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November 17, 2010

SENT VIA ELECTRONIC FILING
Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. ER11-1844-000 - Midwest Independent
Transmission System Operator Inc.

Dear Secretary Bose:

For filing, please find the Notice of Intervention and Protest of the New York State Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

David G. Drexler
Assistant Counsel

Attachment

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission) Docket No. ER11-1844-000
System Operator Inc.)

NOTICE OF INTERVENTION AND PROTEST OF
THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK

NOTICE OF INTERVENTION

Pursuant to the Federal Energy Regulatory Commission's (FERC or Commission) Notice of Extension of Time, issued November 4, 2010, and Rules 211 and 214 of the Commission's Rules of Practice and Procedure, the New York State Public Service Commission (NYPS&C) hereby submits its Notice of Intervention and Protest in opposition to the petition filed by the Midwest Independent Transmission System Operator, Inc. (MISO) and International Transmission Company (ITC) (collectively, Petitioners) on October 20, 2010 (October 20 Filing).

Copies of all correspondence and pleadings should be addressed to:

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BACKGROUND

The Petitioners' October 20 Filing proposes to revise the MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff to provide a methodology for allocating and recovering the costs associated with the installation of Phase Angle Regulators (PARs) on the Michigan-Ontario border. Petitioners assert that because these "new" PARs would mitigate Lake Erie loop flow issues adversely affecting the MISO, the New York Independent System Operator, Inc. (NYISO), and the PJM Interconnection, L.L.C. (PJM), each region should be allocated a portion of the costs. Although the Ontario Independent Electric System Operator (IESO) has also been adversely affected by these loop flows, Petitioners do not propose to allocate any costs to IESO because it is not a FERC-jurisdictional entity.

SUMMARY

The NYPSC appreciates and supports the Commission's and the stakeholders' efforts to implement long-term solutions to the Lake Erie loop flow issues that were addressed in the short-term by prohibiting the scheduling of transactions over eight specified scheduling paths around Lake Erie.¹ However, we

¹ Docket No. ER08-1281-000, NYISO, Order Accepting Tariff Sheets (issued August 21, 2008), ¶ 28 (indicating that "long-term solutions to the loop-flow problem should be worked out through a collaborative process").

object to Petitioners' attempt to unilaterally impose a portion of the costs of the PARs on New York consumers outside of a predetermined planning process that includes the NYISO and interested parties. The involvement of the NYISO and interested parties in such a process is essential to ensure the development of an appropriate cost-benefit analysis and that any allocation of costs to New York's consumers is just and reasonable. The Commission's precedent, as well as its recent Notice of Proposed Rulemaking concerning regional transmission planning and cost allocation,² do not support the involuntary imposition of costs upon New York consumers in this situation.

Petitioners inappropriately attempt to utilize the Lake Erie loop flow problem, and the "benefits" of mitigating that harm, as a *post hoc* rationalization for allocating the costs of the PARs to the NYISO and other regions. In fact, the impetus for the installation of the PARs was ITC's obligation to expand available transmission capability under Michigan's Customer Choice and Electric Reliability Act, at the direction of the Michigan Public Service Commission. Therefore, the Commission should reject Petitioners' claims that the costs to

² Docket No. RM10-23-000, Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Notice of Proposed Rulemaking (Transmission Planning NOPR) (issued June 17, 2010).

replace the PARs should be involuntarily allocated to regions other than MISO.

DISCUSSION AND PROTEST

I. The Commission Should Reject Petitioners' Attempt To Impose The Costs Of The PARs On Entities Outside Of The MISO That Have Not Voluntarily Agreed To A Cost Allocation And Were Not Included In The Planning Process Evaluating The Costs and Benefits Of The PARs

Petitioners incorrectly argue that the cost allocation approach proposed in the October 20 Filing is analogous to other approaches approved by the Commission. Contrary to Petitioners' arguments, the Commission's precedent does not support the involuntary allocation of costs to entities outside of the MISO that were not included as part of a planning process. While Petitioners attempt to rely on the cost causation principle whereby beneficiaries pay, each of the proceedings purportedly involving interregional cost allocation that were cited in the October 20 Filing involved either an allocation on a voluntary basis, or involved entities within the same region.

Only recently the Commission put forth a proposal to require that a cost allocation methodology be in place for allocating the costs of intraregional facilities among different regions; and even there, the Commission proposed to leave the determination of an appropriate cost allocation methodology to

the voluntary agreement of the affected regions.³ Moreover, the Commission articulated the principle in its Transmission Planning NOPR that "[t]he allocation method for the cost of an intraregional facility must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region *voluntarily* agrees to assume a portion of those costs."⁴ In addition, the Commission indicated that "[c]osts cannot be assigned involuntarily under [the Transmission Planning NOPR] to a transmission planning region in which that facility is not located."⁵ Thus, Petitioners' effort to involuntarily impose the costs of PARs located within the MISO region on entities located outside of the MISO planning region is inconsistent with the Commission's Transmission Planning NOPR and the principles articulated therein.

As part of the Commission's effort to expand regional planning and gain the acceptance of stakeholders, it is important that the proposed cost allocation rules are established up front before actual transmission planning studies are performed, and not after the fact, as Petitioners seek to

³ See, Docket No. RM10-23-000, Transmission Planning NOPR, ¶ 165 (proposing to allow transmission providers to develop a cost allocation method that best suits the needs of that planning region).

⁴ Transmission Planning NOPR at ¶ 164(4) (emphasis added).

⁵ Transmission Planning NOPR at ¶ 174(4).

accomplish in the October 20 Filing. Moreover, by acting unilaterally, MISO's planning studies were not conducted to optimize the benefits of the PARs for all regions adversely affected by the Lake Erie loop flow problem. Instead, the PARs appear to be designed to address identified needs within the MISO region, with any mitigation of the Lake Erie loop flow problem being ancillary to addressing the MISO's needs.

II. The Commission Should Reject Petitioners' Post Hoc Rationalization For Allocating Costs Where The Need For The PARs Was Established Prior To The Identification Of Lake Erie Loop Flow Issues

Petitioners inaccurately attempt to characterize the PARs as "new" and designed to address the Lake Erie loop flow problem. However, Petitioners fail to mention that the "new" PARs are merely replacing PARs identified in studies dating back to at least 1999, and which were installed at the direction of the Michigan Public Service Commission in order to comply with Michigan's retail access plan.⁶ Subsequent to being installed, those PARs failed. Had those PARs not failed, Petitioners would not be seeking to allocate the costs associated with them.

⁶ The Protest filed by the New York Transmission Owners and New York Municipal Power Agency in this proceeding on November 11, 2010, contains a thorough description of the background involving the initial installation of the PARs, which we hereby incorporate by reference.

CONCLUSION

For the reasons discussed above, the Commission should reject Petitioners' October 20 Filing.

Respectfully submitted,



Peter McGowan
General Counsel
Public Service Commission
of the State of New York

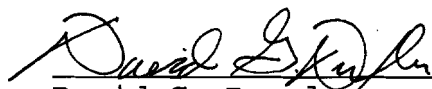
By: David G. Drexler
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Dated: November 17, 2010
Albany, New York

CERTIFICATE OF SERVICE

I, David G. Drexler, do hereby certify that I will serve the foregoing Notice of Intervention and Protest of the New York State Public Service Commission, upon each of the parties of record indicated on the official service list compiled by the Secretary in this proceeding.

Dated: November 17, 2010
Albany, New York


David G. Drexler

