129 FERC ¶ 61,102
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Midwest Independent Transmission System Operator, Inc.;	Docket No. ER05-6-108
Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.	Docket Nos. EL04-135-112 EL02-111-129
Ameren Services Company	Docket No. EL03-212-125

ORDER ON CROSS-BORDER FACILITIES
COST ALLOCATION

(Issued November 3, 2009)

1. In this order, we address the revisions proposed by two Regional Transmission Organizations (RTOs), the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C.'s (PJM) (together, the RTOs), to their Joint Operating Agreement (JOA). The revisions would add a methodology to allocate between the RTOs the costs of projects that are built in one RTO but that provide economic benefits to the other RTO (economic cross-border projects).[1] For the reasons discussed below, we will accept the proposed JOA revisions, effective March 29, 2009, as requested.

[1] The cross-border cost allocation process under the JOA is designed primarily to address facilities built entirely in one RTO but that have loop flow impacts on the other RTO.

I. <u>Background</u>

2. On November 18, 2004, the Commission directed Midwest ISO and PJM, under section 206 of the Federal Power Act (FPA),[2] to submit a proposal to allocate between them the costs of cross-border projects.[3] In January 2008, the Commission accepted the RTOs' methodology to allocate between them the cost of cross-border facilities built for reliability reasons but granted the RTOs more time to file a cost allocation proposal for cross-border projects built for economic purposes.[4]

3. Subsequently, the Commission directed the RTOs to address, in their cost allocation proposal for economic cross-border projects, the allocation of the cost of upgrades that may be needed to address parallel flow problems, such as those on the Northern Indiana Public Service Company (NIPSCO) system caused by west-to-east transmission from PJM's western area to its eastern portion. In an order dismissing a complaint by NIPSCO about parallel flow problems over its system, the Commission noted that the RTOs had identified upgrades to the NIPSCO system that would be built should certain, triggering events occur.[5] The Commission questioned whether those upgrades necessitated a special allocation process, outside of the to-be-revised JOA. It therefore instructed the RTOs to develop generally applicable tariff provisions that would apply to all comparable transmission upgrades. If the RTOs determined that the upgrades recommended for the NIPSCO system, because of their nature or timing, require special cost allocation provisions, they were to include such special allocation provisions in their proposals for economic cross-border projects cost allocations.[6]

---

[2] 16 U.S.C. § 824e (2006).

[3] *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168, at P 60 (2004).

[4] *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,084, at P 29 (2008).

[5] *See Northern Indiana Pub. Serv. Co., Inc. v. Midwest Indep. Transmission Sys. Operator, Inc. and PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,089 (2006) (*Northern Indiana).*

[6] *Id*. P 23-24.

II. <u>January 28 Filing</u>

4. On January 28, 2009, the RTOs filed their proposal to allocate the costs of economic cross-border projects (January 28 Filing). They define an economic cross-border project as one that is necessary to relieve congestion and thereby improve the efficient operation of their two markets.[7] To qualify as an economic cross-border project and for the associated cost-sharing, a project must: (1) have an estimated cost of $20 million or greater; (2) be evaluated as part of a Coordinated System Plan or joint study process, as described in section 9.3.5 of the JOA, "Development of the Coordinated System Plan"; (3) meet or exceed a present value cost/benefit ratio threshold of 1-to-1.25 under the JOA benefit formula; (4) qualify as an "economic transmission enhancement or expansion" under the terms of the PJM Regional Transmission Expansion Plan (RTEP) and also as a Regionally Beneficial Project under the terms of Attachment FF of the Midwest ISO Tariff, "Transmission Expansion Planning Protocol" (MTEP);[8] and (5) address one or more constraints that meet specified characteristics.

5. The JOA benefit formula, set forth at proposed JOA section 9.4.3.1.2.1, combines aspects of the benefit formulas that each RTO already uses to evaluate economic projects on its own system. The JOA formula estimates benefits as the change in production costs and net load payments that result from a proposed economic cross-border project. If a project qualifies as an economic cross-border project, its costs will be allocated to each RTO in proportion to the present value of the RTO's share of the annual benefits that are calculated for the proposed project.[9]

---

[7] The RTOs propose to create a new term in the JOA to describe the type of cross-border project that is the subject of the filing, "Cross Border Market Efficiency Projects (CBMEP)." For clarity in this order, we use the term economic cross-border project instead of CBMEP.

