

149 FERC ¶ 61,292
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

PJM Interconnection, L.L.C.
American Transmission Systems, Inc.

Docket No. ER15-303-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF SHEETS AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 31, 2014)

1. On October 31, 2014, American Transmission Systems, Inc. (ATSI) proposed revisions to its transmission formula rate, found in Attachment H-21 and H-21A (Formula Rate)¹ and H-21B (Protocols)² of the PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (OATT). We accept and suspend the filing for a nominal period to become effective January 1, 2015, as requested, subject to refund and the outcome of hearing and settlement judge procedures. We also institute an investigation under section 206 of the Federal Power Act (FPA)³ within Docket No. ER15-303-000.

I. Background

2. ATSI is a transmission-only utility which provides transmission services in the state of Ohio and the western portion of the Commonwealth of Pennsylvania. ATSI currently recovers its transmission revenue requirement through a transmission formula rate based on historical costs, administered under PJM's OATT.

¹ PJM Interconnection, L.L.C., Intra-PJM Tariffs, [OATT Attachment H-21 - ATSI, 2.0.0](#), and [OATT Attachment H-21A - ATSI, 3.0.0](#).

² PJM Interconnection, L.L.C., Intra-PJM Tariffs, [OATT Attachment H-21B - ATSI Protocol, 1.0.0](#).

³ 16 U.S.C. § 824e (2006).

3. ATSI's current transmission formula rate was accepted by the Commission on May 31, 2011 in Docket No. ER11-2814-000, *et. al.*⁴ Under its current transmission formula rate, ATSI calculates its annual revenue requirement by using cost of service data of the prior year.⁵ For example, the revenue requirement for the rate year June 1, 2014 through May 31, 2015 was set by using the year 2013's cost of service data, as filed in ATSI's 2013 annual FERC Form 1 filing.

4. The current version of ATSI's Protocols was accepted by the Commission in Docket No. ER11-2814-000, *et. al.*⁶ ATSI's Protocols provide definitions, specify the types of inputs to the formula rate, and describe the processes for posting transmission revenue requirement and implementing the annual update. Pursuant to ATSI's Protocols, ATSI is required to recalculate its annual transmission revenue requirements and true-up the transmission formula rate in the event that historical costs do not fully capture the actual costs of providing transmission service.

II. Summary of the Filing

5. ATSI states that the primary purpose of its filing is to change its current transmission formula rate from one based on historical costs to a forward-looking transmission formula rate.⁷ ATSI states that the use of historic costs results in a significant recovery lag for transmission costs.⁸ ATSI also explains that it is planning to make significant capital investments in its transmission facilities from 2014 through

⁴ *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,198 (2011) (order accepting, among other things, ATSI's current formula rate).

⁵ Cost of service data is reported annually by every Major electric utility through FERC Form No. 1 (FERC Form 1) and is an annual regulatory requirement pursuant to 18 C.F.R. § 141.1.

⁶ *See PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,206 (2013).

⁷ The proposed tariff language states that a forward-looking formula rate "...shall be calculated on the basis of projections, subject to true-up to actual data in accordance with the adjustment mechanism described in Attachment H-21B (Formula Rate Protocols)."

⁸ ATSI Transmittal at 3. ATSI states that the recovery of costs incurred during any year will not begin for as many as 17 months after they were incurred, and recovery will not be completed for as long as 29 months.

2017.⁹ In light of this, ATSI states that basing rates on the transmission rate base and associated costs of the prior year significantly understates ATSI's transmission revenue requirement and fails to cover ATSI's cash flow requirements associated with providing transmission service.¹⁰

6. ATSI explains that the effect of switching from its current transmission formula rate to a forward-looking transmission formula rate would be to eliminate the lag in cost recovery.¹¹ As such, ATSI states that the principal effect of ATSI's proposed modifications are on the timing of cost recovery, not the amount of cost recovery.¹²

7. ATSI proposes five revisions to its current transmission formula rate in order to implement a forward-looking formula rate.¹³ First, ATSI proposes to revise the current transmission formula rate to reflect that the forward-looking formula rate will be based on projections subject to true-up to actual costs. Second, ATSI proposes to add provisions that show how the true-up adjustment will be calculated and how interest will be applied via the addition of two appendices to its transmission formula rate.¹⁴ Third, ATSI proposes to add footnotes in its forward-looking formula rate that describe the method by which the rate base and capital structure will be calculated.¹⁵ Fourth, ATSI proposes to remove a legacy provision, in Appendix G of its current transmission formula rate, which was created to true-up a MISO-to-PJM transitional issue but is no longer relevant. Finally, ATSI proposes to use a 'rate year' in its transmission formula rate that starts January 1 and ends on December 31 of each year.

