

1909 K Street, NW
12th Floor
Washington, DC 20006-1157
TEL 202.661.2200
FAX 202.661.2299
www.ballardspahr.com

Howard H. Shafferman
Direct: 202.661.2205
Fax: 202.626.9036
hhs@ballardspahr.com

July 30, 2012

By Electronic Filing

Hon. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Subject: Midwest Independent Transmission System Operator, Inc. and
International Transmission Company d/b/a ITC *Transmission*, Docket
No. ER11-1844-000; CORRECTED Joint Statement of Issues and
Motion for Leave**

Dear Ms. Bose:

Attached please find the a corrected Joint Statement of Issues and motion for leave,
including the witness information provided by the various parties.

Very truly yours,

/s/ Howard H. Shafferman

Howard H. Shafferman
Counsel for New York Independent System Operator, Inc.

cc: Parties of Record
Vintricia Alexander. (Law Clerk to Judge Sterner)

DMEAST #15433216 v1

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

**Midwest Independent Transmission System
Operator, Inc. and
International Transmission Company d/b/a
ITC*Transmission***

Docket No. ER11-1844-000

CORRECTED JOINT STATEMENT OF ISSUES AND MOTION FOR LEAVE

**To: The Honorable Steven L. Sterner
Presiding Administrative Law Judge**

Below is the joint statement of issues, in compliance with Sections 4(a) and (b) of the “Rules of Procedure for Hearings” attached to the January 17, 2012 procedural order issued by the Presiding Administrative Law Judge in this proceeding. The materials under each of the issues have been supplied by the pertinent party.

The undersigned counsel hereby respectfully moves for leave to file this corrected copy, a few minutes after the prior version. Good cause exists to accept the corrected copy. Following active negotiation, the issues list was only agreed among the parties as of 1 p.m. today. In the ensuing compressed effort to compile into one document the individual issues lists of the parties, undersigned counsel inadvertently omitted the list submitted by the Midwest ISO Transmission Owners. The version below includes their issues. Counsel regrets this error.

THRESHOLD ISSUES

- 1. Whether the Federal Power Act (“FPA”) and applicable Commission policies thereunder permit the Midwest Independent Transmission System Operator, Inc. (“MISO”) and the International Transmission Company d/b/a ITC*Transmission***

(“ITC”) to make, and the Commission to approve, the October 20, 2010 filing (as amended on January 31, 2012)?

Commission Trial Staff (“FERC Staff”)

Ex. S-1 at 7-8; Ms. Sherman testifies that the Commission’s policies, as evidenced by Order 1000, preclude the filing made by MISO/ITC.

Midwest Independent Transmission System Operator, Inc. and International Transmission Company d/b/a ITCTransmission (“MISO/ITC”)

MISO

Witnesses Digaunto Chatterjee and Thomas Mallinger

MSO-Tab D Prepared Direct Testimony of Jeff Webb dated October 20, 2010; MSO-1A Prepared Direct Testimony of Digaunto Chatterjee dated January 31, 2012; MSO-1 Prepared Answering and Rebuttal Testimony of Digaunto Chatterjee dated July 16, 2012; MSO-Tab E Prepared Direct Testimony of Thomas Mallinger dated October 20, 2010; MSO-3 Prepared Answering and Rebuttal Testimony of Thomas Mallinger dated July 16, 2012;

The FPA and applicable Commission policies thereunder permit MISO and ITC to make, and the Commission to approve, the October 20, 2010 filing (as amended on January 31, 2012).

ITC

ITC Witnesses Carlo Capra (Tab F Prepared Direct Testimony of Carlo Capra dated October 20, 2010) and Ira Shavel (Exhibit ITC-1).

ITC Witness Carlo Capra provides historical information supporting the propriety of the MISO/ITC rate filing.

ITC Witness Ira Shavel shows that the proposed cost allocation is consistent with applicable Commission ratemaking policies.

Midwest ISO Transmission Owners (“MISO TOs”)

There are no agreements between MISO, PJM and the NYISO that allow for the proposed allocation of costs to PJM and the NYISO, and the proposed allocation of costs to PJM and the NYISO is contrary to Commission precedent. The Midwest ISO Transmission Owners did not submit pre-filed testimony, but will address the issue identified herein.

New York Independent System Operator, Inc. (“NYISO”)

Yeomans, Smith and Pike: NYISO believes that MISO and ITC's October 20, 2010 filing (the "MISO/ITC Filing") is contrary to the FPA. See Wesley J. Yeomans' Testimony, Exh. NYI-1 at 16. NYISO does not believe the Commission has legal authority under the FPA to accept the MISO/ITC filing of October 20, 2010 (the "MISO/ITC Filing"), or that the collection of any or all the proposed charges - under any circumstance - is just and reasonable and not unduly discriminatory or preferential. See Yeomans, Exh. NYI-1 at 3; Testimony of Zachary G. Smith, Exh. NYI-38 at 3; Testimony of Robert Pike, Exhs. NYI-46 at 2 and NYI-63 at 2. The NYISO has presented its concerns to the Commission in the rehearing request it submitted addressing the Commission order that permitted the MISO's proposed tariff revisions to take effect, subject to refund. See Midwest Independent Transmission System Operator, Inc. and International Transmission Company d/b/a ITCTransmission, 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 at 5-12 (January 21, 2011).

In addition to the issues raised in the NYISO's Request for Rehearing, the NYISO will argue that the MISO/ITC filing was legally insufficient because it failed to include a Section 206 complaint proposing revisions to the NYISO and PJM tariffs in order to permit NYISO and PJM to recover charges that NYISO and PJM received from MISO from their respective customers. The NYISO's testimony does not address this purely legal issue, but the NYISO will address this issue in its brief.

Smith: The multitude of small "contributors" to unscheduled Lake Erie power flow illustrates that if regions are permitted to assess charges to each other on the basis of asserted "benefits" in the absence of regional agreements, this "chain reaction" and ensuing litigation will have no logical stopping place. See Smith, Exh. NYI-38 at 16-19; Exh. NYI-43 at 1.

New York Transmission Owners ("NYTOs")

The FPA is predicated on voluntary service arrangements. It does not permit the allocation of costs to entities in other regions over the region's objection in the absence of any customer, or contractual arrangement. ITC/MISO do not point to, or rely upon, any customer or contractual predicate for the filing or any prior Commission precedent for such a unilateral allocation of costs of the ITC PARs to other regions. Commission Order Nos. 1000 and Order No. 1000-A expressly reject any such unilateral allocation to other regions over the region's objection and the Commission did so after acknowledging and rejecting the MISO's comments urging a different result. In Order No. 1000 and 1000-A the Commission also declined to order inter-regional planning even on a prospective basis and instead simply urged inter-regional planning on a voluntary basis. The current MISO/ITC filing is, therefore, at odds with both the letter and spirit of these landmark Commission policy determinations. Moreover, to the extent the Commission approves this filing, the non-discrimination provisions of the FPA would require that the Commission allow similar proposals affecting all pre-existing facilities owned by all transmission

owners, thereby resulting in an endless amount of litigation. There is simply no statutory or policy basis to support the MISO/ITC request for a forced after-the-fact payment from non-customers in neighboring regions for facilities located entirely within the MISO/ITC footprint which were planned and built by ITC pursuant to Michigan state and MISO requirements.

