

147 FERC ¶ 61,096  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

Pioneer Transmission, LLC

Docket Nos. EL12-24-000  
EL12-24-001

v.

Northern Indiana Public Service Company  
and Midwest Independent Transmission System  
Operator, Inc.

ORDER ACCEPTING WITHDRAWALS

(Issued May 8, 2014)

1. On August 20, 2012, Pioneer Transmission, LLC (Pioneer)<sup>1</sup> filed a request for rehearing of the Commission's order denying the complaint in the above-captioned proceeding.<sup>2</sup> Concurrently with the filing of the request for rehearing, Pioneer, Northern Indiana Public Service Company (NIPSCO) and MISO (together, the Settling Parties) filed an offer of settlement (Settlement). On June 12, 2013, in a joint filing, Pioneer and the Settling Parties filed a notice of withdrawal of Pioneer's request for rehearing and the Settlement. In this order, we accept Pioneer's withdrawal of its rehearing request and the Settling Parties' withdrawal of the Settlement.

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<sup>1</sup> Pioneer is a joint venture of American Electric Power Company, Inc. (AEP) and Duke Energy Corporation (Duke). Pioneer was formed to conduct studies in support of the Pioneer Project. The Pioneer Project is a proposed 765kV transmission project located in the State of Indiana that would connect to substations of both PJM Interconnection, L.L.C. (PJM) and Midwest Independent Transmission System Operator, Inc. (MISO). Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

<sup>2</sup> *Pioneer Transmission, LLC v. Northern Indiana Public Service Co. and Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,057 (2012) (Pioneer Order).

## I. Background

2. On February 8, 2012, Pioneer filed a complaint against NIPSCO and MISO alleging, among other things, that NIPSCO does not have ownership rights to any of the investment associated with the segment of the Pioneer Project that MISO included in its 2011 Midwest Transmission Expansion Plan (MTEP) as a Multi-Value Project (MVP).<sup>3</sup> Pioneer stated in the complaint that it originally worked with PJM and MISO to consider the entire Pioneer Project under the MISO-PJM cross-border cost allocation mechanism; however, it began pursuing the project in two segments after experiencing difficulty in getting joint PJM and MISO approval.<sup>4</sup> Pioneer stated that originally, one segment was to run from an existing AEP Rockport substation (in PJM) to the Greentown substation which is owned by Duke (in MISO). However, according to Pioneer, during the MISO transmission planning process, MISO planners determined that the AEP substation, which was deemed to be in PJM, was a less appropriate interconnection point for a MISO MVP. Thus, Pioneer contended that MISO transmission planners modified the route slightly to run from a new substation in the vicinity of the existing Reynolds substation, which is owned by NIPSCO, to Greentown. In the 2011 MTEP, the Reynolds-Greentown transmission project was approved by the MISO Board of Directors with ownership and the responsibilities to construct listed as NIPSCO and Duke;<sup>5</sup> the Pioneer Project remained in the 2011 MTEP as a proposed project.<sup>6</sup>

3. On July 19, 2012, the Commission denied the complaint and found that, among other things, under the plain terms of Appendix B, section VI of the Agreement of

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<sup>3</sup> MVPs are a category of transmission projects that enable the reliable and economic delivery of energy in support of documented energy policy mandates or laws and/or address multiple economic issues affected multiple transmission zones, and/or address at least one economic issue affecting multiple transmission zones and one reliability issue. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221 (2010), *order on reh'g*, 137 FERC ¶ 61,074 (2011), *aff'd in part, dismissed in part and remanded in part sub nom. Illinois Commerce Commission v. FERC*, 721 F.3d 764 (7th Cir. 2013), *cert. denied sub nom. Schuette v. FERC*, 2014 WL 684066 (U.S. Feb. 24, 2014) (No. 13-443); *Hoosier Rural Energy Coop. Inc. v. FERC*, 2014 WL 684067 (U.S. Feb. 24, 2014) (No. 13-445).

<sup>4</sup> Pioneer Complaint at 13.

<sup>5</sup> *See* MISO 2011 MTEP, Appendix A.

<sup>6</sup> *See* MISO 2011 MTEP, Appendix C.

Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation (Transmission Owners Agreement),<sup>7</sup> ownership and the responsibilities to construct the approved Reynolds-Greentown transmission project belong equally to NIPSCO and Duke.<sup>8</sup>

## **II. Request for Rehearing and Settlement**

4. On August 20, 2012, Pioneer filed a request for rehearing of the Pioneer Order. Concurrently with the filing of the request for rehearing, the Settling Parties filed the Settlement.<sup>9</sup> Pioneer states that by filing the request for rehearing, it intends that the complaint docket will remain pending in order to provide the Commission with a forum in which to consider the concurrently-filed Settlement. Pioneer states that if the Commission approves the Settlement without modification or condition, Pioneer will withdraw the request for rehearing. Pioneer argues that the Commission erred to the extent that it did not contemplate a voluntary arrangement under which NIPSCO and Pioneer could share responsibility to invest in and construct the Reynolds-Greentown transmission project. Pioneer states that although the Commission referenced third party rights to build in MISO “if the interconnecting transmission owner is unwilling or unable to assume responsibility for the project,”<sup>10</sup> the Commission did not specifically discuss the option of NIPSCO and Pioneer entering into an agreement under which NIPSCO and Pioneer would share responsibility to invest in and construct the Reynolds-Greentown transmission project. Pioneer argues that on rehearing, the Commission should find that

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<sup>7</sup> Appendix B, section VI of the Transmission Owners Agreement provides, in relevant part:

Ownership and the responsibilities to construct facilities which are connected between two (2) or more Owners’ facilities belong equally to each Owner, unless such Owners otherwise agree, and the responsibility for maintaining such facilities belongs to the Owners of the facilities unless otherwise agreed by such Owners.

<sup>8</sup> Pioneer Order, 140 FERC ¶ 61,057 at PP 95-96.

<sup>9</sup> The Settlement, among other things, provided that MISO would revise the ownership and responsibilities to construct the Reynolds-Greentown transmission project from NIPSCO and Duke to NIPSCO and Pioneer.

<sup>10</sup> Pioneer Request for Rehearing at 3 (citing Pioneer Order, 140 FERC ¶ 61,057 at P 98).

Pioneer has the right to invest in and construct the Reynolds-Greentown transmission project to the extent Pioneer and NIPSCO agree to jointly develop the project and Pioneer has taken the necessary steps to integrate the project into the MISO transmission system.

5. Under the terms of the proposed Settlement, MISO agrees that Pioneer and NIPSCO are designated as the parties responsible for construction of the Reynolds-Greentown transmission project. Further, NIPSCO and Pioneer agree that the dividing point for the Reynolds-Greentown transmission project shall be determined based upon their intent that each of them has complete ownership of components of the Reynolds-Greentown transmission project having a total cost equal to half of the total cost of the project.

### **III. Comments on the Settlement**

#### **A. Initial Comments**

6. Indiana Utility Regulatory Commission Testimonial Staff (Indiana Staff) and Wabash Valley Power Association, Inc. (Wabash) filed protests to the Settlement. Indiana Municipal Power Agency (Indiana Municipal) filed a request for clarification and conditional opposition to the Settlement.

7. Indiana Staff argues that the Pioneer Order is a final order with no issues pending before the Commission, and thus the Settlement is untimely. Indiana Staff maintains that the Settlement should be rejected because it purportedly settles an issue that was already settled by the Pioneer Order, in which the Commission stated that the designated entities to construct, own, and operate the project at issue are NIPSCO and Duke. Indiana Staff notes that Duke is not a signatory to the Settlement, although Duke is the designated entity in the 2011 MTEP and the Pioneer Order. Indiana Staff argues that MISO does not have the authority to agree to designate a different entity than what has been designated under the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff and the Transmission Owners Agreement. Finally, Indiana Staff notes that Pioneer does not have an effective formula rate and, therefore, does not have a method to recover costs.

