

133 FERC ¶ 61,275
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER11-1844-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF SHEETS AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 30, 2010)

1. On October 20, 2010, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and International Transmission Company (ITC) (together, Filing Parties) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ proposed revisions to Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to establish a methodology to allocate and recover the costs of ITC Phase Angle Regulating Transformers (PAR)² at Bunce Creek on the Michigan-Ontario border among Midwest ISO, New York Independent System Operator (NYISO), and PJM Interconnection, L.L.C. (PJM). In this order, we accept for filing the Filing Parties' proposed tariff sheets,³ and suspend them for a nominal period, to become effective January 1, 2011, as requested, subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. Power flows over the path of least resistance, and, as a result, it may not in all instances flow over the path for which it is scheduled by a transmission operator. This

¹ 16 U.S.C § 824d (2006).

² PARs are electrical devices that help control power flows through a particular component of the transmission network.

³ As more fully described below, the proposed tariff sheets consist of new attachments, Attachments SS and SS-1, and a new schedule, Schedule 36, to Midwest ISO's Tariff.

difference between scheduled and actual flow on a path or interface is called loop flow, and has historically been both common and extremely volatile in the Lake Erie region. This situation has been referred to generally as the Lake Erie loop flow issue.

3. Beginning in January 2008, transactions submitted to NYISO for the purpose of exporting power to PJM were scheduled by a small number of market participants as circuitous flows around Lake Erie, utilizing a scheduled path that exited NYISO and then crossed through both the Independent Electricity System Operator of Ontario (IESO) and Midwest ISO, before ultimately sinking in PJM, the intended market. Meanwhile, approximately 80 percent of the power flows associated with these transactions actually flowed directly across the NYISO/PJM border.⁴ According to NYISO, by utilizing this scheduled path, these transactions benefited from the relatively lower market prices at NYISO's western border, i.e., at the NYISO/IESO border, and thus avoided the relatively higher market price at the more congested NYISO/PJM border.

4. In July 2008, NYISO made a filing in Docket No. ER08-1281-000, proposing to require the utilization of more direct routing options, i.e., it proposed to prohibit the scheduling of external transactions over eight specified circuitous paths. In that proceeding, NYISO stated that it incurs additional congestion costs when actual power flows include unscheduled power flows, such as when actual power flows move directly from NYISO to PJM, although the scheduled flow is NYISO-IESO-Midwest ISO-PJM. These unscheduled flows exacerbate west-to-east constraints in New York, thereby increasing congestion costs. NYISO also stated in that proceeding that its proposal would reduce unscheduled power flows, a temporary solution, until there are adequate operational controls in place, such as PARs, to ensure that actual and scheduled flows are closely aligned.

5. In an order issued August 21, 2008, the Commission accepted NYISO's proposed temporary solutions.⁵ The Commission also noted that it had initiated a non-public investigation into the Lake Erie loop flow issue and encouraged the parties to consider all appropriate long-term solutions, including market solutions and the installation of

⁴ *N.Y. Indep. Sys. Operator, Inc.*, 132 FERC ¶ 61,031, at P 2 (2010) (July 2010 Order).

⁵ *N.Y. Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,174 (2008) (August 2008 Order). NYISO's initial filing was made pursuant to the "exigent circumstances" provisions of its tariff (with an automatic expiration date no later than 120 days from the date of the filing). This initial filing was subsequently superseded by a filing backed by NYISO's management committee. *See N.Y. Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,184, at P 20 (2008) (November 2008 Order).

operational controls such as PARs on the Michigan-Ontario interconnection,⁶ to ensure that actual and scheduled flows are closely aligned.⁷

6. By order issued on July 16, 2009, the Commission reaffirmed these directives, requiring NYISO to continue to work with all interested entities to develop long-term comprehensive solutions to the loop flow problem in the Lake Erie region.⁸ The Commission also directed public disclosure of the Enforcement Staff Report resulting from the non-public investigation into the Lake Erie loop flow issue in Docket No. ER08-1281-000 and required NYISO to submit a report to the Commission, within 180 days of the date of the Commission's order, addressing its proposed solutions, including, among other things, a proposed solution addressing interface pricing and congestion management.