NYT-1 Prepared Direct and Answering Testimony of Richard B. Miller (see in particular pgs. 5-14)

NYT-2 E-mail from Digaunto Chatterjee to Jennifer Curran, Jeff Webb re. ITC PARs - Dfax Study (8/24/10). E-mail from Gregory A. Troxell to Thomas Wrenbeck, et al. re. Reconsideration of Cost Sharing within MISO for PARs (9/14/10)

NYT-3 Data Response NYTO/ITC 1-44

NYT-4 Data Response NYTO/MISO 1-9

NYT-5 Data Response NYTO/MISO 1-22

NYT-6 Data Response NYTO/ITC 1-10

NYT-8 Data Response NYTO/MISO 1-50

NYT-9 Data Response NYISO/MISO 4-2

NYT-10 Data Response NYISO/MISO 1-28

NYT-11 Data Response NYISO/ITC 1-29

NYT-12 1998 Interconnection Facilities Expansion Agreement

NYT-13 Attachment MTO-000002 to Data Response NYTO/MISO TO 1-5

NYT-14 Interconnection Facilities Agreement Between Hydro One Networks Inc. and ITC Transmission Company

NYT-17 Data Response NYISO/MPSC 1-2, part 2

NYT-19 Prepared Direct and Answering Testimony of David C. Clarke

NYT-20 David Lake Erie Circulation (LEC3), 1995-1998; Summer Mon-Friday 7:00-23:00

NYT-24 Presentation: Midwest ISO, Impact of Phase Shifters

NYT-28 Data Response NYTO/ITC 1-86

NYT-29 Data Response NYISO/MISO 1-19

NYT-30 Data Responses NYISO/MISO 3-4 and NYISO/MISO 3-5

NYT-31 Data Response NYISO/IESO 1-5

NYT-32 Lake Erie Circulation (LEC3), 1995-1998 Summer Mon-Friday 7:00-23:00

NYT-33 TLR Impact on MECS Transactions (Curtailment Amount MW, MWH)
Jan. 1, 1998 - Aug. 28, 1998

The New York Transmission Owners are also relying on testimony submitted by the New York Independent System Operator, Inc.

PJM Interconnection, L.L.C. (“PJM”)

Witness Bresler testifies that the Federal Power Act and applicable Commission policies thereunder do not permit MISO and ITC to make, nor the Commission to accept, the October 20, 2010 filing (as amended on January 31, 2012) because: there is no agreement between MISO/ITC and PJM permitting MISO/ITC’s proposed allocation of costs of the ITC PARs to PJM; MISO/ITC never sought PJM’s agreement to the allocation of the costs of the ITC PARs to PJM; and the only applicable agreement, the Joint Operating Agreement between MISO and PJM, precludes the allocation of costs of the ITC PARs to PJM. See Exhibits PJM-1 at 9:12-25:16; PJM-2 through PJM-12.

PJM Transmission Owners (“PJM TOs”)

Richard A. Wodyka, Exhibit No. PTO-1 (6:14-7:7; 44:13-54:16): The MISO/ITC Filing is inconsistent with the FPA and well-established FERC precedent and policies interpreting and applying the requirements of the FPA in the context of inter-regional planning and cost allocation. The MISO/ITC Filing does not comport with FERC’s policy of allocating costs based on cost causation and fails to consider important factors that FERC requires be taken into account for purposes of cost allocation in proper inter-regional planning.

2. Whether the Joint Operating Agreement between MISO and PJM Interconnection, L.L.C. (“PJM”) precludes allocation of costs associated with the ITC PARs to PJM?

FERC Staff

Ex. S-1 at 18-19; Ms. Sherman testifies that the JOA acts as a barrier to MISO/ITC’s unilateral allocation of PARs costs to PJM.

MISO/ITC

MISO Witness Thomas Mallinger

MSO- MSO-Tab E Prepared Direct Testimony of Thomas Mallinger dated October 20, 2010; MSO-3 Prepared Answering and Rebuttal Testimony of Thomas Mallinger dated July 16, 2012

The Joint Operating Agreement between MISO and PJM does not preclude allocation of costs associated with the ITC PARs to PJM.

ITC

No witness was offered to address this legal issue but ITC will address the issue on brief.

NYISO

NYISO takes no position on this issue.

NYTOs

The New York Transmission Owners will not address this issue on brief.

PJM

Witness Bresler testifies that the Joint Operating Agreement between MISO and PJM precludes the allocation of costs of the ITC PARs to PJM. See Exhibits PJM-1 at 9:12-25:16; PJM-2 through PJM-12.

PJM Transmission Owners (“PJM TOs”)

Richard A. Wodyka, Exhibit No. PTO-1 (6:14-7:7; 23:1-44:12; 53:21-54:3): The JOA precludes the allocation of costs associated with the ITC PARs to PJM. The MISO/ITC Filing contravenes the MISO/PJM JOA, which was developed to address inter-regional issues, including loop flows, and the provisions of the MISO OATT implementing the JOA and the cost allocation of cross-border projects. Article IX of the JOA (PTO-3) directs MISO and PJM to engage in a coordinated planning process to identify inter-regional transmission facilities needed to maintain reliability, improve operational performance, or enhance the competitiveness of the electricity markets. MISO/ITC’s unilateral action violates the inter-regional cooperation required under the JOA and the ITC PARs do not satisfy the criteria necessary to qualify for allocation of costs to PJM under the JOA.

The JOA includes the Congestion Management Process (“CMP”) which was collaboratively developed by PJM and MISO to manage and compensate each other

for loop flows, including Lake Erie loop flow, and other congestion-related problems between PJM and MISO..

3. Whether there are any other customer or contractual relationships or interregional plans, or lack thereof, that are relevant to the proposed cost allocation?

FERC Staff

Ex. S-1 at 18-21; Ms. Sherman points out that MISO/ITC did not comply with the JOA with PJM or any other transparent planning process.

MISO/ITC

MISO

Witnesses Digaunto Chatterjee and Thomas Mallinger

MSO- MSO-Tab D Prepared Direct Testimony of Jeff Webb dated October 20, 2010; MSO-1A Prepared Direct Testimony of Digaunto Chatterjee dated January 31, 2012; MSO-1 Prepared Answering and Rebuttal Testimony of Digaunto Chatterjee dated July 16, 2012; MSO-Tab E Prepared Direct Testimony of Thomas Mallinger dated October 20, 2010; MSO-3 Prepared Answering and Rebuttal Testimony of Thomas Mallinger dated July 16, 2012

Other customer or contractual relationships are not relevant to the proposed cost allocation, but interregional plans identifying the need for the PARs as a physical solution to controlling Lake Erie Loop flows are relevant.

ITC

No witness was offered to address this legal issue but ITC will address the issue on brief.

MISO TOs

There are no agreements between MISO, PJM and the NYISO that allow for the proposed allocation of costs to PJM and the NYISO. The Midwest ISO Transmission Owners did not submit pre-filed testimony, but will address the issue identified herein.

NYISO

Smith

The 1999 MEN study referenced in the MISO/ITC Filing did not represent a coordinated planning effort to design the PAR originally installed on the B3N circuit (the “Original PAR”) as a multi-regional facility, or to allocate the costs of the Original PAR among the regions that participated in the study. See Smith, Exh. NYI-38 at 20-21; Exh. NYI-44 at 5-6, 39. NYISO has never participated in the MISO’s Transmission Expansion Plan (“MTEP”) planning process with respect to the MI/ON PARs, or otherwise. See Smith, Exh. NYI-38 at 21; Exh. NYI-45 at 1.

Pike

The costs of the ITC PARs were incurred due to pre-existing contract obligations, and to serve the interests of Michigan and Ontario utilities and their electricity customers. In 1998, Detroit Edison (ITC’s former parent company), Ontario Hydro (the pertinent part of which is now Hydro One Networks Inc.) and Consumers Energy Company entered into an Interconnection Facilities Expansion Agreement whereby (in Section 3.1) Detroit Edison agreed to install and operate the Original PAR on the B3N transmission line that interconnects Michigan and Ontario, and Ontario Hydro agreed to install and operate a PAR on the Ontario side of each of the other three major transmission lines (J5D, L51D and L4D) that comprise the Michigan/Ontario Interface or “MI/ON Interface.” The three PARs constructed by Ontario Hydro (now Hydro One) are referred to as the “Hydro One PARs.” See Pike, Exh. NYI-46 at 3-4; Exh. NYI-48. The parties agreed to construct the Original PAR and the Hydro One PARs to prevent or control power flows that were interfering with scheduled transactions between Michigan and Ontario. Section 3.7 of the 1998 Facilities Agreement (Exhibit NYI-48) states, “Hydro and Edison shall each be responsible for the performance of operation and maintenance, extraordinary maintenance and repair, which can include replacement, of the New Equipment and New Facilities [defined to include the Original PAR] which are owned by them, including all costs associated therewith.” Pike, Exh. NYI-46 at 4; Exh. NYI-48. See Pike, Exh. NYI-46 at 7; NYI-48 at 1. In 2007, ITC and Hydro One entered into a new Interconnection Facilities Agreement, under Section 10.3 of which ITC (due to the failure of the Original PAR) agreed to install two replacement PARs at Bunce Creek to replace the Original PAR, stating specifically: “[d]ue to the failure of the Phase Angle Regulator referenced in Subsection 10.2(a) above [i.e., the Original PAR], ITC agrees to install one or more Phase Angle Regulators with a combined total capacity of at least 645 MVA in the B3N Interconnection terminal at its Bunce Creek Station.” Pike, Exh. NYI-46 at 4-5; Exh. NYI-49. See also Exh. NYT-1 at 10 and NYT-10 (admission by ITC that it never sought payment from NYISO prior to January 1, 2008).

