

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

American Transmission Company LLC
Midwest Independent Transmission
System Operator, Inc.

Docket No. ER04-108-000

ORDER CONDITIONALLY ACCEPTING FOR FILING AND SUSPENDING
PROPOSED RATES AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 29, 2003)

1. On October 30, 2003, American Transmission Company (ATC) and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO)¹ filed modifications to ATC's rate formula in Attachment O of the Midwest ISO's Open Access Transmission Tariff (OATT). ATC proposes to modify its rate formula to, among other things, incorporate incentive rate mechanisms including allowing Construction Work in Progress (CWIP) in ratebase. As discussed below, we conditionally accept for filing and nominally suspend ATC's proposed modifications, to become effective January 1, 2004, subject to refund, and establish hearing and settlement judge procedures. This order benefits customers by ensuring just and reasonable rates while encouraging transmission growth and enhanced reliability in congested areas of the grid.

Background

2. ATC is a stand-alone transmission company that owns, plans, operates and maintains nearly 8,900 miles of transmission facilities, located in the contiguous portions of Wisconsin, Michigan and Illinois. ATC is prohibited by Wisconsin law and its Corporate Charter from owning generating assets or participating in any form

¹ ATC states that the Midwest ISO is joining in this application as the tariff administrator of the OATT to which its proposed changes are to be made.

of power marketing or energy merchant activities. Effective February 1, 2002, ATC transferred operation of its facilities to the Midwest ISO.²

3. ATC states that its current transmission rates are calculated using a formula, approved by the Commission for use by transmission-owning members of the Midwest ISO, contained in Attachment O of the Midwest ISO OATT. ATC's formula differs from other Midwest ISO transmission owners only in that ATC's rates are calculated using inputs based on estimates of current year costs, which are later trued-up to actuals from ATC's Form No. 1. ATC's current formula incorporates capitalized Allowance for Funds Used During Construction (AFUDC) for new transmission plant when the new plant is put in service. Prior to that time, funds used during construction are maintained in a non-ratebase account. The same is true of pre-certification costs, which are added to ratebase when the facilities are placed in service.

4. ATC states that it currently uses a 12.20 percent return on equity (ROE) and a hypothetical capital structure representing 50 percent debt, 5 percent preferred stock and 45 percent common equity, based on settlements reached with customers.³ ATC explains that its estimated cost of debt is included in the rate formula each year based on cost of debt projections for the current year, then, as with other formula inputs, debt cost estimates are later trued-up to actual amounts.

5. ATC proposes to modify its transmission rate formula to facilitate the financing of approximately \$2.3 to \$2.8 billion in new transmission facility construction over the next ten years. Specifically, as an alternative to certain of the ROE basis point incentive adders outlined in the Commission's recent Proposed Pricing Policy Statement,⁴ ATC proposes to: 1) include CWIP in the calculation of ATC's transmission rates for new investment in lieu of capitalizing the AFUDC; 2) allow current year expensing of pre-certification costs for new transmission investment instead of capitalizing those costs and earning a return; 3) increase its allowed ROE from the current 12.20 percent to 12.38 percent to correspond to the rate the Commission has allowed for other Midwest ISO transmission owners, and 4) revise its capital structure to a 50 percent debt, 50 percent equity, instead of the current 50 percent debt, 5 percent preferred stock and 45 percent common equity.

² The facilities were transferred pursuant to American Transmission Company, LLC, 97 FERC ¶ 62,182 (2001).

³ American Transmission Company, 97 FERC ¶ 61,139 (2001).

⁴ Proposed Pricing Policy for Efficient Operation and Expansion of Transmission Grid, 102 FERC ¶ 61,032 (2003).