7. In an order issued September 14, 2009, the Commission granted a request for clarification of the July 2009 Order, as sought by NYISO.⁹ Specifically, the Commission clarified that the status of all solutions to the loop flow problem should be addressed by NYISO in its status report. Accordingly, the Commission clarified that NYISO's report must address *all* solutions, including but not limited to: (i) the implementation and effective operation of the PARs; (ii) the progress that has been made on the operating agreements for the PARs; and (iii) the complementary role that physical controls will play in the comprehensive solution to the Lake Erie loop flow problem.

8. In January 2010, NYISO filed a report, *Broader Regional Market Solutions*, which recommended the implementation of four market initiatives: (a) the buy-through congestion proposal; (b) the congestion management/market-to-market coordination proposal; (c) interface pricing revisions; and (d) enhanced interregional transaction coordination. The report also stated that new Ontario-Michigan PARs installed by ITC should be available for service in early 2010. The report noted, however, that ITC had stated that it would not execute the operating agreements required to make the PARs operational until an agreement addressing the allocation of costs associated with the PARs is in place. NYISO stated that NYISO and its stakeholders opposed paying for a portion of ITC's costs for the PARs because they were not developed pursuant to a

⁶ As discussed more fully below, the Ontario-Michigan PARs are an initiative designed to conform actual power flows to scheduled power flows at the Ontario/Michigan border.

⁷ See also November 2008 Order, 125 FERC ¶ 61,184 at P 20.

⁸ *N.Y. Indep. Sys. Operator, Inc.*, 128 FERC ¶ 61,049, at P 6 (2009) (July 2009 Order).

⁹ *N.Y. Indep. Sys. Operator, Inc.*, 128 FERC ¶ 61,239 (2009) (September 2009 Order).

Commission approved regional planning process. NYISO also noted that a regional study would be initiated during 2010 to identify PARs and other devices capable of influencing Lake Erie loop flow.

9. On July 15, 2010, the Commission issued an order finding that the initiatives identified by NYISO represented a workable framework for minimizing the occurrence of Lake Erie loop flow.¹⁰ However, some issues were not fully addressed by NYISO's report, including the equitable allocation of the costs of the PARs. Accordingly, the Commission requested more information on several matters, including information about the following issues: the buy-through of congestion, market-to-market coordination and congestion management, interface pricing reform, and implementation of the PARs.¹¹

II. Filing

10. The Filing Parties explain that they are proposing to establish a cost allocation methodology to assign the costs of the new ITC PARs among the three regions that cause the Lake Erie loop flow problem and benefit from its mitigation, Midwest ISO, PJM, and NYISO.¹² The Filing Parties explain that an initial transfer distribution factor (DFAX) analysis, based on 2015 data, supports allocating 49.6 percent of the PARs revenue requirements to Midwest ISO, 19.5 percent to PJM, and 30.9 percent to NYISO based on each region's contribution to the loop flows over the Michigan-Ontario interface that would occur if the PARs were not operational. The Filing Parties state that they are not proposing to allocate costs of the new PARs to the IESO region because Hydro One Networks, a Canadian utility, is not a Commission-jurisdictional public utility and IESO already pays the entire revenue requirement associated with PARs it has installed on the Michigan-Ontario interface. The Filing Parties assert that the proposed allocation percentages are based on each region's contribution to loop flows that would flow through the Michigan-Ontario interface at the five-year planning horizon if the new PARs were not controlling or regulating that loop flow, as determined using methods that have previously been approved by the Commission for similar cost allocation provisions.¹³

11. The Filing Parties explain that each regional transmission organization (RTO) would determine how their individual share of the PARs revenue requirement would be

¹⁰ July 2010 Order, 132 FERC ¶ 61,031 (2010).

¹¹ The Commission is addressing the responses to the Commission's request for additional information in an order issued concurrently with this order. *See N.Y. Indep. Sys. Operator, Inc.*, 133 FERC ¶ 61,276 (2010).

¹² Filing at 4.

