

120 FERC ¶ 61,221
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

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

Docket No. ER07-1144-000

ORDER CONDITIONALLY ACCEPTING PROPOSED TARIFF SHEETS,
SUBJECT TO COMPLIANCE FILING

(Issued September 7, 2007)

1. In this order, we conditionally accept for filing proposed tariff sheets submitted by American Transmission Company LLC (ATC) and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). The filing proposes to allocate the cost of network upgrades needed to accommodate generation interconnections to the ATC transmission system. ATC proposes to reimburse generators for all the costs of the upgrades under certain circumstances. We accept the tariff sheets, to become effective September 9, 2007, as requested, subject to modification as discussed in this order.

Background

2. ATC and Midwest ISO propose to modify Midwest ISO's Open Access Transmission and Energy Markets Tariff (Tariff) to include a new Attachment FF-ATCLLC.¹ This new attachment would authorize ATC to reimburse certain customers interconnecting to the ATC transmission system for as much as 100% of the cost of network upgrades related to those interconnections.

3. The cost of network upgrades for new or upgraded generator interconnection are funded initially by the generator. The Tariff then provides that half of the cost funded by the generator can be reimbursed under certain circumstances. The affected transmission

¹ See the transmittal letter submitted by ATC and the Midwest ISO on July 11, 2007 (ATC Filing).

owners pay for the remaining network upgrade costs that are not reimbursed, resulting in a 50/50 allocation between transmission owners and generators.²

4. For generators interconnecting to ATC, this 50/50 allocation would be replaced with a 100% allocation to ATC under the proposed Attachment FF-ATCLLC. ATC would reimburse eligible interconnection customers all of the funds they pay to ATC for the network upgrades. Interconnection customers would be eligible for this reimbursement if (1) they have a power purchase agreement with a term of ten years or greater for the new or increased generation capacity covered by the interconnection agreement or (2) if the generating facility has been designated a network resource under the Tariff.³

5. ATC proposes to cap the additional reimbursements it proposes to make at a cost threshold of \$400/kW of generating capacity added at the interconnection, measured when the plant enters commercial operation. Costs that exceed the cap would then be reimbursed under the existing Attachment FF methodology.⁴ This means that only half of the costs over the \$400/kW cap would be reimbursed.

6. ATC would recover the cost of the reimbursements through its Attachment O transmission rate formula. None of these costs are recovered according to the regional or sub-regional cost allocation method that is used in Attachment FF of the existing Tariff.⁵ Thus, these costs would be paid exclusively by the Midwest ISO transmission customers in the ATC rate zone.

7. ATC proposes an effective date of September 9, 2007.

Notice of Filing and Responsive Pleadings

8. Notice of the filing was published in the *Federal Register*, 72 Fed. Reg. 40,848 (2007), with interventions and protests due on or before August 1, 2007. In response to the filing, timely notices of intervention and motions to intervene were submitted by the Michigan Public Service Commission (Michigan Commission), Wisconsin Electric

² The Commission accepted these parts of the Midwest ISO Tariff as the product of the Regional Expansion Criteria and Benefits (RECB) Task Force. *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,106 (RECB I Order), *order on reh'g*, 117 FERC ¶ 61,241 (2006) (RECB I Rehearing Order).

³ ATC Filing at Attachment FF-ATCLLC, Section B.1.a.

⁴ *Id.* at Attachment FF-ATCLLC, Section B.2.

⁵ *Id.* at Attachment FF-ATCLLC, Section D.

Power Company (Wisconsin Electric), the Midwest ISO Transmission Owners⁶ (Midwest ISO TOs), Consumers Energy Company (Consumers), the Public Service Commission of Wisconsin (Wisconsin Commission), the American Wind Energy Association and Wind on the Wires (jointly referred to as American Wind), International Transmission Company (ITC), Michigan Electric Transmission Company, LLC (METC), Integrys Energy Group⁷ (Integrys), and Invenergy Wind North America LLC (Invenergy). Jennifer M. Granholm, the Governor of Michigan, also submitted a letter to the Commission in reference to this proceeding. Wisconsin Electric's motion to intervene included a protest, and comments were included in the interventions of the Michigan Commission, Midwest ISO TOs, ITC and METC, and Integrys. On August 23, 2007, the Wisconsin Commission submitted comments and a motion for leave to file those comments late.

