

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

**New York Independent System Operator, Inc. )**

**Docket No. EL12-\_\_\_\_-000**

**PETITION FOR DECLARATORY ORDER OF  
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”), 18 C.F.R. § 385.207 (2011), the New York Independent System Operator, Inc. (the “NYISO”) submits this petition (the “Petition”) requesting that the Commission issue a declaratory order to resolve uncertainty regarding how the NYISO should recover from its customers the costs allocated to it pursuant to the Commission’s December 30, 2010 order in *Midwest Independent System Operator, Inc.*, 133 FERC ¶ 61,275 (2010) (“PARs Allocation Order”) in Docket No. ER11-1844-000. In addition to seeking guidance regarding cost recovery mechanisms, the Petition seeks a declaration that the NYISO cannot be required to pay invoices for charges imposed by the Midwest Independent Transmission System Operator, Inc. (“MISO”) until after a final Commission order addressing these charges is issued following the conclusion of the hearing in Docket No. ER11-1844.

The PARs Allocation Order accepted, subject to refund, a joint filing by the MISO and the International Transmission Company (“ITC”) of changes to the MISO tariff (the “MISO Tariff”) under Section 205 of the Federal Power Act (the “MISO/ITC Filing”). The NYISO has requested rehearing of the PARs Allocation Order, arguing that Section 205 of the Federal Power Act does not permit the filing or acceptance of a rate filing where the filing utility does not have

a contractual or customer relationship with the entities to which the rates will be charged.<sup>1</sup> More recently, on December 13, 2011, the NYISO filed a Motion to Dismiss or for Summary Disposition or, in the Alternative, Request for Expedited Action on Rehearing Requests in Docket No. ER11-1844-001 (the “NYISO Motion to Dismiss”). The NYISO Motion to Dismiss asks the Commission to promptly dismiss the October 20, 2010 filing in Docket No. ER11-1844-000 (the “MISO/ITC Filing”), or grant summary disposition because it is inconsistent with clearly enunciated Commission policy, including Order No. 1000, that facility costs must be allocated within the same region as the facility unless another entity voluntarily agrees to be allocated a portion of the cost. Alternatively, the NYISO Motion to Dismiss requests expedited action on the pending rehearing requests in this proceeding, including the NYISO Rehearing Request.<sup>2</sup>

The MISO/ITC Filing seeks to impose charges on the NYISO’s and PJM Interconnection, L.L.C.’s (“PJM’s”) customers - without the consent of NYISO or PJM, or their customers - for a portion of the cost that ITC incurred to build, install and maintaining replacement phase angle regulating transformers (“PARs”) at Bunce Creek on the MichiganOntario border (the “ITC PARs”). The ITC PARs are located within the MISO-operated transmission system and do not border either New York or PJM.

MISO’s proposed Rate Schedule 36 makes clear that the MISO proposes to charge the NYISO for a portion of the cost of the ITC PARs “on behalf of” the NYISO’s customers.

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<sup>1</sup> See Request of New York Independent System Operator, Inc. for Expedited Reconsideration or Rehearing, Request to Stay Proceedings, and Motion to Shorten Response Period, Docket No. ER11-1844-001 (filed January 21, 2011) (the “NYISO Rehearing Request”). Although it has been more than a year since rehearing requests were submitted in Docket No. ER11-1844, the Commission has yet to act on rehearing in that Docket.

<sup>2</sup> As with the NYISO Rehearing Request, the Commission has yet to act on the NYISO Motion to Dismiss.

However, the NYISO has no mechanism in its Tariffs<sup>3</sup> to recover charges for the cost of the ITC PARs from the NYISO's customers. The NYISO is a not-for-profit corporation. The only money the NYISO has to pay its bills is the money its Tariffs authorize the NYISO to recover from its customers. If the Commission determines that the NYISO should be required to pay the invoices it receives from MISO for the costs of the ITC PARs, then the Commission will need to provide the authority - and guidance as to the appropriate mechanism - for the NYISO to recover such charges from its customers.

The Commission should declare that the NYISO cannot be required to pay MISO invoices for ITC PARs charges until after the hearing in Docket No. ER11-1844 is concluded and a final Commission order is issued. It is not clear to the NYISO how the Commission could devise a cost allocation and recovery mechanism for the ITC PARs charges until the hearing in Docket No. ER11-1844 is concluded and a final Commission order is issued. In its PARs Allocation Order the Commission determined:

43. The Filing Parties' proposed tariff sheets raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

44. Our preliminary analysis indicates that the Filing Parties' proposed tariff sheets have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the Filing Parties' proposed tariff sheets for filing, suspend them for a nominal period, make them effective January 1, 2011, subject to refund, and set them for hearing and settlement judge procedures....