⁹ These investments are made as part of a FirstEnergy program called "Energizing the Future." ATSI states this program is designed to increase the reliability of ATSI's transmission facilities. ATSI states it plans to invest at least \$2.7 billion on improvements and enhancements to its transmission system, including \$614 million in additions in 2014 and \$845 million in 2015.

¹⁰ ATSI Transmittal at 3; *see also*, Attachment C, Testimony of Milorad Pokrajac at 9.

¹¹ ATSI Transmittal at 4.

¹² ATSI Transmittal at 4-5.

¹³ ATSI Transmittal at 5-6.

¹⁴ PJM Interconnection, L.L.C., Intra-PJM Tariffs, [OATT Attachment H-21A Appendix D \(True-up\), 0.0.0](#) and [OATT Attachment H-21A Appendix E \(True-up\), 0.0.0](#).

¹⁵ ATSI Transmittal at 5. Also, *see* Attachment H-21A (Formula Rate) at 5.

8. In addition to its revisions to the current transmission formula rate, ATSI also proposes revisions to the current transmission formula rate Protocols. Specifically, ATSI proposes to add provisions that would allow customers an opportunity to review the projected revenue requirement prior to its effective date each year. ATSI states it would allow such an opportunity by posting its projections onto the PJM website by November 1 of each year, and hold an open meeting between fifteen and thirty days later to explain its proposed transmission revenue requirement. ATSI also proposes to submit an annual informational filing with the Commission by May 1 of the following year (e.g., by May 1, 2016 for the rates in effect during calendar year 2015) showing its actual costs as well as a true-up of actual revenues to the projected revenues for the prior year. The amount of the true-up, with interest, will be included in the year following the calculation of the true-up.

9. ATSI further provides a projection of its transmission revenue requirement for the 2015 rate year.¹⁶ The projection results in a 13-month average transmission rate base of approximately \$1.8 billion and a net revenue requirement of \$458 million for 2015.¹⁷ ATSI states that a similarly calculated revenue requirement under the current formula rate is projected to be \$305 million.¹⁸ ATSI notes that because its tariff revisions are proposed to go into effect January 1, 2015, review of the projected transmission revenue requirement by November 1 of 2014 would not be possible. Therefore, ATSI proposes special procedures to review the projected transmission revenue requirement for rate year 2015. Specifically, ATSI submits its projected transmission revenue requirement for rate 2015 on an informational basis to the Commission, in this proceeding,¹⁹ and states that it will post its projection on to the PJM website, as well as hold an open meeting with interested parties.²⁰

¹⁶ ATSI Transmittal at Exhibit ATS-8, 115-116.

¹⁷ ATSI Transmittal at 8; *see also*, Testimony of Milorad Pokrajac, Attachment C at 16 and the Testimony of Marlene A. Barwood, Attachment E at 11-13. Also, *see* ATS-8 at 115, line No. 7 (net revenue requirement) and ATS-8 at 116; line No. 30 (2015 rate base).

¹⁸ ATSI Transmittal at 12.

¹⁹ *See* ATSI Transmittal, Attachment F at 1-10.

²⁰ The open meeting for review of ATSI's projected transmission revenue requirement was held on Monday, November 24, 2014. *See* <http://www.pjm.com/sitecore%20modules/web/~media/markets-ops/trans-service/20141117-atsi-2015-ptrr-notice-of-open-meeting.ashx>.