The Replacement PARs perform the same function as the Original PAR. See Pike, Exh. NYI-46 at 4-7; Exh. NYI-49; Exh. NYI-50 at 11, 19; Exh. NYI-51 at 7; Exhs. NYI-52 through 55.

Yeomans

The MISO-Independent Electricity System Operator (Ontario) (“IESO”) Operating Instruction permits MISO and IESO to favor their own customers and interests, versus those of NYISO and PJM. See Yeomans, Exh. NYI-1 at 20-23; Exh. NYI-3 at 50, 52-55. The operating instruction provides protections to MISO and IESO that are not available, or not available on an equivalent basis, to NYISO. See Yeomans, Exh. NYI-1 at 20; Exh. NYI-3 at 52-54. This disparity applies in cases of control area emergencies, and in cases of unforeseen operational or market outcomes. See Yeomans, Exh. NYI-1 at 20-23; Exh. NYI-3 at 52-54. The proposal to impose equal charges on entities that are not eligible or expected to receive equal benefits from the operation of the MI/ON PARs is unduly preferential, unduly prejudicial and unduly discriminatory.

NYTOs

There are no customer or contractual relationships between MISO/ITC and NYISO and the MISO/ITC and the NYTOs that are relevant to or support the proposed cost allocation. In addition, there is no interregional plans or interregional planning process relevant to the proposed cost allocation. Therefore, the Commission erred in accepting MISO/ITC’s rate filing because the filing parties are precluded as a matter of law from allocating costs to parties with which they do not have a customer or contractual relationship or agreed to pursuant to an interregional planning process.

See Richard D. Miller Prepared Direct and Answering Testimony (see in particular pgs. 5 - 14) and David C. Clarke Prepared Direct and Answering Testimony and accompanying exhibits listed in #1 above.

The New York Transmission Owners are also relying on testimony submitted by the New York Independent System Operator, Inc.

PJM

Witness Bresler testifies that the Joint Operating Agreement between MISO and PJM is the only means by which MISO/ITC could allocate costs for transmission facilities with cross-border benefits to PJM and its customers, and the allocation of costs of the ITC PARs to PJM is precluded by the JOA . See Exhibits PJM-1 at 9:12-25:16; PJM-2 through PJM-12.

PJM TOs

Richard A. Wodyka, Exhibit No. PTO-1 (37:5-42:13): In addition to the JOA, the MISO/ITC filing violates the terms of the MISO Tariff. The ITC PARs were included in the MISO MTEP to address local reliability concerns, and the MISO Tariff provides that the allocation of such costs is limited to the ITC transmission zone.

RATE ISSUES

4. **Whether the allocation of the costs of the ITC PARs to NYISO and PJM, and the level of such allocations, is just, reasonable and not unduly discriminatory or preferential under the Federal Power Act and the applicable Commission policies, orders and precedent thereunder (including but not limited to the policies, if applicable, contained in Order No. 1000)?**

FERC Staff

Ex. S-1 at 7-8; Ms. Sherman testifies that under Order 1000, MISO/ITC flouted the cost allocation principle that costs may only be allocated on a voluntary basis, and that facilities must be approved through a joint interregional planning process.

MISO/ITC

MISO

Witnesses Digaunto Chatterjee and Thomas Mallinger

MSO-Tab D Prepared Direct Testimony of Jeff Webb dated October 20, 2010; MSO-1A Prepared Direct Testimony of Digaunto Chatterjee dated January 31, 2012; MSO-1 Prepared Answering and Rebuttal Testimony of Digaunto Chatterjee dated July 16, 2012; MSO-Tab E Prepared Direct Testimony of Thomas Mallinger dated October 20, 2010; MSO-3 Prepared Answering and Rebuttal Testimony of Thomas Mallinger dated July 16, 2012

The allocation of the costs of the ITC PARs to NYISO and PJM, and the level of such allocations, is just, reasonable and not unduly discriminatory or preferential under the Federal Power Act and the applicable Commission policies, orders, and precedent thereunder (including but not limited to the policies, if applicable, contained in Order No. 1000).

ITC

Witnesses Carlo Capra Tab F, October 20, 2010), David Grover (Tab G, October 20, 2010), and Ira Shavel (Exhibit ITC-1).

ITC Witness Carlo Capra provides historical information supporting the justness and reasonableness of the MISO/ITC rate filing. Witness David Grover explains the deviation of the PARs annual revenue requirement and the calculation of the proposed allocations to NYISO and PJM. Witness Ira Shavel shows that the proposed cost allocation is consistent with the Commission's cost causation ratemaking principle.

MISO TOs

The Midwest ISO Transmission Owners take no position of the proposed level of cost allocation of costs to the NYISO and PJM but state that any allocation of costs as proposed in the Docket No. ER11-1844 is contrary to Commission policy and is not just or reasonable. See response to Issue 3. The Midwest ISO Transmission Owners did not submit pre-filed testimony, but will address the issue identified herein.

NYISO

MISO and ITC have not shown that the proposed allocation of the costs of the ITC PARs to NYISO and PJM, or that the level of such allocations, is just, reasonable and not unduly discriminatory or preferential.

Yeomans

Neither MISO nor ITC have submitted actual operational evidence supporting the claimed effectiveness of the ITC PARs (also referred to herein as the “Replacement PARs”) operating in conjunction with the PARs owned by Hydro One Networks, Inc. on the Ontario side of the Michigan-Ontario interface (the “Hydro One PARs,” together with the Replacement PARs, the “MI/ON PARs”). The PARs on all four transmission lines connecting Michigan and Ontario have rarely been in service at the same time. See Yeomans, Exh. NYI-1 at 10. See also Yeomans testimony with respect to Issue 9 and the outage history of the PARs at the Michigan-Ontario interface. MISO’s and ITC’s testimonies ignore the actual operational (in)effectiveness of the MI/ON PARs. MISO and ITC have not shown that NYISO’s customers will benefit from the operation of the MI/ON PARs, nor have MISO or ITC submitted a reasonably supported estimate of expected benefits to the NYISO’s customers.

The MISO-Independent Electricity System Operator (Ontario) (“IESO”) Operating Instruction permits MISO and IESO to favor their own customers and interests, versus those of NYISO and PJM. See Yeomans, Exh. NYI-1 at 20-23; Exh. NYI-3 at 50, 52-55. The operating instruction provides protections to MISO and IESO that are not available, or not available on an equivalent basis, to NYISO. See Yeomans, Exh. NYI-1 at 20; Exh. NYI-3 at 52-54. This disparity applies in cases of control area emergencies, and in cases of unforeseen operational or market outcomes. See Yeomans, Exh. NYI-1 at 20-23; Exh. NYI-3 at 52-54.

Proposed Attachment SS-1 to the MISO tariff allows MISO to temporarily suspend normal operations of the MI/ON PARs in the event of anomalous MISO market results related to the MI/ON PARs, without according similar rights to NYISO or PJM for anomalous market results in their respective markets. See Yeomans, Exh. NYI-1 at 23.