[8] Among the requirements to qualify under RTEP and MTEP, a proposed economic cross-border project must meet each RTO's respective cost-benefit ratios. The Commission notes that Midwest ISO and its stakeholders are currently undertaking a comprehensive look at transmission upgrade cost allocations. *See Midwest Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,060 (2009).

[9] The total annual benefits for an economic cross-border project shall be determined by calculating the present value of annual benefits for each of the first ten years of the life of the project at a minimum, with a maximum number of years limited by a 20-year horizon.

6. The RTOs explain that the January 28 Filing does not address operational performance issues like the problems raised in NIPSCO's complaint. The RTOs believe that operational performance issues that resulted in the NIPSCO complaint are unique. They arise through actual, real-time operational conditions and not through projected conditions associated with normal planning processes, which are forward looking and involve larger, more costly solutions. Area constraints, such as the NIPSCO situation, are too small for inclusion in the thresholds for forwardly planned, market efficiency projects that are expected to benefit customers over the wide region spanned by the two RTOs' markets. Furthermore, the RTOs state, problems like the NIPSCO situation are not of a routine or general nature that lend themselves to general provisions in the JOA. Rather, most operational performance issues can be resolved by market-to-market protocols or by reasonable operating steps. Nevertheless, the RTOs commit to continue monitoring operational performance issues and, if appropriate, to discuss further with stakeholders where additional modifications to the JOA are appropriate. Regarding NIPSCO's complaint, the RTOs, NIPSCO, and other market participants agreed to resolve the NIPSCO issue outside of the instant filing and will submit to the Commission a NIPSCO-specific cost allocation in a separate filing.[10]

III. Deficiency Letter and RTOs' Response

7. On May 8, 2009, Commission staff issued a deficiency letter to the RTOs, requesting more details about the proposed cross-border cost allocation methodology. On June 8, 2009, the RTOs submitted their joint response (Deficiency Response) that further explains their proposed economic cross-border cost allocation process. The RTOs provided detailed examples illustrating how a hypothetical transmission project will qualify as an economic cross-border project under the JOA as well as under each RTO's individual tariff. They next explained, in detail and with examples, the allocated costs that each RTO will use to qualify a project under its individual tariff requirements. Thirdly, they gave greater detail, with examples, about how the applicable costs for a project will be allocated between the RTOs.

---

[10] On July 31, 2009, in Docket No. ER09-1539-000, NIPSCO filed an agreement, executed by itself, Midwest ISO, PJM, and Edison Mission Marketing & Trading Inc. (Edison) whereby Edison would fund certain upgrades on the NIPSCO system (Upgrade Agreement). The Commission accepted the Upgrade Agreement in *Northern Indiana Public Service Co.*, 128 FERC ¶ 61,281 (2009) (*Northern Indiana*).

IV. Informational Filing

8. On July 29, 2009, the RTOs submitted, as an informational filing, the agreement that was filed two days later in the Docket No. ER09-1539-000 proceedings (Informational Filing).[11]

V. Notices of Filing and Responsive Pleadings

9. Notice of the January 28 Filing was published in the *Federal Register*, 74 Fed. Reg. 7414 (2009), with comments, protests and interventions due on or before February 18, 2009. Certain PJM Transmission Owners (PJM TOs)[12] filed comments. Midwest ISO Transmission Owners (Midwest ISO TOs)[13] filed a motion to intervene and supportive comments. Pioneer Transmission LLC (Pioneer) filed a motion to intervene and comments. Dominion Resources Services, Inc. (Dominion) filed a motion to intervene and comments. International Transmission Company, Michigan Electric Transmission Company, LLC, ITC Midwest LLC, and American Electric Power Service

---

[11] *See* note 10, *supra*.

[12] PJM TOs, for this proceeding, consist of: Baltimore Gas and Electric Company (BG&E); Exelon Corporation (Exelon) on behalf of its operating affiliates, PECO Energy Company and Commonwealth Edison Company and the latter's wholly-owned subsidiary, Commonwealth Edison Company of Indiana, Inc. (ComEd-Indiana); Monongahela Power Company; and the Potomac Edison Company, and West Penn Power Company.

