

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Marc Spitzer, Philip D. Moeller,
and Jon Wellinghoff.

American Transmission Systems, Inc.

Docket Nos. ER04-618-000
ER04-618-001

ORDER ACCEPTING CONTESTED SETTLEMENT

(Issued April 5, 2007)

1. On August 5, 2004, American Transmission Systems, Inc. (ATSI) filed a Settlement Agreement and Explanatory Statement pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2006).¹ ATSI asserts² that the Settlement Agreement will resolve the issues set for hearing in this proceeding without need for an evidentiary hearing or further proceedings.³ Commission Trial Staff (Trial Staff) supports the Settlement, with modifications. On September 24, 2004, the Administrative Law Judge (ALJ) filed a Report to the Commission and Chief

¹ ATSI also filed a revised Reactive Supply Service Schedule, including Schedule 2, Reactive Supply and Voltage Control from Generation Sources Service, and Schedule 2.1, Revenue Requirement for Reactive Power, along with the Settlement Agreement.

² See Settlement Agreement, p. 2.

³ By order issued May 6, 2004, the Commission accepted, suspended and made effective May 1, 2004, subject to refund, ATSI's proposed Schedule 2 concerning reactive power and established hearing and settlement judge procedures. The Commission held the hearing procedures in abeyance to permit the conduct of settlement judge procedures. *American Transmission Systems, Inc.*, 107 FERC ¶ 61,111 (2004) (May 2004 Order).

Judge Concerning Contested Offer of Settlement,⁴ and on September 29, 2004, the Chief Judge issued an order terminating settlement judge procedures, there being no additional matters pending before the Office of Administrative Law Judges and subject to final action by the Commission.⁵

2. Upon consideration of the comments filed by Trial Staff and other parties, the Commission here decides the contested issues on their merits. The Commission finds that the Settlement Agreement is just and reasonable. Based on these findings, the Commission approves the Settlement.

I. Background

3. ATSI, a wholly-owned subsidiary of FirstEnergy Corporation (First Energy), owns and operates transmission facilities located within the FirstEnergy Control Area in Ohio and northwestern Pennsylvania. Operational control over these facilities was transferred to the Midwest ISO on October 1, 2003. Transmission and ancillary services provided over ATSI transmission facilities thereafter have been secured under the Midwest ISO OATT, which obligates ATSI to provide specified ancillary services to customers requiring those services.

4. ATSI neither owns nor operates any generation facilities. ATSI therefore must secure the Reactive Supply Service required to support electric transmission within the FirstEnergy Control Area from third-party generators connected to the ATSI transmission system. Charges by ATSI for Reactive Supply Service within the FirstEnergy control area are based on the revenue requirement for Reactive Supply Service that have been accepted by the Commission for each of the suppliers. Those charges are passed through by the Midwest ISO to transmission customers using the ATSI Zone within the Midwest ISO in accordance with the Midwest ISO OATT.

5. On September 23, 2003, Troy Energy, LLC (Troy) filed to establish a revenue requirement for Reactive Supply Service from a Troy generating unit connected to the ATSI system.⁶ The ATSI Schedule 2—Reactive Supply Service in effect at that time,

⁴ *American Transmission Systems, Inc.*, 108 FERC ¶ 63,044 (2004) (September 2004 Report).

⁵ *American Transmission Systems, Inc.*, 108 FERC ¶ 63,050 (2004).

⁶ Prior to Troy's filing, FirstEnergy Solutions Corporation (FirstEnergy Solutions), an ATSI affiliate, was the sole provider of Reactive Supply Service in the First Energy Control Area.

however, did not accommodate multiple providers. A resulting settlement agreement between Troy, FirstEnergy Service Company, Midwest ISO, and Calpine Central, L.P. obligated ATSI to modify its OATT to accommodate multiple providers.⁷ ATSI filed the March 4, 2004 application and proposed Schedule 2 at issue as a result of that settlement (March 2004 filing).