The PARs Allocation Order states that the Commission does not know if the proposed revisions to the MISO's tariff are just and reasonable, that they may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful, and that a trial-type evidentiary

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<sup>3</sup> Capitalized terms that are not defined in this Petition have the meaning ascribed to them in the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff").

hearing is necessary to reach a determination. Accordingly, the Commission lacks an adequate evidentiary basis to establish a rational allocation of costs between and among the customers of the affected ISOs and RTOs. It is not clear to the NYISO what mechanism the Commission could use to permit the NYISO to recover costs from its customers that the Commission recognizes may be unlawful.<sup>4</sup>

## **I. COMMUNICATIONS**

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## **II. BACKGROUND**

### **A. The MISO/ITC Filing in Docket No. ER11-1844-000**

Multiple parties intervened and protested the MISO/ITC Filing on a wide variety of grounds. In particular, the NYISO argued that none of the Commission and judicial orders cited

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<sup>4</sup> Even the Commission were to establish a rate for the NYISO to charge its customers, the prohibition on retroactive ratemaking could preclude subsequent adjustments or corrections to the charges the NYISO collects from its customers. In other words, the NYISO's collection of costs from its customers could be inconsistent with the ultimate outcome of Docket No. ER11-1844 if the rate proposed by MISO is modified and/or if refunds are required.

in the MISO/ITC Filing authorized “*ex post* cost allocation to non-customers.”<sup>5</sup> The NYISO is not a Market Participant,<sup>6</sup> Transmission Customer<sup>7</sup> or Coordination Customer<sup>8</sup> of the MISO under the MISO Tariff. Additional protests<sup>9</sup> argued that the Commission does not have the legal authority to accept a rate filing that assesses charges to entities that do not have a contractual relationship with the filing utility or otherwise do not take service from that utility.

In the PARs Allocation Order, the Commission did not address any of the substantive legal challenges protesters raised regarding the fact that the Commission does not have the legal authority to allow public utilities to impose involuntary charges to non-customers, or that such a proposal conflicts with Commission precedent. The PARs Allocation Order simply accepted and suspended the MISO/ITC Filing, subject to refund, and set the proceeding for settlement judge and hearing procedures.

On January 21, 2011, the NYISO and other parties filed timely rehearing requests of the PARs Allocation Order. On December 13, 2011, the NYISO filed a Motion to Dismiss or for Summary Disposition or, in the Alternative, Request for Expedited Action On Rehearing

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<sup>5</sup> See Protest of the New York Independent System Operator, Inc. at 34, Docket No. ER11-1844-000 (filed November 17, 2010) (the “NYISO Protest”).

<sup>6</sup> The NYISO has not registered with, or been qualified by, the Midwest ISO as a Market Participant. See Midwest ISO Tariff at § 1.384.

<sup>7</sup> The NYISO has not executed a transmission Service Agreement or requested the Midwest ISO to file with the Commission an unexecuted Service Agreement. See Midwest ISO Tariff at § 1.666.

<sup>8</sup> The NYISO is not taking Coordination Services from the Midwest ISO under Module F of its tariff. See Midwest ISO Tariff at § 1.98.

<sup>9</sup> See, e.g., Notice of Intervention and Protest of the Massachusetts Department of Public Utilities at 3-4; Motion to Intervene, Protest and Motion for Summary Rejection of New England Conference of Public Utilities Commissioners at 6-15; Motion to Intervene and Protest [of the] New England States Committee on Electricity at 2-5; Notice of Intervention and Protest of the Public Service Commission of the State of New York at 4; Motion to Intervene and Protest of the New York Transmission Owners and New York Municipal Power Agency at 4-5; Protest of PJM Interconnection, L.L.C. at 4-6; PJM Transmission Owners Group Protest to Rate Filing at 5-6 (the “PJM TOs Protest”); Motion to Intervene, Protest and Request for Summary Dismissal and Motion to Consolidate of the PSEG Companies at 7-9.

Requests. This motion seeks dismissal of the MISO/ITC Filing because it is inconsistent with clearly enunciated Commission policy, including Order No. 1000,<sup>10</sup> which the Commission issued after it issued the PARs Allocation Order. In particular, the MISO/ITC Filing is directly and unambiguously inconsistent with Order No. 1000's Regional Cost Allocation Principle 4, because it proposes to allocate costs incurred for a transmission facility (*i.e.*, the ITC PARs) selected in one transmission planning region's plan (MISO's) - and located in that region - to other planning regions (here, NYISO and PJM) without their consent. Order No. 1000 requires facility costs to be allocated solely within that transmission planning region unless an entity outside the region voluntarily agrees otherwise.<sup>11</sup>

The parties spent close to a year engaged in good-faith settlement efforts. Ultimately, though, the parties reached an impasse, and a Presiding Judge has been appointed to resolve the issues in that docket, with a hearing scheduled to begin on July 30, 2012.

**B. DOE Order Granting ITC's Request for a Presidential Permit to Operate the ITC PARs Issued February 24, 2012**

On February 24, 2012, the United States Department of Energy ("DOE") granted ITC's request for a Presidential Permit authorizing ITC to construct, operate, maintain and connect the ITC PARs.<sup>12</sup> The MISO's proposed tariff rules provide that MISO may begin sending bills to NYISO and PJM as soon as ITC's PARs enter service.<sup>13</sup> Because ITC has received DOE

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<sup>10</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000 ("Order No. 1000"), 76 Fed. Reg. 49842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 (2011).

<sup>11</sup> *Id.* at P 657.

<sup>12</sup> See Presidential Permit No. PP-230-4 (February 24, 2012) (the "Presidential Permit"). ITC's Presidential Permit is included as Attachment 1 to this Petition.

