UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Northern Indiana Public Service Co.
v.
Midwest Independent Transmission System Operator, Inc. and
PJM Interconnection, L.L.C.

Docket No. EL05-103-001

ORDER DENYING REHEARING

(Issued July 5, 2006)

1. Northern Indiana Public Service Company (Northern Indiana) has requested rehearing of the Commission's April 21, 2006 Order that dismissed, as premature, Northern Indiana's complaint (Complaint) against Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C. (PJM).[1] Northern Indiana complains that the two regional transmission organizations (RTOs) have inadequately addressed congestion problems on the Northern Indiana transmission system resulting from parallel flows caused by large PJM west-to-east transmissions. For the reasons discussed below, we will deny rehearing.

Background

2. This is the third order in these complaint proceedings treating problems on the Northern Indiana transmission system that began with the integration of Commonwealth Edison Company and Commonwealth Edison of Indiana (together, ComEd) into PJM and the resulting increase in energy transfers from the areas served by ComEd to PJM's eastern region (PJM-East). The path for such transfers, *i.e.*, the transmission systems owned by ComEd and the American Electric Power Corporation (AEP)[2] abuts the

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[1] *Northern Indiana Public Service Co. v. Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,089 (2006) (April Order).

[2] AEP is also a PJM member.

Northern Indiana service area. Because parallel flows from such transfers caused congestion on the Northern Indiana transmission system, Midwest ISO invoked Transmission Loading Relief (TLR) procedures on Northern Indiana's system with increasing frequency to control these flows.

3. In its first order, of June 27, 2005,[3] the Commission observed that all parties – Northern Indiana, Midwest ISO, PJM, and the intervenors – substantially agreed that additional study and more information were required before a decision could be made as to what specific adjustments to current practices were necessary to address Northern Indiana's Complaint. Noting that the two RTOs had already begun a transmission study to analyze power flows affecting the Northern Indiana system, the Commission directed the RTOs to file interim reports and a final report at year's end. The Commission set forth areas to be covered in the interim reports. It also required the final report to include the study's final results and recommendations with supporting data and remedies, if warranted, including whether changes to the RTOs' Joint Operating Agreement (JOA) are needed. The Commission said that, based on its evaluation of these reports, it "may issue a substantive order on the Complaint, addressing changes to the RTOs' procedures or the JOA, if and when appropriate."[4]

4. The two RTOs filed their interim reports in timely fashion and their final report on January 17, 2006.[5] The Transmission Report stated that the source of Northern Indiana's problems is the increase of west-to-east power flows from ComEd to PJM-East; although this problem existed prior to ComEd joining PJM, the flows have increased after integrations of ComEd and AEP into PJM were finalized.[6] The report stated that when redispatch of generation in the markets does not relieve the Northern Indiana flowgates, the RTOs resort to additional measures, which include reconfiguring Northern Indiana's transmission facilities by opening certain lines. The report stated further that such actions degrade the reliability of the Northern Indiana system, putting native load at risk.[7] For

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[3] *Northern Indiana Public Service Co. v. Midwest Independent Transmission System Operator, Inc. and PJM Interconnection L.L.C.*, 111 FERC ¶ 61,474 (2005) (2005 Order).

[4] 2005 Order at P 29.

[5] "Northern Indiana Transmission Study Final Report Completed by MISO and PJM January 2006" (Transmission Report). The Commission extended the time to file the final report to January 17, 2006. The parties filed a redacted version, on January 31, 2006. They supplemented the Transmission Report with an update on March 8, 2006 (Update).

[6] Transmission Report Cover Letter at 3.

[7] Transmission Report at 3, 8-9.

this reason, the two RTOs proposed the solution of constructing certain upgrades upon the occurrence of certain specified triggering events so as to increase transfer capability from ComEd to the east.[8] Until the system improvements are made, the two RTOs will take all available steps to avoid the need to resort to the three-line-opening operating step.[9] Northern Indiana agreed generally to this solution.[10]

5. The Transmission Report estimated the costs of these upgrades at $1,178,000. Observing that no current JOA provision addresses the appropriate allocation of the costs of these upgrades, the RTOs recommended a special methodology to allocate the costs among the parties. This proposal would allocate the costs with regard to the impact that each party's existing flows have on the affected facilities. The RTOs specified that they did not propose, in this filing, to incorporate this methodology into their JOA. The RTOs added that they will continue to discuss the issues surrounding cross-border expansions and appropriate cost allocations for such expansions as part of their June 2006 filing in Docket No. ER05-6, *et al.* proceedings treating cross-border economic expansions[11] and as a part of the joint and common market process. They stated that, in each case, the discussions will be subject to a broader stakeholder process before proposing JOA amendments.[12]

6. In comments on the Transmission Report, Northern Indiana disputed the RTOs' proposed cost allocation methodology. It argued that all of the costs should be assigned to PJM because the need for the upgrades arises solely because of economic transfers

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[8] The triggering events are more than one required opening of certain bus ties in any month or any single operation required for 24 hours or more, after implementing market-to-market procedures, or else any single instance of the required opening of three specified lines. Transmission Report at 20-21. The upgrades include the reconductoring of certain lines and the upgrading of certain transformers. Update at 3.