6. ATC states that its transmission system is one of the most congested systems in the nation, and that over the next ten years, significant new transmission investment is needed to increase reliability on its system, to meet load growth, and alleviate congestion that is preventing market participants in Wisconsin and Michigan from accessing newly developed markets in the Midwest ISO region. ATC further states that its anticipated investment of approximately \$2.3 to \$2.8 billion will place tremendous financial pressures on ATC. ATC states that the biggest challenges will be to maintain adequate cash flow during the construction process, to maintain the company's overall financial health to ensure the availability of reasonably priced capital, and to minimize the rate impacts on ATC's customers. ATC contends that, under its current tariff, it will likely face a downgrade of its fixed income rating over the next several years, due to inadequate cash flow thereby increasing its capital costs by nearly \$176 million over a twenty-year horizon. ATC maintains that its proposed tariff revisions would increase cash flow coverages, allow ATC to maintain its financial ratios, and thereby create a more stable environment for ATC to raise the necessary capital to pursue its construction program over a ten-year period.

7. ATC maintains that it has tailored its proposal to meet ATC's particular financing needs and to mitigate rate impacts on its customers in light of the needed transmission construction. ATC states that it is not requesting that the Commission make any policy determinations on appropriate incentives or to change the Commission's existing rules on recovery of CWIP and pre-certification costs. Rather, ATC is requesting that the Commission approve its proposed rate formula changes as an alternative incentive ratemaking methodology that meets ATC's specific needs. ATC states that it is willing to forego any future ROE incentives until 2012, the end of ATC's ten-year construction timeline.⁵

8. ATC contends that its proposal, as compared to the incentive ROE adders contained in the Commission's Proposed Pricing Policy Statement, will allow ATC to maintain a ten-year schedule for its \$2.3 to \$2.8 billion in additional new transmission construction, to reduce financing and construction costs and minimize and smooth out rate impacts, and to maintain ATC's financial ratings. ATC maintains that without the proposed modification to its rate formula, such transmission construction would follow a 20-year schedule.

9. ATC seeks an effective date of January 1, 2004.

⁵ ATC reserves the right to propose changes to its ROE to correspond to any changes the Commission makes to the baseline ROE for Midwest ISO transmission owners.

Notice of Filing, Interventions, Protest and Comments

10. Notice of ATC's filing was published in the Federal Register, 68 Fed. Reg. 64,333 (2003), with comments, interventions and protests due on or before November 20, 2003. Michigan Public Service Commission, Minnesota Department of Commerce and the Public Service Commission of Wisconsin (Wisconsin Commission) filed notices of intervention. International Transmission Company, National Rural Electric Cooperative Association, Wisconsin Public Power, Inc., WPS Resources Corporation, Michigan Electric Transmission Company, LLC, Electric Consumers Resource Council, American Forest & Paper Association, Wisconsin Electric Power Company, PSEG Companies, and Upper Peninsula Transmission Dependent Utilities filed timely motions to intervene with comments. On November 26, 2003, Madison Gas and Electric Company (MG&E) filed a motion to intervene out of time. On December 8, 2003, Alliant Energy Corporate Services, Inc. (Alliant) filed a motion to intervene out of time. Finally, on December 2, 2003, Public Service Commission of Wisconsin filed comments on the ATC proposal. Wisconsin Transmission Customer Group (Joint Protestors)⁶ filed a timely motion to intervene and protested ATC's filing, and asked that the Commission set the matter for hearing and institute formal settlement proceedings.

11. On December 12, 2003, ATC filed an answer to intervenors' comments and protest.

Discussion

A. Procedural Matter

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will accept the motions to intervene out-of-time of MG&E and Alliant, given the entities' interests in this proceeding, the early stages of the proceeding, and the absence of any undue prejudice or delay. Moreover, we will accept the late-filed comments of Wisconsin Commission because the comments provide information that assists us in our decision-making process.

13. Further, while Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to protests unless otherwise permitted by the decisional

⁶ The Wisconsin Transmission Customer Group filed a joint motion to intervene and protest on behalf of its member companies, consisting of Wisconsin Industrial Energy Group, Dairyland Power Cooperative, Wisconsin Paper Council and Manitowoc Public Utilities.

authority, we find that good cause exists to allow ATC's answer, as it provides additional information that assists us in the decision-making process.