<sup>13</sup> MISO's proposed Schedule 36 provides "The charges described above will not become effective until the New PARs have been placed in service." See Tab A to the MISO's and ITC's October 20, 2010 submission in Docket No. ER11-1844.

authorization to operate the ITC PARs, the NYISO expects that it will soon begin receiving bills for ITC PAR-related charges from the MISO.

**C. The PJM Petition in this Docket No. EL12-10-000**

On November 9, 2011, PJM submitted a petition for declaratory order (the “PJM Petition”) asking “that the Commission issue a declaratory order to provide guidance on how PJM should recover from its members the costs of the MISO charges” imposed by the MISO/ITC Filing.<sup>14</sup> PJM asserted that time is of the essence, because MISO will begin billing PJM under the MISO/ITC Filing as soon as the DOE grants it the legal right to do so by approving ITC’s application for a Presidential Permit.<sup>15</sup> DOE granted ITC’s Presidential Permit on February 24, 2012. PJM explained that its uncertainty about how to recover these costs stems, in part, from the fact that the Commission has not previously provided guidance on how to recover transmission facilities costs assessed by another RTO in this fashion.<sup>16</sup>

On December 2, 2011, the NYISO moved to intervene in the PJM Petition proceeding and filed comments in support of that petition, asking that the Commission “grant the PJM Petition’s request to provide guidance on how PJM, and as appropriate, the NYISO, should recover from its customers the costs unilaterally imposed on it by the MISO/ITC Filing.”<sup>17</sup>

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<sup>14</sup> PJM Petition at 2.

<sup>15</sup> Several parties, including the NYISO, filed comments with DOE raising concerns about ITC’s application for the Presidential Permit. During the DOE comment period the NYISO worked with MISO, ITC, and the Independent Electricity System Operator of Ontario (“IESO”) to resolve the NYISO’s most pressing and imminent reliability concerns related to the physical operation of the PARs at the Ontario/Michigan interface and the appropriate representation of those PARs in the North American Electric Reliability Corporation’s Interchange Distribution calculator. PJM and its transmission owners worked separately with MISO and ITC to resolve their concerns related to the operation of the PARs at the Ontario/Michigan interface and presented a proposed settlement to the DOE.

<sup>16</sup> *Id.* at 10-11.

<sup>17</sup> See New York Independent System Operator, Inc. Motion to Intervene and Comments in Support of Petition for Declaratory Order, Docket No. EL12-10-000, at 8 (filed December 2, 2011).

### **III. PETITION FOR DECLARATORY ORDER**

The MISO/ITC Filing raises unique questions for the NYISO. The NYISO has not agreed to pay the charges proposed in the MISO/ITC Filing regarding the ITC PARs, and the NYISO does not take service from MISO. Despite these facts, the PARs Allocation Order accepted, subject to refund, the MISO/ITC Filing.

The PJM Petition appropriately asks the Commission to provide guidance on how to recover from PJM's customers any costs ultimately imposed through the MISO Tariff changes implemented in the MISO/ITC Filing. As the PJM Petition notes, no Commission precedent exists that provides guidance to PJM on how to recover charges imposed without consent in this fashion.<sup>18</sup> The NYISO finds itself in the same position as PJM, and therefore submits this Petition asking the Commission to provide guidance on how the NYISO should collect from its customers the costs MISO and ITC intend to bill the NYISO for the ITC PARs.

#### **A. The NYISO Tariffs Do Not Provide a Mechanism to Recover from Its Customers the Charges MISO Plans to Assess**

The PJM Petition explains how the PJM Tariff “provides no mechanism for PJM to allocate to, and recover from, its members the charges to be assessed by MISO for the ITC PARs facilities.”<sup>19</sup> The NYISO faces the same challenge. The NYISO is a non-profit entity without equity, that relies on collections from its customers to fund its operational expenses. The NYISO ultimately must collect from its customers any revenues it needs to pay any invoices issued by MISO to collect charges for the costs of the ITC PARs.

Under the Federal Power Act, the NYISO can only charge its filed rate. The NYISO has reviewed its tariffs, and has identified no provisions therein that would allow the NYISO to

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<sup>18</sup> PJM Petition at 10-11.

<sup>19</sup> PJM Petition at 8.



allocate to, and recover from, its customers the charges MISO would assess based on the Commission's acceptance of the MISO/ITC Filing. The NYISO's ability to recover costs for transmission facilities from its customers under the NYISO Open Access Transmission Tariff (the "NYISO OATT") is limited to costs specified in OATT Attachment H and, for new regulated reliability solutions approved through OATT Attachment Y, through Rate Schedule 10.<sup>20</sup> As to new transmission projects: (i) transmission owners' costs for regulated transmission solutions to reliability needs may be recovered through the NYISO OATT only if the project is included - after conduct of the Comprehensive System Planning Process ("CSPP") set forth in Attachment Y to the NYISO OATT - in the Comprehensive Reliability Plan or as a gap solution to an imminent threat to reliability, as approved by the NYISO Board of Directors and as selected by the New York State Public Service Commission;<sup>21</sup> and (ii) transmission costs for regulated transmission responses to congestion may be recovered through the NYISO OATT only if the project is included - after conduct of the CSPP - in the Congestion Assessment and Resource Integration Study ("CARIS") for specific projects found to be eligible for cost recovery, including a favorable beneficiary vote, approval by the NYISO Board of Directors, and approval by the Commission of the costs of the project.<sup>22</sup> The ITC PARs were not evaluated and approved as regulated solutions pursuant to the CSPP. Accordingly, the NYISO cannot recover the costs of the ITC PARs from its customers.

