost allocation methodology.⁴⁴ Postage stamp rates have not been available in circumstances, like the ones present in this proceeding, where transmission facilities are constructed before a postage stamp rate method is adopted. Only by ensuring that postage stamp rates apply on a prospective basis can the Commission ensure that it is truly providing the correct incentives for the construction of new transmission facilities, and avoid inequitable cost shifts that inevitably accompany the reallocation of sunk transmission costs.

With respect to this issue, it should be noted that, contrary to ITC's assertions on page 5 of its pleading, the Commission's decisions requiring license plate cost allocation for transmission facilities in the Midwest ISO and PJM footprints have not all involved "traditional transmission facilities which had been in place for substantial periods" In the case of the Midwest ISO's transmission facilities in particular, the Commission approved a cost allocation approach that excluded from the newer, system-wide cost allocation mechanism numerous transmission projects that had reached advanced stages in the planning process, but that had not yet been constructed. The Commission rejected challenges to this determination from developers of these excluded projects, noting that they had "moved forward with those projects without any assurance that such projects would be candidates for regional cost-sharing."⁴⁵ This holding underscores that the key issue is not whether the underlying transmission facility "has been in place for substantial periods," but instead whether the developer of that facility has moved forward in its effort to construct that facility before a postage stamp rate was put into effect. There is no postage stamp rate in place for allocating costs across the Midwest ISO-PJM-NYISO region.

⁴⁴ See 119 FERC ¶ 61,063 at PP 61-66 (emphasizing that the methodology requiring transmission costs to be paid by all beneficiaries will apply to all "new" transmission facilities).

⁴⁵ 117 FERC ¶ 61,241 at P 96.

ii. System-Wide Planning Process

The Commission's second prerequisite to the adoption of a postage stamp rate is the use of "a formal, Commission-approved, regional planning process where the needs of the region are addressed and where all stakeholders are given an opportunity to participate."⁴⁶ In its orders on the AEP complaint the Commission found that "an important factor in allowing certain new high-voltage facilities to be eligible for postage-stamp treatment is that those new facilities are planned on a regional basis by a central grid operator, who considers the reliability and economic interests of the RTO as a whole."⁴⁷

This factor directly affected the outcome of AEP's complaint because AEP was unable to prove that its existing facilities were constructed pursuant to such a process. As outlined above, AEP provided documentation of collaborations between it and neighboring utilities, in an attempt to satisfy this criterion. Nonetheless, the type of organized process needed to satisfy this criterion is a highly centralized one that formally accounts for all the needs of the relevant region, and that permits all affected stakeholders to participate on a prospective (pre-construction) basis. AEP's collaborations with its neighboring utilities -- like ITC's attendance at the technical conferences to discuss solutions to Lake Erie loop flow -- were insufficient to carry AEP's burden of establishing that its existing facilities had been planned pursuant to the necessary regional planning process. The Commission concluded that "[a]lthough AEP's facilities were likely not planned in isolation, there is no evidence in the record to show that they

⁴⁶ 122 FERC ¶ 61,083 at P 99. *See also* Opinion No. 494, 119 FERC ¶ 61,063 at P 84 ("facilities that are eligible for postage-stamp treatment will be planned on a regional basis by a central grid operator, PJM, which considers the reliability and economic interests of PJM as a whole.").

⁴⁷ 122 FERC ¶ 61,083 at P 99.

were planned to address regional needs of either the Midwest ISO or PJM wholesale market, and therefore they are not comparable to each RTO's regional planning process.”⁴⁸

2. ITC Has Not Demonstrated That the Prerequisites to the Adoption of Regional Cost Sharing for the Bunce Creek PARs are Satisfied

Like AEP in its complaint proceeding, ITC has the burden of demonstrating that the existing cost allocation method for the Bunce Creek PARs is unjust and unreasonable. It has not done so. Indeed, all of the circumstances that the Commission relied on in rejecting postage stamp rates for existing facilities in Opinion No. 494 and in the AEP case are present in this proceeding, and none of the prerequisites to the application of a postage stamp rate have been satisfied.

