

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.

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EL12-__-000

**PETITION OF PJM INTERCONNECTION, L.L.C.
FOR DECLARATORY ORDER AND EXPEDITED ACTION**

I. INTRODUCTION.

Pursuant to Rule 207,¹ PJM Interconnection, L.L.C. (“PJM”) requests that the Commission issue a declaratory order to resolve uncertainty regarding how PJM should recover from its members the costs allocated to PJM pursuant to the Commission’s December 30, 2010 order in *Midwest Independent Transmission System Operator, Inc.*, 133 FERC ¶ 61,275 (2010) (“PARs Allocation Order”) in Docket No. ER11-1844.

In the PARs Allocation Order, the Commission accepted, subject to refund, unilaterally-filed revisions to the Midwest Independent Transmission System Operator, Inc.’s (“MISO”) tariff submitted by MISO and its member International Transmission Company (“ITC”), permitting MISO to charge PJM, among others, for phase angle regulator (“PARs”) transmission facilities to be installed by ITC on ITC’s transmission system. Yet, PJM has no existing mechanism to recover these charges from its members and thus no source of revenues to pay MISO’s bills. Because the ITC PARs facilities were not approved under either the regional transmission planning process of the PJM Open Access Transmission Tariff (“PJM Tariff”) or the interregional planning process established by the Joint Operating Agreement (“JOA”) between PJM and MISO, the PJM Tariff does not provide any cost recovery mechanism to enable PJM to recover these

¹ 18 C.F.R. § 385.207(a)(2).

costs. Nor is there any Commission precedent for PJM to follow to develop a cost recovery mechanism for the ITC PARs facilities charges, inasmuch as the Commission has never before approved a unilateral transmission facilities charge assessed by one region upon another region where the paying region has not voluntarily agreed to pay for the costs of transmission facilities.

Therefore, PJM requests through this Petition that the Commission issue a declaratory order to provide guidance on how PJM should recover from its members the costs of the MISO charges. PJM and others have sought rehearing of the PARs Allocation Order because the charges are not authorized under the JOA and PJM has not voluntarily agreed to pay them. However, because the Commission has not yet acted on the 10-month old rehearing requests, PJM will become subject to these MISO charges in the very near future – without any means of recovering the costs from the PJM members – unless the Commission provides this guidance.

PJM requests expedited Commission action on this Petition so as to provide the needed guidance before it is billed by the MISO for the ITC PARs-related costs. The Commission already has authorized MISO to begin charging PJM, subject to refund, upon the placement of the PARs facilities into service. The facilities will enter service upon the Department of Energy’s (“DOE”) approval of ITC’s pending application to amend its presidential permit,² which, as discussed below, is ripe for a DOE decision in light of a settlement of that proceeding, which is before the DOE for consideration. To

² Request of International Transmission Company d/b/a *ITCTransmission* to Amend Presidential Permit, Docket No. PP-230-4 (Jan. 5, 2009), *as supplemented*, Supplemental Reply Comments of International Transmission Company, d/b/a *ITCTransmission*, Docket No. PP-230-4 (Aug. 9, 2011) (“Supplemental Reply Comments”).

ensure PJM's recovery of the ITC PARs facilities-related charges, revisions to PJM's tariff must be in place in time to be effective prior to the PARs facilities entering service and MISO's commencement of charges to PJM.³

Of course, if the Commission grants the pending rehearing requests of the PARs Allocation Order and finds, as PJM and others contend, that MISO and ITC should not be permitted to impose these charges on PJM, then this petition would become moot.