III. Notice of Filing and Responsive Pleadings

10. Notice of ATSI's filing was published in the *Federal Register*, 79 Fed. Reg. 67,427, with motions to intervene and protests due on or before November 21, 2014. American Municipal Power, Inc. (AMP) and Buckeye Power, Inc. (Buckeye Power) filed motions to intervene and protests. Notices of intervention and timely motions to intervene were filed by: The Pennsylvania Public Utility Commission, Public Utilities Commission of Ohio, Industrial Energy Users-Ohio, Industrial Energy Users-Ohio, Cleveland Public Power, and Pennsylvania Office of Consumer Advocate. On December 5, 2014, a motion for leave to answer and answer was filed by ATSI. On December 15, 2014, Buckeye Power filed a motion for leave to reply to ATSI and a reply.

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²¹ the notices of intervention and the timely, unopposed motions to intervene serve to make the entities who filed them parties to this proceeding. Rule 213(a) (2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) (2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept ATSI's answer and Buckeye Power's response to that answer because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Protests

12. Both Buckeye Power and AMP (jointly, Protestors) request that the Commission suspend ATSI's rate filing for the maximum period and set the matter for hearing. AMP asserts that seeking a forward-looking formula rate is intended to eliminate the regulatory lag and will create an incentive for over-investment.²² Buckeye Power argues that the increase proposed in this docket represents a 93.3 percent increase over the rate that

²¹ 18 C.F.R. § 385.214 (2014).

²² AMP Protest at 11.

would otherwise apply under ATSI's compliance filing in Docket No. ER15-61-000.²³ Protestors assert that ATSI's rate of return on equity (ROE) of 12.38 percent that was based on a discounted cash flow analysis and adoption of the midpoint of the zone of reasonable returns,²⁴ is a remnant of ATSI's time as a member of Midcontinent Independent System Operator (MISO), is no longer appropriate for ATSI, does not adequately capture current economic conditions, and is excessive by at least 150 basis points.²⁵ Protestors also allege that the excessive ROE may be motivating ATSI to invest in regulated transmission rather than unregulated generation resources.²⁶ AMP argues that, from a financial perspective, the strategy behind the Energizing the Future program is simple: because Commission-approved formula transmission rates reliably produce revenues yielding a specified return, and because Commission-allowed returns on transmission facilities far exceed what might be earned in other business segments, financial success lies in maximizing the amount of capital a utility books to the wholesale transmission rate base.²⁷ Therefore, given the magnitude of the alleged excess, Protestors assert that a five-month suspension period is appropriate under Commission policy.

13. In addition, Protestors assert that the November 1 date by which ATSI must post its projected transmission revenue requirement is unreasonable.²⁸ Buckeye Power states

²³ Buckeye Power Protest at 10. This percentage increase calculation differs from how ATSI would calculate its increase in rates because Buckeye Power uses a voltage-differentiated rate design, while ATSI does not. *See Buckeye Power, Inc. v. American Transmission Systems Incorporated*, Opinion No. 533, 148 FERC ¶ 61,174 (September 8, 2014). The Commission directed ATSI to eliminate its voltage-differentiated rate design and submit a rolled in rate design, undifferentiated by voltage, to be effective January 1, 2015.

²⁴ AMP notes that, in *Martha Coakley, et. al. v. Bangor Hydro Electric Company, et. al.*, 147 FERC ¶ 61,234, at P 96 (2014), the Commission found that in all future public utility rate cases, the utility must apply a two-step DCF analysis to develop a zone of reasonableness for its proposed ROE, and that the ROE should be set at 10.57 percent, halfway between the midpoint and top of the zone of reasonableness for the national proxy group used in that analysis.

²⁵ AMP Protest at 34; Buckeye Power Protest at 14 (citing *West Texas Utilities Company*, 18 FERC ¶ 61,189, at 61,374-75 (1982) (*West Texas*)).

²⁶ Buckeye Power Protest at 13-14. AMP Protest at 14-15.

²⁷ AMP Protest at 3.

²⁸ *See* Buckeye Power Protest at 6-9. AMP Protest at 25-27.

that the November 1 date would give interested parties “as little as three weeks to review and digest the information included in the posting...” before ATSI schedules its open meeting; and less than five weeks to resolve any concerns before the projected rates go into effect. Buckeye Power maintains that, consistent with Commission precedent,²⁹ the Commission requires an alternative date of September 1 to allow interested parties at least 60 days to review the projected transmission revenue requirement.