6. Consumers Energy Company and American Municipal Power-Ohio (AMP-Ohio) protested the March 2004 filing on various grounds, among these being claims that it: (1) effectively prohibited customers from self-supplying reactive power and deducting load in computing reactive power charges; (2) allowed gross load charges when distribution systems produce vars to support all or part of that load; (3) allowed compensation adjustments to reactive power supplies providing vars outside normal operating procedures without comparing var needs to capabilities; (4) effectively compelled behind-the-meter generation to pay for reactive power despite the fact that behind-the-meter loads do not cross into the transmission system; and (5) inappropriately granted reactive power providers up to twelve (12) hours to satisfy operator demands for additional reactive power. The May 2004 order stated that the Commission's preliminary review indicated that ATSI's March 2004 filing might be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, the Commission accepted the proposed schedule for filing, suspended it and made it effective May 1, 2004, subject to refund, and established hearing and settlement judge procedures.

7. The parties then engaged in settlement negotiations, and on August 5, 2004, ATSI submitted the instant Settlement Agreement, on behalf of itself and the participants who had joined the Settlement Agreement (the Settling Parties). ATSI states that the Settlement Agreement modifies certain provisions in Schedule 2, and provides for termination of the proceeding without addressing certain other issues that had been raised in the proceeding on the merits and without the need for an evidentiary hearing. The Settling Parties urge the Commission to approve the Settlement Agreement without modification.

⁷ The Troy settlement agreement was filed on March 4, 2004 and approved by the Commission on June 1, 2004 in *Troy Energy, LLC*, 107 FERC ¶ 61, 226 (2004).

A. Settlement Agreement

8. The Settlement Agreement's principal component is a revised Reactive Supply Service Schedule 2. That schedule, the effective date of which is May 1, 2004,⁸ contemplates that FirstEnergy Solutions (with AMP-Ohio support) will seek to have any generator who can be compensated directly by the Midwest ISO for providing reactive power under the schedule transferred to the appropriate Midwest ISO rate schedule.

9. The Settlement Agreement expressly disclaims any specific resolution with respect to self-supply, behind-the-meter generation or as to whether an upper limit should be established on the collective revenue requirements for generators capable of providing Reactive Supply Service within the ATSI zone of the Midwest ISO, instead providing that ATSI pay AMP-Ohio a flat amount per month, effective May 1, 2004 and continuing until the effective date of a superseding Reactive Supply Service schedule. The initial monthly payment was \$1,000, with adjustments being calculated by multiplying any new total control area revenue requirement by 0.0008789 on a pro-rated basis. The monthly payment to AMP-Ohio also would be increased (with appropriate adjustments for offsets and interest) to reflect a proposed increase in Reactive Supply Service charges from FirstEnergy Solutions in the event that proceedings in *FirstEnergy Solutions Corporation*, Docket No. ER04-652-000 were not concluded prior to October 16, 2004.⁹

10. The Explanatory Statement indicates that the standard of review for the Reactive Supply Service Schedule appended to the Settlement Agreement is the "just and reasonable" standard of sections 205 and 206 of the Federal Power Act.

11. The Settlement Agreement is expressly contingent on Commission approval without modification, except as agreed among the parties.

⁸ The Settlement Agreement provides that once the Midwest ISO has established a tariff provision for compensating suppliers directly for the Reactive Supply Service, ATSI Schedule 2 will not be available for use by a supplier seeking to recover its annual revenue requirements for such service. The Midwest ISO's tariff provision for compensating suppliers directly for the Reactive Supply Service became effective on January 1, 2005. See *Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,046 (2005).

⁹ The uncontested settlement was not approved until February 14, 2005. *First Energy Solutions, Co.*, 110 FERC ¶ 61,142 (2005).

B. Comments on the Settlement

12. Trial Staff filed initial comments to the Settlement Agreement on August 25, 2004. ATSI filed reply comments on September 7, 2004. Dominion Resources, Inc. (Dominion) and Troy jointly filed reply comments and an answer to Trial Staff's initial comments on September 7, 2004.