[13] Midwest ISO TOs for this proceeding consist of: Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Company, and Illinois Power Company; American Transmission Company LLC; American Transmission Systems, Inc.; City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Duke Energy Business Services, LLC for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative., Inc.; Indiana Municipal Power Agency; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Company; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative.; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative., Inc.

Corporation (AEP) (collectively, ITC-AEP) filed a joint motion to intervene and protest. NIPSCO filed comments. On March 5, 2009, the RTOs filed an answer (March Answer).

10. Notice of the Deficiency Response was published in the *Federal Register*, 74 Fed. Reg. 29201 (2009), with comments, protests and interventions due on or before June 29, 2009. LS Power Transmission, L.L.C. (LS Power), filed a motion to intervene, comments, and a request for technical conference. Pioneer filed additional comments.

11. On July 14, 2009, the RTOs filed an answer (July Answer), and BG&E filed an answer opposing a technical conference (BG&E Answer).

12. NIPSCO, Exelon and the Indiana Utility Regulatory Commission (Indiana Commission) submitted comments on the Informational Filing.[14] On September 9, 2009, PJM filed an answer to Exelon's comments on the Informational Filing (September Answer).[15]

A. Protests, Comments and Answers

1. Responses to January 28 Filing

13. ITC-AEP argue that the proposed economic cross-border cost allocation methodology replicates a number of significant flaws from the RTOs' internal cost allocation processes, which have already proven unsuccessful, while adding entirely new impediments to economic transmission expansion, thus ensuring that economic transmission projects will not be built. While ITC-AEP recommend that the Commission reject the RTOs' proposed methodology and replace it with a methodology more conducive to regional expansion, they recognize that this outcome is unlikely. Therefore, they instead recommend revision of the proposed methodology as follows.

14. First, they object to the requirement that to qualify as an economic cross-border project, a proposed project must meet the JOA 1-to-1.25 cost/benefit ratio as well as the cost/benefit ratio under each RTO's internal cost allocation process. Instead, ITC-AEP contend that a proposed project should qualify under a single cost/benefit test (i.e., the JOA 1-to-1.25 cost/benefit ratio) in order to simplify the process for determining whether a project qualifies as an economic cross-border project. Second, ITC-AEP argue that instead of three materiality tests (i.e., $20 million and each RTO's individual materiality

[14] The Indiana Commission also filed a notice of intervention.

[15] Indiana Commission, Exelon, and PJM filed their pleadings in Docket No. ER09-1539-000 also. *See* note 9, *supra*.

threshold), only a single uniform standard should be adopted. Third, they believe that if the Commission decides to retain the RTO-specific cost/benefit tests, then the Commission should clarify that the costs allocated to each RTO, rather than total project costs, should be compared to the benefits received by customers in each RTO. Fourth, they contend that because the proposed methodology for calculating economic benefits omits most benefits of high voltage transmission infrastructure, the Commission should reject this methodology and instead require the RTOs to develop a more comprehensive methodology or, alternatively, condition acceptance of the proposed methodology on the RTOs filing a more comprehensive methodology in the future. ITC-AEP state that their strong preference for allocating costs is on a uniform, postage-stamp basis.

15. Pioneer criticizes the RTOs' proposal because it does not address cost allocation for extra high voltage (EHV) overlay projects such as Pioneer's intended 765 kV transmission line in Indiana, which it is not proposing as a stand-alone reliability or economic upgrade. Pioneer states that it intends no denigration of the RTOs' efforts to come up with an economic cross-border cost allocation methodology and notes that the RTOs have done what the Commission ordered them to do. However, Pioneer is concerned that, given the amount of time it took for the RTOs to come up with the economic cost allocation proposal, it may be a very long time before the RTOs come up with a regional cost allocation proposal for EHV projects. Pioneer asks, therefore, that the Commission direct the RTOs to propose an expedited joint planning process for considering EHV overlay transmission projects together with a proposed regional cost allocation methodology.

16. The PJM TOs and Midwest ISO TOs both support the RTOs' proposed economic cross-border cost allocation methodology. They note that the proposed methodology is the product of extensive stakeholder input, which was gathered at seven stakeholder meetings conducted from June 2008 through December 2008. The PJM TOs and Midwest ISO TOs consider the proposed methodology as a reasonable compromise and urge the Commission to approve the compliance filing without material modification.