9. ATC filed an answer on August 16, 2007 (ATC Response).

⁶ The Midwest ISO Transmission Owners are: Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, Central Illinois Light Co. d/b/a AmerenCILCO, and Illinois Power Company d/b/a AmerenIP; Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); City Water, Light & Power (Springfield, IL); Duke Energy Shared Services for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; and Wabash Valley Power Association, Inc.

⁷ The Integrys Energy Group is Integrys Energy Group, Inc. and its subsidiaries, Wisconsin Public Service Corporation, Upper Peninsula Power Company and Integrys Energy Services, Inc.

Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁸ the timely, unopposed motions to intervene and notices of intervention serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁹ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept ATC's answer because it has provided information that assisted us in our decision-making process. We will also accept the late comments of the Wisconsin Commission, given its interest in this proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Subsidy and Seam Issues

1. Positions of the Parties

11. ATC's proposal does not restrict its 100% reimbursement policy to generators that serve load exclusively within the ATC rate zone. Rather, an interconnection customer would be eligible for 100% reimbursement if it has either entered into a power purchase agreement with a term of at least ten years, or if they have had the generating facility designated as a network resource under the Tariff.¹⁰

12. The Michigan Commission and Governor of Michigan generally support the filing. However, they do not believe the tariff sheets are just and reasonable without certain changes. They are specifically concerned that the principle of cost causation will be violated if the ATC proposal is adopted, arguing that if a new generator exports power outside the ATC region, then ratepayers who ultimately pay the costs of the network upgrades may not receive all the benefits of those upgrades. The Michigan Commission says that requiring a ten-year purchase agreement with any customer is not restrictive enough. To encourage better cost allocation, the Michigan Commission suggests that 100% reimbursement should only be available to generators designated as network resources in the Midwest ISO for a minimum term, such as ten years.¹¹ The Michigan Commission proposes a technical conference or a deferred hearing with settlement judge procedures.

⁸ 18 C.F.R. § 385.214 (2007).

⁹ 18 C.F.R. § 385.213(a)(2) (2007).

¹⁰ ATC Filing at Attachment FF-ATCLLC, Section B.1.a.

¹¹ Comments of the Michigan Commission at 10.

13. Wisconsin Electric contends that allocating all the network upgrade costs to the ATC rate zone would be unjust and unreasonable and unduly discriminatory against Midwest ISO transmission customers in that rate zone. The proposal would effectively double the network upgrade costs for Midwest ISO customers in the ATC rate zone.¹²

14. Wisconsin Electric argues that ATC's proposal would encourage poor decisions on the siting of generators, especially at the seam between Midwest ISO and PJM Interconnection, L.L.C. (PJM) at the Wisconsin-Illinois border. Since ATC would fully reimburse generators, and since PJM does not allow any reimbursement, generators would be encouraged to interconnect with ATC even if the cost of the network upgrades would otherwise make that interconnection uneconomical.¹³ According to Wisconsin Electric, if it must pay for network upgrades to allow the siting of generation in the ATC rate zone, then that generation should be required to make a commitment to serve load within the ATC rate zone.¹⁴

15. In its response, ATC claims that restricting the 100% reimbursement policy to load in the ATC zone would be unduly discriminatory.¹⁵ ATC notes that many load centers in Wisconsin are not technically part of the ATC system, such as the load of certain public power or cooperative entities, and it would be discriminatory for ATC to exclude those generators from its reimbursement policy.

16. As an alternative, ATC states that it is willing to adopt the eligibility requirements used by the Midwest ISO generally in Attachment FF. This policy would alleviate some of the concerns of Wisconsin Electric, as a generator eligible for reimbursement would need to be either designated as a network resource or have a contractual commitment of at least one year to sell power to a network customer. This alternative approach would reduce Wisconsin Electric's concern about capacity being sold outside of the Midwest ISO.

2. Commission Determination

17. Similar arguments involving subsidy were raised in the Order No. 2003 proceeding. In Order No. 2003 the Commission found that a 100% reimbursement policy

¹² Protest of Wisconsin Electric at 3-4.