¹³ *Id.* at 15 (citing *Midwest Independent Transmission System Operator, Inc.*, FERC Electric Tariff, Second Revised Rate Schedule No. 5).

recovered from load within their region. According to the Filing Parties, ITC's Attachment O formula rate will allocate Midwest ISO's share of the PARs revenue requirement within ITC's pricing zone and that zone will be credited with any revenues recovered from PJM and NYISO. The Filing Parties state that ITC will report these revenues in Account No. 456.1 and include these revenues in Attachment O-International to ensure that the amount recovered from the PJM and NYISO regions is excluded from the ITC zonal revenue requirement.¹⁴

12. The Filing Parties explain that the revenue requirement for the PARs will be calculated using the methodology contained in a new attachment to the Midwest ISO Tariff, Attachment SS. The Filing Parties explain that the formula used in Attachment SS is identical to the formula developed for other cross-border projects in Attachment CC¹⁵ of Midwest ISO's Tariff. In addition, the Filing Parties state that they are proposing a new schedule, Schedule 36, that will describe the manner in which the revenue requirement for the PARs will be allocated among Midwest ISO, PJM, and NYISO. The Filing Parties state that Schedule 36 will specify how the amounts to be collected in the PJM and NYISO regions will be calculated each year.

13. The Filing Parties also explain that they are proposing another new attachment to Midwest ISO's Tariff, Attachment SS-1. The Filing Parties explain that Attachment SS-1 will provide Midwest ISO with the authority to consult with Midwest ISO's independent market monitor, IESO, and other relevant Reliability Coordinators, such as PJM and NYISO, to determine whether Midwest ISO should temporarily suspend normal operation of the PARs in the event that there are anomalous Midwest ISO market results. The Filing Parties state that Midwest ISO is cognizant of the possibility that unanticipated market events may occur once the PARs are in service and that Attachment SS-1 will permit Midwest ISO to act quickly to minimize any unanticipated anomalous market results. The Filing Parties request that the Commission consider and act on Attachment SS-1, which pertains to the operation of the PARs, separately from Attachment SS and Schedule 36, which pertain to cost recovery for the PARs.¹⁶

14. The Filing Parties claim that, in the August 2008 Order and the November 2008 Order, the Commission recognized that the new PARs will help resolve the Lake Erie loop flow issues. In addition, the Filing Parties state that Midwest ISO, NYISO, PJM, and IESO are in agreement that implementing an effective regional physical solution to

¹⁴ *Id.* at 16.

¹⁵ Midwest Independent Transmission System Operator, Inc., FERC Electric Tariff, Attachment CC (Cross-Border Allocation Projects Revenue Requirement Calculations).

¹⁶ Filing at 16-17.

control or mitigate the Lake Erie loop flows is a key component of any comprehensive solution to the problem and that, once activated, the new PARs will reduce unscheduled Lake Erie loop flows and will provide substantial benefits to the surrounding regions, including significant economic savings. The Filing Parties contend that the new PARs are expected to fully mitigate Lake Erie loop flows approximately 74 percent of the time and to reduce loop flows by approximately 600 MW the rest of the time, with remaining loop flows addressed through existing market solutions.¹⁷

15. The Filing Parties argue that their proposed cost allocation is consistent with Order No. 890¹⁸ and the notice of proposed rulemaking concerning transmission planning and cost allocation that was issued on June 17, 2010.¹⁹ The Filing Parties state that in Order No. 890 the Commission articulated several factors that it would consider when considering disputes over cost allocation: (1) whether the cost allocation proposal fairly assigns costs among participants, including those that cause the costs to be incurred and those that otherwise benefit from them; (2) whether the cost allocation proposal provides adequate incentives to construct new transmission; and (3) whether the cost allocation proposal is generally supported by state authorities and participants in the region. The Filing Parties state that the Commission emphasized that these factors are particularly important when applied to economic projects, such as upgrades to reduce congestion. The Filing Parties explain that, while the Commission acknowledged that there are “free rider” problems associated with new transmission investment, as a general matter, the beneficiaries of such projects should agree to bear the costs of the project. The Filing Parties state that the Commission has proposed to amend the transmission planning and cost allocation requirements of Order No. 890 in order to more closely align transmission planning and cost allocation processes and to ensure that entities bear the costs of transmission facilities roughly commensurate with the benefits that they are estimated to receive.²⁰

16. The Filing Parties maintain that their cost allocation proposal is also consistent

¹⁷ *Id.* at 5-6 (citing Mallinger Test. at 18; August 2008 Order, 124 FERC ¶ 61,174 at P 24; November 2008 Order, 125 FERC ¶ 61,184 at P 20).