a. The Bunce Creek PARs are existing facilities for which the type of cost allocation sought by ITC is not available

One of criteria for regional cost sharing is that the cost sharing mechanism be in place before the underlying transmission assets are planned and constructed. Indeed, the Commission has looked askance at the use of a postage stamp rate in circumstances where “[p]arties moved forward with [their] projects without any assurance that such projects would be candidates for regional cost sharing.”⁴⁹ Thus, where there are existing facilities -- that is, facilities that have undergone either extensive planning or construction, the costs of which are expected to be recovered under a license plate rate -- the Commission prohibits a reallocation of such costs pursuant to a postage stamp rate. The reasons for this, again, are to promote efficient transmission development, and to prevent unfair cost shifts to unsuspecting third party customers.

⁴⁸ *Id.*

⁴⁹ *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,241 at P 96 (2006).

In this case, ITC moved forward with the planning and construction of the Bunce Creek PARs long before it began participating in the process that is currently in place to develop broader regional market solutions to Lake Erie loop flow. Parties outside of the ITC zone had absolutely no notice of any proposal by ITC to allocate such costs to them until after the underlying PARs were either nearly complete or completed.⁵⁰ The Bunce Creek PARs are existing transmission facilities for which the type of broad cost allocation sought by ITC is prohibited. ITC's argument that the Bunce Creek PARs have not been in place for "substantial periods" is irrelevant.⁵¹ Granting ITC's motion would unfairly reallocate part of the costs of the Bunce Creek PARs to third parties on the eastern side of Lake Erie, without ever giving them a chance to weigh in on the planning or construction of those facilities, in contravention of established Commission precedent. Furthermore, granting ITC's motion would constitute the very type of reallocation of sunk costs that the Commission has repeatedly concluded would adversely affect efficient transmission construction decisions. ITC's motion should be rejected.

b. ITC constructed the Bunce Creek PARs in order to benefit its own ratepayers, and to satisfy the requirements of the Michigan retail access statute, and not to provide regional benefits

As the Commission established in Opinion No. 494, broad cost allocation is not warranted in circumstances where "existing facilities represent sunk costs that were built

⁵⁰ ITC did not propose or request broader allocation of the cost of its PARs until more than eight years after ITC initially proposed to construct the original Bunce Creek PAR. It was not until the NYISO brought the incidental benefits these facilities could provide to other ratepayers to the Commission's attention that ITC began requesting broader allocation of the cost of its facilities. ITC first began making these arguments in pleadings seeking to dissuade the NYISO and the Commission from involving themselves in the Department of Energy permitting process for the Bunce Creek PARs. *See, e.g., ITC's Answer In Opposition to Request for Clarification at 3* (August 31, 2009).

⁵¹ ITC motion at 5. As outlined above, the Commission's decisions regarding the Midwest ISO cost allocations excluded from postage stamp rates facilities that had not yet been constructed, but that had advanced substantially through the planning process. *See Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,241 at P 96.

primarily by individual utilities to serve their own internal needs and were financed by those utilities.”⁵² It is for this reason that the Commission, in its rejection of the AEP complaint, held that “[w]ithin the context of RTOs, examining the original basis for making an investment is a reasonable component of a rate design analysis.”⁵³

A review of the “original basis” for the ITC PARs shows that they were designed and constructed primarily for the benefit of ITC’s ratepayers and to achieve compliance with Michigan’s electric retail access statute. The PARs were not designed pursuant to the type of formalized, regional planning process necessary to justify an allocation of ITC’s costs to New York ratepayers.

The construction of a PAR at Bunce Creek Station was originally proposed by Detroit Edison -- ITC’s predecessor-in-interest -- in 2000. In its April 2000 application to amend its Presidential Permit to allow the construction of a PAR (“Original Bunce Creek PAR”), Detroit Edison explained that the installation of the Original Bunce Creek PAR would “provide enhanced control over the inadvertent power flow between Michigan and Ontario, and by extension, around the Great Lakes.”⁵⁴

In December of 2000, the Michigan Public Service Commission (“MPSC”) initiated a proceeding, requiring electric utilities serving more than 100,000 retail customers in Michigan, to file a joint plan detailing measures to expand available transmission capability by at least 2000

⁵² Opinion No. 494, 119 FERC ¶ 61,063 at P 50.