13. Trial Staff supports the Settlement Agreement, with modifications, as fair, reasonable, and in the public interest. It requests that the Settlement Agreement be modified in two areas to be consistent with Commission precedent and to prevent ambiguous language. In particular, it asserts that the Settlement Agreement should be modified to: (1) add a provision expressly permitting customers to self supply reactive power and voltage control; and (2) delete the term "entire" from Schedule 2, section (I)(C)(1).¹⁰

14. Trial Staff urges the Commission to direct the parties to explicitly allow customers within the ATSI system to self supply reactive power and voltage control. Trial Staff notes that proposed Schedule 2 does not address the question of self supply for reactive power and voltage control service. Trial Staff indicates that Order No. 888 requires that the provision of reactive power and voltage control service by a transmission provider must be net of the self supply of reactive power and voltage control service furnished by a customer.¹¹ Trial Staff argues that the Commission's self-supply policy is clear and has been improperly ignored by the parties in crafting the Settlement Agreement.

15. Trial Staff next requests that the word "entire" be eliminated from section (I)(C)(1) because Trial Staff considers it overly ambiguous in that it might permit a generator to over collect a reactive revenue requirement based on a facility's full nameplate capability instead of the electrical output figure specified in the applicable Generator Interconnection Agreement. Trial Staff states that the word "entire" should be

¹⁰ Schedule 2, Section (I)(C)(1) provides that, "Schedule 2.1 provides the annual revenue requirements for Reactive Supply and Voltage Control Service for the First Energy Control Area. Suppliers shall be responsible for filing and updating their annual revenue requirement for acceptance by the Commission. Each Supplier's annual revenue requirement for reactive power capability shall reflect the cost for the *entire* reactive power capability of its unit(s) (emphasis added)"

¹¹ See *Atlantic City Electric Company*, 77 FERC ¶ 61,144, at 61,537, n. 23 (1996) (*Atlantic City*).

removed because it allows for potential ambiguity and confusion, and that the issue should remain part of the revenue requirement proceeding for each generator rather than putting any mention of it into the ATSI tariff.¹²

16. ATSI characterizes Trial Staff's proposed modifications as contrary to the Settlement Agreement's basic intent. ATSI underscores the fact that the parties to the Settlement Agreement agree that it is expressly contingent on Commission approval without modification (except as agreed among the parties), noting, in addition, that Trial Staff has failed to demonstrate that the proposed rates, terms or conditions are unreasonable.

17. ATSI does not agree to Trial Staff's proposed modification with respect to self supply. ATSI states that Section 3 of the Settlement Agreement states that the agreement "does not and may not be construed to establish any precedent or principle affecting the consideration of" the issue of self supply, and it thereby assures that the rights of parties to raise the issue in a more appropriate forum are unaffected. ATSI further states that no intervenor has objected to this treatment of self supply, and that because the treatment of self supply in the agreement is not opposed by any party with a legitimate interest, it should be accepted by the Commission without modification.

18. ATSI argues that Commission policy does not require a Schedule 2 provision explicitly addressing self supply.¹³ ATSI also argues that the decision in *Atlantic City* confirms that the inclusion of an explicit provision regarding self supply in a service schedule such as its proposed Schedule 2 is not necessary. ATSI explains that, in *Atlantic City*, the Commission emphasized that "Order No. 888 required all tariff compliance filings to contain non-rate terms and conditions identical to the *pro forma* tariff."¹⁴ Therefore, ATSI states, the Commission ruled that compliance filings that did not conform to the *pro forma* tariff and did not fall within the category of permissible

¹² Trial Staff also states that the Settlement Agreement does not raise issues of first impression or reverse previous Commission determinations.

¹³ ATSI argues that "insofar as relevant" ATSI's proposed Schedule 2 follows the format prescribed by Order No. 888, and that Trial Staff has not cited any reference to Commission policy that would require an OATT to contain additional language to discuss the self-supply option.

¹⁴ *Atlantic City Electric Company*, 77 FERC ¶ 61,144 at 61,532.

deviations would be rejected.¹⁵ ATSI states that the Commission recognized that the *pro forma* tariff did not expressly provide for customers to self supply Reactive Supply Service, and it determined that the matter could more properly be addressed in a service agreement between the transmission provider and the transmission customer.¹⁶

19. ATSI further argues that, because of the transfer of operational control over ATSI's transmission system to the Midwest ISO, the obligation of transmission customers using the ATSI transmission facilities to acquire Reactive Supply Service from the Transmission Provider is prescribed in the Midwest ISO OATT rather than the ATSI OATT.¹⁷ Thus, ATSI states, Trial Staff's recommendation cannot be implemented without modification of the Midwest ISO OATT. ATSI also argues that since there was no consensus in the Midwest ISO proceeding for recognition of the self-supply option, it should not be imposed on ATSI in the instant proceeding.