The MISO/ITC proposal to impose equal charges on entities that are not eligible or expected to receive equal benefits from the operation of the MI/ON PARs is unduly preferential, unduly prejudicial and unduly discriminatory.

Pike

The “Broader Regional Markets” (“BRM”) initiatives, which began in 2008, and in which NYISO, IESO, MISO, PJM, ISO New England and Hydro-Québec are participating, improve coordination between the markets, enhances utilization of existing resources and reduces costs of power consumers. The new BRM rules that the ISOs and RTOs are developing will tend to reduce Lake Erie unscheduled power flow or permit the ISOs and RTOs to mitigate the impacts on unscheduled Lake Erie power flows at a lower overall cost. See Pike, Exh. NYI-46 at 15-18. The BRM initiatives are potential alternatives to the construction of the MI/ON PARs that will reduce any potential benefits that the MI/ON PARs might provide by improving the efficiency of the interconnected markets’ response to Lake Erie unscheduled power flows.

Other

Please see also the testimony with respect to Issue 5 of Smith (NYISO has never participated in MISO’s planning process); Pike (cost incurrence resulted from pre-existing contract obligations, and to serve interest of Michigan and Ontario utilities and their electricity customers); Yeomans (ITC PARs do not provide unique benefits that no other PARs can provide); Smith (ITC PARs do not provide a unique, multiregion benefit); Pike (ITC PARs were built for benefit of ITC’s customers).

Please see also the testimony with respect to Issue 7 of Smith (DFAX analysis flaws).

NYTOs

MISO/ITC’s proposal is preferential and unduly discriminatory because it is contrary to the Commission’s prior treatment of all other pre-existing transmission facilities. It is also contrary to the Commission’s landmark Order Nos. 1000 and 1000-A. The MISO/ITC filing unduly-discriminates between its treatment of PJM and NYISO and its customers on the one hand, and MISO/IESO on the other. Indeed, the DFAX study that MISO/ITC relies upon to support their proposed cost allocation indicates that IESO causes 55.4% of all Lake Erie unscheduled power flows. Yet, MISO and ITC are not proposing to charge IESO for any costs of the Replacement PARs. Instead, MISO and ITC propose to reallocate costs that MISO’s own DFAX analysis indicates are caused by IESO to PJM and NYISO. Moreover, ITC proposes to charge its own transmission customers for the entire MISO share because MISO has refused to allow any of its other customers to be charged for any of the costs of the PARs because they are Replacement PARs that are simply replacing facilities whose costs were originally allocated only to ITC’s customers. In short, the cost allocation based on the DFAX study results is only being applied to PJM and NYISO which is

undue discrimination by any measure. In addition, the ITC/IESO operating agreements by their express terms provide for the Replacement PARs to be operated in an unduly discriminatory manner by favoring ITC and IESO customers over all other regions.

See Richard D. Miller Prepared Direct and Answering Testimony (see pgs. 14-19) and David C. Clarke Prepared Direct and Answering Testimony (see pgs. 5-7) and accompanying exhibits listed in #1 above.

The New York Transmission Owners are also relying on testimony submitted by the New York Independent System Operator, Inc.

PJM

Witness Bresler testifies that the allocation of costs of the ITC PARs to PJM is not just and reasonable, and is unduly discriminatory and preferential, under the Federal Power Act, and is precluded by Commission policies, including those set forth in Order No. 1000, because: (a) the Joint Operating Agreement between MISO and PJM precludes the allocation of costs of the ITC PARs to PJM; (b) under the JOA, MISO and PJM already compensate each other for any adverse effects resulting from loop flow; (c) PJM has never agreed the operation of the ITC PARs on a flow to schedule basis, which will harm PJM and its customers, and (d) the MISO/ITC cost allocation methodology is fundamentally flawed. See Exhibits PJM-1 at 2:8-43:6; PJM-2 through 21.

PJM TOs

Richard A. Wodyka, Exhibit No. PTO-1 (6:14-7:7; 44:13-54:16): The MISO/ITC Filing is not just and reasonable, is unduly discriminatory and preferential, does not comport with FERC's precedent and policy of allocating costs based on cost causation, and fails to consider important factors that FERC requires be taken into account for purposes of cost allocation in proper inter-regional planning, such as the failure to justify the allocation of costs attributable to the Independent Electricity System Operator to PJM.

- 5. Whether any allocation of costs of the ITC PARs to NYISO and PJM and their customers (or others) is appropriate based on cost causation/incurrence and/or beneficiary pays principles or on other considerations, and if so, is the proposed cost allocation roughly commensurate with (a) the extent to which NYISO and PJM and their customers (or MISO, IESO or others) caused ITC to incur the costs of the installation and operation of the ITC PARs (and, to the extent relevant, the reasons for which Detroit Edison/ITC incurred costs for installation of the original PAR); and/or (b) the extent to which NYISO and PJM and their customers (or MISO,**

IESO or others) will benefit from (or be harmed by) the installation and operation of the ITC PARs?

FERC Staff

There is no evidence of benefits to NYISO and PJM to justify the proposed allocation of costs to them. Ms. Sherman, Ex. S-1 at 13-14; Ms. Zugris, Ex. S-6 at 14-16.

MISO/ITC

MISO Witnesses Digaunto Chatterjee, Thomas Mallinger, and David Zwergel

MSO-Tab D Prepared Direct Testimony of Jeff Webb dated October 20, 2010; MSO-1A Prepared Direct Testimony of Digaunto Chatterjee dated January 31, 2012; MSO-1 Prepared Answering and Rebuttal Testimony of Digaunto Chatterjee dated July 16, 2012; MSO-Tab E Prepared Direct Testimony of Thomas Mallinger dated October 20, 2010; MSO-3 Prepared Answering and Rebuttal Testimony of Thomas Mallinger dated July 16, 2012; MSO-Tab H Prepared Direct Testimony of David Zwergel dated October 20, 2010

The allocation of costs of the ITC PARs to NYISO and PJM and their customers is appropriate based on cost causation/incurrence and/or beneficiary pays principles and on other considerations. The proposed cost allocation is roughly commensurate with (a) the extent to which NYISO and PJM and their customers caused ITC to incur the costs of the installation and operation of the ITC PARs and (b) the extent to which NYISO and PJM and their customers will benefit from the installation and operation of the ITC PARs.

ITC

Witness Ira Shavel (Exhibit ITC-1)

ITC Witness Ira Shavel shows that the proposed cost allocation is consistent with the Commission's cost causation ratemaking principle.

NYISO

(a) Cause of cost incurrence

Smith

NYISO has never participated in the MISO's MTEP planning process, whether with respect to the PARs at the MI/ON Interface or otherwise. See Smith, Exh. NYI-38 at 21; Exh. NYI-45.

Pike

The costs of the ITC PARs were incurred due to pre-existing contract obligations, and to serve the interests of Michigan and Ontario utilities and their electricity customers. In 1998, Detroit Edison (ITC's former parent company), Ontario Hydro (the pertinent part of which is now Hydro One Networks Inc.) and Consumers Energy Company entered into an Interconnection Facilities Expansion Agreement whereby Detroit Edison agreed to install and operate the Original PAR on the B3N transmission line that interconnects Michigan and Ontario, and Ontario Hydro agreed to install and operate a PAR on the Ontario side of each of the other three major transmission lines (J5D, L51D and L4D) that comprise the Michigan/Ontario Interface or "MI/ON Interface." The three PARs constructed by Ontario Hydro (now Hydro One) are referred to as the "Hydro One PARs." See Pike, Exh. NYI-46 at 3-4; Exh. NYI-48. The parties agreed to construct the Original PAR and the Hydro One PARs to prevent or control power flows that were interfering with scheduled transactions between Michigan and Ontario. See Pike, Exh. NYI-46 at 7; NYI-48 at 1. In 2007, ITC and Hydro One entered into a new Interconnection Facilities Agreement, under which ITC (due to the failure of the Original PAR) agreed to install one or more replacement PARs on the B3N circuit (i.e., the Replacement PARs). The Replacement PARs perform the same function as the Original PAR. See Pike, Exh. NYI-46 at 4-7; Exh. NYI-49; Exh. NYI-50 at 11, 19; Exh. NYI-51 at 7; Exhs. NYI-52 through 55.