[9] Transmission Report at 22.

[10] Northern Indiana's February 1, 2006 filing at 6-8.

[11] In Docket No. ER05-6, *et al.* proceedings, the Commission has been addressing how to allocate the cost of new, cross-border transmission facilities that are built in one RTO but provide benefits to customers in the other RTO. In *Midwest Independent Transmission System Operator, Inc.*, 113 FERC ¶ 61,194 (2005) (Cross-Border Facilities Order), the Commission conditionally accepted the RTOs' proposals concerning such facilities built for reliability purposes. The Commission required the RTOs to file, by June 1, 2006, a description of proposed cost allocations for facilities built for non-reliability, *i.e.*, economic, purposes.

[12] Transmission Report Cover Letter at 4.

from ComEd to PJM-East that benefit PJM parties. Northern Indiana stated that its situation is unique and so can be resolved by the Commission without prejudice to the methodology ultimately adopted in the Docket No. ER05-6, *et al.* proceedings. Lastly, it argued that should the Commission decide that Northern Indiana or its customers must bear any portion of the costs for the proposed facilities upgrades, then the Commission should require modification of the Transmission Report's recommendations to provide a solution to the parallel flow problems other than the upgrades. It recommended, to accomplish this, that the Commission modify PJM's operations to reduce west-to-east transfers of power from ComEd to PJM-East, and possibly require corresponding amendment of the JOA.[13]

7. In the April Order, the Commission observed that all parties had supported constructing the upgrades after the triggering events, and that the only dispute was over apportionment of the construction costs. The Commission concluded that it was premature to decide the cost responsibility and dismissed the Complaint. Its reasons were that the triggering events had not yet occurred, and that the RTOs planned to address in the near future, *i.e.*, in the report to be filed in June 2006, in Docket No. ER05-6, *et al.*, the costs of cross-border facilities constructed for economic or operational reasons that provide benefits to customers in the other RTO. The Commission also rejected the argument that the recommended upgrades would be so unique as to necessitate a special allocation process outside of the to-be-revised JOA. It stated that allocation of the costs must be determined according to generally applicable tariff provisions that apply to both RTOs for comparable facilities. It stated also that, if the RTOs find that these recommended upgrades require special cost allocation provisions, they should propose provisions that would apply to all comparable upgrades in their forthcoming June 2006 filing, in the Docket No. ER05-6, *et al.* proceedings.[14]

8. Although dismissing the Complaint, the Commission stated that should these facilities be scheduled for construction and issues arise that the provisions of an amended JOA do not resolve, the parties may make new filings addressing the issue at that time.[15]

Northern Indiana's Rehearing Request

9. On rehearing, Northern Indiana repeats two previous arguments. It argues that all costs of the recommended upgrades should be assigned to PJM because the need for the facilities is caused solely by the economic transfers from ComEd to PJM-East, benefiting PJM, and because Northern Indiana and others in Midwest ISO do not need the

[13] Northern Indiana's February 1, 2006 Filing at 10-12.

[14] April Order at P 24.

[15] *Id.* at P 25.

recommended upgrades to provide transmission service. Secondly, should the Commission not allocate all costs to PJM, the Commission should revise the Transmission Report's recommendations to provide a solution that does not require transmission upgrades, such as requiring PJM to reduce its west-to-east transfers.

10. Northern Indiana argues also that the Commission erred, in the April Order, by not deciding the cost allocation issue for the following reasons. First, the RTOs' filing, in Docket No. ER05-6, *et al.*, addressing costs of cross-border facilities, although projected for June 1, 2006, will not be made at that time and the RTOs will not address the cost allocation for facilities like the recommended upgrades in a timely manner.[16] Northern Indiana asks that the determination about cost allocation of the recommended upgrades be made before the triggering events. Second, the RTOs' future filing about costs of cross-border facilities probably will not apply to the recommended upgrades. Northern Indiana points out that the Commission's order accepted, for reliability projects, the RTOs' proposal that only projects costing $10 million or greater are eligible for cross-border allocation; [17] if the RTOs propose the same cost threshold for the cross-border allocation of the costs of non-reliability or economic projects, the RTOs' future filing will not address the recommended upgrades, which are estimated to cost only approximately $1.2 million. Additionally, Northern Indiana notes that while the April Order gave the RTOs the option of including, in their June 1, 2006 filing, provisions that would apply generally to situations comparable to the recommended upgrades, the Commission did not actually require the RTOs to propose such cost allocation provisions. Third, the issue in this proceeding is unusual and unique to Northern Indiana because of Northern Indiana's location between PJM members ComEd and AEP, and thus the situation meets the test of the April Order, that special allocation provisions are required.