Accordingly, the NYISO must amend its OATT before it can recover from its customers any charges from MISO for the ITC PARs. However, the NYISO does not have the authority to amend its tariffs pursuant to a Section 205 filing without first obtaining approval from its

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<sup>20</sup> See NYISO OATT Attachment H.

<sup>21</sup> See NYISO OATT Attachment Y, at §§ 31.4.2.1 and 31.4.2.2.

<sup>22</sup> See NYISO OATT, Attachment Y, at §§ 31.4.3.1, 31.4.3.2., 31.4.3.4.6.

stakeholders.<sup>23</sup> The NYISO cannot predict with certainty how its stakeholders might vote on a proposal to amend its OATT to allow the NYISO to charge them to recover the MISO charges for ITC PARs costs, but notes that the New York Transmission Owners and the New York Municipal Power Agency protested the MISO/ITC Filing, and the New York Transmission Owners sought rehearing of the PARs Allocation Order, in each case actively opposing any attempt by MISO and ITC to impose a share of the costs of the ITC PARs on the NYISO. Further, in their comments supporting the PJM Petition, the New York Transmission Owners highlighted that the NYISO cannot pass these costs through its tariff, using a Section 205 filing, over its stakeholders' objections.<sup>24</sup> It seems unlikely, therefore, that stakeholders would vote to grant the NYISO the authority to impose such charges directly on them through a Section 205 amendment to the NYISO OATT.

Without such stakeholder support, the NYISO could only amend its OATT through a Section 206 filing. Because the NYISO believes that the existing terms of its tariffs are just and reasonable, and because it has strenuous legal, policy and factual objections to the MISO/ITC Filing, the NYISO will not be making a Section 206 filing.

**B. There is No Commission Precedent Providing Guidance to the NYISO on How to Recover the ITC PARs Costs from Its Customers**

The PJM Petition also notes that no Commission precedent exists that provides guidance to PJM on how to recover charges imposed without consent in this fashion.<sup>25</sup> The same is true

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<sup>23</sup> See ISO Agreement at § 19.01. Although that section permits the NYISO to amend its tariffs pursuant to Section 205 where “exigent circumstances” exist, any such amendment would expire no later than 120 days from the date of filing with the Commission. Accordingly, an exigent circumstances filing would be insufficient to meet the MISO/ITC Filing’s demand for a multiyear payment stream.

<sup>24</sup> See Motion to Intervene and Comments in Support of New York Transmission Owners, Docket No. EL12-10, at 6 (filed December 2, 2011).

<sup>25</sup> PJM Petition at 10-11.

for the NYISO: no Commission guidance exists on how the NYISO should recover charges imposed on it by another RTO without its consent. Indeed, Order No. 1000, the Commission's latest pronouncement on its interregional cost recovery policy, specifically calls for an outcome opposite to that of the PARs Allocation Order - namely, that one region may not unilaterally impose a rate on another region to recover costs incurred for a transmission facility within the charging region without the other region's agreement.

**C. The Commission Should Grant this Petition to Resolve Uncertainty in a Timely Manner Before MISO Charges the NYISO for the Costs of the ITC PARs**

Section 554(e) of the Administrative Procedure Act ("APA") provides that an agency in its sound discretion may issue a declaratory order to terminate a controversy or remove uncertainty. Commission Rule 207(a)(2), in turn, "expressly provides for petitions seeking: 'A declaratory order or rule to terminate a controversy or remove uncertainty.'"<sup>26</sup> The Commission will grant a petition for declaratory order when it "finds that it is in the public interest and a proper exercise of its discretion to provide requested interpretations and clarifications ... in order to provide clarify for the parties."<sup>27</sup>

Granting this Petition would serve the public interest. The PARs Allocation Order has created significant uncertainty on how the NYISO should handle any charges from MISO for the ITC PARs. As demonstrated above, the NYISO OATT does not allow the NYISO to recover such costs from its customers, the NYISO has no other source of revenues to pay such invoices from the MISO, and the only Commission precedent on this issue (aside from the PARs Allocation Order) prohibits one region from forcing another region to pay for transmission

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<sup>26</sup> *USGen New England, Inc.*, 118 FERC ¶ 61,172 at P 18 (2007).

<sup>27</sup> *Nicole Gas Prod. Ltd.*, 103 FERC ¶ 61,328 at P 12 (2003).

facilities located inside the charging region, absent a cost allocation agreement among the parties.

Furthermore, time is of the essence. On February 24, 2012 DOE issued a Presidential Permit to ITC authorizing the construction, operation, maintenance and interconnection of the ITC PARs. ITC's Presidential Permit allows MISO to place the ITC PARs into service. As soon as MISO and ITC place the facilities into service, they may begin to invoice the NYISO and others in accordance with the MISO/ITC Filing.