⁵³ 125 FERC ¶ 61,341 at P 41.

⁵⁴ *The Detroit Edison Company*, Presidential Permit Order No. P-221 at 2 (April 27, 2000) (“April 2000 Presidential Permit”).

MW, by June 5, 2002. The MPSC imposed this requirement to comply with Section 10v of Michigan's Customer Choice and Electric Reliability Act, 2000 PA 141 ("Section 10v").⁵⁵

In the resulting MPSC proceeding, Detroit Edison, and its then-subsiary, ITC, filed a Joint Report "detailing the actions required to achieve the 2000 MW expansion, including identifying the facilities required."⁵⁶ The Joint Report identified seven projects that ITC would have to build, in order to meet the requirements of Section 10v.⁵⁷ One of the projects ITC identified was the addition of "a 675 MVA Phase Angle Regulator in the B3N interconnection with Hydro One [*i.e.*, the Original Bunce Creek PAR]."⁵⁸

In the Joint Report, ITC stated that it had installed the Original Bunce Creek PAR which was:

operating in concert with similar phase angle regulators added by Hydro One in the L4D and L51D interconnections, as well as the existing phase angle regulator in the J5D interconnection, [and] enables the control of 600-700 MW of parallel path flow north of Lake Erie (Lake Erie circulation). As this circulating power was using a significant portion of the International Transmission Company-Ontario interface, the control of 600-700 MW of circulating power translates into an increase in the firm commercial capability of that interface. **In total, the Hydro One to MECS path will realize an increase of 820 MW of firm commercial capability from 2000 to 2002.**⁵⁹ (Emphasis added.)

⁵⁵ See *In the Matter of the application of Indiana Michigan Power Co., d/b/a American Electric Power, for approvals in connection with 2000 PA 141 Section 10v; In the matter of the application of International Transmission Company and Great Lakes Energy Cooperative for approvals in Connection with 2000 PA 141 Section 10v*, Brief of the Detroit Edison Co. at 1-2, MPSC Docket Nos. U-12780 and U-12781 (filed June 29, 2001) ("Detroit Edison Brief"); see also, MPSC Docket Nos. U-12780 and U12781, *ITC Testimony of T.W. Vitez* at 16 (filed March 17, 2001).

⁵⁶ *Id.* at 2.

⁵⁷ See MPSC Docket Nos. U-12780 and U12781, *ITC Testimony of T.W. Vitez - Exhibit 2 "Joint Report"* at 1 (filed March 17, 2001) (The Joint Report was produced by ITC, along with Consumers Energy Company and Great Lakes Energy Company) ("Joint Report").

⁵⁸ Detroit Edison Brief at 5.

⁵⁹ Joint Report at 8.

The Joint Report indicated that ITC was “committed to constructing all of the identified projects” which were required to comply with Section 10v.⁶⁰ In a subsequent pleading with the MPSC, DTE and ITC stated that “adding a 675 MVA phase angle regulator in the B3N interconnection with Hydro One” was part of the projects “required to be completed on ITC’s system in order to support the expansion by 2000 MW, of the firm commercial capability into the lower peninsula of Michigan.”⁶¹ In July of 2002, the MPSC issued an order finding that the Joint Report complied with state law and stated that the proposal “will achieve the required increase in transmission capacity.”⁶²

In April of 2001, the Department of Energy issued a Presidential Permit to ITC,⁶³ authorizing the construction of the Original Bunce Creek PAR.⁶⁴ The Original Bunce Creek PAR entered service in 2003, but failed in March of that year.⁶⁵ Later, in April of 2003, the tower supporting the Canadian side of the underlying transmission line (the Bunce Creek - Scott line) collapsed due to inclement weather, causing the line itself to fail.⁶⁶ In November of 2006, Hydro One replaced the tower and restrung the Bunce Creek-Scott transmission line.⁶⁷ In 2009 and 2010, ITC identified the replacement of the Original Bunce Creek PAR as a capital project

⁶⁰ *Id.* at 12.