14. Next, AMP argues that ATSI’s modified formula rate template is flawed, citing eight instances where ATSI’s proposed formula rate is deficient.³⁰ Briefly, they are: (1) improper inclusion of “Accumulated Other Comprehensive Income” in ATSI’s common equity; (2) rate base inclusion of deferred taxes related to charitable contributions and asset retirement obligations; (3) lack of a rate base adjustment for unfunded reserves; (4) lack of support for cash working capital; (5) unsupported \$5 million increase in 2015 transmission operation and maintenance expenses; (6) improper inclusion of regulatory commission expenses associated with retail service; (7) \$35 million overstatement of property tax expense; and (8) inclusion in the formula of cost categories (common plant and related expenses) that are not applicable to ATSI.

15. AMP also argues that the proposed formula rate Protocols provide insufficient protection to customers. Specifically, AMP argues that the proposed Protocols fail to establish standards that would govern the inputs to the projected transmission revenue requirement, and requests that the Commission direct ATSI to revise its Protocols to include such standards.³¹ AMP further argues that ATSI’s proposed Protocols limit the scope of discovery provisions³² and do not contain provisions that would allow customers to verify the accuracy of the projected transmission revenue requirement,³³ as

²⁹ Buckeye Power notes that almost all of the many forward-looking formula rates of MISO transmission owners that the Commission has accepted, including seven out of the eight cited by ATSI and the great majority of the rest, feature a September 1 posting of the projected transmission revenue requirement. Buckeye Power Protest at 8-9.

³⁰ AMP Protest at 16-21.

³¹ AMP Protest at 22-23.

³² AMP Protest at 30.

³³ AMP Protest at 26.

contemplated in the Commission's current views on formula rate protocols.³⁴ AMP further notes that although ATSI's modified Protocols allow customers to submit and receive responses to information requests regarding the annual true-up, such provisions are not available for the projected transmission revenue requirement, and thereby limit the scope of potential challenges.

16. In addition, AMP asserts that the information ATSI proposes to provide in its annual true-up filing is insufficient, and should be revised to facilitate the understanding of whether actual expenses and inputs were prudent. Finally, AMP asserts that ATSI's Protocols should contain an immediate rate correction provision that would allow for timely refunds of rates charged as a result of a revision of an input to the projected transmission revenue requirement.³⁵

2. ATSI's Answer

17. ATSI argues that AMP's allegation that a forward-looking formula rate eliminates regulatory lag ignores Commission precedent that explicitly accepts forward-looking formula rates to eliminate the regulatory lag.³⁶ ATSI contends Protestors statements regarding its alleged overinvestment in transmission resources are beyond the scope of the filing, as its filing concerns only ATSI's transition to a forward-looking formula rate, not the specific elements of ATSI's projected spending in 2015.³⁷ ATSI states that the specific elements will be addressed in the two review processes established in the revised Protocols. In response to AMP's and Buckeye's assertion that ATSI's proposed transmission capital spending is driven more by financial results than by sound engineering, ATSI asserts that it has a planning and reliability obligation under the PJM

³⁴ AMP Protest at 21 (citing *Midcontinental Independent System Operator, Inc.*, 139 FERC ¶ 61,127 (2012) (order on investigation), 143 FERC ¶ 61,149 (2013), *order on reh'g*, 146 FERC ¶ 61,209 (2014) (order on compliance), 146 FERC ¶ 61,212 (2014)).

³⁵ AMP Protest at 31.

³⁶ ATSI Answer at 6-7.

³⁷ ATSI Answer at 9-15.

Operating Agreement³⁸ to identify additional investments necessary to maintain or enhance reliability, replace or upgrade equipment, enhance system performance, and improve operational flexibility of its transmission facilities, and that the commenters disregard the evidence ATSI provided explaining the planning and engineering factors driving its transmission investment decisions.