B. Proposed Rate Formula Modification

Adjustment to Return on Equity

14. ATC requests the same ROE, 12.38 percent, that was approved for use by the other Midwest ISO transmission owners. Because ATC is seeking alternative incentive rates, ATC does not seek the additional basis point premium set forth in the Proposed Pricing Policy Statement.

15. Joint Protestors assert that ATC's proposed increase in ROE is unjustified and unnecessary. They maintain that ATC provides no analysis supporting its request for an increased ROE and suggest that a discounted cash flow analysis is required to justify an increase in ROE. Since ATC is now functioning with a Commission approved ROE lower than that of other Midwest ISO transmission owners, Joint Protestors request that the Commission reject ATC's request for an increased ROE. Other commentors⁷ support ATC's rate modification proposals in full. Wisconsin Commission takes no position on the issue.

16. In a filing on December 3, 2001 (December 2001 Filing), the Midwest ISO proposed revisions to its OATT in order to, among other things, increase the ROE from 10.5 to 13 percent in the Midwest ISO pricing zones. In an order issued on September 23, 2002, the Commission affirmed an initial decision calculating ROE for the Midwest ISO transmission owners at 12.38 percent.⁸ In that order, we also provided an upward adjustment in the ROE of 50 basis points because the transmission owners turned over operational control of their systems to an independent entity, the Midwest ISO. Although Midwest ISO did not originally propose to increase the ROE in the ATC pricing zone because ATC did not join the December 2001 Filing, we find that it is appropriate and reasonable for ATC to adopt the ROE that was approved for the other Midwest ISO transmission owners. In fact, the Commission has directed Translink and METC to adopt the 12.38 ROE even

⁷ These commentors include: International Transmission Company, The Electricity Consumers Resource Council, and The American Forest & Paper Association.

⁸ See Midwest Independent Transmission System Operator, Inc., 100 FERC ¶ 61,292 (2002), reh'g.denied, 102 FERC ¶ 61,143 (2003) (Midwest ISO).

though these entities were not included in the Midwest ISO's December 2001 Filing.⁹ Accordingly, ATC has turned over operational control of its transmission facilities to the Midwest ISO and consistent with the Commission's holding in Midwest ISO, we accept an ROE of 12.38 percent for ATC.

Incentive Rates

17. ATC states that it is willing to forego the additional basis points on ROE and other incentives proposed by the Commission until 2012 if the Commission accepts its proposal. In lieu of these incentives, ATC proposes to include CWIP in the calculation of its transmission rates for new transmission investment and adopt a change in capital structure from a 50/5/45 percent debt/preferred equity/common equity structure to a 50/50 percent debt/common equity structure.

18. Joint Protestors are concerned that ATC's alternative incentive proposal may increase rates for customers on a net present value basis and may not be just and reasonable. Joint Protestors assert that ATC's analyses are flawed because ATC overestimates the AFUDC rate. According to Commission rules, AFUDC rates are derived from ATC's cost of short-term debt and include long-term capital costs only in the event short-term debt balances are lower than the CWIP balances. Joint Protestors point out that in ATC's testimony, ATC assumes an AFUDC rate set at the ATC's pre-tax cost of capital (13.25 percent) not at ATC's cost of short-term debt (currently in the 1 percentage point-4 percentage point range). Therefore, Joint Protestors assert that AFUDC costs are overstated and ATC's conclusion that the proposed incentive rates do not result in rate increases for customers is flawed. Joint Protestors also argue that the studies submitted by ATC do not reflect ATC's proposed change in capital structure.

19. The Wisconsin Commission states that it generally supports including CWIP in rate base and expensing pre-certification costs when it produces lower present values of costs for ratepayers.¹⁰ According to the Wisconsin Commission, ATC's proposal to include CWIP in rate base and to expense pre-certification costs is consistent with

⁹ See TRANSLink Development Company, LLC, 101 FERC ¶ 61,216 (2002). See also Michigan Electric Transmission Company, LLC, 105 FERC ¶ 61,214 (2003).