II. STATEMENT OF THE ISSUE.

In the PARs Allocation Order, the Commission accepted, subject to refund, MISO and ITC's unilateral proposal to allocate to PJM and New York Independent System Operator, Inc. ("NYISO") over 50 percent of the costs of two PARs facilities that interconnect ITC with Hydro One Network, Inc.'s ("Ontario Hydro") electric transmission facilities at the Michigan-Ontario border. Neither PJM nor NYISO is connected to these facilities. Nonetheless, to accomplish a unilateral cost allocation among the RTO regions, MISO and ITC proposed, and the Commission accepted, charges from MISO to both PJM and NYISO. However, MISO and ITC did not propose any method by which PJM and NYISO could recover the costs allocated to them. Rather, MISO and ITC merely stated that "[e]ach RTO would determine how their share of the New PARs' revenue requirement is recovered from RTO load within their own regions."⁴

³ PJM could be required to supply payment to MISO in as little as seven days from receipt of an invoice. See *Monthly Transmission Billing, Cash Clearing and Revenue Distributing Business Practices Manual No. 019*, Midwest ISO, Section 3.3 (Jan. 6, 2009), <https://www.midwestiso.org/Library/BusinessPracticesManuals/Pages/BusinessPracticesManuals.aspx>.

⁴ See Submittal of Midwest Indep. Transmission Sys. Operator, Inc. and Int'l Transmission Co. *d/b/a ITCTransmission*, Docket No. ER11-1844-000, at 16 (Oct. 20, 2010) ("PARs Allocation").

PJM's Tariff has no mechanism to recover these costs. PJM's ability to recover costs for transmission facilities from its members is limited to facilities evaluated and approved pursuant to one of two planning processes: PJM's Regional Transmission Expansion Planning Protocol established in Schedule 6 of the PJM Operating Agreement,⁵ or the Coordinated Regional Transmission Expansion Planning procedures established under Article IX of the JOA between PJM and MISO.⁶ Because MISO and ITC acted unilaterally to impose these charges, PJM neither evaluated nor approved the ITC PARs facilities under the PJM processes set forth in the PJM Operating Agreement, and neither MISO nor PJM evaluated or approved the ITC PARs facilities under the processes of the JOA. Therefore, PJM has no established method for recovering the ITC PARs facilities-related costs: unilateral requests to allocate costs to another region without following the tariff procedures is not contemplated under the PJM Tariff.⁷

MISO will commence charging ITC PARs facilities-related costs to PJM once the facilities enter service, the timing of which will be determined by the DOE. The ITC PARs facilities are the subject of a presidential permit proceeding before the DOE under

⁵ Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., Schedule 6 ("PJM Operating Agreement").

⁶ JOA, Art. IX.

⁷ As pointed out in the various rehearing applications, such unilateral action is completely at odds with Order No. 1000's requirement of a neighboring region's consent to interregional cost allocation. *See Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, III FERC Stats. & Regs., Regs. Preambles ¶ 31,323, at PP 582, 587 (2011). Moreover, the process set forth in the PJM Tariff for interregional cost allocation (namely the processes set forth in the MISO/PJM JOA) were blatantly ignored in this case.

Executive Order 10485,⁸ in which ITC seeks authorization to install the two PARs facilities in question, replacing a pre-existing PAR facility at the border that had failed.⁹ On August 9, 2011, ITC submitted required additional information in the DOE proceeding, completing its application.¹⁰ The active parties in the DOE proceeding recently agreed to a settlement resolving various controversies that arose in that proceeding. The settlement was submitted to DOE on November 4, 2011. Once DOE approves the settlement, ITC will place the ITC PARs facilities in service, and in accordance with the tariff revisions accepted by the Commission, MISO will begin charging PJM its allocated share of the costs of the facilities. Thus, the Commission should act expeditiously on this petition, as PJM needs to know how to allocate these costs when it receives the first bill from MISO.

III. THE COMMISSION SHOULD REMOVE THE UNCERTAINTY REGARDING HOW PJM IS TO ALLOCATE THE CHARGES MISO WILL ASSESS PJM.

A. A Declaratory Order Is Appropriate To Resolve Uncertainty.

Section 554(e) of the Administrative Procedure Act (“APA”) provides that an agency in its sound discretion may issue a declaratory order to terminate a controversy or remove uncertainty.¹¹ Following this APA guidance, Rule 207(a)(2) of the Commission’s Rules of Practice and Procedure “expressly provides for petitions seeking:

⁸ Executive Order 10485, issued Sept. 3, 1953, as amended by Executive Order 12038, issued Feb. 3, 1978.