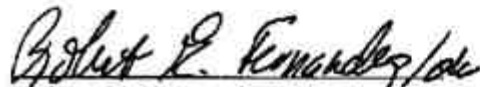
At the very least, the Commission should declare that the NYISO cannot be required to pay MISO invoices for ITC PARs charges until after the hearing in Docket No. ER11-1844 is concluded and a final Commission order is issued. Even if the Commission were to undertake a Section 206 investigation of the NYISO Tariffs, and determine that the NYISO's existing Tariff provisions are unjust and unreasonable because they lack a mechanism to pass through ITC PAR-related charges to the NYISO's customers, the Commission will not have a basis for fashioning a just and reasonable ITC PAR cost allocation method for the NYISO until the hearing in Docket No. ER11-1844 is concluded and a final Commission order is issued regarding whether the MISO charges and proposed cost allocation are just and reasonable.

#### IV. CONCLUSION

For the reasons stated herein, the NYISO asks the Commission to grant this Petition expeditiously and (1) declare that the NYISO cannot be required to pay MISO invoices for ITC PARs charges until after the hearing in Docket No. ER11-1844 is concluded and a final Commission order is issued, or (2) provide guidance on whether and how the NYISO may recover from its customers costs assessed by MISO in accordance with the PARs Allocation Order.

Respectfully submitted,

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Dated: February 28, 2012

## **ATTACHMENT 1**

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United States  
Department of Energy

Office of Electricity Delivery and Energy Reliability

International Transmission Company d/b/a  
ITCTransmission

OE Docket No. PP-230-4

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Presidential Permit  
No. PP-230-4

February 24, 2012

# **PRESIDENTIAL PERMIT**

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

**Presidential Permit No. PP-230-4**

## **I. BACKGROUND**

The Department of Energy (DOE) has the responsibility for implementing Executive Order (EO) 10485, as amended by EO 12038, which requires the issuance of a Presidential permit for the construction, operation, maintenance, or connection of electric transmission facilities at the United States international border.<sup>1</sup> DOE may issue such a permit if it determines that the permit is in the public interest and after obtaining favorable recommendations from the U.S. Departments of State and Defense.

On September 26, 2000, DOE issued Presidential Permit No. PP-230 to International Transmission Company (ITC) authorizing it to construct, operate, maintain, and connect electric transmission facilities at the international border of the United States and Canada. Presidential Permit No. PP-230 was issued to ITC as the result of a voluntary transfer of facilities from Detroit Edison Company (Presidential Permit No. PP-221) to ITC. Those facilities are currently authorized by Presidential Permit No. PP-230-3 and include:

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

In March 2003, the phase shifting transformer installed on the B3N facilities failed. On January 5, 2009, ITC applied to DOE to amend Presidential Permit PP-230-3 by authorizing it to replace the failed 675-MVA transformer with two 700-MVA phase shifting transformers connected in series. Because of the complexity of the issues raised by this proceeding and in the interest of clarity, a new Presidential Permit is being issued.

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<sup>1</sup> The authority to administer the International Electricity Regulatory Program through the regulation of electricity exports and the issuance of Presidential permits has been delegated to the Assistant Secretary for the Office of Electricity Delivery and Energy Reliability (OE), in Redelegation Order No. 00-002.10C issued on May 29, 2008.



DOE issued a notice of ITC's application in the *Federal Register* on February 10, 2009 (74 Fed. Reg. 6607), requesting that any comments, protests, or motions to intervene be filed by March 12, 2009. Numerous responsive documents were filed, including late requests to intervene. The filings raised various issues, including the need to review the operational protocols for the facilities with the installation of the new transformers, also known as phase angle regulators (PARs).

On August 9, 2011, DOE received Supplemental Reply Comments from ITC, which completed the ITC response to earlier comments filed in the proceeding by the Midwest Independent Transmission System Operator (MISO), Inc. and the Independent Electricity System Operator of Ontario (IESO). According to ITC, the supplemental filing provided the operational agreements required to complete ITC's application in this proceeding, including a letter agreement between ITC and MISO assigning functional control of the subject facilities at the Bunce Creek Station to MISO.

ITC requested that DOE accept this filing as sufficient to allow DOE to approve its application to amend the ITC Presidential permit on an expedited basis without further notice so that the transformers could be placed into service and benefits from controlling the Lake Erie loop flow could begin. ITC also indicated that placing the PARs into service immediately would allow the parties to better assess the various impacts of the PARs operations and thus, better determine if the current operational procedures would need to be modified.

DOE published a notice in the *Federal Register* on August 24, 2011 (76 Fed. Reg. 52945) inviting comments, to be submitted by September 23, 2011, from prior participants in the proceeding and other interested persons on the ITC supplemental filing. Specifically, DOE was interested in obtaining the views of other affected utilities and system operators on the sufficiency of the operating principles provided by ITC. In response to motions from ITC to extend the comment period in order to allow more time for the parties in the case to finalize ongoing settlement discussions, DOE extended the comment period on the supplemental filing until October 14, 2011 (76 Fed. Reg. 59668, 9/27/11) and then again until November 4, 2011 (76 Fed. Reg. 65503, 10/21/11). Additional comments and requests to intervene were received in response to these notices.

