

153 FERC ¶ 61,092  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Wisconsin Public Service Corporation

Docket No. EC15-131-000

ORDER DISMISSING APPLICATION

(Issued October 27, 2015)

1. On April 30, 2015, as corrected on May 4, 2015, and June 23, 2015, Wisconsin Public Service Corporation (Applicant) filed, pursuant to section 203(a)(1)(B) of the Federal Power Act (FPA)<sup>1</sup> and Part 33 of the Commission's regulations,<sup>2</sup> an application requesting authorization to acquire certain equipment from American Transmission Company, LLC (American Transmission) for use in providing distribution service in Applicant's existing service area (Proposed Transaction).<sup>3</sup> As discussed below, we dismiss the Application for lack of jurisdiction.

**I. Background**

**A. The Parties to the Proposed Transactions**

**1. Wisconsin Public Service Corporation**

2. Applicant states that it is a non-transmission owning member of the Midcontinent Independent System Operator, Inc. (MISO) and a participant in MISO's various power markets. Applicant explains that it sells and distributes power to retail customers in Eastern Wisconsin and the Upper Peninsula of Michigan, subject to the jurisdiction of the Public Service Commission of Wisconsin (Wisconsin Commission) and the Michigan Public Service Commission (Michigan Commission), respectively. Applicant states that

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<sup>1</sup> 16 U.S.C. § 824b(a)(1)(B) (2012).

<sup>2</sup> 18 C.F.R. pt. 33 (2015).

<sup>3</sup> Application for Approval of Transaction Under Section 203(a)(1)(B) of the Federal Power Act, Docket No. EC15-131-000 (filed Apr. 30, 2015) (Application).

it sells power under cost-based and market-based wholesale rates to customers in those areas.<sup>4</sup>

3. According to Applicant, it is a wholly-owned subsidiary of Integrys Energy Group, Inc. (Integrys), which is a diversified energy holding company headquartered in Chicago, Illinois, with both electric and natural gas distribution utility subsidiaries. Applicant states that Integrys's subsidiaries serve approximately 2.2 million electric and natural gas customers in Illinois, Michigan, Minnesota and Wisconsin. Applicant states that none of its public utility affiliates has native load customers.<sup>5</sup>

## 2. American Transmission Company, LLC

4. Applicant states that American Transmission is a Wisconsin limited liability company created as a single-purpose, for-profit transmission company.<sup>6</sup> Applicant states that American Transmission began operations under the terms of its own open access transmission tariff on January 1, 2001. Applicant states that American Transmission currently owns and operates approximately 9,500 miles of jurisdictional transmission facilities in the States of Wisconsin, Illinois, Minnesota, and Michigan. Applicant states that on February 1, 2002, American Transmission transferred operational control of its facilities to MISO. Since that time, MISO has provided transmission service over American Transmission's transmission facilities pursuant to the terms of the MISO tariff, with American Transmission operating its transmission facilities in accordance with the MISO's direction.<sup>7</sup>

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<sup>4</sup> Application at 3.

<sup>5</sup> At the time the Application was filed, Applicant was a subsidiary of Integrys. On April 7, 2015, the Commission authorized Wisconsin Energy Corporation to acquire Integrys. *See Wisconsin Energy Corp.*, 151 FERC ¶ 61,015 (2015). As a result of that merger, which was consummated on June 29, 2015, Applicant is now a wholly-owned subsidiary of WEC Energy Group, Inc. (WEC), which is a diversified energy holding company headquartered in Milwaukee, Wisconsin, with both electric and natural gas distribution utility subsidiaries.

<sup>6</sup> Application at 4. WEC has an approximately 60 percent indirect ownership interest in American Transmission and in American Transmission Management, Inc., which manages American Transmission. *Wisconsin Energy Corp.*, 151 FERC ¶ 61,015 at P 16. Through WEC's partial ownership of American Transmission, Applicant and American Transmission are affiliates.

<sup>7</sup> Application at 4.

**B. Description of Equipment**

5. Applicant states that the equipment it seeks to acquire from American Transmission consists of the “T-150” 69 kV transmission line, phase conductors, poles, shield wire and insulators. The equipment also includes American Transmission’s 69 kV transformer foundation and the 60 CS circuit switcher from American Transmission’s 138/69 transformer at Amberg, Wisconsin. American Transmission will also transfer relevant easements for Line T150 to Applicant as part of the Proposed Transaction (together with the transmission equipment described earlier, Equipment). Applicant notes that in the aggregate, the original cost of the Equipment was \$86,373.40, and as of January 31, 2015, the remaining net book value of the Equipment was \$46,385.32.<sup>8</sup>

**C. The Proposed Transaction**

6. Applicant seeks to acquire the Equipment from American Transmission. According to Applicant, the Equipment was previously used by American Transmission to provide Commission-jurisdictional transmission service. Applicant states that the Equipment was taken out of service by American Transmission on December 10, 2014, and is no longer used by American Transmission.<sup>9</sup> Applicant explains that it determined that it could repurpose the Equipment to provide distribution service to its existing customers, and the Equipment was re-energized by Applicant on March 18, 2015.<sup>10</sup> Applicant states that, since then, it has used the Equipment as a distribution feeder to serve retail load in Wisconsin.<sup>11</sup>

7. While the Equipment is still currently owned by American Transmission (i.e., American Transmission retains title to it), Applicant states that American Transmission discontinued using the Equipment as of December 10, 2014. Applicant represents that American Transmission continues to hold title to the Equipment and that transfer of title will not take place until the Commission approves the Proposed Transaction.<sup>12</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 5. Applicant notes that American Transmission would have permanently retired the Equipment, but for Applicant’s interest in repurposing it for distribution. *Id.*

<sup>10</sup> *Id.* at 5-6.