¹⁸ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

¹⁹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,660 (2010) (Transmission NOPR).

²⁰ Filing at 8-10.

with the “spirit” of the principles articulated in the Transmission NOPR because it allocates costs to those that benefit from the facilities in a manner that is at least roughly commensurate with the estimated benefits, by not allocating costs to those that receive no benefit from the transmission facilities, and by providing transparent and adequate documentation to allow a stakeholder to determine how that data was applied to a facility. The Filing Parties argue that while the Transmission NOPR requires voluntary agreement to allocate an intraregional facility outside of the relevant transmission planning region, applying that principle to PJM and NYISO would insulate them from responsibility for facilities from which they benefit.²¹

17. The Filing Parties also argue that the Commission has previously approved approaches to the cross-border allocation of costs that are analogous to their proposal and that the Commission has consistently held that owners of devices used to control loop flow should be compensated by all load in the regions impacted. Moreover, they argue that the Regional Expansion Criteria and Benefits filing submitted by Midwest ISO and the Midwest ISO Transmission Owners in Docket No. ER10-1791-000, which was recently accepted by the Commission,²² illustrates the need for regional planning and cost allocation.²³

18. Accordingly, the Filing Parties ask that the Commission accept their proposed revisions, effective January 1, 2011.

III. Notice of Filing and Responsive Pleadings

19. Notice of the filing was published in the *Federal Register*, 75 Fed. Reg. 66,372 (2010), with motions to intervene and comments due on or before November 10, 2010.

20. On November 2, 2010, NYISO filed a motion to intervene and to extend the time for responses to the filing to November 17, 2010. On November 4, 2010, PJM filed a motion to intervene and comments in support of NYISO’s request for an extension of time.

21. On November 4, 2010, the Commission issued a notice extending the time to submit motions to intervene and comments to November 17, 2010.

22. Exelon Corporation, Ontario Power Generation Inc., Old Dominion Electric Cooperative (Old Dominion), the Dayton Power and Light Company (Dayton), Rockland Electric Company (Rockland), Duquesne Light Company, Baltimore Gas and Electric

²¹ *Id.* at 12.

²² *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221 (2010).

²³ Filing at 12-15.

Company, Consumers Energy Company, American Electric Power Service Corporation (AEP),²⁴ FirstEnergy Service Company (FirstEnergy),²⁵ Allegheny Power, the New York Association of Public Power, DC Energy Midwest, LLC, the PPL PJM Companies,²⁶ Wisconsin Electric Power Company, and the PHI Companies²⁷ filed timely motions to intervene.

23. The New York Transmission Owners²⁸ and New York Municipal Power Agency (NYMPA), Consolidated Edison Solutions, Inc. and Consolidated Edison Energy, Inc. (together, Consolidated Edison), New England Power Pool Participants Committee (NEPOOL), PSEG Companies,²⁹ Detroit Edison Company, New England Conference of Public Utilities Commissioners (NECPUC), ISO New England, Inc. (ISO-NE), New England States Committee on Electricity (NESCOE), Midwest ISO Transmission

²⁴ AEP filed a motion to intervene on behalf of its affiliates: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company, AEP Appalachian Transmission Company Inc., AEP Indiana Michigan Transmission Company Inc., AEP Kentucky Transmission Company Inc., AEP Ohio Transmission Company Inc., and AEP West Virginia Transmission Company (collectively, the AEP Companies).

²⁵ FirstEnergy filed a motion to intervene on behalf of its affiliate operating utility companies, Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company, and its electric transmission affiliate, American Transmission Systems, Incorporated.

²⁶ For the purposes of this filing, the PPL PJM Companies consist of PPL Electric Utilities Corporation, PPL EnergyPlus, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Martins Creek, LLC, PPL Montour, LLC, PPL Susquehanna, LLC, PPL University Park, LLC, Lower Mount Bethel Energy, LLC, PPL New Jersey Solar LLC, PPL New Jersey Biogas, LLC, and PPL Renewable Energy, LLC.

