

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

Midwest Independent Transmission System Operator, Inc. and International Transmission Company d/b/a ITCTransmission)
)
) **Docket No. ER11-1844-___**
)

**PJM INTERCONNECTION, L.L.C.’S ANSWER IN SUPPORT OF
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.’S
MOTION TO DISMISS OR FOR SUMMARY DISPOSITION OR, IN THE
ALTERNATIVE, REQUEST FOR EXPEDITED ACTION ON
REHEARING REQUESTS**

On December 13, 2011, New York Independent System Operator, Inc. (“NYISO”) filed a motion (1) for dismissal or summary disposition of Midwest Independent Transmission System Operator, Inc. (“MISO”) and International Transmission Company’s (“ITC”) October 20, 2010 filing¹ in this proceeding; or (2) in the alternative, expedited action on the requests for rehearing pending in this proceeding.² Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure,³ PJM Interconnection, L.L.C. (“PJM”) files this answer in support of dismissal of this proceeding. As discussed below, the Commission should grant the pending rehearing requests and dismiss this proceeding.

¹ Submittal of Midwest Independent Transmission System Operator, Inc. and International Transmission Company d/b/a ITC*Transmission*, Docket No. ER11-1844-000 (Oct. 20, 2010) (“MISO/ITC Filing”).

² Motion to Dismiss or for Summary Disposition or, in the Alternative, Request for Expedited Action on Rehearing Requests of the New York Independent System Operator, Inc., Docket Nos. ER11-1844-000, *et al.*, at 1 (Dec. 13, 2011) (“NYISO Motion”).

³ 18 C.F.R. § 385.213.

I. BACKGROUND

On October 20, 2010, MISO and ITC submitted the MISO/ITC Filing seeking to recover a portion of the costs incurred by ITC to install, operate, and maintain the PAR facilities located at the Michigan-Ontario border (“ITC PARs”) from NYISO and PJM through unilateral changes to MISO’s Open Access Transmission Tariff. Several parties, including PJM and NYISO, filed protests. On December 30, 2010, the Commission issued an order accepting for filing the proposed tariff sheets and suspending them for a nominal period, subject to refund, to become effective January 1, 2011.⁴ The Commission did not address any of the substantive legal challenges that protesters raised in their protests. Rather, it set the proceeding for settlement judge and hearing procedures.⁵ Several parties filed rehearing requests, including PJM.⁶

II. THE COMMISSION SHOULD ACT EXPEDITIOUSLY TO GRANT REHEARING OF ITS DECEMBER 30, 2010 ORDER AND DISMISS THE MISO/ITC FILING

PJM supports NYISO’s request that the Commission act expeditiously on the rehearing requests filed in this proceeding prior to the commencement of any formal

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,275 (2010) (“December 30 Order”)

⁵ December 30 Order at PP 44, 45, Ordering Paragraphs (C) & (D). On December 20, 2011, the Chief Administrative Law Judge issued an order terminating settlement proceedings, designating a Presiding Administrative Law Judge, and establishing a Track II procedural schedule. *Midwest Indep. Transmission Sys. Operator, Inc.*, Order of Chief Judge Terminating Settlement Judge Procedures, Designating Presiding Administrative Law Judge, and Establishing Track II Procedural Time Standards, Docket No. ER11-1844-002 (Dec. 20, 2011).

⁶ *See* Request for Rehearing of PJM Interconnection, L.L.C. and Answer In Support of Request to Stay Proceedings, Docket No. ER11-1844-001 (Jan. 31, 2011) (“PJM Rehearing Request”).

hearing procedures.⁷ The Commission should grant rehearing and dismiss the MISO/ITC Filing. Granting such rehearing and dismissal is clearly warranted for the reasons previously stated in PJM’s rehearing request.