¹³ *Id.* at 7-8.

¹⁴ *Id.* at 8-9.

¹⁵ ATC Response at 5.

for network upgrades is just and reasonable.¹⁶ We likewise find that the proposal of ATC to adopt a 100% reimbursement policy is just and reasonable. As long-recognized by the courts, different rate proposals can be just and reasonable; there is no one correct method for calculating rates.¹⁷

18. With respect to the subsidy concerns of Wisconsin Electric and the Michigan Commission that generators interconnected with ATC may serve load outside the region, a network upgrade is considered part of the interconnected transmission system, benefiting all customers. As stated in Order No. 2003-A, our approach to interconnection pricing looks beyond the entity that purchases power from the new generator, and considers the reliability and competitive benefits from a stronger transmission infrastructure. This approach was fully supported by the court in *Entergy Services*, which said "[t]he Commission's rationale for crediting network upgrades, based on a less cramped view of what constitutes a 'benefit,' reflects its policy determination that a competitive transmission system, with barriers to entry removed or reduced, is in the public interest."¹⁸

19. While this is the Commission's general view, the Commission will consider alternate proposals. In Order No. 2003-B, we addressed the subsidy arguments by allowing transmission customers (and transmission providers) to propose a different cost allocation in a particular case if they could show that 100% reimbursement would lead to an improper subsidy.¹⁹ Consistent with that approach, if a transmission customer of ATC believes that it can show an improper subsidy if it is allocated costs of a particular network upgrade, it may file a complaint with the Commission and we will consider the merits of that claim.

20. The Commission further finds that the eligibility criteria used by the Midwest ISO in Attachment FF would be just and reasonable if used by the ATC with its

¹⁶ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 694 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (Order No. 2003-A), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004) (Order No. 2003-B), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

¹⁷ See *Mobil Oil Exploration & Producing Southeast, Inc. v. United Distribution Co.*, 498 U.S. 211, 224 (1991); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944).

¹⁸ *Entergy Services, Inc. v. FERC*, 319 F.3d 536, 543-44 (D.C. Cir. 2003); Order No. 2003-A at P 584.

¹⁹ Order No. 2003-B at P 56.

reimbursement policy. When the Commission approved the Midwest ISO's reimbursement policy in Attachment FF, we determined that interconnecting generators may be required to have "a contract of at least one year to serve Midwest ISO Network Customers or that the Generating Facility be designated as a Network Resource, at the time of Commercial Operation."²⁰ This requirement addressed concerns by some parties that interconnection customers would locate in the Midwest ISO because the Midwest ISO's cost allocation policy for network upgrades was more favorable than that of adjacent transmission providers, like PJM, where similar projects are 100% directly assigned to the interconnection customer.²¹ Moreover, the cost of network upgrades is not the primary factor in deciding where to locate a power plant. As we previously stated, "[f]or the majority of projects requiring generator interconnection, the network upgrade costs associated with generator interconnection are likely to be only a small percentage of the overall project costs and, thus, not determinative of whether the project will be built."²² The Commission finds that, on balance, the criteria accepted for the Midwest ISO's reimbursement policy are sufficient to ensure that interconnection customers do not interconnect with ATC solely for the purpose of receiving better cost treatment.

21. ATC does not object to revising the eligibility portion of its proposal to be consistent with Attachment FF. We direct ATC to adopt those requirements as a condition of acceptance of its proposed tariff sheets by submission of a filing, within 30 days of this order, revising the tariff sheets.

C. Cap on Reimbursements to Generators

1. Positions of the Parties

22. While the Michigan Commission supports the concept of a cap on reimbursement at the 100% level, it argues that ATC's reimbursement limit of \$400/kW of network upgrade costs in proportion to generation capacity added that can be recovered at 100%, with costs above that cap reimbursed according to the 50/50 arrangement in the existing Attachment FF has not been shown to be just and reasonable, because it far exceeds historical costs for network upgrades.²³ Wisconsin Electric agrees with the Michigan Commission, claiming that a doubling of historical costs to arrive at the cap does nothing

²⁰ RECB I Order at P62.