20. In its final argument for exclusion of a self-supply option, ATSI points out that no transmission customer using the ATSI transmission system with the capability of delivering Reactive Supply Service to serve loads within the ATSI Control Area has expressed an interest in self supplying such a service. ATSI states that Reactive Supply service from merchant generators within the ATSI Control Area that are capable of providing such service is used to support the overall operation of the ATSI Control Area. It states that once such generators have established a Commission-approved revenue requirement for Reactive Supply Service, they may be compensated for providing such service through ATSI's Schedule 2. Therefore, ATSI argues, there is no need for a provision in ATSI's Schedule 2 that explicitly addresses the possibility that a transmission customer might self supply Reactive Supply Service within the ATSI Control Area.

21. ATSI next argues that Trial Staff's concerns with respect to including the term "entire" in Schedule 2, Section (I)(C)(1) are baseless. ATSI states that, first, there is no reason to expect that the reactive power capability of a generating unit would be lower than its full nameplate capability. Second, ATSI asserts that it is appropriate to

¹⁵ *Id.* at 61,535.

¹⁶ *Id.* at 61,537, n. 22.

¹⁷ ATSI states that Schedule 2 simply establishes the applicable charge for such service within the ATSI control area.

compensate a generator on the basis of nameplate capability because, even if the reactive power output of a generating unit as set forth in the Generator Interconnection Agreement is below the nameplate capability, the unit would presumably be able to produce Reactive Supply Service up to its nameplate capability in the event it was called upon to do so by ATSI or the Midwest ISO.¹⁸ Next, ATSI argues, there is no Commission policy to prevent the owner of a generating unit from establishing reactive power charges on the basis of the entire reactive power capability of the units, regardless of the information set forth in the Generator Interconnection Agreement. Indeed, ATSI notes in *American Electric Power Service Corporation*,¹⁹ the Commission found that the reactive allocator factor used to segregate the reactive power production function from the real power production function should be based on the nameplate reactive capability as measured at the generator terminals. Thus, ATSI argues, Trial Staff's claim that collection of charges for Reactive Supply Service on the basis of the information in the Generator Interconnection Agreement is "more appropriate" than collection of charges on the basis of the nameplate capability of the generating facility is misplaced. Finally, ATSI states that Trial Staff's proposal to modify the Settlement Agreement in an effort to affect the manner in which rates for Reactive Supply Service might be established is contrary to the intent of the Settlement Agreement. Nonetheless, ATSI states, there is nothing in ATSI's Schedule 2 that impairs the Commission's ability to determine the allowable revenue requirement for Reactive Supply Service in individual proceedings, and, more importantly, the Settlement Agreement provides that once the Midwest ISO has established a tariff provision for compensating suppliers directly for the Reactive Supply Service, ATSI Schedule 2 will not be available for use by a supplier seeking to recover its annual revenue requirements for such service.

22. The Dominion/Troy reply comments and answer generally echo the ATSI position, supporting Commission approval of the Settlement Agreement without modification. Dominion/Troy characterize the issues raised by Trial Staff as outside the Settlement Agreement's scope and therefore constituting inadequate justification to alter the consensual accommodations reached among the parties.

¹⁸ ATSI states that, pursuant to ATSI Schedule 2, either the Midwest ISO or ATSI may request a supplier to provide enhanced reactive support beyond that otherwise established in the interconnection agreement in order to prevent or respond to emergency conditions.

¹⁹ 88 FERC ¶ 61,141, at 61,456-57 (1999) (*AEP*).