The purpose of the MI/ON PARs is to facilitate economic trades between Ontario and Michigan, in part through the avoidance of curtailment of Ontario-Michigan transactions via Transmission Loading Relief ("TLR"). See Pike, Exh. NYI-46 at 7-9; Exh. NYI-48 at 1. Regulatory filings before the Michigan Public Service Commission confirm that the purpose of the MI/ON PARs is to facilitate economic trades between Ontario and Michigan. See Pike, Exh. NYI-46 at 9; Exh. NYI-57 at 12; Exh. NYI-58 at 8.

(b) Extent of benefit or harms.

Yeomans

All interconnected facilities benefit neighbors. PARs are not a "special class" of transmission facilities of extraordinary value; they are no different from other transmission facilities that provide mutual transmission security benefits for neighboring ISOs/RTOs. The Replacement PARs do not provide unique benefits that no other PARs can provide. See Yeomans, Exh. NYI-1 at 39-40.

Smith

NYISO's modification of the MISO's DFAX study rebut claims by MISO and ITC that the Replacement PARs (operating together with the three "Hydro One PARs" on the Ontario side of the MI/ON Interface) will provide a unique, multiregion benefit.

The NYISO's modification to the MISO's DFAX study shows that all PARs in the Eastern Interconnection affect power flows over the MI/ON Interface. The PARs located at the MI/ON Interface are not unique in this regard. If the other PARs in the Eastern Interconnection were removed from service, the modified DFAX analysis that the NYISO performed suggests that unscheduled Lake Erie power flows would be substantially higher than they are today. See Smith, Exh. NYI-38 at 21-25.

The multitude of small "contributors" to unscheduled Lake Erie power flow illustrates that if regions are permitted to assess charges to each other on the basis of asserted "benefits" in the absence of regional agreements, this "chain reaction" and ensuing litigation will have no logical stopping place. See Smith, Exh. NYI-38 at 16-19; Exh. NYI-43 at 1.

Pike

The ITC PARs were built for the benefit of ITC's customers, and not for the benefit of NYISO's customers. See Pike, Exh. NYI-46 at 11; Exh. NYI-60 at 2; Exh. NYI-50 at 19. The Replacement PARs perform the same function as the Original PAR. See Pike, Exh. NYI-46 at 5-7; Exh. NYI-50 at 11, 19; Exh. NYI-51 at 7; Exh. NYI-52; Exh. NYI-53; Exh. NYI-54; Exh. NYI-55 at 1; Exh. NYI-48 at 1. The purpose of the MI/ON PARs is to facilitate economic trades between Ontario and Michigan, in part through the avoidance of curtailment of Ontario-Michigan transactions via Transmission Loading Relief ("TLR"). See Pike, Exh. NYI-46 at 7-9; Exh. NYI-48 at 1; Exh. NYI-56 at 1; Exh. NYI-57 at 12; Exh. NYI-58 at 8.

Reducing the number of TLRs affecting External Transactions at the MI/ON Interface will provide benefits to MISO, IESO and their customers that are not provided to NYISO and its customers. Transmission Loading Relief ("TLR") of transactions at the MI/ON Interface remains an obstacle to commerce between the regions of MISO and IESO today. The MI/ON PARs provide reliability benefits to ITC and its customers and maintains import capability for transactions beneficial to ITC customers. The Replacement PARs were built for the benefit of ITC's customers. See Pike, Exh. NYI-46 at 10-11; Exh. NYI-59 at 1; Exh. NYI-60 at 2; Exh. NYI-50 at 19.

MISO/ITC assert that the MI/ON PARs provide "benefits" to NYISO based on statements made by the NYISO in its July 21, 2008 "exigent circumstances" filing in Docket No. ER08-1281, in which the NYISO proposed tariff changes (subsequently accepted by the Commission and still in place) to prohibit "circuitous" scheduling of external transactions in the control areas around Lake Erie. However, the MI/ON PARs were not operated to mitigate that circuitous scheduling problem and would not have been capable of fully "solving" the loop flow problems experienced due to circuitous schedules. Instead, the problem was addressed by the NYISO's Tariff revisions. See Pike, Exh. NYI-46 at 12-23; Exh. NYI-61 at 2, 3-4.

The limited circumstances in which effective, coordinated operation of all of the MI/ON PARs may benefit New York are when (a) the MI/ON PARs are operated to reduce clockwise loop flows, and (b) components of the New York State Transmission System that are substantially affected by unscheduled Lake Erie power flows are constrained. See Pike, Exh. NYI-46 at 21-22. New York may be “harmed,” however, if/when (x) the MI/ON PARs are operated to reduce counterclockwise loop flows, and (y) components of the New York State Transmission System that are substantially affected by unscheduled Lake Erie power flows are constrained. See Pike, Exh. NYI-46 at 22. If the MI/ON PARs are not successfully operated to conform actual power flows to scheduled power flows, but are still declared to be “regulating” for purposes of the NERC Interchange Distribution Calculator (“IDC”), New York may be harmed because it may not be able to use TLR to obtain relief from unscheduled Lake Erie power flows. See Pike, Exh. NYI-46 at 23. New York may also be harmed if MISO and IESO do not accurately anticipate power flows and move the MI/ON PARs in a direction that exacerbates unscheduled flows, or if the MI/ON PARs are operated in a manner that regularly causes unscheduled power flows over the New York State Transmission System. See Pike, Exh. NYI-46 at 23.

MISO’s March 23, 2012 announcement relating to the initiation of service over the Replacement PARs despite the outage - which continues to the present - of one of the Hydro One PARs (L4D). Specifically, MISO’s announcement that it did not intend to change, on April 5, 2012 (the date on which it initiated Replacement PARs’ operation) the methodology for pricing transactions scheduled across the MI/ON Interface amounts to an admission that MISO does not expect the MI/ON PARs to be able to effectively conform actual power flows to scheduled power flows at the MI/ON Interface without the L4D PAR in service. See Pike, Exh. NYI-46 at 24-25.

NYTOs

Any cost allocation for the subject replacement facilities that date back to 1998 or before, must be based on cost causation principles. The subject Replacement PARs are replacing PARs that were planned and constructed 10-15 years ago to serve its Michigan customers under Michigan state law and pursuant to a contract between ITC and IESO. Therefore, the costs were not incurred to serve PJM or NYISO but rather only ITC’s Michigan customers. The MISO has rejected ITC’s proposed allocation to other MISO customers for precisely that reason.

See Richard D. Miller Prepared Direct and Answering Testimony (see pgs. 5 - 14) and David C. Clarke Prepared Direct and Answering Testimony (see pgs. 5-7) and accompanying exhibits listed in #1 above.

The New York Transmission Owners are also relying on testimony submitted by the New York Independent System Operator, Inc.

PJM

Witness Bresler testifies that MISO/ITC's proposed cost allocation is not commensurate with either cost causation/incurrence or an allocation based on beneficiary pays because (a) PJM and its customers did not cause ITC to incur the costs of the installation and operation of the ITC PARs, and (b) PJM and its customers will not benefit from, and in fact will be harmed by, the installation and operation of the ITC PARs. PJM estimates that the annual harm from the ITC PARs operations, had they been in operation in 2010 and 2011, on PJM and its customers would have been between \$11.4 and \$16.1 million, and that this magnitude of annual harm can be expected to continue for the foreseeable future. See Exhibits PJM-1 at 5:10-25:16 and PJM-1 at 37:1-43:6; PJM-7, PJM-17-PJM21.

PJM TOs

Richard A. Wodyka, Exhibit No. PTO-1 (6:14-7:7; 48:11-54-16): It is not appropriate to allocate any portion of the cost of the ITC PARs to PJM because MISO/ITC failed to take into consideration the cost causation principles that FERC requires be taken into account when allocating costs of inter-regional projects and their proposed allocation is unrelated to the extent to which proposed payors caused the costs of the PARs or will benefit from them. MISO and ITC have not demonstrated that the ITC PARs are necessary to resolve reliability violations.