⁶¹ Detroit Edison Brief at 1-2.

⁶² MPSC Docket Nos. U-12780 and U12781, Opinion and Order (issued July 23, 2002).

⁶³ ITC and Detroit Edison had restructured and applied to the DOE to rescind the Presidential Permit granted to Detroit Edison and concurrently issue a new Presidential Permit to ITC for the same facilities. That request was authorized on September 26, 2000 in Presidential Permit Order No. PP-230. *See* April 2001 Presidential Permit at 3.

⁶⁴ *See* April 2001 Presidential Permit at 1.

⁶⁵ *International Transmission Company d/b/a ITCTransmission*, Request of International Transmission Company D/B/A ITCTransmission to Amend Presidential Permit at 5, DOE Docket No. PP-230-4 (filed January 5, 2009) (“January 2009 Presidential Permit Application”); International Transmission Company, *Partners in Business Presentation* at 8, Spring 2008 (“Spring 2008 ITC Presentation”).

⁶⁶ *See* January 2009 Presidential Permit Application at 5 and Spring 2008 ITC Presentation at 8.

⁶⁷ *See* Spring 2008 ITC Presentation at 8.

to be included in ITC's Attachment O rate -- that is, the license plate rate in the Midwest ISO tariff for recovery of ITC's transmission costs from ITC's own customers.⁶⁸ Replacement of the Original Bunce Creek PAR was also listed in the 2006 Midwest ISO Transmission Expansion Plan as a project recommended by the Midwest ISO to meet system needs, but not eligible for cost sharing.⁶⁹ As the Midwest ISO has established in its Regional Transmission Plan, projects that are not eligible for cost sharing include those that are "under the threshold for regional cost sharing, are driven by local area planning criteria ... and are therefore not eligible for cost sharing but should nevertheless be implemented with the costs recovered by the Transmission Owner within the associated pricing zone."⁷⁰

On January 5, 2009, ITC filed an application to amend its Presidential Permit. Specifically, ITC requested approval to place into service two 700 MVA phase shifting transformers (the Bunce Creek PARs) to replace the "previously authorized 675-MVA transformer" (the Original Bunce Creek PAR).⁷¹ ITC asserted that the Original Bunce Creek PAR's "purpose was to help provide 'enhanced control over the inadvertent power flow between Michigan and Ontario and, by extension, around Lake Erie', so that 'under normal operating

⁶⁸ ITC has included replacement of the Original Bunce Creek PAR in its Attachment O as a capital project. See International Transmission Company, *ITC Partners in Business 2009 Attachment O* at 9 (listing Midwest ISO Project ID #1308 – B3N ITC-Hydro One Interconnection (Bunce Creek) as a 2009 Planned Capital Addition) and International Transmission Company, *ITC Transmission 2010 Attachment O* at 10. ITC has also discussed the project in several presentations as a replacement of the Original Bunce Creek PAR. See, e.g., International Transmission Company, *ITC Partners in Business Meeting Presentation* at 21 (dated December 13, 2007 (describing it as a project to "Replace the failed B3N phase shifting transformer at Bunce Creek with two phase shifting transformers to be operated in series. Justification Includes – Replace failed equipment."); Spring 2008 ITC Presentation at 9 (stating that "[w]ith PARs on 3 of 4 interconnections, it will not be possible to achieve the goal of flow equal to schedule, particularly when external transactions cause heavy flow conditions. The interconnection will be operated to control flow to schedule as much as possible. This will be the case for Summer 2008. The B3N transformer will be replaced by two (in series) phase angle regulating transformers which are expected to be delivered in late 2008 and early 2009. Once operational, the interconnection flow can be optimally controlled to flow equals scheduled.").

⁶⁹ See *Midwest ISO Transmission Expansion Plan - MTEP06* at 7 (revised February 2007).