17. NIPSCO's and Dominion's comments pertain to the operational flow problems described in NIPSCO's complaint.[16]

18. The RTOs answer ITC-AEP's general criticism by stating that while a variety of metrics and procedures for identifying valuable system expansions could be determined just and reasonable, the January 28 Filing represents the prevailing viewpoint of the stakeholders and is most consistent with the Commission-approved processes currently in

---

[16] *See* P 3 and P 6, *supra*.

place within each RTO for defining cost effective market efficiency projects. The RTOs answer ITC-AEP's request for a single 1-to-1.25 cost benefit ratio by stating that the majority of stakeholders supported the requirement for an economic cross-border project to meet the JOA cost benefit ratio as well as each RTO's existing requirements for non-cross-border projects. The RTOs explain that because a project's costs will be shared between the RTOs, the project needs to qualify under each RTO's existing protocols so that the differences between each RTO's internal economic planning processes are taken into account. In response to ITC-AEP's request for a single materiality test, the RTOs state that their proposal already contains only a single materiality test (i.e., $20 million in total costs).

19. Concerning the methodology to calculate benefits, the RTOs note that the Commission has already approved only slightly different metrics for measuring the benefits of economic projects in Midwest ISO and PJM. They state that the January 28 Filing incorporates components of each RTO's internal benefit metrics. To propose otherwise, the RTOs state, would require wholesale reexamination of each RTO's planning constructs and would require guidance from the Commission. Regarding why the RTOs propose to use the same formula to allocate costs as is used to determine benefits, and decline to adopt a postage stamp rate structure, the RTOs state that, on this issue, the stakeholders were most united. They want as close a tie as possible between the beneficiaries indicated by the analyses and the recovery of costs from those specific beneficiaries. The RTOs independently concluded that this was an appropriate, reasonable approach.

20. The RTOs answered Pioneer's concern that its Pioneer Project will not fall within the category of a reliability or an economic cross-border project by stating that they have already initiated a planning process to evaluate the Pioneer Project within the Coordinated System Plan of the JOA. The RTOs state that if the Pioneer project does not meet the reliability or economic criteria in the JOA or in either of the RTOs' approved planning processes, then Pioneer may seek to have the RTOs consider the Pioneer project as a merchant transmission project, with cost recovery pursuant to bilateral contracts rather than a regional tariff. They state that to develop a cost allocation proposal for the Pioneer Project now, before it is evaluated under existing protocols including those of the January 28 Filing, would be premature.

2. <u>Responses to Deficiency Response</u>

21. In separate comments to the Deficiency Response, LS Power and Pioneer both contend that the benefit calculation proposed by the RTOs is flawed because it considers only production costs and load payments. They point out that the RTOs themselves state that it is not likely that a project primarily designed to allow renewable generation facilities to serve load in the RTOs pursuant to any Renewable Portfolio Standards, such as an EHV overlay transmission project, will qualify as an economic cross-border project.

Therefore, they ask the Commission to reject the proposed methodology or, if the Commission accepts it, to set a date certain for the RTOs to replace the proposal with a new methodology that provides a more comprehensive evaluation of economic benefits (such as those related to increased reliability and access to renewable generation). LS Power and Pioneer recommend that the Commission hold a technical conference on this issue. LS Power agrees with ITC-AEP's request for a single 1-to-1.25 cost benefit ratio.

22. In answering LS Power's and Pioneer's comments, BG&E opposes the request to hold a separate technical conference. BG&E notes that much stakeholder input went into the preparation of the RTOs' joint proposal. BG&E states that the collective effort should not be devalued by reopening the process at this late date. Also, BG&E states that the Commission does not need to hold a separate technical conference in this proceeding on the topic of promoting renewable energy because integrating renewable resources into the wholesale electric grid is a topic that the Commission will address in other proceedings.

23. In their July Answer, the RTOs state that many larger policy issues raised by commentors have already been raised in other proceedings, such as the March 2, 2009 technical conference on integrating renewables and the technical conferences on the Order No. 890 transmission planning process.[17] The RTOs also note that organizations such as the Organization of Midwest ISO States are evaluating regional transmission planning approaches and cost allocation mechanisms needed to address energy policy objectives, including renewables. The RTOs urge that their proposal fulfills the Commission's directive to file a just and reasonable methodology to allocate the cost of economic cross-border projects. They believe that this proceeding is not the appropriate place to address broad policy questions regarding transmission cost allocations intended to support renewable energy. The RTOs recommend that the Commission instead address such issues in one or more separate dockets. They urge the Commission to accept the current proposal as a first step upon which to further refine and improve the RTOs' planning processes. The RTOs commit to work with the Commission to determine if further refinements are needed.