In its rehearing request, PJM explained that the MISO/ITC Filing violates section 205 of the Federal Power Act, 16 U.S.C. § 824d, because section 205 does not authorize imposition of charges on entities that are not taking service under a utility’s tariff or rate schedules or pursuant to a negotiated agreement.⁸ Imposition of rates under section 205 is premised on a voluntary contractual relationship⁹ between the parties. The only agreement in place between MISO and PJM that would permit MISO to allocate costs of the ITC PARs on a cross border basis (assuming the ITC PARs would qualify for such cross border allocation) is the Joint Operating Agreement (“JOA”) between MISO and PJM.¹⁰ However, the JOA does not permit unilateral cross border cost allocations;¹¹ rather, it provides a specific process that a project must follow to qualify for cost recovery in both MISO and PJM.¹² As PJM explained in its rehearing request, there is no dispute that the facilities at issue here were not subjected to the required JOA process and do not qualify

⁷ See NYISO Motion at 11-13.

⁸ PJM Rehearing Request at 4-7.

⁹ See *Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527, 534 (2008) (“[t]he regulatory system created by the [FPA] is premised on contractual agreements voluntarily devised by the regulated companies”) (quoting *Permian Basin Area Rate Cases*, 390 U.S. 747, 822 (1968)).

¹⁰ Joint Operating Agreement Between the Midwest Independent Transmission System Operator, Inc. And PJM Interconnection, L.L.C. (December 11, 2008).

¹¹ PJM Rehearing Request at 4, 7-9; Protest of PJM Interconnection, L.L.C., Docket No. ER11-1844-000, at 6-7 (Nov. 17, 2010) (“PJM Protest”).

¹² JOA, section § 9.4.3.

for cross border cost recovery.¹³ Accordingly, MISO and ITC may not allocate costs for the ITC PARs to PJM and the filing should be dismissed.¹⁴

¹³ As explained in PJM’s rehearing request, the ITC PARs do not qualify for cross-border allocation because: (1) the ITC PARs were *not* designated and planned as a Cross-Border Project under the Coordinated System Plan as required by the JOA for inter-regional allocation; and (2) the ITC PARs are not a new transmission project providing regional benefits or interregional benefits within the RTOs’ regional planning processes, as required under the JOA. PJM further noted that the Commission has consistently rejected unilateral filings by single entities proposing to compel charges, terms and conditions on a neighboring utility where there were no discussions to reach consensus among the affected entities. PJM Rehearing Request at 7-9; *see also* PJM Protest at 6-7; PJM Transmission Owners Group Protest to Rate Filing, Docket No. ER11-1844-000, at 6-8 (Nov. 17, 2011); Petition of PJM Interconnection, L.L.C. For Declaratory Order and Expedited Action, Docket No. EL12-10-000, at 6-8 (Nov. 9, 2011) (explaining that “[b]ecause 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.”).

¹⁴ Dismissal of the MISO/ITC Filing will moot PJM’s petition for declaratory order and expedited action that is currently before the Commission in Docket No. EL12-10-000.

III. CONCLUSION

For the reasons stated above and in the PJM Rehearing Request, the Commission should act expeditiously to grant rehearing of the December 30 Order and dismiss the MISO/ITC Filing.

Respectfully submitted,

Craig Glazer
Vice President–Federal Government Policy
PJM Interconnection, L.L.C.
1200 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 423-4743 (phone)
(202) 393-7741 (fax)
glazec@pjm.com

/s/ Barry S. Spector
Barry S. Spector
Carrie L. Bumgarner
Ryan J. Collins
Wright & Talisman, P.C.
1200 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 393-1200 (phone)
(202) 393-1240 (fax)
spector@wrightlaw.com
bumgarner@wrightlaw.com
collins@wrightlaw.com

Pauline Foley
Assistant General Counsel
PJM Interconnection, L.L.C.
955 Jefferson Avenue
Norristown, PA 19403
(610) 666-4438 (phone)
(610) 666-4281 (fax)
foleyp@pjm.com

December 28, 2011

K:\pjm\PARS proceeding\answer support NY FINAL.docx

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 28th day of December, 2011.

/s/ Ryan J. Collins
Ryan J. Collins