23. Dominion/Troy state that ATSI's Schedule 2 is not inconsistent with Order No. 888 because the Commission's *pro forma* tariff does not include a self-supply option. They also argue that the requirement in Order No. 888 that customers be allowed to self supply reactive capability is not absolute, and it can be superseded by a consistent or superior provision. Dominion/Troy state that they believe the generator compensation schedule included in the settlement is superior to the Order No. 888 self-supply requirement because: (1) it provides a single mechanism for compensating all generators, regardless of whether the generator is owned by a transmission customer or by a marketer; (2) it compensated the generator based on the generator's own cost of reactive power capability, whereas the self-supply option effectively gives the generator a credit equal to the Transmission Provider's cost of reactive capability, which may be very different from the generator's cost; and (3) direct compensation avoids the difficulties that a customer would have to face with respect to scheduling a self supply, such as arranging for provision of ancillary service through a third party, negotiating self supply in service agreements and determining the amount of a credit the customer can receive.

24. Dominion/Troy state that Trial Staff's complaint that the Settlement Agreement contains language that is overly ambiguous because it recognizes that a generator is to be compensated for its "entire" reactive power capability is unfounded and outside the scope of the settlement. Dominion/Troy base their objection on the fact that the methodology that generators may use to develop their reactive power revenue requirements is not at issue in this proceeding, and the parties have simply included a description of the methodology previously approved by the Commission for compensation of independent generators for reactive power. Finally, Dominion/Troy state that it appears to them that Trial Staff may have been attempting to assert that generators should be compensated for their reactive power capability only to the extent that the capability allows the generator to produce reactive power outside the criteria included in the Commission's generator interconnection agreement. Dominion/Troy argue that that issue is both outside the scope of the settlement agreement and inconsistent with the Commission's approval of compensation for the entire reactive capability of generators in numerous proceedings.

II. Discussion

25. For the reasons discussed below, the Commission finds that this contested Settlement is just and reasonable, and, accordingly, the Commission approves the Settlement without modification. The Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act, 16 U.S.C. § 824e (2000). In order to approve a contested settlement, such as the instant Settlement, the

Commission must make "an independent finding supported by 'substantial evidence on the record as a whole' that the proposal will establish 'just and reasonable' rates."²⁰ Consistent with this requirement, Rule 602(h)(1)(i) of the Commission's settlement rules²¹ provides that the Commission may decide the merits of contested settlement issues if the record contains substantial evidence upon which to base a reasoned decision or the Commission finds that there is no genuine issue of material fact.

26. The Commission here finds that there is no genuine issue of material fact, and it finds that the Settlement is just and reasonable and not unduly discriminatory. Trial Staff's first proposed modification, that ATSI add a provision to Schedule 2 expressly permitting customers to self supply reactive power and voltage control, is contrary to Commission precedent. The Commission has expressly found that a self-supply option is inappropriate where, as here, the tariff provides that all generators will be compensated for their reactive power capability on a non-discriminatory basis, and all load pays its load ratio share of the costs of that capability.²² Accordingly, we deny Trial Staff's proposed modification.

27. We also deny Trial Staff's request to remove the word "entire" from Schedule 2, Section (I)(C)(1). The Commission has consistently used a generator's reactive power capability in determining its revenue requirement under the *AEP* methodology. Because a generator has the ability to produce reactive power up to its nameplate capability, and because it is obligated to do so to prevent or respond to emergency situations,²³ there is no rationale that would warrant using anything less in determining a generator's reactive power capability. Moreover, we note that, in determining the appropriate reactive allocator factor to segregate the costs of reactive power production from those of real power production, the Commission has found that the reactive allocator factor should be

²⁰ *Mobil Oil Corp. v. FERC*, 417 U.S. 283, 314 (1974), *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345 (1998).

²¹ 18 C.F.R. § 385.602(h)(1)(i) (2006).

²² See *Midwest Independent Transmission System Operator, Inc.*, 113 FERC ¶ 61,046, at P 56-59 (2005), *order on reh'g*, 114 FERC ¶ 61,192 (2006).

²³ See ATSI's August 5, 2004 Settlement Agreement, Second Revised Sheet No. 16-5.

based on the capability of the generators to produce vars and that this capability should be measured at the generator terminals, *i.e.*, the nameplate capability.²⁴

The Commission orders:

The Settlement Agreement is hereby approved.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Philis J. Posey,
Acting Secretary.

²⁴ *AEP, supra* note 19.