<sup>11</sup> According to Applicant, new distribution arrangements were instituted on March 18, 2015, as of which date the Equipment and related Applicant-owned distribution facilities were energized and used to serve retail load in Wisconsin. *Id.* at 6.

<sup>12</sup> According to Applicant, it will pay American Transmission the net book value of the Equipment at the time the Proposed Transaction is completed. *Id.* at 6.

8. Applicant states that it does not serve any wholesale load where the Equipment is located, and, as reconfigured for distribution, the Equipment cannot carry electricity for any service subject to the jurisdiction of the Commission.<sup>13</sup> Applicant claims that the sole use of the reconfigured Equipment is for retail distribution service subject to the Wisconsin Commission's jurisdiction.<sup>14</sup>

## **II. Notice of Filing and Responsive Pleadings**

9. Notice of the Application was published in the *Federal Register*, 80 Fed. Reg. 26,028 (2015), with interventions and protests due on or before May 21, 2015. American Transmission filed a motion to intervene on May 7, 2015.

## **III. Discussion**

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>15</sup> American Transmission's timely, unopposed motion to intervene serves to make American Transmission a party to this proceeding.

11. Applicant states that it filed the Application seeking approval of the Proposed Transaction under section 203(a)(1)(B) of the FPA out of an abundance of caution, citing ambiguity as to the application of Commission precedent to the Proposed Transaction.<sup>16</sup> Applicant refers to Commission precedent for the general proposition that Applicant, as the party acquiring the Equipment, must obtain prior authorization from the Commission prior to obtaining jurisdictional facilities or risk violating the FPA.<sup>17</sup> However, Applicant also argues, in the alternative, that the Proposed Transaction is not subject to FPA section 203 for a variety of reasons, including that the Equipment was taken out of service by American Transmission and is now being used by Applicant for distribution, a non-jurisdictional service.<sup>18</sup>

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<sup>13</sup> *Id.* at 5-6.

<sup>14</sup> *Id.* at 6.

<sup>15</sup> 18 C.F.R. § 385.214 (2015).

<sup>16</sup> Application at 9. Applicant states that it "assumes but does not conclude that the acquisition of de-energized transmission facilities to serve a distribution function is subject to FPA Section 203(a)(1)(B)." Application at 2, n.2.

<sup>17</sup> *Id.* at 7 (citing *The Goldman Sachs Group, Inc.*, 114 FERC ¶ 61,118 (2006) and *International Transmission Company, et al.*, 146 FERC ¶ 61,172 (2014).).

<sup>18</sup> *Id.* at 8-9. ("Moreover, Section 203(a)(1)(B) applies only when there is a merger or consolidation of one owner's jurisdictional facilities with the jurisdictional facilities of another owner."). *Id.* at 8.

12. We dismiss the Application for lack of jurisdiction. Under FPA section 201(b)(1), local distribution services and facilities are not subject to the Commission's jurisdiction.<sup>19</sup> In *Duke Power Company*,<sup>20</sup> the Court of Appeals for the District of Columbia Circuit ruled that the "merge or consolidate" clause of FPA section 203 (which was re-designated without change as section 203(a)(1)(B) in 2005), does not apply to an acquisition of non-jurisdictional facilities, such as facilities used for local distribution.<sup>21</sup> As described in the Application, the Equipment, while once used by American Transmission to provide Commission-jurisdictional transmission service, is now being used by Applicant to provide distribution service. Applicant explains further that the Equipment has been reconfigured and can now only be used to provide local distribution service.<sup>22</sup>

13. Based on Applicant's current and intended use of the Equipment as described in the Application, the Equipment is not subject to the Commission's jurisdiction and Applicant's acquisition of the Equipment is therefore not subject to FPA section 203(a)(1)(B).<sup>23</sup> As the Equipment is being used as distribution facilities by Applicant, and is therefore not subject to the Commission's jurisdiction, the acquisition of the Equipment does not require prior authorization under FPA section 203(a)(1)(B). Accordingly, we dismiss the Application for lack of jurisdiction.

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<sup>19</sup> 16 U.S.C. § 824(b)(1) (2012). This section states in part, "[t]he Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided...over facilities used in local distribution...."

<sup>20</sup> 401 F.2d 930 (D.C. Cir. 1968).

<sup>21</sup> *Id.* at 932.

<sup>22</sup> Application at 6.

<sup>23</sup> Applicant notes that "[a]lthough there is no current plan to use the [Equipment] for other than retail distribution service, the electric system is dynamic and [Applicant] cannot rule out the possibility, however slight, that at some future time the Equipment could have a use in service to a wholesale customer or to carry electricity from a local generator (as yet unbuilt and unplanned) to the grid." *Id.* n.10. Should the use of the Equipment change to include the provision of Commission-jurisdictional transmission service, Applicant must make any necessary section 205 filings with the Commission.

The Commission orders:

The Application is hereby dismissed, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.