⁷⁰ *Id.*

⁷¹ January 2009 Presidential Permit Application at 5-6.

conditions ... the electrical flow on the Michigan-Ontario interface will match the Michigan-Ontario scheduled transactions across the interface.”⁷² Further, ITC stated that:

[i]n recognition of the failure of the original transformer ... ITC chose a differently designed unit and decided to replace the single failed unit with two 700-MVA units connected in series.... Since the two new transformers will nominally have 15 degrees more shifting capability than the failed transformer, they should be capable of providing some increased amount of control over unscheduled electrical flows when necessary. **However, the intended function of the new units will be the same as the original unit was authorized to provide in 2001** -- to control unscheduled flows so that actual flow matches scheduled flow, to the maximum extent possible. **In that sense, therefore, the new units should perhaps best be viewed as replacement facilities providing an already authorized service, rather than as new facilities providing a new service.**⁷³ (Emphasis added.)

This history demonstrates that the Original Bunce Creek PAR was constructed by Detroit Edison with the needs of its own ratepayers in mind, and for the purpose of satisfying Michigan’s electric retail access requirements. ITC’s presidential permit application emphasizes that the replacement PARs were constructed for the same purposes as the Original Bunce Creek PAR. Thus, like the existing facilities in Opinion No. 494 and in the AEP complaint proceeding, the Bunce Creek PARs were built for the benefit of ITC’s own ratepayers, and -- in spite of any ancillary benefits that those facilities might have for other areas around Lake Erie -- not for the benefit of the broader region.

c. The Bunce Creek PARs were not planned and constructed pursuant to the type of formalized planning process that is a prerequisite to the type of cost allocation sought by ITC

The history of the Bunce Creek PARs outlined above belies ITC’s suggestion that they were somehow constructed pursuant to the type of regional planning process required to justify the cost allocation that ITC now seeks. The specific requirement is that there be a “formal,

⁷² *Id.* at 5.

⁷³ *Id.* at 6.

Commission-approved, regional planning process where the needs of the region are addressed and where all stakeholders are given an opportunity to participate.”⁷⁴ As outlined above, informal discussions or collaborations are not sufficient to satisfy this criterion. Rather, a proponent of a broad cost allocation must demonstrate that a formalized, regional planning process was in place at the time that the underlying facilities were planned, that it considered the needs of the entire region, and that it permitted all affected stakeholders to have a say over whether and, if so, how the relevant facilities will be constructed.

To the extent that the NYISO and New York ratepayers have had any discussions with ITC, the Midwest ISO, or any other entity regarding the Bunce Creek PARs, those discussions have been informal, and have not been part of the type of formalized, regional planning process that is a prerequisite to the cost allocation sought by ITC. Neither the NYISO nor New York ratepayers have been brought into, or been permitted to seriously participate in, the design, planning, or installation process for the Bunce Creek PARs, and have had no say regarding the nature or amount of the PARs expenditures incurred by ITC. Furthermore, there has been no formalized process in place to encourage such participation, and any discussions that the NYISO or New York ratepayers have had with other entities regarding the Bunce Creek PARs have been only informal communications, largely at the operational (as opposed to the planning) level.

This is borne out by the limited documentation that ITC cites in support of its “regional planning” claims -- a joint PJM-Midwest ISO report, and documentation of the Midwest ISO Board’s approval of the 2006 Midwest ISO Regional Transmission Plan (“MTEP”), which incorporated the Bunce Creek PARs as an MTEP project. The PJM-Midwest ISO report is not a formalized planning document. Rather, as its terms make clear, it is a report on the existing

⁷⁴ 122 FERC ¶ 61,083 at P 99.

status of loop flow issues, and a description of operational measures being taken by PJM and the Midwest ISO to address loop flows.⁷⁵ In any case, the NYISO was not a sponsor of that study, nor was it a participant in the MTEP process. ITC does not identify any formal multi-regional planning process that resulted in the construction of the Bunce Creek PARs, to which the NYISO was a party. ITC has failed to demonstrate that the Bunce Creek PARs were the subject of a regional planning process that included New York ratepayers.