Richard A. Wodyka, Exhibit No. PTO-1 (44:16-48:10): There is no evidence that PJM has more than a minimal impact on Lake Erie loop flow, or any impact whatsoever on reliability. The MISO/ITC filing does not identify specific benefits to PJM and ignores the possible harm that might arise in PJM if the ITC PARs are installed and operated on a flow to schedule basis.

6. What is the extent of the contributions to loop flows of MISO, IESO, NYISO and PJM and others, and do they represent a basis for MISO/ITC to allocate the costs of the ITC PARs to PJM and NYISO?

FERC Staff

Any contributions to loop flows by MISO, IESO, NYISO and PJM and others do not represent a basis for MISO/ITC to allocate the costs of the ITC PARs to PJM and NYISO. Ms. Zugris, Ex. S-6 at 16-26.

MISO/ITC

MISO

Witnesses Digaunto Chatterjee and Thomas Mallinger

MSO-Tab D Prepared Direct Testimony of Jeff Webb dated October 20, 2010; MSO-1A Prepared Direct Testimony of Digaunto Chatterjee dated January 31, 2012; MSO-1 Prepared Answering and Rebuttal Testimony of Digaunto Chatterjee dated July 16, 2012; MSO-Tab E Prepared Direct Testimony of Thomas Mallinger dated October 20, 2010; MSO-3 Prepared Answering and Rebuttal Testimony of Thomas Mallinger dated July 16, 2012

The DFAX study and prior regional studies show the contribution to loop flows of MISO, IESO, NYISO and PJM and others.

ITC

Witness Ira Shavel (Exhibit ITC-1)

ITC Witness Ira Shavel shows that the proposed cost allocation is “roughly commensurate” with NYISO’s and PJM’s contributions to loop flow as shown in the DFAX study, and that the contributions are an appropriate basis for the proposed cost allocation under the Commission’s cost causation principle

NYISO

Neither MISO nor ITC submitted evidence showing that NYISO’s contribution to Lake Erie unscheduled power flows caused ITC to incur the costs of the installation and operation of the ITC PARs. Instead, MISO submitted a flawed DFAX analysis that purports to estimate the loop flow that the NYISO will cause in 2015. The flaws that MISO witness Smith identified in the MISO’s DFAX analysis are addressed in the discussion of Issue #7, below. In addition, NYTO witness Clarke explains the problems with MISO’s DFAX analysis and why it should not be relied on.

See NYISO witnesses’ positions regarding Issue 5 above (Pike explanation of why Detroit Edison/ITC chose to construct the Original PAR and the Replacement PARs) and Issue 7 below (Smith identification of flaws in the MISO’s DFAX analysis).

PJM

Witness Bresler testifies that loop flows are a natural occurrence that are managed by interconnected systems without utilities charging each other for facilities costs and, as such, do not constitute an appropriate basis for cost allocation. In any event, the ITC PARs are replacement facilities for ITC’s PARs installations. See Exhibits PJM-1 at 26:1-35:19; PJM-2, PJM-4, PJM-13 through PJM-15.

NYTOs

The various contributions of loop flow over particular facilities various moment to moment and can be both positive or negative. There is no record evidence to demonstrate what the contributions to loop flow by different regions either at the time the original facilities were built, at the time the replacement facilities were

committed to or over the next 48 years over which ITC proposes to collect the costs of the Replacement PARs from PJM and NYISO. Thus, contributions to loop flow do not represent an accurate base for the allocation of the Replacement PARs.

See Richard D. Miller Prepared Direct and Answering Testimony (pgs. 4 - 21) and David C. Clarke Prepared Direct and Answering Testimony and accompanying exhibits listed in #1 above.

The New York Transmission Owners are also relying on testimony submitted by the New York Independent System Operator, Inc.

PJM TOs

Richard A. Wodyka, Exhibit No. PTO-1 (44:16-48:10): Based on Mr. Wodyka's review of the MISO/ITC Filing information and the MISO ITC PARs—DFAX Study, there is no evidence that PJM has any more than minimal impact on Lake Erie loop flow.

Richard A. Wodyka, Exhibit No. PTO-1 (48:15-54:16): Loop flows are a natural and unavoidable result of the operation of the interconnected transmission system. There is no evidence that PJM has more than a minimal impact on Lake Erie loop flow, or any impact whatsoever on reliability. The allocation study performed by MISO and ITC confirms that any PJM impacts would be negligible in the peak and shoulder peak hours that would appropriately drive a cost allocation if one were to be performed. MISO/ITC have produced neither an analysis that provides evidence that PJM flows adversely impact the reliability of the MISO transmission system in any significant way nor accounts for the minimal impact that PJM has on the Lake Erie loop flow. The MISO/ITC Filing is inconsistent with the design, planning, and expected operation of the interconnected transmission system, which necessitates an inter-regional approach to addressing loop flows.

7. Whether the MISO/ITC DFAX study provides an adequate basis for the proposed cost allocation?

FERC Staff

The MISO/ITC DFAX study does not provide an adequate basis for the proposed cost allocation. Ms. Zugris, Ex. S-6 at 30-36; Ms. Sherman, Ex. 1 at 16-17.

MISO/ITC

MISO

Witnesses Digaunto Chatterjee and Thomas Mallinger

MSO-Tab D Prepared Direct Testimony of Jeff Webb dated October 20, 2010; MSO-1A Prepared Direct Testimony of Digaunto Chatterjee dated January 31, 2012; MSO-1 Prepared Answering and Rebuttal Testimony of Digaunto Chatterjee dated July 16, 2012; MSO-Tab E Prepared Direct Testimony of Thomas Mallinger dated October 20, 2010; MSO-3 Prepared Answering and Rebuttal Testimony of Thomas Mallinger dated July 16, 2012

The DFAX study provides an adequate basis for the proposed cost allocation.

ITC

No witness was offered to address this legal issue but ITC will address the issue on brief.

NYISO

Smith

It was not appropriate for MISO to base its DFAX analysis on the contribution to flows across the entire MI/ON Interface (which consist of four circuits). Instead, MISO's analysis should only have considered impacts on the "B3N" circuit, on which the ITC (Replacement) PARs are located. See Smith, Exh. NYI-38 at 6. The study MISO performed understates MISO's expected use of the MI/ON PARs because MISO power flows from Michigan to Ontario on two of the circuits, and loops back to Michigan on the two other circuits, but the MISO's method inappropriately nets these two flows against each other. See Smith, Exh. NYI-38 at 6-7. The DFAX analysis should have set the Replacement PARs on the B3N circuit to "inactive" and the Hydro One PARs to "inactive," producing a more focused assessment of generation-to-load impacts on that circuit, as shown in a table. See Smith, Exh. NYI-38 at 7-8.

It was also improper for the DFAX analysis to have used the MISO's load duration curve for all regions, rather than the load duration curves for each of the regions to which Replacement PAR costs are proposed to be allocated. See Smith, Exh. NYI-38 at 9-12; Exh. NYI-39; Exh. NYI-40; Exh. NYI-41. Applying MISO's load duration curve to New York penalizes the NYISO in the calculation of the overall weighted participation. See Smith, Exh. NYI-38 at 12-13.

MISO's use of only three load blocks was also inappropriate because such a simplistic construct cannot depict a region's electricity usage accurately over the 8760 hours in a given year. See Smith, Exh. NYI-38 at 14; Exh. NYI-39. The use of just three load blocks penalizes New York by mis-assigning a significant portion of the NYISO's participation (flows) to higher load hours. See Smith, Exh. NYI-38 at 14-15; Exh. NYI-42. Instead, the MISO should have conducted the DFAX analysis

for each region based on that region's load level for each hour of the year. See Smith, Exh. NYI-38 at 15-16.