18. Regarding its ROE, ATSI states that its filing does not change the pre-existing 12.38 percent ROE.³⁹ Moreover, ATSI notes that its Protocols explicitly state that the ROE will remain a stated value until changed pursuant to a section 205 or 206 filing. ATSI argues that Protestors should seek to change the stated ROE through more appropriate avenues, namely, by filing a section 206 complaint. ATSI also asserts that AMP's list of deficiencies to the formula rate template are outside the scope of the filing, since those items alleged by AMP to be deficient are pre-existing items that are not being changed in this proceeding.⁴⁰

19. With regard to Protestors requests for a five-month suspension period, ATSI asserts that a five-month suspension of its formula rate is not warranted. Specifically, ATSI notes that its proposed forward-looking formula rate will not create excessive revenues, as required for a five-month suspension under *West Texas*, because ATSI would recover the same amount of revenues as it would have under its historical formula rate.⁴¹ ATSI further argues that the true-up process will ensure that there is no over-collection of costs. ATSI further asserts that its filing does not contain an extraordinary event that would cause irreparable harm to customers and therefore, a five-month suspension is unwarranted as contemplated under *West Texas*. Moreover, ATSI argues that Protestors have not provided support for meeting the requirements to justify a five-month suspension.

³⁸ *PJM Interconnection, L.L.C.*, Intra-PJM Tariffs, [OA Schedule 6 Sec 1.3](#), [OA Schedule 6 Sec 1.3 Establishment of Committees, 2.1.0](#) and [OA Schedule 6 Sec 1.5](#), [OA Schedule 6 Sec 1.5 Procedure for Development of the, 3.1.0](#). See also, PJM Manual 14 B: PJM Regional Transmission Planning Process at 8 which states "The analysis of OATT transmission facilities below 100kV and not under PJM operational control is led by the Transmission Owner (TO.)" <http://pjm.com/~media/documents/manuals/m14b.ashx>.

³⁹ ATSI also argues that the Commission recognized that the unchanged portions of a rate filing are not subject to review under section 205 of the FPA in *Duke Energy Carolinas, LLC*, 123 FERC ¶ 61,201 (2008) (*Duke Energy*).

⁴⁰ ATSI Answer at 23.

⁴¹ ATSI Answer at 18-23.

20. Finally, ATSI maintains that objections to its proposed Protocols are meritless, stating that Protestors criticize aspects of the protocols that were unchanged by ATSI's filing.⁴² ATSI further notes that Protestors agreed to the elements of the Protocols that remain unchanged from previous versions of the Protocols;⁴³ and that, if Protestors take issue with these elements, they should initiate a section 206 complaint.

3. Buckeye Power's Response

21. Buckeye Power asserts that ATSI has failed to acknowledge legitimate concerns about the prudence of the projected capital expenditures associated with ATSI's Energizing the Future program.⁴⁴ Buckeye Power contends that ATSI's intent to use its capital expenditures as its "primary growth platform" should also cast doubt on whether the projects in ATSI's Energizing the Future program are reasonable.⁴⁵

22. Buckeye Power is particularly critical of ATSI's claims that a regional planning process and regulatory review will provide adequate safeguards against over-investment.⁴⁶ Buckeye Power argues that such safeguards are not present for ATSI's 2015 investment facilities. Specifically, Buckeye Power contends that forty-two percent, or approximately \$353 million, of ATSI's \$845 million of investment, will not have a regional planning process as a screening mechanism, and will not be vetted for prudence.

23. Buckeye Power also states that the review procedures proposed by ATSI, which only allow an after-the-fact opportunity for review, are wholly inadequate to protect affected customers.⁴⁷ Buckeye Power argues that ATSI's proposed process of informing customers on November 1 of a given year of the projected capital expenditures to commence on the following January 1, and then scheduling an open meeting teleconference before the end of November to answer questions about the projected revenue requirement, does not provide a meaningful opportunity for review. Further, Buckeye Power notes that, although the open meeting provides opportunity for interested

⁴² ATSI Answer at 26-27.

⁴³ See *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,206.

⁴⁴ Buckeye Power Response at 7-8.

⁴⁵ Buckeye Power Response at 8.

⁴⁶ Buckeye Power Response at 9-10 (citing ATSI's Answer at 14 and 30).

⁴⁷ Buckeye Power Response at 8-11.

parties to ask questions about the projected revenue requirement, it does not allow for any challenges.⁴⁸

24. Finally, Buckeye Power asserts that a formula rate may not be just and reasonable in the absence of certain features of the implementing Protocols.⁴⁹ Buckeye Power agrees with AMP that ATSI's filing fails to conform to the requirements for acceptable protocols as contemplated in the Commission's recent proceeding on MISO protocols.⁵⁰ As such, Buckeye Power urges the Commission to condition any acceptance of the forward-looking formula rate on the presence of any missing features in the Protocols.