²¹ *Id.* at P63.

²² RECB I Rehearing Order at P 82.

²³ Michigan Commission at 8-9.

to minimize the cost of network upgrades.²⁴ It also contends that the proposed \$400/kW cap is excessive and therefore does not send appropriate cost signals. The Michigan Commission supports a technical conference or settlement judge procedures to determine the optimal cap.

23. In its response, ATC states that it is willing to entirely remove the cap. This would make its proposal more consistent with the Midwest ISO's 50/50 sharing and with the proposal made by ITC and METC on reimbursements for network upgrades.²⁵ Alternatively, ATC argues that the \$400/kW cap strikes a reasonable balance based on the historical costs of network upgrades in the ATC system.

2. Commission Determination

24. We see no need at this time to impose a cap on ATC to ensure that the costs of a network upgrade do not become excessive. The Midwest ISO's transmission planning process is the forum that provides information and opportunity for comment on transmission upgrades – it is a transparent process administered by an independent entity charged with ensuring cost-effective planning.²⁶

25. Moreover, the \$400/kW as proposed by ATC is an arbitrary figure, no better or worse, as a general matter, than some other value. It does not recognize that interconnection costs can vary based on many factors, and are not strictly proportional to the ratio of dollars invested per kilowatt of generation capacity. Transmission customers who can show that certain transmission costs are excessive have rights to relief under section 206 of the FPA.

26. ATC does not object to revising its proposal to be consistent with Attachment FF. That tariff does not require a cap or limit on the amount of costs that would be eligible for reimbursement. For this reason, as a condition of acceptance of its proposed tariff sheets, we direct ATC to remove its \$400/kW cap by submission of a filing, within 30 days of this order, revising its proposed tariff sheets.

²⁴ Wisconsin Electric at 10.

²⁵ ATC Response at 6, citing to Docket No. ER07-1141-000 concerning the ITC and METC proposal.

²⁶ See RECB I Order at P69 and the Midwest ISO Transmission Owners Agreement, Appendix B (Planning Framework), Section VI (Development of the Midwest ISO Transmission Plan).

D. Other Issues

1. The Need to Encourage Renewable Generation

27. ATC observes that new generation in the ATC service territory is needed and should be encouraged, especially renewable resources.²⁷ The Michigan Commission supports the encouragement of new generation, particularly renewables.

28. Wisconsin Electric asserts that ATC's proposal has nothing to do with the development of renewable energy in Wisconsin, as the legislature has already mandated that Wisconsin utilities purchase ten percent of their load from renewable resources by 2015, regardless of whether ATC's proposed filing is accepted by the Commission.²⁸

29. The Commission recognizes that the ATC proposal is not restricted to renewable generation. We find that ATC's proposal is supported by the widely-recognized need for new generation in its pricing zone, and is a reasonable approach to serving that need.²⁹

2. Cost Recovery

30. ATC proposes to recover the cost of the 100% reimbursement under its Attachment O formula rate.³⁰ Thus, no portion of the ATC reimbursement will be imposed on other transmission zones in Midwest ISO.

31. The Michigan Commission seeks to modify cost recovery so that half of the 100% recovery is recovered in the same way that these costs are recovered under existing rates. The result would be that of the 100% recovery, 50% would be recovered in the same way that such costs are recovered under existing Attachment FF, and the incremental 50% would be recovered entirely under ATC's Attachment O formula rate.³¹

²⁷ ATC Filing at 6.

²⁸ Wisconsin Electric at 5.

²⁹ ATC also claims that interconnecting generators face a larger tax burden for the costs of their network upgrades when interconnecting with ATC than when interconnecting with transmission owners who organized under a different legal form. The Commission has not relied on this tax burden for its findings in this order.

³⁰ ATC Filing at 6.

³¹ Michigan Commission at 11. The Michigan Commission notes that costs are recovered under the existing Attachment FF according to line outage distribution factor (LODF) results.