¹⁰ For generation construction projects, the Wisconsin Commission has allowed a current return on 50 percent of CWIP in revenue requirement in certain circumstances based upon the level of a Load Serving Entity's construction expenses, financial health, and the need for expedited cash flow. In some very limited circumstances, the Wisconsin Commission has granted a current return on 100 percent of CWIP. In general, the Wisconsin Commission's ratemaking policy has been to

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the Wisconsin Commission's ratemaking treatment for a Load Serving Entity during a significant construction program.

20. To address these issues in ATC's analysis, Joint Protestors request that ATC's proposal be set for hearing and that the Commission institute settlement procedures. The Wisconsin Commission supports commentor's request for settlement procedures.

21. In its answer, ATC asserts that the Joint Protestors' analysis is flawed because the Joint Protestors used different equity returns in the AFUDC rate alternative and the CWIP alternative. ATC states that the purpose of ATC's comparison was to show the difference between AFUDC and CWIP. Therefore, to accurately show the impact of the proposed phased-CWIP tariff alternative, the allowed ROE must be held constant between the two alternatives.

22. According to ATC, Joint Protestors incorrectly assume that the new construction could be financed with short-term debt. ATC asserts that it does not know the amount of short-term debt that will be available at any given time to finance the new construction. ATC states that the rating agencies usually limit the amount of short-term debt to 10 percent of capitalization and exceeding that limit could increase interest rate refinancing and liquidity risks. ATC argues that a proper comparison between the CWIP and AFUDC models would require inclusion of a short-term debt component in both the CWIP and AFUDC rate options which would lower the rates of both models.

23. ATC requests that the Commission accept its proposed rate changes without suspension or hearing and make them effective on January 1, 2004. However, ATC states that if the Commission determines that settlement proceedings are necessary, ATC requests that the Commission suspend the filing for a nominal period and make the proposed rates effective as of January 1, 2004, and suspend for a 30-day period any formal settlement proceedings before a settlement judge to allow ATC to continue discussions with the parties in an attempt to resolve outstanding issues on an informal basis.

24. As we have said, the Commission believes that incentives can promote the efficient operation and expansion of the transmission grid through the development of independent RTOs and ITCs. Order No. 2000 indicated the Commission's willingness to entertain transmission pricing reforms in order to achieve the goals of

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expense pre-certification expenses in the year incurred, although exceptions have been made if there has been significant uncertainty concerning the amount of the expense.

that order which discussed various innovative rate options and identified specific innovative rate mechanisms that the Commission would consider for entities that meet the minimum characteristics of RTOs.¹¹ In doing so, the Commission emphasized that it was neither prescribing a specific transmission pricing method nor guaranteeing that it will approve any particular innovative pricing proposal. It further emphasized that all innovative pricing proposals must be fully and adequately supported in accordance with Order No. 2000 and the regulatory text promulgated therein. Moreover, in our Proposed Pricing Policy Statement, we have proposed incentives for transmission owners within an RTO for the construction of grid enhancements or employment of innovative operating practices that could yield improved performance of the transmission grid and bring more competition to the wholesale electricity market. The Proposed Pricing Policy Statement also proposes that such projects should be subject to an independent regional planning process.

25. With regard to whether ATC would qualify for rate incentives for new transmission investment, the Commission, in PJM Interconnection, provided guidance explaining that a utility must provide support for why the incentive adder is needed to promote investment and whether the proposed incentive adder should apply to all types of transmission expansion or just expansions that utilize innovative technologies that result in lower costs than traditional technology.¹² We believe that ATC has provided the necessary support demonstrating that an additional incentive adder would be warranted. In its filing, ATC explains that its transmission system is one of the most congested systems in the nation and significant new transmission investment is needed to increase reliability on its system, to meet load growth, and to alleviate congestion that is preventing market participants in Wisconsin and Michigan from accessing newly developed markets in the Midwest ISO region. Thus, ATC states that an incentive is necessary to provide the financial strength for ATC to build about \$2.3 to \$2.8 billion worth of new transmission facilities in a 10 year period rather than a 20 year period. ATC further explains that any incentive should apply to new investment found necessary through the Midwest ISO's independent regional planning process.