⁹ Request of International Transmission Company d/b/a ITC*Transmission* To Amend Presidential Permit, DOE Docket No. PP-230-4 (Jan. 5, 2009).

¹⁰ Supplemental Reply Comments.

¹¹ 5 U.S.C. § 554(e).

‘A declaratory order or rule to terminate a controversy or remove uncertainty.’”¹² The Commission provides such relief when it “finds that it is in the public interest and a proper exercise of its discretion to provide requested interpretations and clarifications . . . in order to provide clarity for the parties.”¹³

It is in the public interest and therefore a proper use of the Commission’s discretion to resolve uncertainty regarding how PJM should recover the charges associated with the ITC PARs facilities. This certainty is needed because: PJM has no tariff method for recovering such costs; there is no existing Commission precedent to guide PJM in developing a collection mechanism; and, as an RTO that operates on a revenue-neutral basis, PJM must recover from its membership all costs it incurs, including the charges MISO will assess PJM for ITC’s PARs facilities.

B. The JOA Is Inapplicable To ITC’s PARs Facilities And Therefore Provides No Applicable Cost Recovery Mechanism.

The JOA provides the only legitimate, FERC-approved means by which costs for a transmission project located in the MISO region can be allocated to PJM. But, the ITC PARs facilities the costs of which MISO and ITC wish to allocate to PJM do not qualify for interregional cost allocation under the JOA. No party has contended otherwise.

Section 9.4.3 of the JOA provides for the development of a “Coordinated System Plan” that “will identify cross-border projects” in one RTO that benefit the other RTO

¹² *USGen New Eng., Inc.*, 118 FERC ¶ 61,172, at P 18 (2007).

¹³ *Nicole Gas Prod. Ltd.*, 103 FERC ¶ 61,328, at P 12 (2003); *see also Colonial Pipeline Co.*, 116 FERC ¶ 61,078, at P 45 (2006) (“The Commission has found that, in certain instances, it is useful to remove uncertainty regarding rate methodology issues prior to construction of a project and prior to the filing of proposed rates because the assurances facilitate financing and other investment decisions.”).

and consistent with the applicable OATT provisions “will designate the portion of the Project Cost for each such project that is to be allocated to each RTO on behalf of its Market Participants.” The JOA further provides that to be designated a Cross Border Allocation Project, among other criteria, “the project must be a baseline reliability project as defined under the Midwest ISO or PJM Tariffs.”¹⁴ While the ITC PARs facilities were approved under the 2006 MISO Transmission Expansion Plan (“MTEP”), they were *not* approved as a “baseline reliability project.”¹⁵ Nor have the ITC PARs facilities been included in any PJM regional transmission expansion plans as a “baseline reliability project.” Therefore, the ITC PARs facilities do not qualify as a “Cross Border Allocation Project” subject to the cost allocation provisions of the Joint Operating Agreement, and they have never been so designated as part of the “Coordinated System Plan” under the JOA.¹⁶

Moreover, the MISO and ITC planners did not develop the ITC PARs facilities to “benefit PJM” and thus they do not constitute “projects in one RTO that benefit the other RTO,” thus becoming subject to interregional cost allocation under the JOA. The ITC PARs facilities are replacements for a PAR facility that was planned and developed years ago by Detroit Edison (“DTE”) to meet local system needs. When that PAR failed, ITC planned and developed the ITC PARs facilities to meet those same local needs. The ITC PARs facilities were not designed to address any reliability issue in the PJM region and

¹⁴ JOA § 9.4.3.1.1.

¹⁵ *See* PARs Allocation Filing, Testimony of J. Webb at 20.

¹⁶ *See* Request for Rehearing of PJM Interconnection, L.L.C. and Answer in Support of Request to Stay Proceedings, Docket No. ER11-1844-000, at 7-9 (Jan. 31, 2011) (“PJM Rehearing”); PJM Transmission Owners Group Protest To Rate Filing, Docket No. ER11-1844-000, at 6-8 (Nov. 17, 2010) (“PJM TOs Protest”).

were not part of any planning processes to provide interregional benefits to PJM and MISO.¹⁷

Order No. 1000 confirms that these facilities are not eligible for interregional cost allocation. In the landmark cost allocation order, the Commission directed that “an interregional transmission facility must be selected in *both* of the relevant regional transmission planning processes for purposes of cost allocation in order to be eligible for interregional cost allocation,”¹⁸ and the costs of such projects only “may be assigned on a *voluntary* basis . . . to a transmission planning region in which an interregional transmission facility is not located.”¹⁹ The PARs facilities were not selected in PJM’s planning process, and PJM has not voluntarily agreed to pay for them.