3. Responses to Informational Filing

24. Exelon comments that the Informational Filing is incomplete because it ignores the work necessary on the system of its subsidiary, ComEd-Indiana, to accomplish the transmission upgrades at issue. Exelon asks the Commission to reject this Informational Filing and to require an updated informational filing after execution and filing of an

---

[17] Docket Nos. AD09-4-000 and AD09-8-000, respectively.

agreement between ComEd-Indiana and NIPSCO (and if necessary PJM and Midwest ISO) concerning reconductoring on the ComEd-Indiana transmission system. PJM responds to Exelon's comments by stating its support for a separate agreement with ComEd-Indiana and any additional filings that may be required in connection with that agreement.[18]

VI. **Discussion**

A. **Procedural Matters**

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) (2009), prohibits an answer to a protest, unless otherwise permitted by the decisional authority. We will accept the RTOs' March and July Answers, BG&E's Answer, and PJM's September Answer because they provided information that assisted us in our decision-making process.

B. **Commission Determination**

26. We accept the RTOs' proposal as just and reasonable and in compliance with the Commission's directives to revise the JOA to include a methodology to allocate between the RTOs, the costs of economic cross-border transmission projects.

27. We find that the proposed JOA economic cross-border benefit formula is a just and reasonable method of allocating costs since it is based on criteria that the Commission previously accepted for use by each RTO to measure the benefits of adding new transmission within its footprint.[19] We find that requiring a proposed economic cross-border project to meet each RTO's internal cost allocation formula is reasonable because it ensures that before the RTOs allocate economic cross-border project costs to their customers, the project meets the same requirements as any non-cross-border economic project. Although some parties argue that a different methodology should be

---

[18] Indiana Commission's comments pertain only to the Upgrade Agreement among Edison, NIPSCO and the RTOs. They are summarized and addressed in *Northern Indiana*, 128 FERC ¶ 61,281 at P 8 and P 11.

[19] Like the proposed JOA benefit formula, the benefit formulas that the RTOs use to qualify economic projects for cost sharing under MTEP and RTEP use production costs and load payments.

adopted so that more projects can qualify as economic cross-border projects, the proposed methodology is reasonable insofar as it applies the current metrics to evaluate economic upgrades.

28. In addition, we note that the RTOs in their Answers and Deficiency Response provided the clarifications that ITC-AEP requested by confirming that the costs allocated to each RTO, rather than total project costs, will be used when applying each RTO's internal cost allocation formula. The RTOs also confirmed that a proposed project will have to meet a single, uniform materiality threshold of $20 million to qualify as an economic cross-border project.

29. In regard to Pioneer's concern that its proposed EHV project will not qualify as an economic cross-border facility, we note that the RTOs state, and Pioneer does not dispute, that they have initiated a joint stakeholder process pursuant to the JOA to evaluate Pioneer's project. It would be inappropriate to direct the RTOs to modify their economic cross-border cost allocation methodology to better address a single project by a single party even before that project goes through the existing process. As a general matter, however, we acknowledge that transmission planning and market development policy is an evolving process, and we agree with the RTOs that the proposed changes to the JOA are a first step upon which further refinements and improvements may be needed in the future.[20] As the Commission continues to evaluate transmission planning processes, changes may well be needed for internal projects as well as cross-border projects. In response to a recent staff notice, the Commission will be receiving comments and examining whether further transmission-related reforms are appropriate.[21]

30. With respect to the NIPSCO operational performance issue, we see no reason for any further informational filings in this docket. NIPSCO, the RTOs and other stakeholders agree that resolution of NIPSCO's concerns requires a unique solution that is better addressed separately. The parties have entered into an agreement designed to resolve these issues in Docket No. ER09-1539-000, and have agreed to file any further agreements. Therefore, these issues no longer need to be linked with the generic determination of cross-border allocations.

---

[20] Deficiency Response at 9.

[21] *See* Notice of Request for Comments, October 8, 2009, Docket No. AD09-8-000.

<u>The Commission orders</u>:

The RTOs' revisions to the JOA are hereby accepted, effective March 29, 2009, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.