On November 4, 2011, ITC filed a Settlement Agreement executed by ITC and most of the interveners, including those who initially raised objections to the proposed operating plan for the PARs. The Settlement Agreement addressed the concerns raised by the interveners and the parties to the Settlement Agreement withdrew their opposition to the operation of the PARs as proposed by ITC.

## II. DISCUSSION

As noted above, in support of its Presidential permit application, on August 9, 2011, ITC submitted the operational agreements required to complete ITC's application in this proceeding, including a letter agreement between ITC and MISO assigning functional control of the subject facilities at the Bunce Creek Station to MISO. MISO is

the Regional Transmission Operator (RTO) and operates as the Reliability Coordinator for the ITC system. Therefore, MISO is obligated to operate the PARs and associated facilities consistent with the standards of the North American Electric Reliability Corporation (NERC) and other regulatory and statutory requirements. Thus, by accepting functional control of the facilities, MISO agrees that it will operate the facilities in a manner that will ensure that system reliability is maintained. A condition was added to this Permit in Article 10 clarifying that with the filing of this letter agreement the assignment of operational responsibility to MISO is authorized under this Permit without the need for further action.

According to these operational documents filed and made a part of the record in this proceeding, the installation and operation of the two 700 MVA PARs will not have an adverse impact on the reliability of the U.S. electric grid if operated consistent with the policies and standards of the North American Electric Reliability Corporation (NERC), and operated in accordance with Schedule I of the Amended and Restated Interconnection Facilities Agreement between ITC and Hydro One, dated August 8, 2011 (IFA). The IFA standard is consistent with the standard set forth in Section 3 (PAR Operations) of the MISO and IESO Operating Instruction entitled "Operation of the Michigan-Ontario Tie Lines and Associated Facilities" of the same date.

Pursuant to these agreements, under normal conditions, the PARs will be operated such that the electrical flow on the Michigan-Ontario interface will match Michigan-Ontario scheduled transactions across the interface to the maximum extent possible considering operational feasibility, safety, equipment limitations, and regulatory and statutory requirements. The agreements permit the PARs to be operated without electrical flow matching scheduled transactions across the interface (1) if anomalous market results occur in the market of the RTO that has functional control over the transformers or in Ontario, (2) as necessary to respect system operating limits within Michigan or Ontario, or (3) in order to prevent or resolve declared emergency operating situations consistent with NERC standards and the provisions of Schedule I of the IFA.

### **Settlement Agreement**

The Settlement Agreement filed by ITC on November 4, 2011, and signed by most of the entities that intervened and submitted comments in this proceeding, included the following major provisions:

1. PJM Interconnection, L.L.C. (PJM) and the PJM Transmission Owners that submitted comments withdrew their opposition to the operation of the PARs on a flow to schedule basis as proposed by ITC in the operational agreements filed by ITC on August 9, 2011.
2. A data collection procedure was agreed to whereby data on the impacts of the PARs operations would be collected and shared over a two to three year period. After collection of one year's data, ITC, MISO, IESO, and PJM will begin discussions as to whether changes to the PARs operations are warranted and can be agreed upon. Any agreed upon changes will be filed with DOE and implemented upon DOE approval.

3. If the signatories cannot agree on the operational changes to the PARs, any signatory may submit the proposed operational changes to DOE for approval. The settlement proposes that DOE include in this Presidential Permit a process whereby DOE would open a docket to address the proposed operational changes and delegate to the Federal Energy Regulatory Commission the responsibility for assembling an evidentiary record, including proposed findings of fact, that would be returned to DOE for final decision on any changes to the PARs operating procedures.

Because most of the interveners that filed comments in opposition to the proposed operation of the PARs are signatories to the Settlement Agreement and withdrew their opposition, a summary of those comments is not being provided by DOE in this Permit. However, all of the comments, protests, and requests to intervene still remain a part of the record in this docket.

#### **Non-Signatory Commenters**

The entities that filed comments and interventions in this proceeding that were not a signatory to the Settlement Agreement include the New York Independent System Operator (NYISO), the New York Transmission Owners (NYTO), the Independent Electricity System Operator of Ontario (IESO), and The Public Utilities Commission of Ohio (PUCO). NYISO filed a comment with DOE on March 9, 2009 in support of ITC's filing. On November 4, 2011, NYISO filed supplemental comments with DOE supporting ITC's proposed operation of the PARs as well as expressed its intention to work with ITC, MISO, and PJM to consider whether, and on what terms, NYISO is willing to participate in the data collection arrangement. NYTO submitted a request to intervene in this proceeding on April 5, 2011, requesting an opportunity to review the operational agreement when it became available. As discussed above, DOE provided an opportunity for public comment on ITC's proposed operation of the PARs by notice in the *Federal Register*, and NYTO did not comment. According to the November 4, 2011 ITC filing accompanying the Settlement Agreement, IESO, which is a Canadian entity and not subject to U.S. jurisdiction, authorized ITC to inform DOE that it supports the settlement and intends to voluntarily participate in the data collection process and the PARs operational discussions. That same filing also indicated that PUCO did not oppose the Settlement Agreement.