²⁷ For the purposes of this filing, the PHI Companies consist of Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company.

²⁸ Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation comprise the New York Transmission Owners.

²⁹ The PSEG Companies consist of Public Service Electric and Gas Company, PSEG Power, LLC, and PSEG Energy Resources & Trade LLC.

Owners,³⁰ and Connecticut Municipal Electric Energy Cooperative together with Massachusetts Municipal Wholesale Electric Company and New Hampshire Electric Cooperative (together, the Cooperatives), filed timely motions to intervene and comments. American Municipal Power, Inc. (AMP), PJM Transmission Owners Group,³¹ PJM, and NYISO filed timely motions to intervene and comments. IESO filed a motion to intervene out-of-time and comments. Dominion Resources Services, Inc. (Dominion) filed a motion to intervene out-of-time.³²

24. The Maryland Public Service Commission, Connecticut Department of Public Utility Control, Illinois Commerce Commission, and Indiana Utility Regulatory Commission filed notices of intervention. The Department of Public Utilities of the Commonwealth of Massachusetts (Massachusetts Commission), Michigan Public Service

³⁰ For the purpose of this filing, the Midwest ISO Transmission Owners consist of Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Co., and Illinois Power Company; American Transmission Company LLC; American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation 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; Indianapolis Power & Light Company; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power and its subsidiary Superior Water, L&P; Montana-Dakota Utilities Co.; 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.

³¹ The PJM Transmission Owners Group consists of AEP Companies; Baltimore Gas and Electric Company; Duquesne Light Company; Exelon Corporation; FirstEnergy, on behalf of its affiliates Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company; Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, all doing business as Allegheny Power; the PHI Companies; Old Dominion; the PPL PJM Companies; Public Service Electric and Gas Company; Rockland; Dayton; UGI Utilities, Inc.; and Virginia Electric and Power Company, doing business as Dominion Virginia Power (Virginia Power).

³² Dominion filed on behalf of itself and Dominion Energy Marketing, Inc., Dominion Energy Kewaunee, Inc., Dominion Energy Retail, Inc., Elwood Energy, LLC, Fairless Energy, LLC, State Line Energy, LLC, Kincaid Generation, LLC, and Virginia Power.

Commission (Michigan Commission), and New York State Public Service Commission (New York Commission) filed notices of intervention and comments.

25. The Filing Parties filed an answer to the comments filed in the proceeding. The Midwest ISO Transmission Owners filed an answer to the comments of NYISO and PJM. The Indicated New York Transmission Owners filed a request for leave to answer and answer.

IV. Discussion

A. Procedural Matters

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

27. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2010), the Commission will grant Dominion's and IESO's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

28. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of the Filing Parties, the Midwest ISO Transmission Owners and the Indicated New York Transmission Owners because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Comments

a. Comments in Support of the Proposal

29. The Michigan Commission states that it believes that the proposal is consistent with cost causation principles. The Michigan Commission states that further discussions may produce a consensus on allocation of the costs of the PARs and asks the Commission to establish settlement judge procedures.³³ Similarly, Detroit Edison argues that NYISO and PJM, entities that will benefit from use of the PARs, should not be insulated from cost responsibility.³⁴

³³ Michigan Commission Comments at 4.

³⁴ Detroit Edison Comments at 3-4

b. Commission Policy Respecting Interregional Cost Allocation and Planning

30. Consolidated Edison and AMP argue that the proposal is premature because it raises issues that are currently being considered in the Transmission NOPR and urge the Commission to delay any decision on the final merits until the Commission issues a final rule in that proceeding.³⁵ A number of protesters object to the Filing Parties' attempt to unilaterally impose costs on PJM and NYISO without the agreement of the affected regions on the basis that it is contrary to the principles articulated in the Transmission NOPR.³⁶ NEPOOL and the Cooperatives argue that the Commission should limit any approval of the proposal to the specific facts here.³⁷

31. Several protesters argue that the Filing Parties proposal is contrary to section 205 of the FPA because it imposes costs on entities that are neither taking jurisdictional service from the Filing Parties nor parties to an agreement authorizing cost sharing.³⁸ A number of protesters express concern that acceptance of the proposal could result in a flurry of filings by RTOs unilaterally imposing costs on other regions and could hamper interregional planning processes.³⁹

32. Other protesters argue that the proposal should be rejected because the PARs are meant to replace facilities designed to meet the obligations of ITC's predecessor-in-interest, Detroit Edison, under Michigan law and were not planned through a transparent planning process that involved all of the affected regions and their respective stakeholders.⁴⁰

³⁵ Consolidated Edison Protest at 2-3; AMP Protest at 3.