26. ATC's proposed rate formula modifications present issues of material fact; we are concerned with the issues raised by Joint Protestors regarding the reasonableness

¹¹ Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March. 8, 2000), FERC Stats. & Regs. 30,092 (2000), aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

¹² See PJM Interconnection, L.L.C., 104 FERC ¶ 61,124 (2003), P 74-75, order on reh'g, 105 FERC ¶ 61,123 (2003) (PJM Interconnection).

of the rate modification proposals, especially the concerns with potentially flawed analyses of the rate impacts. We find that these issues are more appropriately addressed in the hearing ordered below.

27. Our preliminary analysis of ATC's proposal, including the inclusion of 100 percent of CWIP in rate base, current year expensing of pre-certification costs and revision of its capital structure to a 50 percent debt, 50 percent equity ratio, indicates that it has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept ATC's proposal for filing, as conditioned as discussed below, suspend it for a nominal period, make the proposal effective January 1, 2004, subject to refund, and set it for hearing.

28. In order to provide the parties an opportunity to resolve these matters among themselves, we will hold the hearing in abeyance and direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹³ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding, otherwise, the Chief Judge will select a judge for this purpose.¹⁴ The settlement judge shall report to the Chief Judge and the Commission within 90 days of the date of this order 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. ATC requests that the Commission suspend for a 30-day period formal settlement proceedings in order for ATC and the Joint Protestors to continue discussions and attempt to resolve outstanding issues on an informal basis. The Chief Judge will determine whether to grant ATC's request.

29. We note that in exchange for approval of its proposed rate treatments, ATC commits to not seek approval of the 50 basis point ROE adder incentive for joining an

¹³ 18 C.F.R. § 35.2(b) and n.1 (2001). To allow the parties to continue ongoing informal discussions, we will direct the Chief Administrative Law Judge to appoint a settlement judge in this proceeding after 30 days of the date of this order.

¹⁴ 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 and a summary of their background and experience. (www.ferc.gov, click on "Legal Matters" and then on "Office of Administrative Law Judges").

RTO or the 100 basis point ROE adder incentive for new transmission investment. ATC also commits to forego any future ROE incentives until 2012.¹⁵

30. In accepting ATC's proposal we impose conditions in addition to the commitments made by ATC. First, we will require that ATC apply the incentive rate treatment only to projects that are accepted by the Midwest ISO in the Midwest ISO Transmission Expansion Plan (MTEP). The Midwest ISO has ultimate authority to decide which projects are necessary to the reliable operation of its system after the consideration of all potential solutions.

31. Second, we will require that any incentive rates accepted in this proceeding remain effective only as long as ATC remains a member of the Midwest ISO. We find that incentive rates for independent operation of facilities and investment in new transmission are just and reasonable only as long as the transmission owner remains a member of an approved RTO. Should ATC leave the Midwest ISO, the justification for the incentive rates would no longer apply and at that time, ATC must revert back to rates that do not contain such incentives.

32. Finally, we direct ATC to comply with the accounting procedures described below.

Pre-Certification Costs in Rates

33. ATC's proposes to expense pre-certification costs for "conceptual stage" projects as those costs are incurred. In filed testimony, ATC explains that there will be instances when ATC must begin certain pre-construction activities for projects in its 10 year plan for which construction will not be started in the next five years. Thus, ATC states that it will incur pre-certification costs on projects that are not specifically included in the current MTEP but are expected to be included in future MTEPs. ATC notes that in order to address recovery of pre-certification costs for projects that are not in the MTEP, the Midwest ISO has agreed that Appendix A of the MTEP could be expanded to include not only projects that are planned and proposed, but also projects that are still in a conceptual stage.¹⁶

¹⁵ While ATC has chosen to seek other incentives in lieu of the 50 basis point ROE adder, we find that ATC would otherwise have qualified for such an adder, consistent with Midwest ISO.

