

128 FERC ¶ 61,281
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

September 29, 2009

In Reply Refer To:
Northern Indiana Public Service
Company
Docket No. ER09-1539-000

Winston & Strawn, LLP
1700 K Street NW
Washington, DC 20006-3817

Attention: Raymond B. Wuslich, Esq.
Attorney for Northern Indiana Public Service Company

Reference: July 31, 2009 Filing of Transmission Upgrade Agreement and Request for
Waiver of Prior Notice Requirement

Dear Mr. Wuslich:

1. On July 31, 2009, you submitted, under section 205 of the Federal Power Act (FPA),¹ a transmission upgrade agreement (Upgrade Agreement) between Northern Indiana Public Service Company (NIPSCO), Edison Mission Marketing & Trading, Inc. (Edison), and two Regional Transmission Organizations (RTOs), the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), and PJM Interconnection, L.L.C. (PJM) (collectively, the Parties). The Upgrade Agreement provides for Edison to make contribution-in-aid-of-construction (CIAC) payments for limited transmission upgrades to address congestion issues on NIPSCO's transmission system. You state that the Parties request expedited Commission action on this filing and waiver of the Commission's 60-day prior notice requirement to permit the Upgrade Agreement to become effective July 28, 2009.²

¹ 16 U.S.C. § 824d (2006).

² 18 C.F.R. § 35.11 (2009).

2. This filing resolves a dispute about the allocation of the costs of certain upgrades related to concerns regarding congestion on NIPSCO's system resulting from flows into PJM across that system.³ The Upgrade Agreement describes the proposed upgrades as: replacement of circuit breakers on Circuits 13843 and 13814; reconductoring of Circuits 13803 and 13893 lines; and replacement of the terminal equipment on those latter two circuits. Edison, through CIAC payments, will reimburse NIPSCO for its labor and material costs up to maximums of \$802,700 for the breaker upgrade costs and \$888,000 for the terminal equipment.⁴ At section 3.1, the Upgrade Agreement provides that NIPSCO will undertake and pay for reconductoring on Circuits 13803 and 13893, and also the portion of Circuit 13803 owned by the Commonwealth Edison Company of Indiana, Inc. (ComEd-Indiana).⁵ The Parties expect that the transmission upgrades will improve the efficiency of the RTOs' markets by eliminating many congestion and operational performance issues.⁶

3. In support of their request for waiver of the Commission's 60-day prior notice requirement, the Parties state that the Upgrade Agreement has no rate impact, and is being submitted immediately after execution and before any payments have been made under it.

4. On January 28, 2009, in Docket Nos. ER05-6-108, *et al.*, the RTOs filed proposals for cross-border cost allocation for economic transmission projects. The RTOs reported general agreement that resolution of the NIPSCO issues requires a unique solution. For this reason, they stated the issue needed to be resolved in a separate proceeding, and the RTOs stated they would propose a new NIPSCO-specific cost allocation.⁷ On July 29, 2009, the RTOs made an informational filing of the Upgrade Agreement in the Docket No. ER05-6-108, *et al.* proceedings, stating that the agreement is intended to resolve the transmission system problems raised in NIPSCO's complaint. The RTOs stated that NIPSCO would file the Upgrade Agreement separately, under section 205 of the FPA.

³ NIPSCO is a transmission owning member of Midwest ISO, but its service territory lies between the service territories of two transmission owning members of PJM - Commonwealth Edison Company (ComEd) to the west and American Electric Power Service Corporation to the east.

⁴ Edison owns and operates generation assets in various geographical areas of the U.S., including PJM.

⁵ ComEd-Indiana is a wholly-owned subsidiary of ComEd.

⁶ Transmittal Letter at 3.

⁷ Midwest ISO and PJM, Compliance Filing, Transmittal Letter at 4, Docket No. ER05-6-108 (filed January 28, 2009).

5. Notice of NIPSCO's filing of the Upgrade Agreement was published in the *Federal Register*, 74 Fed. Reg. 40,177 (2009), with interventions or protests due on or before August 21, 2009. Edison, Midwest ISO, PJM, and Exelon Corporation (Exelon),⁸ filed motions to intervene. Exelon's filing included comments. The Indiana Utility Regulatory Commission (Indiana Commission) filed a notice of intervention and comments. The Illinois Commerce Commission (Illinois Commission) and ITC Holdings Corporation (ITC Holdings) filed motions to intervene out-of-time. On September 9, 2009, PJM filed an answer to Exelon's comments.

6. 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 filing them parties of this proceeding. We find that good cause exists to grant the motions to intervene out-of-time of the Illinois Commission and ITC Holdings given their interests, the early stage of this proceeding, and the apparent absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PJM's answer because it has provided information that assisted us in our decision-making process.

7. Exelon recommends that the Commission accept the Upgrade Agreement filed in this proceeding. It recommends also rejection of the RTOs' related informational filing in the Docket No. ER05-6-108, *et al.*, proceedings as incomplete because the filing ignores the work on the ComEd-Indiana system that will be necessary to accomplish the transmission upgrades at issue. Exelon states that while it did not participate in the process that resulted in the Upgrade Agreement, it is currently working with NIPSCO to enable reconductoring on the portion of Circuit 13803 owned by ComEd-Indiana. Exelon states that any agreement between ComEd and NIPSCO (and if necessary PJM and Midwest ISO) will be filed with the Commission. It recommends that Midwest ISO and PJM file an updated informational filing after this agreement is executed.

8. PJM supports a separate agreement between ComEd and NIPSCO concerning the upgrades on ComEd-Indiana's transmission system and any additional filings that may be required in connection with this separate agreement. The Indiana Commission points out that the transmission upgrades proposed in the Upgrade Agreement are only a partial, short-term solution. It asks that consideration of the Upgrade Agreement not substitute for continued consideration and development of a comprehensive and long-term solution that fully addresses NIPSCO's operational performance issues. The Indiana Commission asks also that the future discussions include consideration of other potential solutions, such as demand response, that might be used to fully address congestion and operational performance issues.

⁸ Exelon is the parent company of ComEd and ComEd-Indiana.

9. We will accept the Upgrade Agreement as just and reasonable. We also find that good cause exists to waive our prior notice requirement and to permit the Upgrade Agreement to be effective July 28, 2009, as requested.⁹

10. Exelon requests that the Commission reject the related informational filing in the Docket No. ER05-6-108, *et al.*, proceedings, and require the RTOs to provide an updated informational filing, in that proceeding, after execution of an agreement between ComEd-Indiana and NIPSCO concerning the reconductoring on the ComEd-Indiana transmission system. We find that these requests are outside the scope of this proceeding and will therefore deny them. Exelon filed its comments in the Docket No. ER05-6-108, *et al.* proceedings as well, so its requests will be considered in those proceedings.

11. Finally, we agree with the Indiana Commission that it is appropriate that any discussions about a comprehensive and long-term solution should include consideration of whether there are more optimal transmission and/or resource solutions (including demand response) that might be used to fully address congestion and operational performance issues.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹ See *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).