32. The Commission finds that the cost recovery approach proposed by the Michigan Commission would be more consistent with the approach of the Midwest ISO in Attachment FF, would be consistent with the approach taken by ITC and METC in their recent proposal to allow 100% reimbursement, and would be consistent with the stated objectives of ATC in this proposal. We find no reason to depart from the policy that the initial 50% of reimbursement should be recovered according to the existing Attachment FF. The Commission accepts the cost recovery approach proposed by the Michigan Commission, and directs ATC to revise its tariff sheets to be consistent with that approach within thirty days of this order. This means that 50% of the reimbursement costs would be allocated entirely to ATC for recovery from their customers, and 50% would continue to be allocated to affected transmission owners pursuant to the existing tests in Attachment FF.

3. Authority of ATC to Make Its Proposal

33. ATC contends that its proposal is permitted by Attachment FF of Midwest ISO's Tariff. Attachment FF allows a market participant that is also a transmission owner to elect to assume cost responsibility for certain network upgrades.³² ATC recognizes that it is not a market participant. Nevertheless, ATC asserts that the intent of this tariff provision is to permit a transmission owner to assume full cost responsibility, as long as the transmission owner meets the same standards required of market participants. That is, any assumption of cost responsibility must be made on a consistent and non-discriminatory basis.

34. Wisconsin Electric claims that ATC lacks authority under the tariff to make its filing, since even ATC recognizes that it is not a market participant.³³ Wisconsin Electric further contends that ATC is not proposing to assume any cost responsibility under Attachment FF; rather it wants to reallocate costs that are now allocated to generators. Wisconsin Electric asserts that Midwest ISO customers located in ATC's pricing zone would be assuming cost responsibility, not ATC.

35. No party disputes that ATC is not a market participant under the tariff. Nevertheless, ATC is correct that it is the type of entity that Attachment FF intended to permit the assumption of full cost responsibility. For this reason, we find that ATC has authority under the Midwest ISO Tariff to make its filing. We note that even if ATC lacked that authority, we would grant ATC any necessary waivers to allow it to exercise that authority.

³² ATC Filing at 3, 8, citing to Tariff Sheet No. 1841, Section A.2.a.

³³ Wisconsin Electric at 6.

36. Similar to state-regulated utilities, ATC can recover its legitimate costs in rates. While Wisconsin Electric is correct that it will be paying new costs in rates, the question of whether those new costs constitute an improper subsidy to others is addressed in the section of this order concerning subsidy and seam issues.

4. Effect on the RECB Orders

37. The Midwest ISO TOs ask that the Commission ensure that ATC's proposal does not affect the regional 50/50 cost sharing approach adopted through the RECB process. They say that the Commission should not reverse its course for the remainder of the Midwest ISO rate zones.³⁴ The Midwest ISO TOs contend that, unlike ATC, vertically integrated transmission owners would face significant challenges in funding a 100% reimbursement methodology, especially with respect to achieving cost recovery before state regulatory commissions.

38. The Commission finds that the ATC proposal will not undercut the regional 50/50 cost sharing approach adopted through the RECB process, and we are not requiring in this order that any other transmission owner offer 100% reimbursement.

5. Upcoming Filings in the Midwest ISO to Remove Barriers to Efficient Transmission Investment

39. The Michigan and Wisconsin Commissions suggest that the ATC proposal is premature, given that the Midwest ISO will be proposing new cost recovery arrangements for regional generation needs, as illustrated by a proposal of Midwest ISO on regionally planned generator interconnection issued on its website on June 29, 2007.³⁵ Wisconsin Electric agrees, and also adds that a transmission pricing proposal of the Midwest ISO transmission owners will be filed shortly. These two filings will apparently address similar issues throughout the Midwest ISO, and Wisconsin Electric believes that singling out the ATC rate zone at this time puts "the cart before the horse."³⁶

40. Since the Commission in this order has ruled on the merits of ATC's filing, the argument that the filing is premature has now been rendered moot.

³⁴ Midwest ISO TOs at 5-6.

³⁵ Michigan Commission at 12-13.

³⁶ Wisconsin Electric at 6-7.

The Commission orders:

(A) ATC's tariff sheets are conditionally accepted, effective September 9, 2007, as discussed in the body of this order.

(B) ATC is directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.
Acting Deputy Secretary.