Other flaws in the DFAX analysis include ignoring the cumulative contribution of regions other than MISO, NYISO, PJM and IESO to unscheduled Lake Erie power flows. The multitude of small "contributors" illustrates that if regions are permitted to assess charges to each other on the basis of asserted "benefits" in the absence of regional agreements, this "chain reaction" and ensuing litigation will have no logical stopping place. See Smith, Exh. NYI-38 at 16-19; Exh. NYI-43 at 1. They also include: (i) failing to include an amount of PJM generation and an amount of MISO generation, (ii) additional generation was incorrectly added to the NYISO and (iii) additional loads were incorrectly added to the NYISO. See Smith, Exh. NYI-38 at 19.

See also NYISO witnesses' position regarding Issue 4 and 5 above.

NYTOs

No, it does not. See earlier answers. The MISO's DFAX study does not purport to represent the relative factors that caused the cost of the Original or Replacement PARs to be incurred. It is simply a 2015 hypothetical depiction of estimated flows over the Michigan-Ontario interface. The MISO DFAX study also does not reflect the impact of individual scheduled transactions across the interface or the benefit that scheduled transactions will receive as a result of the Replacement PARs being put in service. Nor does the proposed allocation purport to consider reflect the impacts on loop flow over the interface of any other regions outside the MISO footprint except NYISO, PJM and IESO. The study also ignores the fact that flows from one region can offset the impacts of the flows from other regions. Finally, the proposed cost allocation ignores the fact that the percentage contribution to flows over the interface does not equal the impact on each region that may result from the installation of the Replacement PARs.

See Richard D. Miller Prepared Direct and Answering Testimony and David C. Clarke Prepared Direct and Answering Testimony (pgs. 4 - 21) and accompanying exhibits listed in #1 above.

The New York Transmission Owners are also relying on testimony submitted by the New York Independent System Operator, Inc.

PJM

Witness Bresler testifies that MISO/ITC's DFAX study does not yield just and reasonable results because it fails to identify the power flows actually causing harm, but instead improperly assumed that all loop flows caused harm, even when they reduce congestion on, and benefit, the transmission system. See Exhibits PJM-1 at 26:1-35:19; PJM-2, PJM-4, PJM-13 through PJM-15.

PJM TOs

Richard A. Wodyka, Exhibit No. PTO-1 (48:11-54:16): The DFAX analysis performed by MISO is fundamentally flawed, does not accurately measure cost incurrence, benefits, or detriments, and is not an adequate justification for MISO/ITC's proposed cost allocation.

MISCELLANEOUS ISSUES

8. Whether the filing creates a service obligation of MISO and ITC to NYISO or PJM or their customers and, if so, what is the nature of the obligation?

FERC Staff

The filing does not create a service obligation of MISO and ITC to NYISO or PJM or their customers. Ms. Sherman, Ex. S-1 at 13-14, 16; Ms. Zugris, Ex. S-6 at 26-30.

MISO/ITC

MISO

No witness was offered to address this legal issue but MISO will address the issue on brief.

ITC

No witness was offered to address this legal issue but ITC will address the issue on brief.

NYISO

Yeomans

Despite the proposal of MISO/ITC to collect more than half of the cost of the Replacement PARs from NYISO and PJM customers, MISO and ITC do not propose to assume an obligation to serve those customers. See Yeomans, Exh. NYI-1 at 13-16; Exhs. NYI-5 through NYI-9.

MISO asserts that NYISO and PJM customers will be required to pay the proposed PAR charges even when the Replacement PARs or Hydro One PARs are out of service. See Yeomans, Exh. NYI-1 at 13-15; Exhs. NYI-5 through NYI-8. ITC disclaims any service obligation whatsoever. See Yeomans, Exh. NYI-1 at 15; Exh. NYI-9.

The MISO-IESO Operating Instruction does not require MISO and IESO to operate the MI/ON PARs to mitigate 600 MW of unscheduled power flows at time when those flows exceed the +/-200 MW Control Band. See Yeomans, Exh. NYI-1 at 16-19; Exh. NYI-3 at 51, 53; Exh. NYI-10.

In order to be permitted to charge NYISO and PJM customers for the costs of the Replacement PARs, MISO and ITC should be required to meet the performance expectations created in the their direct testimony; namely, that the MI/ON PARs will fully mitigate unscheduled Lake Erie power flows in at least 74% of all hours, and reduce unscheduled power flows by at least 600 MW at times when the MI/ON PARs are not able to fully mitigate those flows. See Yeomans, Exh. NYI-1 at 16.

NYTOs

To the extent the Commission approves the ITC filing, the Commission would be creating a new service obligation on the part of the MISO and ITC that contrary to current and established rules and policy. The Commission will have to identify what ITC's service obligation is to the PJM and NYISO regions that would now be forced to pay for the costs of the Replacement PARs. That service obligation, at a minimum must be applied to PJM and NYISO on an equal footing with MISO and IESO with respect to the operation of the Replacement PARs and provide relief from any charges to the extent the Replacement PARs (like the Original PARs) fail to operate as intended and do not match flows to schedule across the Michigan-Ontario interface or produce positive impacts on PJM and NYISO.

See Richard D. Miller Prepared Direct and Answering Testimony and David C. Clarke Prepared Direct and Answering Testimony and accompanying exhibits listed in #1 above.

The New York Transmission Owners are also relying on testimony submitted by the New York Independent System Operator, Inc.

PJM

PJM did not file testimony on this issue and intends to rely on the testimony of other parties.

PJM TOs

The PJM Transmission Owners did not submit pre-filed testimony on this issue, but reserve the right to address the issue.

- 9. Whether and to what extent will the PARs control Lake Erie loop flow, including whether, if any of the ITC PARs (or the Hydro One PARs) are unavailable, bypassed, or not being operated in a manner that is consistent with the Presidential Permit issued to ITC by the Department of Energy, NYISO or PJM or their**

customers nonetheless should be required to pay the charges at issue in this proceeding?

FERC Staff

The PARs do not provide a distinctive, multi-region benefit such that NYISO or PJM or their customers nonetheless should be required to pay the charges at issue in this proceeding. Ms. Sherman, Ex. S-1 at 13-14, 16; Ms. Zugris, Ex. S-6 at 12-16.

MISO/ITC

MISO

Witnesses Digaunto Chatterjee, Thomas Mallinger, and David Zwergel

MSO-Tab D Prepared Direct Testimony of Jeff Webb dated October 20, 2010; MSO-1A Prepared Direct Testimony of Digaunto Chatterjee dated January 31, 2012; MSO-1 Prepared Answering and Rebuttal Testimony of Digaunto Chatterjee dated July 16, 2012; MSO-Tab E Prepared Direct Testimony of Thomas Mallinger dated October 20, 2010; MSO-3 Prepared Answering and Rebuttal Testimony of Thomas Mallinger dated July 16, 2012; MSO-Tab H Prepared Direct Testimony of David Zwergel dated October 20, 2010

The PARs are expected to help control Lake Erie loop flow to varying degrees depending upon whether the ITC PARs (or the Hydro One PARs) are unavailable, bypassed, or not being operated in a manner that is consistent with the Presidential Permit issued to ITC by the Department of Energy, and NYISO or PJM or their customers nonetheless should be required to pay the charges at issue in this proceeding.

ITC

Witness Oliver Kleinbub (Exhibit ITC-11)

Witness Oliver Kleinbub shows that PARs are not novel technology, that PARs are in place and operating successfully at numerous locations, and that there is no reasonable basis for concluding that ITC's PARs will not operate as intended.

NYISO

Yeomans

The MISO-IESO "Operating Instruction" provides a operational target that actual power flows over the MI/ON Interface are to be maintained within a +/-200 MW "Control Band" of the power flows that have been scheduled over the MI/ON Interface to the maximum extent practical. See Yeomans, Exh. NYI-1 at 11-12; Exh.

NYI-3 at 51, 52. However, without any control by the MI/ON PARs, the flows were within that Control Band about one-half of the time over the past year. See Yeomans, Exh. NYI-1 at 12-13; Exh. NYI-4.