¹⁶ ATC would have to demonstrate that these projects would provide potential reliability, economic, or other benefits in order to be included in the MTEP as conceptual projects.

34. Joint Protestors argue that ATC's proposal does not include adequate mechanisms to ensure that ATC pursues least cost construction alternatives. As stated in ATC's testimony, there is not a complete correlation between ATC's ten-year capital expansion plan and the MTEP which is only a five-year plan. Joint Protestors argue that ATC should not be permitted to recover from customers current expenses incurred for "conceptual stage" projects, since those projects may never be included in the MTEP. Joint Protestors propose that ATC be required to provide adequate monitoring and/or auditing mechanisms to ensure that what ATC proposes to build over the next ten years is reasonable and cost-effective and that ATC pursues and executes its construction plans on a least-cost basis.

35. ATC's answer states that it will provide customers with sufficient information in advance of expenditures so that customers can determine the reasonableness of ATC's proposed capital budget and proposed pre-certification expenditures. According to ATC, customers will have the opportunity to provide input in the determination of such expenditures and Joint Protestors can also challenge the propriety of new facilities during the development of the MTEP.

36. As stated above, we condition the acceptance of ATC's proposal on the incentive rates applying solely to Midwest ISO planned projects. Given this condition, we are unable to discern the impact of the inclusion of pre-certification costs on the incentive rates. Therefore, we set this issue for hearing and settlement discussion in the further proceedings discussed above.

Accounting Treatment

37. ATC's rate proposal provides for current rate recovery of return on CWIP and pre-certification costs related to construction projects beginning after January 1, 2004. This rate plan results in recovering these costs in ATC's rates in a different period than the costs are ordinarily charged to expense under the general requirements of the Commission's Uniform System of Accounts (USOA). Under the general requirements of the USOA, the return on CWIP (or AFUDC) must be capitalized as a cost of the construction project¹⁷ and depreciated over the service life of the asset. Pre-certification costs also are to be accounted for similarly under the general requirements, though these costs are often accumulated in Account 183, Preliminary Survey and Investigation Charges, before being transferred to construction work in progress.¹⁸

¹⁷ 18 CFR Part 101, Electric Plant Instruction No. 3(17).

¹⁸ 18 CFR Part 101, Account 183, Preliminary Survey and Investigation Charges.

38. In order to recognize the effects of its rate plan, ATC proposes to deviate from the general requirements of the USOA in two respects. First, it proposes to discontinue AFUDC on construction projects started after January 1, 2004. However, ATC would continue to accrue AFUDC on projects in process before that date. Second, ATC proposes to charge all pre-certification costs incurred on projects started after January 1, 2004 to expense when incurred rather than to capitalize the costs as a component of construction cost.

39. Although ATC's proposed accounting captures and reflects the economic effects of its rate plan in the proper periods, it also has undesirable consequences. ATC's proposed accounting will result in inconsistent application of accounting standards within ATC in that AFUDC and pre-certification costs will be capitalized on some construction projects but not on others. More importantly, it will undermine the comparability of financial information between entities because other entities follow the general requirements of the USOA in accounting for these costs but ATC will not. This loss in comparability significantly reduces the usefulness of financial information. Therefore, an alternative to ATC's proposal which avoids these undesirable consequences is for ATC to account for AFUDC and pre-certification costs in accordance with the general requirements of the USOA and separately recognize as a regulatory liability (or asset) the economic effects of a rate plan that provides for recovery of these costs in periods different than they are charged to expense under the general USOA requirements. This can be accomplished by debiting Account 407.3, Regulatory Debits, and crediting Account 254, Other Regulatory Liabilities, in accordance with the instructions to those accounts.¹⁹

40. Therefore, we will require ATC to account for AFUDC and pre-certification costs according to the general requirements of the USOA and separately recognize the economic effects of the rate plan approved for return on CWIP and pre-certification costs in accordance with the requirements for recognition of Other Regulatory Assets and Liabilities.