Just as AEP was unable to satisfy its burden of demonstrating that its existing facilities were planned and constructed pursuant to a formalized, region-wide planning process, so ITC has failed to demonstrate that the Bunce Creek PARs were planned and constructed pursuant to a formalized, region-wide planning process. Indeed, the NYISO submits not only that ITC has not identified a multi-region planning process that satisfies the planning prerequisite, but that it cannot make such a demonstration. There was no process in place for the NYISO or New York ratepayers that are not also, coincidentally, participants in the Midwest ISO's markets, to have any say regarding the design, planning, or construction of the Bunce Creek PARs. In light of these circumstances, there is no basis under applicable Commission orders for granting ITC's motion.

d. ITC makes no effort to distinguish its PARs from any other facility that provides broad benefits, but that have associated license plate rates

The Bunce Creek PARs are similar to many other existing transmission facilities that provide benefits across a relatively broad geographic area. As the Commission stated with respect to AEP's existing facilities -- and equally applicable to the Bunce Creek PARs -- "this

⁷⁵ See Investigation of Loop Flows Across Combined Midwest ISO and PJM Footprint, May 25, 2007 at 3-4 (stating that the purpose of the initiative is "to provide details on plans and actions taken to address the problems of external loop flows") (available at <http://www.jointandcommon.com/working-groups/joint-and-common/downloads/20070525-loop-flow-investigation-report.pdf>).

fact by itself does not establish that the current license-plate rate design for existing facilities is unjust or unreasonable, nor does it provide justification for reallocating the cost of existing facilities throughout the combined Midwest ISO/PJM region.”⁷⁶ Without the satisfaction of the specific prerequisites outlined above, or some other distinguishing factor, there is no basis for a departure from the license plate rates that currently apply to the Bunce Creek facilities.

ITC has made no effort to distinguish the Bunce Creek PARs from all the other existing transmission facilities that provide broad benefits, but whose costs are recovered through license plate rates. The NYISO submits that there is no basis for making such a distinction. The Midwest ISO identified the PARs as a part of its regional planning process, but did not identify the PARs as being eligible for broader cost allocation within the Midwest ISO footprint. To the extent that the Bunce Creek PARs were not determined to be eligible under the Midwest ISO’s cost allocation processes for allocation to customers outside of the ITC zone, there is no possible basis for concluding that they should now be eligible for super-regional cost allocation.⁷⁷

C. The WECC Cases Cited by ITC Are Not Applicable and Do Not Support the Relief That ITC Seeks

Recognizing that the Commission’s more recent decisions addressing cost allocation in the Midwest ISO and PJM require ITC to recover the costs of its Bunce Creek PARs from its own customers through a license plate rate, ITC points to the Commission’s *Southern California Edison* decisions, which were issued in 1995 before ISOs and RTOs assumed responsibility for regional planning,⁷⁸ and asks the Commission to mandate participation by the NYISO, PJM,

⁷⁶ 122 FERC ¶ 61,083 at P 133.

⁷⁷ Even if the Midwest ISO were to revise its previous determination and to permit Bunce Creek PAR costs to be allocated more widely within its footprint, on a prospective basis, that redetermination would occur within the Midwest ISO’s planning process.

⁷⁸ *Southern California Edison Company, et al.*, 70 FERC ¶ 61,087 (1995); 73 FERC ¶ 61,219 (1995).

Midwest ISO and their stakeholders in “good faith negotiations to develop a regional cost sharing plan.” If mandatory participation in “good faith negotiations” will, ultimately, require the NYISO and New York stakeholders to agree to pay for ITC’s PARs, then there is nothing “voluntary” about ITC’s proposal, or about the outcome of the resulting negotiations.

ITC’s motion asks the Commission to predetermine that it will require customers in New York, PJM and across the Midwest ISO to contribute to the cost of ITC’s Bunce Creek PARs in direct contravention of the Commission’s more recent decisions addressing the allocation of the costs of transmission facilities in the Midwest ISO and PJM. The Commission should decline ITC’s invitation to require the NYISO and New York ratepayers to participate in such “good faith” negotiations.