Commission Response

11. We will deny rehearing. Within the past year, the Commission stated, in *East Kentucky Power Cooperative, Inc.*,[18] that its policy on unauthorized loop flows is the

[16] On May 17, 2006, in Docket No. ER05-6-023, *et al.,* the RTOs moved for an extension of time, until December 1, 2006, to submit their joint proposal regarding cross-border cost allocation for economic transmission projects because of lack of consensus by their stakeholders on many key issues (May 17 Time Extension Request). On May 31, 2006, the Commission issued a notice granting the request.

[17] Northern Indiana's rehearing request at 7-8 (*citing* Cross Border Facilities Order, 113 FERC ¶ 61,194 at P 4). *See* note 11, *supra*.

[18] *East Kentucky Power Cooperative, Inc.*, 112 FERC ¶ 61,160 at P 27 (2005), *final order*, 114 FERC ¶ 61,035 (2006) (*East Kentucky*).

policy described in 1989, prior to formation of RTOs, in *American Electric Power Service Corporation*:

> Inadvertent or unauthorized power flows are an unavoidable consequence of interconnected utility operations. Interconnected utilities must, and do, work closely to ensure that the operation of one system does not jeopardize the reliability of a neighboring system, nor diminish the neighbor's ability to utilize its system in the most economical manners. This coordination is accomplished by direct day-to-day communications and the establishment of operating committees, as well as the participation in power pools. . . . It is, in the first instance, for the interconnected parties as the owners and operators of utility systems to establish mutually acceptable operating practices.[19]

The Commission stated also that compensation for loop flows can be ordered if an entity demonstrates that they are a burden on its system. The Commission gave as examples evidencing such a burden that the loop flow jeopardizes the reliability of the entity's system or diminishes the entity's ability to utilize its system in the most economical manner.[20]

12. Thus, we expect the RTOs and the transmission owners on both systems to resolve the congestion problems on Northern Indiana's system caused by the west-to-east flows.[21] The RTOs have indicated that they are addressing these problems in the Docket No. ER05-6, *et al*. proceedings, where they are developing their forthcoming cross-border facilities cost allocation proposal for non-reliability projects, in response to

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[19] *American Electric Power Service Corporation,* 49 FERC ¶ 61,377 at 62,381 (1989), *reh'g denied*, 50 FERC ¶ 61,192 (1990) (*AEP*).

[20] *East Kentucky*, 114 FERC ¶ 61,035 at P 40 & n.29 (*citing AEP*, 49 FERC at 62,381).

[21] The upgrades at issue here amount to little over $1 million, hardly a significant expenditure of funds in these markets. There seems no reason that the RTOs and their transmission owners cannot resolve such issues among themselves. The RTOs stated that they developed the allocation proposal described in the Transmission Report outside of the stakeholder process because of the timing of the response required by the Commission. Transmission Report at 21-22. By deferring to the forthcoming filing in the Docket No. ER05-6 *et al.* proceedings, proposed allocation of the costs of cross-border economic upgrades, the April Order allowed the RTOs to address allocating the costs of the recommended upgrades through their stakeholder process.

Commission directive.[22] We anticipate that, in this forthcoming cost allocation proposal, the RTOs will state whether the recommended upgrades and comparable upgrades fall within the filing's general provisions, or whether, because of their nature or timing, special cost allocation provisions are needed to apply generically to such upgrades, as discussed at P 24 of the April Order.

13. We disagree with Northern Indiana's assumption that the RTOs will necessarily propose for costs allocation of cross-border non-reliability projects the same $10 million threshold that they proposed for reliability projects. Northern Indiana is making assumptions about a proposal that has not been made and has not been accepted by the Commission. The Commission recognized, in the Cross-Border Facilities Order, that reliability projects and economic projects differ. It instructed the RTOs to address this distinction and whether planning for these two categories of projects should be done differently and how costs for economic projects should be allocated to produce just and reasonable results.[23] Moreover, the Commission found, in the April Order, that allocation of the costs of individual projects must be determined according to generally applicable tariff provisions that apply to both RTOs for comparable facilities rather than on a piecemeal basis.[24] This is important because the transmission system of each RTO experiences loop flows from transactions within the other RTO. We are unconvinced that the upgrades at issue and the events contributing to their need present a unique, non-repeating situation qualifying for special allocation provisions.

14. We continue to find, as the Commission did in the April Order, that it is premature to address the issues raised by Northern Indiana. It is still speculative as to whether or when the triggering events will actually occur, and whether or not, should the recommended facilities actually be scheduled for construction, JOA provisions existing at that time will fail to address allocation of the construction costs. Furthermore, before the Commission could decide the question of costs allocation, should the question become

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[22] May 17 Time Extension Request, at note 8. *See* note 16, *supra*. The RTOs are responding to the Commission's directive in *Midwest Independent Transmission System Operator, Inc.*, 113 FERC ¶ 61,194 at P 12 (2005) (Cross-Border Facilities Order). *See* note 11, *supra*.

[23] Cross Border Facilities Order, 113 FERC ¶ 61,194 at P 12.

[24] April Order at P 24.

ripe for resolution, it would need a more complete record regarding the benefits of the recommended upgrades.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.