Because the JOA provides the *only* agreement between MISO and PJM regarding cost allocations for facilities located in each other’s regions, and the ITC PARs facilities do not qualify as a “Cross Border Allocation Project” under the JOA, there is no existing JOA mechanism for either the cost allocation to PJM or PJM’s recovery of such costs from its members. Therefore, the JOA provides no guidance to PJM for any allocation of these costs to the PJM members.

C. The PJM Tariff Does Not Provide Any Mechanism To Allocate To PJM Members The Charges That Will Be Assessed By MISO.

The PJM Tariff likewise provides no mechanism for PJM to allocate to, and recover from, its members the charges to be assessed by MISO for the ITC PARs facilities. Cost responsibility assignments to PJM members for transmission facilities are

¹⁷ See PJM Rehearing at 7-9; PJM TOs Protest at 6-8.

¹⁸ Order No. 1000 at P 582 (emphasis added).

¹⁹ *Id.* (emphasis added), *see also id.*, at P 587.

determined pursuant to Schedule 12 of the PJM Tariff. Schedule 12 provides methodologies for allocating the costs of transmission facilities that arise from two processes: “(1) the Regional Transmission Expansion Plan periodically developed pursuant to Schedule 6 of the Operating Agreement or (2) the Coordinated System Plan periodically developed pursuant to the Joint Operating Agreement Between the Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C. (“Coordinated System Plan”).”²⁰ The ITC PARs facilities do not fall under either of these two categories. They were not developed under the PJM “Regional Transmission Expansion Plan,” and they are not part of the “Coordinated System Plan” under the JOA. Therefore, Schedule 12 does not supply a mechanism for PJM to recover the charges related to these facilities. Nor does any other provision of the PJM Tariff.

Furthermore, the mechanisms set forth in Schedule 12 for allocating costs of transmission facilities cannot logically be applied to the charges for the ITC PARs facilities. Schedule 12 provides two cost allocation methodologies: (1) region-wide cost allocation for 500 kV and above facilities and (2) a distribution factor (“DFAX”) approach for below 500 kV facilities.²¹

The region-wide cost allocation cannot apply. ITC’s PARs facilities are not 500 kV and above facilities. Consequently, the Schedule 12 region-wide cost allocation methodology provides no useful guidance.

²⁰ PJM Tariff, Schedule 12(a).

²¹ See *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007), *order on reh’g*, Opinion No. 494-A, 122 FERC ¶ 61,082, *reh’g denied*, 124 FERC ¶ 61,033 (2008) (accepting cost allocation methodology); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,044 (2011) (approving allocation of costs for new transmission baseline upgrades pursuant to Schedule 12).

The DFAX methodology for lower voltage facilities also is of no use for allocating ITC PARs facilities-related costs. Under Schedule 12, the DFAX analysis used to determine cost responsibility assignments for lower voltage facilities “takes into account the contributions of loads . . . to the reliability criteria violations [in the PJM Region] for which Lower Voltage Facilities are identified as solutions.”²² The ITC PARs facilities do not address *any* reliability criteria violations in PJM. Without any such contributions to reliability violations, the Schedule 12 DFAX analysis is entirely unusable as a mechanism for PJM to allocate costs to PJM members for charges associated with ITC’s PARs facilities.