³⁶ New York Commission Protest at 3, 4-5; Cooperatives Protest at 4-5; PSEG Companies Protest at 9; AMP Protest at 3-4; New York Transmission Owners and NYMPA Protest at 4-6; Midwest ISO Transmission Owners Protest at 6-7; NEPOOL Protest at 2-3; NECPUC Protest at 4-5.

³⁷ NEPOOL Protest at 2-3; Cooperatives Protest at 7.

³⁸ PJM Protest at 4-5; PJM Transmission Owners Protest at 5-6; ISO-NE Protest at 4, 6; NESCOE Protest at 2, 4-5; NECPUC Protest at 5-9; PSEG Companies Protest at 7-10.

³⁹ Midwest ISO Transmission Owners Protest at 6; Massachusetts Commission Protest at 3-4; NESCOE Protest at 4.

⁴⁰ PJM Protest at 2-3, 5-6; PSEG Companies Protest at 12-16; New York Transmission Owners and NYMPA Protest at 2-4; NYISO Protest at 21-26; New York

(continued...)

c. Benefits to the Regions

33. A number of protesters state that the proposal is inconsistent with cost causation principles because it excludes the IESO region.⁴¹ With respect to allocation within Midwest ISO, PJM and the PJM Transmission Owners claim that the cost allocation proposal improperly excludes Midwest ISO load outside of the ITC zone, while the Midwest ISO Transmission Owners argue that the Commission should find that any costs allocated to Midwest ISO will be allocated to the ITC zone only.⁴²

34. Other protesters argue that the Filing Parties have failed to demonstrate that PJM and NYISO would receive benefits from the PARs that warrant the assignment of costs or that the Filing Parties' DFAX analysis is flawed.⁴³ Some protesters also claim that the PARs are designed to address needs within Midwest ISO, with any mitigation of the Lake Erie loop flow problem being merely ancillary. For example, PJM argues that Midwest ISO's position on modeling the PARs in the Interchange Distribution Calculator (IDC) would deny benefits to PJM by giving Midwest ISO's transactions a firmer status than similarly situated external transactions from PJM.⁴⁴ The Cooperatives state that the Commission should consider whether the alleged "free rider" issue is best solved through an administrative allocation of costs, and that any finding about the benefits produced by a facility should be based on a strong evidentiary showing and may require periodic reevaluation.⁴⁵

35. IESO expresses concern with Attachment SS-1. Specifically, IESO argues that the proposed language should not be part of a tariff filing because controlling flows across interfaces is an operational issue that should not be included in a tariff and the language of Attachment SS-1 mentions IESO, who is not a tariff customer of Midwest ISO. In addition, IESO argues that in the event that operation of the PARs leads to anomalous market outcomes, Midwest ISO should work collaboratively with IESO, PJM, and NYISO to resolve these issues as opposed to taking unilateral actions.⁴⁶

Commission Protest at 6.

⁴¹ *Id.* at 7-8; PJM Transmission Owners Protest at 15; PSEG Companies Protest at 11-12; NECPUC Protest at 4.

⁴² Midwest ISO Transmission Owners Protest at 7-8.

⁴³ Consolidated Edison Protest at 4-5; NYISO Protest at 39-42.

⁴⁴ New York Commission Protest at 5-6; PJM Protest at 9-11.

⁴⁵ Cooperatives Protest at 7-8.