### **III. FINDING AND DECISION**

In determining whether issuance of a Presidential permit is in the public interest, DOE considers the environmental impacts of the proposed project pursuant to DOE's National Environmental Policy Act (NEPA) Implementing Procedures (10 CFR Part 1021), the project's impact on electric reliability, and any other factors that DOE may also consider relevant to the public interest.

DOE has determined that this action is among those classes of actions not normally requiring preparation of an environmental assessment or an environmental impact statement and, therefore, is eligible for categorical exclusion (CX) under paragraph B4.6 of Appendix B to Subpart D of the DOE NEPA Implementing Procedures

in 10 CFR Part 1021. Specifically, this CX is for additions or modifications to electric power transmission facilities that would not affect the environment beyond the previously developed facility area including, but not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, changing of insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms.

DOE has also assessed the impact the operation the proposed international transmission facilities would have on the reliability of the U.S. electric power supply system. Based on the information filed in this docket as discussed above, DOE has determined that the installation and operation of the proposed international transmission facilities by ITC, as conditioned herein, would not adversely impact the reliability of the U.S. electric power supply system.

In regards to the Settlement Agreement, DOE appreciates the effort of the parties to resolve their differences and allow the installation and operation of the PARs in a manner that should better control the Lake Erie loop flow. DOE also supports the decision to collect data regarding the impacts of the operation of the PARs in order to achieve the best operating principles to mitigate any negative impact on electric reliability. However, DOE is not in a position at this time to prejudge how it may evaluate concerns from parties regarding changes to the operation of the PARs. As noted in the Settlement Agreement, nothing prevents any of the parties to this proceeding from proposing to DOE at any time changes in the operating principles of the PARs in order to protect the reliability of the U.S. electric transmission grid. DOE will evaluate any request at that time to determine the appropriate manner in which to handle the matter and the best course of action to follow.

The Departments of State and Defense have concurred in the granting of this Permit.

Based upon the above, DOE has determined that issuing this Presidential Permit No. PP-234-4 to ITC is consistent with the public interest.

All requests to intervene filed in this proceeding, including those filed late, are hereby granted.

Any party to this proceeding aggrieved by this permit is being given an opportunity by DOE to file a request for a rehearing within thirty (30) days of the issuance of this Permit.

#### **IV. DATA COLLECTION AND REPORTING**

The responsibility for the data collection and reporting under Presidential permits authorizing electric transmission facilities at the U.S. international border and orders authorizing electricity exports to a foreign country has been transferred from OE to DOE's Energy Information Administration (EIA). In August 2010, EIA began collecting that data on a monthly basis in accordance with the data collection and reporting



procedures required by Form OE-781R, "Monthly Electricity Imports and Exports Report." The data collection requirements of Form OE-781R were approved by the Office of Management and Budget (OMB) on November 23, 2009 (OMB Control No. 1901-0296).

On August 3, 2011, EIA issued a notice in the *Federal Register* soliciting public comment on new quarterly data collection procedures under proposed Form EIA-111, "Quarterly Electricity Imports and Exports Report" (76 FR 49757, 8/11/11). The new survey form would replace the monthly reporting requirements of existing Form OE-781R. The new proposal modifies the data being collected and, although data would still be collected monthly, respondents will only need to file the form quarterly.

Pending the receipt of authorization from OMB to administer the revised data collection procedures under the new form, EIA suspended the current data collection and reporting under Form OE-781R, effective June 1, 2011. Upon receipt of such authorization from OMB, EIA will terminate Form OE-781R. Because EIA intends to retroactively collect the core import and export data for the period of the suspension, EIA expects respondents to continue to collect monthly data. However, that data will not need to be reported to EIA until such time as the new survey under Form EIA-111 takes effect.

Therefore, a data collection and reporting requirement that reflects the transfer of the data collection responsibility to EIA has been added to this Order in Article 9. However, the new data collection and reporting procedures under Form EIA-111 will not take effect until EIA obtains authorization from OMB to administer the revised form and begins operation of the new survey.

## V. ORDER

Pursuant to the provisions of EO 10485, as amended by EO 12038, and the Rules and Regulations issued thereunder (Title 10, Code of Federal Regulations, section 205.320 et. seq.), Presidential Permit No. PP-230-3 is hereby rescinded and ITC is authorized to construct, operate, maintain, and connect electric transmission facilities at the international border of the United States and Canada, as further described in Article 2 below, upon the following terms and conditions:

Article 1. The facilities herein described shall be subject to all conditions, provisions and requirements of this Permit. This Permit may be modified or revoked by the President of the United States without notice, or by DOE after public notice, and may be amended by DOE after proper application thereto.

Article 2. The facilities covered by and subject to this Permit shall include the following facilities and all supporting structures within the right-of-way occupied by such facilities:

- (1) One 230,000-volt (230-kV) transmission line, including two 700-MVA phase-shifting transformers, connected in series, connecting the Bunce Creek Station,

- located in Marysville, Michigan, with Hydro One's Scott Transformer Station, located in Sarnia, Ontario (identified as the B3N facility);
- (2) One 230-kV transmission line connecting the Waterman Station, located in Detroit, Michigan, with Hydro One's J. Clark Keith Generating Station, located in Windsor, Ontario (identified as the J5D facility);
  - (3) One 345-kV transmission line connecting the St. Clair Generating Station, located in East China Township, Michigan, with Hydro One's Lambton Generating Station, located in Moore Township, Ontario (identified as the L4D facility); and
  - (4) One 230-kV transmission line connecting the St. Clair Generating Station with Hydro One's Lambton Generating Station (identified as the L51D facility).