V. Commission Determination

25. Our preliminary analysis indicates that ATSI's proposed forward-looking transmission formula rate and Protocols have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Protestors raise a number of issues of material fact concerning the proposed formula rate and its Protocols that cannot be resolved based on the record before us, and are more appropriately addressed in hearing and settlement judge procedures ordered below. In addition, as discussed below, we will institute a section 206 investigation in this proceeding.

26. While the Protestors request a five-month suspension, we agree with ATSI that a five-month suspension is not warranted as our preliminary analysis does not suggest that ATSI's change from a historic rate formula to a forward-looking one meets the standards articulated in *West Texas* for the maximum suspension. Therefore, we will accept ATSI's proposed formula rate for filing, suspend it for a nominal period, make it effective January 1, 2015, subject to refund, and set it for hearing and settlement judge procedures.

⁴⁸ By way of example, Buckeye Power states that ATSI's October 31, 2014 rate filing, whose date coincided with the proposed annual November 1 posting of projected annual revenue requirement information, quantified its proposed revenue requirement for 2015 and provided a formula rate template populated to reflect the proposed revenue requirement. Buckeye Power states that, consistent with its Protocols, ATSI scheduled an open meeting on November 24, 2014 to answer questions about the projected revenue requirement. Buckeye Power states, despite receiving numerous questions from Buckeye Power, ATSI has yet to respond to these questions.

⁴⁹ Buckeye Power Response at 12.

⁵⁰ Buckeye Power Response at 11-12 (citing AMP Protest at 21-31).

27. With respect to ATSI's ROE, we note that its 12.38 percent ROE was established in the context of a MISO system-wide ROE based on proxy group of MISO transmission owners.⁵¹ Since the Commission accepted the current ROE, circumstances have changed. ATSI is no longer a member of MISO, and the Commission previously allowed parties to challenge the justness and reasonableness of continuing the MISO system-wide ROE in light of the entity's withdrawal from MISO and integration into PJM.⁵² Moreover, the Commission itself is now investigating the justness and reasonableness of the MISO system-wide ROE.⁵³ Therefore, given these changed circumstances, our preliminary analysis indicates that ATSI's ROE may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful and we will also review ATSI's 12.38 percent ROE as part of the settlement and hearing procedures ordered herein.

28. Accordingly, we will institute a section 206 investigation, which will ensure that we have sufficient authority to order refunds, should refunds be ultimately ordered. Upon the establishment of procedures pursuant to section 206 of the FPA, the Commission must establish a refund effective date that is no earlier than the date of publication of notice of the Commission's intent to institute a proceeding, and no later than five months subsequent to that date. We will establish a refund effective date as of the publication of the issuance of this order.

29. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁵⁴ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

⁵¹ See *Midwest Independent Transmission System Operator, Inc.* 100 FERC ¶ 61,292 (2002), *reh'g denied*, 102 FERC ¶ 61,143 (2003), 111 FERC ¶ 61,355 (2005) (order on remand).

⁵² *PJM Interconnection, LLC, et. al.*, 139 FERC ¶ 61,068 (2012) (Commission issued order instituting a section 206 investigation based on AMP challenging Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.'s 12.38 percent ROE in light of the companies exiting from MISO and integrating into PJM).

⁵³ See *Association of Businesses Advocating Tariff Equity et. al. v. Midcontinent Indep. System Operator, et. al.*, 148 FERC ¶ 61,049 (2014).

⁵⁴ 18 C.F.R. § 385.603 (2014).

otherwise, the Chief Judge will select a judge for this purpose.⁵⁵ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) ATSI's proposed forward-looking transmission formula rate and Protocols are hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2015, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning ATSI's proposed forward-looking transmission formula rate, Protocols and its ROE. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or

⁵⁵ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) The Secretary shall promptly publish in the Federal Register a notice of the Commission's initiation of section 206 proceedings in Docket No. ER15-303-000.

(G) The refund effective date established pursuant to section 206(b) of the Federal Power Act will be the date of publication in the Federal Register of the notice discussed in Ordering Paragraph (F) above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.