8. Wabash argues that the Commission should reject the Settlement as being contrary to the Pioneer Order and a violation of Wabash's rights under the Transmission Owners Agreement and as joint owner under the Transmission and Local Facilities Ownership,

Operation and Maintenance Agreement (Joint Transmission Agreement).<sup>11</sup> In the alternative, Wabash requests that procedures be established in order for the Commission to receive additional evidence on the contested issues. Wabash argues that the Settlement is directly contrary to the Transmission Owners Agreement. Wabash argues that Duke Energy Indiana, as owner of the Greentown substation, has the exclusive right to invest in, construct and own the transmission project along with NIPSCO; yet, Duke Energy Indiana is not a party to the Settlement. Further, Wabash argues that the record is devoid of any assignment from Duke Energy Indiana to Pioneer. Wabash also argues that Duke Energy Indiana's Greentown substation is part of the Joint Transmission System and thus, Duke Energy Indiana, Indiana Municipal and Wabash are the true owners of the Greentown substation. Wabash argues that Duke Energy Indiana cannot assign any property rights under the Joint Transmission System without the approval of Wabash and Indiana Municipal.

9. Indiana Municipal requests clarification that the Settlement and any Commission approval thereof do not prejudice its contractual rights under the Joint Transmission Agreement. Indiana Municipal states that if its request is not granted, it opposes the Settlement unless its contractual rights are recognized and protected. Specifically, Indiana Municipal states that the project at issue connects to the Joint Transmission System at the Greentown station, which is part of the Joint Transmission System. Indiana Municipal argues that under the combined effect of the joint ownership arrangements for the Joint Transmission System and the Pioneer Order, the project development rights that arise out of Duke Energy Indiana's Greentown ownership run to the three Joint Transmission System co-owners collectively, not to Duke Energy Indiana alone, and not to Duke Energy Indiana's affiliate Pioneer.

## **B. Reply Comments**

10. On September 19, 2012, Pioneer and NIPSCO filed joint comments in support of the Settlement and MISO also filed comments in support. Pioneer and NIPSCO argue that by filing the request for rehearing, Pioneer prevented the proceeding from terminating, and thus, there was a proceeding pending before the Commission. They further maintain that the Settlement is not contrary to the Pioneer Order, in that Pioneer

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<sup>11</sup> The Joint Transmission Agreement establishes the Joint Transmission System. The Joint Transmission System is defined as those transmission facilities owned by PSI Energy, Inc. (now Duke Energy Indiana, Inc. (Duke Energy Indiana)), Wabash and Indiana Municipal physically connected to Duke Energy Indiana's transmission facilities or to another party's transmission facilities which are connected to Duke Energy Indiana's transmission facilities. *See* Joint Transmission Agreement at § 1.9.

and NIPSCO have agreed to split the project, giving NIPSCO its 50 percent just as the Pioneer Order holds is required by the Transmission Owners Agreement. Pioneer and NIPSCO argue that although the Pioneer Order also mentions that section VI of the Transmission Owners Agreement grants NIPSCO and Duke the right to build the Reynolds-Greentown transmission project, there was never a dispute before the Commission as to development rights of Duke versus Pioneer, and the Commission's statement was therefore irrelevant to its decision on the merits of the Complaint. Pioneer and NIPSCO further argue that the language in section VI of the Transmission Owners Agreement expressly permits Duke, NIPSCO and Pioneer to agree to alternative arrangements for construction and ownership of the project. Pioneer and NIPSCO also maintain that the Settlement is among essential parties and because Duke and AEP each have a fifty percent interest in Pioneer, Pioneer could not have executed the Settlement without Duke's approval. Pioneer and NIPSCO note that to the extent there is any doubt about Duke's support for the Settlement, attached to these comments, Pioneer submits a delegation of rights from Duke to Pioneer.

11. With respect to Wabash and Indiana Municipal's claims, Pioneer and NIPSCO claim that the Joint Transmission Agreement cited by Indiana Municipal and Wabash provides that Wabash and Indiana Municipal will have joint use rights to the Joint Transmission System that are equivalent to those of Duke, the owner of most of the Joint Transmission System, and the Agreement provides for cost equalization based on the parties' relative ownership and use of the Joint Transmission System. Pioneer and NIPSCO state that nothing in the Joint Transmission Agreement requires Duke to transfer any ownership interest in the Greentown substation to Wabash and Indiana Municipal, and it has never done so. In response to Indiana Staff, Pioneer and NIPSCO contend that any issue of Pioneer's cost recovery method is premature and irrelevant to the Commission's approval of the Settlement.