The *Southern California Edison* decisions make clear that compensation for the phase shifters at issue in that case was developed as part of a formalized, organized Western Systems Coordinating Council (“WSCC”) plan to address parallel path flow issues. Specifically, a WSCC-wide working group was organized to develop a plan to address loop flow issues, and it was out of that regional working group that the applicable cost allocation methodology was developed. The WSCC was an established regional planning organization, formed decades before the cost allocation method addressed in the *Southern California Edison* decisions was filed with the Commission,⁷⁹ and all WSCC members had input into the process before regional cost allocation decisions were made. By contrast, in this case ITC proposes to commence discussions with a Commission-mandated presumption that the costs of its Bunce Creek PARs

⁷⁹ The WSCC was established in 1967. See <<http://www.wecc.biz/About/Pages/default.aspx>> (The Western Electricity Coordinating Council “is the successor to the Western Systems Coordinating Council (WSCC), which was formed in 1967 by 40 electric power systems serving all or part of the 14 Western States and British Columbia, Canada.”).

are eligible for recovery, and then to back-fill the “voluntary” participation in a regional planning process requirement.

In the first *Southern California Edison* decision, the Commission stated that it “has consistently rejected unilateral filings by single utilities proposing to impose charges, terms and conditions on a neighboring utility that, according to the filing utility, is responsible for loop flows” and instead “has required utilities, in the first instance, to work to resolve these highly complex issues among themselves.”⁸⁰ The Commission noted further that, unlike in the case of a unilateral filing by a single utility, the “WECC members have attempted to do so [*i.e.*, to work together on a joint solution].”⁸¹

As is amply demonstrated in this proceeding, the NYISO is eager to work with ITC, the Midwest ISO, PJM and the ISOs’ and RTOs’ combined stakeholders to develop effective market and physical solutions to Lake Erie loop flow. However, the NYISO is not proposing in this proceeding, nor does it support, reassigning the cost of existing controllable facilities located in New York to PJM or Midwest ISO customers, even if those facilities could be included in a coordinated plan to address Lake Erie loop flow.⁸² Reciprocally, the NYISO has no interest in volunteering customers in New York to pick up the tab for existing transmission facilities that

⁸⁰ 70 FERC at 61,250 (citing *Indiana Michigan Power Company and Ohio Power Company*, 64 FERC ¶ 61,184 (1993); *American Electric Power Service Corporation, et al.*, 49 FERC 61,377 at 62,381 (1989), *reh'g denied*, 50 FERC ¶ 61,192 (1990); *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act; Policy Statement*, III FERC Stats. & Regs., Regulations Preambles ¶ 31,005 at 31,145 (1994)).

⁸¹ *Id.*

⁸² If New York ratepayers are forced to pay a portion of the cost of existing facilities located outside its footprint, the NYISO may be forced to change its stated position. However, reaching agreement on a three ISO/RTO cost sharing arrangement for multiple controllable transmission facilities located in several different Control Areas, and owned by a dozen different Transmission Owners (or more) would require *years* of negotiations and could dramatically delay the development and implementation of the Broader Regional Market Solutions to Lake Erie loop flow. The better answer is to focus on solving the Lake Erie loop flow problem, and to leave distractions, like cost allocation for existing facilities, out of the discussions.

ITC constructed at the behest of its own customers, even if those facilities are components of a coordinated plan to address Lake Erie loop flow.

III. Conclusion

WHEREFORE, for the foregoing reasons, the Commission should reject ITC's motion.

Respectfully submitted,

/s/ Alex M. Schnell

Robert E. Fernandez, General Counsel
Alex M. Schnell
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, New York 12144

February 12, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents upon each person designated on the official service list for the captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 12th day of February, 2010, at Rensselaer, New York.

/s/ Alex M. Schnell

Alex M. Schnell

New York Independent System Operator, Inc.

10 Krey Boulevard

Rensselaer, New York 12144

Ph: 518-356-8707