Article 3. The facilities described in Article 2 above, including the phase-shifting transformers in the B3N circuit, shall be designed and operated in accordance with all policies and standards of the NERC, Regional Entities, Reliability Coordinators, and independent system operators, or their successors, as appropriate, on such terms as expressed therein and as such criteria, standards, and guides may be amended from time to time.

Furthermore, the two 700-MVA phase shifting transformers at the B3N circuit shall be operated consistent with the operating principles set forth in Schedule I of the Amended and Restated Interconnection Facilities Agreement, dated August 8, 2011, between ITC and Hydro One, which has been filed with DOE and made a part of this docket.

Article 4. No change shall be made in the facilities covered by this Permit or in the authorized operation or connection of these facilities unless such change has been approved by DOE.

Article 5. ITC shall at all times maintain the facilities covered by this Permit in a satisfactory condition so that all requirements of the National Electric Safety Code in effect at the time of construction are fully met.

Article 6. The operation and maintenance of the facilities covered by this Permit shall be subject to the inspection and approval of a properly designated representative of DOE, who shall be an authorized representative of the United States for such purposes. ITC shall allow officers or employees of the United States, with written authorization, free and unrestricted access into, through, and across any lands occupied by these facilities in the performance of their duties.

Article 7. ITC shall investigate any complaints from nearby residents of radio or television interference identifiably caused by the operation of the facilities covered by this Permit. ITC shall take appropriate action as necessary to mitigate such situations. Complaints from individuals residing within one-half mile of the centerline of the transmission line are the only ones which must be resolved. ITC shall maintain written records of all complaints received and of the corrective actions taken.

Article 8. The United States shall not be responsible or liable: for damages to or loss of the property of, or injuries to, persons; for damages to, or loss of the facilities covered by this Permit; or for damages to, or loss of the property of, or injuries to the

person of ITC officers, agents, servants or employees or of others who may be on said premises; any of which may arise from or be incident to the exercise of the privileges granted herein; and ITC shall hold the United States harmless from any and all such claims.

Article 9. ITC shall arrange for the installation and maintenance of appropriate metering equipment to record permanently the hourly flow of all electric energy transmitted between the United States and Canada over the facilities authorized herein. ITC shall make and preserve full and complete records with respect to the electric energy transactions between the United States and Canada. ITC shall collect and submit the data to EIA as required by and in accordance with the procedures of Form EIA-111, "Quarterly Electricity Imports and Exports Report." The data reporting requirements of this section shall not take effect until EIA obtains authorization from OMB to administer the form and begins operation of the new survey.

Article 10. In accordance with Title 10, Code of Federal Regulations, section 205.323, this Permit and the facilities covered by this Permit, or any part thereof, shall not be transferable or assignable, except in the event of the involuntary transfer of the facilities by operation of law. Provided written notice is given to DOE within 30 days of the involuntary transfer, this Permit shall continue in effect temporarily for a period of 60 days and then shall terminate, unless an application for a new permit has been received by DOE. Upon receipt by DOE of such an application, this existing Permit shall continue in effect pending a decision on the new application. In the event of a proposed voluntary transfer of the facilities, the existing permit holder and the party to whom the transfer would be made shall file a joint application with DOE for a new permit together with a statement of the reasons for the transfer. During the decision period on an application for a permit, the facilities authorized herein and their operation shall remain substantially the same as before the transfer.

Notwithstanding the foregoing, operational or functional control of the facilities covered by this Permit may be assigned to a RTO, or similar entity with operational or functional control, approved by the Federal Energy Regulatory Commission upon providing notice to DOE and the filing with DOE of an agreement between the permit holder and the RTO, or similar entity, whereby the RTO, or similar entity, agrees to comply with all of the applicable terms and conditions of this Permit.

Article 11. Upon the termination, revocation or surrender of this Permit, the permitted facilities which are owned, operated, maintained, and connected by ITC and described in Article 2 of this Permit, shall be removed and the land restored to its original condition within such time as DOE may specify and at the expense of ITC. If ITC fails to remove such facilities and/or any portion thereof authorized by this Permit, DOE may direct that such actions be taken for the removal of the facilities or the restoration of the land associated with the facilities at the expense of ITC. ITC shall have no claim for damages by reason of such possession, removal or repair. However, if certain facilities authorized herein are useful for other utility operations within the bounds of the United States, DOE will not require that those facilities be removed and the land restored to its original condition upon termination of the international interconnection.

Issued in Washington, D.C., on February 24, 2012

A handwritten signature in black ink, appearing to read "B. Mills", written over a horizontal line.

Brian Mills  
Director, Permitting and Siting  
Office of Electricity Delivery and  
Energy Reliability



### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in Docket No. ER11-1844-000.

Dated at Washington this 28<sup>th</sup> day of February, 2012.



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