⁴⁶ IESO Protest at 3-6.

d. Joint Operating Agreement

36. AMP argues that Midwest ISO failed to follow the procedures governing the planning and cost sharing of interregional facilities in the Joint Operating Agreement (JOA) between PJM and Midwest ISO.⁴⁷ PJM and the PJM Transmission Owners contend that the proposal violates the JOA by assigning costs to PJM despite the fact that the PARs were not designated and planned as cross-border projects. PJM and the PJM Transmission Owners note that the PARs were not included in the list of baseline reliability projects eligible for region-wide cost sharing under the Midwest ISO Transmission Expansion Plan 2006 (MTEP 2006).⁴⁸

e. Lake Erie Loop Flow Proceeding

37. The PSEG Companies request that the Commission consolidate this proceeding with the Lake Erie loop flow proceeding in Docket No. ER08-1281-000 and state that consolidation stands the best chance for ultimately securing an agreement.⁴⁹

f. Postage Stamp Rates

38. NYISO argues that the proposal is contrary to existing Commission policy respecting the allocation of the costs of transmission facilities because it would recover the costs of the PARs through a postage stamp rate despite the fact that the facilities were not planned through a formal, Commission-approved regional planning process and the evidence, including the language of Attachment SS-1, suggests that Midwest ISO intends to operate the PARs to benefit itself.⁵⁰

2. Answers

39. The Filing Parties maintain that the original PARs were planned and designed to address the problem of Lake Erie loop flow, which was identified in the early 1970s. Moreover, the Filing Parties argue that the original purpose of the new PARs is not relevant here and that the focus in this case should be the benefits of the new PARs to the regions to which costs will be allocated.⁵¹ The Filing Parties also contend that the

⁴⁷ AMP Protest at 4-5.

⁴⁸ PJM Protest at 6-7; PJM Transmission Owners Protest at 5-8.

⁴⁹ PSEG Companies Protest at 16-20.

⁵⁰ NYISO Protest at 2, 10-17, 21-31.

⁵¹ Filing Parties Answer at 7-9.

absence of a formalized interregional planning process exactly like today's interregional planning process is not a bar to the proposed cost allocation because all of the RTOs surrounding Lake Erie have been directly involved in discussions and studies of the loop flow problem for several decades. The Filing Parties also argue that they have attempted to engage in good faith discussions with stakeholders.⁵²

40. In addition, the Filing Parties claim that their proposal is not inconsistent with the Transmission NOPR, which confirms that the Commission has authority to allocate costs to parties who benefit from facilities absent a voluntary agreement. The Filing Parties also state that the existence of a customer relationship is not essential to the allocation of facility costs to beneficiaries. With respect to the exclusion of IESO, the Filing Parties argue that their study results conclude that IESO's contribution to loop flow is offset by the latter's ownership and funding of three of the five interface PARs. As far as the JOA is concerned, the Filing Parties argue that the proposed treatment of the PARs is beyond the scope of the JOA because the PARs benefit multiple regions.⁵³

41. The Filing Parties state that issues raised on modeling of the PARs in the IDC are outside the scope of this proceeding. The Filing Parties also maintain that the language of proposed Attachment SS-1 is specifically intended to anticipate and address possible market anomalies and that protesters' concerns about conditions outside of Midwest ISO are misplaced because Midwest ISO retains its existing obligations as an RTO and as a North American Electric Reliability Corporation Reliability Coordinator.⁵⁴

42. In their answer, the Midwest ISO Transmission Owners reiterate the concerns expressed in their protest. In their answer, the Indicated New York Transmission Owners argue that the Filing Parties have mischaracterized the positions of protesters and the Transmission NOPR, mistakenly claimed that the original purpose of the PARs is not relevant, and erred in stating that the JOA is not applicable.

3. Commission Determination

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

44. Our preliminary analysis indicates that the Filing Parties' proposed tariff sheets have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the

⁵² *Id.* at 10-11, 17-18.

⁵³ *Id.* at 12-17.

⁵⁴ *Id.* at 19-20.

Filing Parties' proposed tariff sheets for filing, suspend them for a nominal period, make them effective January 1, 2011, subject to refund, and set them for hearing and settlement judge procedures. Additionally, we decline to consolidate this proceeding with the ongoing Lake Erie loop flow proceeding in Docket No. ER08-1281-000, as requested by the PSEG Companies, because we do not believe that consolidation would promote the efficient resolution of the issues here.

45. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁵⁵ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁵⁶ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The Filing Parties proposed tariff sheets are hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2011, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the Filing Parties' proposed tariff sheets. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

⁵⁵ 18 C.F.R. § 385.603 (2010).

⁵⁶ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.