Impact of Regional Rate Proposals

41. The Wisconsin Commission expresses concern that ATC's proposal could result in retail ratepayers paying a disproportionately higher share of transmission construction costs if the Commission later adopts differently structured regional rates that would apply to an area larger than the ATC zone. The Wisconsin Commission is concerned that the Commission could adopt an approach like that approved in

¹⁹ The amount recorded in Account 254 related to return and pre-certification costs must of course be deducted from rate base by ATC.

TRANSLink for a wider region including ATC.²⁰ If such structure were adopted, the Wisconsin Commission is concerned that retail ratepayers might lose the benefits of having paid the front-loaded costs for the new ATC projects and would end up paying for the pre-certification costs and capitalized AFUDC. The Wisconsin Commission seeks assurance from the Commission that ratepayers currently in the ATC footprint will be protected from paying a disproportionate share of costs if regional transmission cost recovery is adopted in the future.

42. ATC in its answer, states that if during its 10 year plan, a regional rate design, such as the “highway” methodology proposed for TRANSLink, is established in the Midwest ISO, there is a risk that Wisconsin ratepayers will have already paid for the pre-certification costs and a return on CWIP on ATC’s new facilities. ATC says it supports the development of some form of a regional highway charge in the Midwest ISO. However, ATC contends that its proposed tariff revisions should not be delayed or conditioned depending on the development of this potential new rate design. ATC claims that the proposed new facilities are needed irrespective of the development of a regional rate design because a substantial portion of the benefits of ATC’s proposed new construction will go to Wisconsin ratepayers. ATC asserts that it is amenable to supporting regional highway rate concerns on an expedited basis to alleviate the Wisconsin Commission’s concerns.

43. We take seriously the Wisconsin Commission’s concerns about the impacts on retail customers of a change from ATC’s proposal to differently structured regional rates. However, since there is no regional rate proposal before us at this time it is not possible to examine such impacts. If such a regional rate proposal is filed in the future, we will address this issue at that time.

Other Issues

44. Joint Protestors assert that ATC’s ten year plan has failed to address the reliability needs of its customers in all instances. Joint Protestors observe that it is not clear what specific criteria ATC uses to determine which projects should be constructed. Joint Protestors call for greater transparency in ATC’s planning process.

45. ATC maintains that it is committed to addressing the transmission needs of its customers with an open and transparent process. ATC states that Manitowoc Public Utilities’ (MPU) contention that it has sought a 138 kV connection from ATC for

²⁰ The rate design that the Commission approved for TRANSLink includes a “highway” component which recovers the costs of transmission facilities that are rated at 230 kV and above across the entire TRANSLink rate zone. (See TRANSLink Development Company, LLC 101 FERC ¶ 61,316 (2002)).

several years and that ATC's 10 year plan does not address this need is a mischaracterization. ATC asserts that its 10 year plan shows that currently there are no reliability problems and, therefore, no need for a 138 kV interconnection with MPU.

46. Because ATC's planning process is not at issue in this case, we find that Joint Protestor's request is beyond the scope of this proceeding. Therefore, we will not address Joint Protestors' concern.

The Commission orders:

(A) ATC's proposed changes to its rate formula are hereby conditionally accepted for filing and suspended, to become effective January 1, 2004, subject to refund.

(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 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 1), a public hearing shall be held in Docket No. ER04-108-000 to address the reasonableness of the proposed changes, as discussed in the body of this order. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2003), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding after thirty (30) days of the date of this order for the reasons discussed herein. Such settlement judge shall have all the 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 in writing or by telephone within five (5) days of the date of this order.

(D) Within ninety (90) days of the date of this order, the settlement judge shall file a report with the Chief Judge and with the Commission on the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing. If settlement discussions continue, the settlement judge shall file a report at least every thirty (30) days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

(E) If settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, the presiding judge so designated by the Chief Judge shall convene a conference in this proceeding, to be held within approximately fifteen (15) days of the date on which the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such 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.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.