D. There Is No Commission Precedent Providing Guidance to PJM.

There also is no other Commission precedent that provides guidance to PJM as to how to recover transmission facilities costs assessed by another RTO, where PJM has no agreement with the other RTO or other tariff-prescribed means for assessing the costs to its members. The Commission has never before prescribed a cost allocation for payments unilaterally imposed by one RTO on another RTO, and as a result, there is no basis under the PJM Tariff for the allocation of costs among the PJM customers. Nor has the Commission ever addressed the allocation of costs within an RTO for charges assessed by another RTO without agreement. The only precedent of which PJM is aware, namely Order No. 1000, expressly requires consent to cost allocation from a neighboring region. Absent Commission guidance, therefore, PJM has no foundation for proposing revisions to the PJM Tariff to enable the necessary recovery of the costs that MISO will bill PJM.

²² PJM Tariff, Schedule 12(b)(iii)(C).

The uncertainty that the Commission must resolve here is patent. PJM will be assessed costs in accordance with a Commission order for which PJM has no contractual method to recover and for which no Commission precedent exists upon which it can rely to create such a mechanism. As a regional transmission organization, PJM operates on a revenue neutral basis. Therefore, the Commission cannot let charges be assessed to PJM without ensuring that PJM's tariff specifies how those costs are to be recovered. PJM is facing imminent MISO billing of costs that PJM cannot recover. Therefore, it is a proper use of the Commission's discretion to resolve this uncertainty through a declaratory order that guides PJM regarding how PJM should recover the costs billed by MISO for the ITC PARs facilities.

IV. REQUEST FOR EXPEDITED ACTION OR, IN THE ALTERNATIVE, AN INTERIM ORDER DEFERRING PJM'S OBLIGATION TO PAY MISO PENDING THE OUTCOME OF THIS PROCEEDING.

As discussed above, prompt Commission guidance is necessary to enable PJM to recover the charges MISO soon will assess PJM in accordance with the PARs Allocation Order. Therefore, PJM requests that the Commission act expeditiously to remove this uncertainty and provide PJM guidance on how it should recover these costs. The PJM Tariff must provide a cost allocation mechanism for these charges with an effective date prior to any billing by MISO of ITC PARs facilities-related charges.

In the alternative, the Commission could issue an interim order providing that PJM does not have to pay any amounts billed by MISO to PJM related to ITC's PARs facilities, while the Commission considers this petition. Such an interim order would prevent immediate adverse impacts on PJM. PJM is an entity that operates on a revenue-

neutral basis and has no means to pay a charge that it cannot recover, while the Commission deliberates on this petition.²³

V. CORRESPONDENCE AND COMMUNICATIONS.

Correspondence and communications with respect to this filing should be sent to, and PJM requests the Secretary to include on the official service list, the following:

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VI. SERVICE.

PJM has served a copy of this filing on all PJM members and on all state utility regulatory commissions in the PJM Region by posting this filing electronically. PJM also has served a copy of this filing on all parties in Docket No. ER11-1844 via electronic

²³ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,022 (2005) (Order granting interim relief from potentially excessive transmission rates pending the Commission evaluation the just and reasonableness of the rates proposed); *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,387 (2005) (same).

mail. In accordance with the Commission's regulations,²⁴ PJM will post a copy of this filing to the FERC filings section of its internet site, located at the following link: <http://www.pjm.com/documents/ferc-manuals/ferc-filings.aspx> with a specific link to the newly-filed document, and will send an e-mail on the same date as this filing to all PJM members and all state utility regulatory commissions in the PJM Region²⁵ alerting them that this filing has been made by PJM and is available by following such link. PJM also serves the parties listed on the Commission's official service list for this docket. If the document is not immediately available by using the referenced link, the document will be available through the referenced link within 24 hours of the filing. Also, a copy of this filing will be available on the FERC's eLibrary website located at the following link: <http://www.ferc.gov/docs-filing/elibrary.asp> in accordance with the Commission's regulations and Order No. 714.

²⁴ See 18 C.F.R. §§ 35.2(e) and 385.2010(f)(3).

²⁵ PJM already maintains, updates and regularly uses e-mail lists for all PJM members and affected state commissions.

VII. CONCLUSION.

For the reasons discussed above, PJM requests that the Commission expeditiously provide, through a declaratory order, guidance on how PJM may recover the costs allocated to it by the PARs Allocation Order.

Respectfully submitted,



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November 9, 2011

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