12. MISO's reply comments address the limited issues raised in the comments surrounding the operation of the Transmission Owners Agreement regarding the designation and delegation of MTEP projects. MISO states that the Indiana Staff reasons that since the Reynolds-Greentown transmission project connects to transmission facilities owned by NIPSCO and Duke, under the language of the Transmission Owners Agreement, NISPCO and Duke are the only parties who can construct the facilities. However, MISO submits that under the applicable language in the Transmission Owners Agreement, the owners of the connected transmission facilities can designate another party to invest in and construct the project, which is what happened in this matter. MISO states that Duke, as the holding company system, delegated the Reynolds-Greentown transmission project, with NIPSCO's consent, to Pioneer, and this arrangement was accepted by MISO.

### **C. Answers**

13. On October 4, 2012, Wabash and Indiana Municipal filed answers to Pioneer and NIPSCO's and MISO's reply comments. Wabash reiterates arguments that the Settlement is contrary to the Pioneer Order, that Wabash has substantial rights to the project and that the Settlement does not include all essential parties. Wabash claims that under the Joint Transmission Agreement, it has an undivided ownership interest, as tenants in common, to the Greentown substation and the rights associated with it. Wabash also argues that any action of transferring rights to construct and own the Reynolds-Greentown transmission project without consent of the other joint owners is prohibited under the Joint Transmission Agreement. Wabash also claims that MISO's interpretation of the Transmission Owners Agreement disregards its obligation to Wabash and Wabash's rights under the Joint Transmission Agreement.

14. Indiana Municipal reiterates its argument that the Commission should either clarify that the Settlement and any Commission approval thereof do not prejudice Indiana Municipal's rights under the Joint Transmission Agreement, or decline to accept the Settlement until its relationship to the Joint Transmission Agreement is duly considered in a Commission or judicial proceeding. Indiana Municipal argues that formal ownership of individual Joint Transmission System facilities becomes in substance "an undivided ownership interest," such that the relevant responsibilities and beneficial incidents of ownership are shared without regard to which participant holds formal title to any particular element. Indiana Municipal contends that this sharing of the incidents of ownership is demonstrated by contract language, the parties' course of performance, and Indiana law.

### **IV. Withdrawal of Request for Rehearing and Settlement**

15. On June 12, 2013, in a joint filing, Pioneer and the Settling Parties filed a notice of withdrawal of Pioneer's request for rehearing and the Settlement. Pioneer and the Settling Parties state that the Indiana Staff supports the notice of withdrawal. They further state that they have resolved the issues that are the subject of the request for rehearing and the Settlement. The Settling Parties state that withdrawal of the Settlement is without prejudice to Indiana Municipal's and Wabash's rights under the Joint Transmission Agreement and both Indiana Municipal and Wabash retain all rights and privileges conveyed to them under the Joint Transmission Agreement, including, but not limited to, the ability to submit any disagreement under that agreement to an impartial arbitrator.

16. On June 27, 2013, Indiana Municipal filed a motion opposing withdrawal of the Settlement and rehearing. Indiana Municipal requests that the Commission clarify that

the Settlement and any approvals of it or the withdrawals do not prejudice Indiana Municipal's contractual and other rights, specifically including Indiana Municipal's rights under the Joint Transmission Agreement and the Transmission Owners Agreement.

17. On July 9, 2013, Pioneer filed an answer to Indiana Municipal's motion. Pioneer states that in the notice of withdrawal, Pioneer and the Settling Parties note that the filing "is without prejudice to [Indiana Municipal's] and [Wabash's] rights under the [Joint Transmission] Agreement." Thus, Pioneer contends that the Settling Parties' notice of withdrawal supports the relief Indiana Municipal seeks.

**V. Discussion**

18. We will accept Pioneer's withdrawal of its rehearing request and the Settling Parties' withdrawal of the Settlement. In response to Indiana Municipal's motion, we clarify that the Commission's acceptance of the withdrawals does not prejudice Indiana Municipal's rights under the Joint Transmission Agreement and the Transmission Owners Agreement.

The Commission orders:

Pioneer's withdrawal of its rehearing request and the Settling Parties' withdrawal of the Settlement are hereby accepted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.