A review of the outage history of the PARs at the MI/ON Interface from 2001 to the present reveals that the Original PAR and the Hydro One PARs have experienced significant operational difficulties during that period. See Yeomans, Exh. NYI-1 at 23-27; Exhs. NYI-11 through Exh. NYI-14; Exh. NYI-15 at 40; Exh. NYI-16 at 34, 35; Exh. NYI-17 at 21; Exh. NYI-18 at 24; Exh. NYI-19 at 25; Exhs. NYI-20 through Exh. NYI-23; Exh. NYI-24 at 22. Indeed, when the Replacement PARs were placed into service on April 5, 2012, not all of the Hydro One PARs were in service, and the history of the MI/ON PARs indicates that they are prone to failure. See Yeomans, Exh. NYI-1 at 27-29; Exhs. NYI-25 and NYI-26. This calls into serious question the MISO/ITC claim that the MI/ON PARs can control Lake Erie unscheduled power flows by 600 MW and for 74 percent of the time. See Yeomans, Exh. NYI-1 at 29. Notably, ITC chose a different manufacturer for the Replacement PARs from the one utilized for the Original PAR and the Hydro One PARs that have experienced significant failures. See Yeomans, Exhs. NYI-1 at 30-31; Exhs. NYI-27 through NYI-29.

The Replacement PARs must be operated in conjunction with the Hydro One PARs to impact Lake Erie unscheduled power flows. See Yeomans, Exh. NYI-1 at 39; Exh. NYI-37. The ability of the MI/ON PARs to mitigate Lake Erie unscheduled power flows when one or more of the Hydro One PARs is out of service is severely limited and MISO has admitted that the ability to mitigate is reduced. See Yeomans, Exh. NYI-1 at 31-37; Exhs. NYI-30 through Exh. NYI-35; Exh. NYI-21. The operation of the ITC PARs has not eliminated Lake Erie unscheduled power flows, nor have Lake Erie unscheduled power flows been reduced below the levels that the NYISO recorded for periods when the MI/ON PARs were not operated to control unscheduled power flows. See Yeomans, Exh. NYI-1 at 37-38; Exh. NYI-36; Exh. NYI-4.

Pike

Had the Replacement PARs and the Hydro One PARs all been available, they would not have been capable of fully “solving” the loop flow problems experienced in 2008 due to the circuitous schedules. MISO and ITC have indicated (at page 6 of the filing letter) that the PARs can control up to 600 MW of loop flow. However, during the circuitous scheduling period, unscheduled power flows exceeded 1000 MWs, even 2000 MWs, at times in both the clockwise and counter-clockwise directions around Lake Erie. On 81 days between October 1, 2007 and May 31, 2008, unscheduled power flows changed by more than 1000 MWs and flowed in both the clockwise and counter-clockwise directions around Lake Erie. See Pike, Exh. NYI-46 at 13-14.

See also Pike testimony summarized in issue 5(b) above (admission based on pricing methodology that MISO does not expect the MI/ON PARs to be able to effectively

conform actual power flows to scheduled power flows at the MI/ON Interface without the L4D PAR in service).

NYTOs

The NYTOs did not participate in and did not agree to the settlement agreement regarding the operation of the PARs and that resulted in the issuance of the Presidential Permit. NYISO customers should not be required to pay the charges at issue if the replacement facilities are unavailable, bypassed, or not being operated in a manner that is consistent with the Presidential Permit issued to ITC by the Department of Energy. The NYTO's do not believe that ITC has provided sufficient record evidence that the PARs can be relied upon to function as intended. Not only did the Original PARs fail but it does not appear that the Replacement PARs are likely to operate as intended. Moreover, the ability of the ITC Replacement PARs to operate as intended is dependent upon the IESO PARs also being in service and operating as predicted. It is not clear that this has occurred since the Original PARs were first planned and constructed 10-155 years ago or certainly not for any reasonable period of time.

See Richard D. Miller Prepared Direct and Answering Testimony and David C. Clarke Prepared Direct and Answering Testimony (pgs. 16 - 21) and accompanying exhibits listed in #1 above.

The New York Transmission Owners are also relying on testimony submitted by the New York Independent System Operator, Inc.

PJM

PJM did not file testimony on this issue and intends to rely on the testimony of other parties.

PJM TOs

The PJM Transmission Owners did not submit pre-filed testimony on this issue, but reserve the right to address the issue.

- 10. Whether, if the costs of the ITC PARs are allocated to PJM, the cost responsibility assigned to PJM by MISO's January 2012 testimony, which increases PJM's allocation above the amount allocated by the MISO/ITC filing, may be imposed on PJM?**

FERC Staff

Trial Staff did not submit pre-filed testimony on this issue, but reserves the right to address it on brief.

MISO/ITC

MISO

Witnesses Digaunto Chatterjee and Thomas Mallinger

MSO-Tab D Prepared Direct Testimony of Jeff Webb dated October 20, 2010; MSO-1A Prepared Direct Testimony of Digaunto Chatterjee dated January 31, 2012; MSO-1 Prepared Answering and Rebuttal Testimony of Digaunto Chatterjee dated July 16, 2012; MSO-Tab E Prepared Direct Testimony of Thomas Mallinger dated October 20, 2010; MSO-3 Prepared Answering and Rebuttal Testimony of Thomas Mallinger dated July 16, 2012

If the costs of the ITC PARs are allocated to PJM, the cost responsibility assigned to PJM by MISO's January 2012 testimony, which increases PJM's allocation above the amount allocated by the MISO/ITC filing, may be imposed on PJM.

ITC

No witness was offered to address this legal issue but ITC will address the issue on brief.

NYISO

NYISO takes no position on this issue.

NYTOs

The New York Transmission Owners will not address this issue on brief.

PJM

This is a legal question that does not require the presentation of any testimony. However, PJM witness Bresler testifies as to the differences between the rates which were filed in October 2010, and the rates proposed in the January 2012, testimony of MISO/ITC. See Exhibits PJM-1 at 3:9-19 & n.7.

PJM TOs

The PJM Transmission Owners did not submit pre-filed testimony on this issue, but reserve the right to address the issue.

- 11. Whether, if the costs of the ITC PARs are allocated to PJM or NYISO, PJM or NYISO is responsible (respectively) for paying MISO in the case of a PJM or NYISO customer's failure to pay PARs-related charges?**

FERC Staff

Trial Staff did not submit pre-filed testimony on this issue, but reserves the right to address it on brief.

MISO/ITC

MISO

No witness was offered to address this legal issue but MISO will address the issue on brief.

ITC

No witness was offered to address this legal issue but ITC will address the issue on brief.

NYISO

NYISO expects to support PJM's position on this issue.

NYTOs

No, the NYISO is a non-profit entity without any assets. Therefore, it should not be required to underwrite ITC's construction decisions by being forced to pay MISO/ITC for the costs of the Replacement Facilities to the extent that the NYISO's customers fail to pay PARs-related charges.

See Richard D. Miller Prepared Direct and Answering Testimony and David C. Clarke Prepared Direct and Answering Testimony and accompanying exhibits listed in #1 above.

The New York Transmission Owners are also relying on testimony submitted by the New York Independent System Operator, Inc.

PJM

This is a legal question that does not require the presentation of any testimony. In an order in another related proceeding, the Commission stated that this issue could be addressed here. *See PJM Interconnection, L.L.C.*, 140 FERC ¶ 61,012, at P 22 (2012).

PJM TOs

The PJM Transmission Owners did not submit pre-filed testimony on this issue, but reserve the right to address the issue.

Respectfully submitted,

/s/

Howard H. Shafferman
Counsel for New York Independent System
Operator, Inc.

Ballard Spahr LLP
1909 K Street, NW, 12th Floor
Washington, DC 20006
202-661-2205
hhs@ballardspahr.com

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 these proceedings.

Dated at Washington, D.C. this 30th day of July, 2012.

/s/ Pamela S. Higgins
Pamela S. Higgins
Ballard Spahr LLP
1909 K Street, N.W., 12th Floor
Washington, D.C. 20006
(202) 661-2258