160 FERC ¶ 61,030
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

American Transmission Company, LLC Docket No. IN17-5-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued August 28, 2017)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and American Transmission Company, LLC (ATC). This Order is in the public interest because the Agreement resolves on fair and equitable terms Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2017), into (i) whether ATC violated section 203(a)(1)(B) of the Federal Power Act (FPA)[1] and Part 33 of the Commission's regulations, 18 C.F.R. Part 33, by acquiring certain Commission-jurisdictional facilities without prior Commission approval; and (ii) whether ATC violated section 205 of the FPA[2] and Part 35 of the Commission's regulations, 18 C.F.R. Part 35, by failing to timely file certain Commission-jurisdictional agreements. ATC agrees to pay a civil penalty of $205,000 and to make compliance reporting.

2. ATC admits the violations and agrees to pay a civil penalty of $205,000. ATC will also implement measures designed to ensure compliance in the future, including submitting an annual compliance report.

I. Facts

3. ATC is a Wisconsin limited liability company. It owns and operates Commission-jurisdictional transmission facilities and is regulated by the Commission as a "public utility" under Part II of the FPA. ATC's transmission facilities are under the operational control of the Midcontinent Independent System Operator, Inc. (MISO).

[1] 16 U.S.C. § 824b (2012).

[2] 16 U.S.C. § 824d (2012).

4. In April 2015, ATC filed an application seeking Commission approval of the disposition of jurisdictional facilities under FPA § 203(a)(1)(B). The Commission approved the disposition, but noted that, "contrary to the requirements of FPA section 203, ATC failed to obtain Commission authorization in a timely manner."[3] The Commission also referred ATC's violations to Enforcement for further examination and inquiry.[4] In August 2015, ATC self-reported failures to file jurisdictional agreements under FPA section 205 and failures to obtain prior Commission approvals for the acquisition of jurisdictional assets under FPA section 203(a)(1)(B).

5. Enforcement determined in its investigation that ATC violated FPA section 203(a)(1)(B) and Part 33 of the Commission's regulations by merging or consolidating facilities subject to the Commission's jurisdiction without obtaining prior Commission authorization. Specifically, between August 8, 2006 and February 13, 2014, ATC engaged in 21 unauthorized transactions valued from $1,513 to $1,214,766. Between September 5, 2014 and December 19, 2015, ATC filed and requested authorization for each of these 21 asset transfers. The Commission approved each of these late applications.

6. Enforcement also determined in its investigation that ATC violated FPA section 205 and Part 35 of the Commission's regulations by: (a) commencing jurisdictional service without providing the requisite notice, and (b) terminating jurisdictional contracts without providing the required notice. Specifically, between October 17, 2000 and May 26, 2011, ATC executed and failed to timely file 42 agreements under FPA section 205 and Part 35 of the Commission's regulations. Of those 42 agreements, 11 were common facility agreements, 13 were contribution-in-aid-of-construction agreements, 2 were ownership and cost sharing agreements, 2 were operating agreements, 2 were pole removal and replacement agreements, 1 was a design agreement, 1 was a transmission line relocation agreement, and 4 were distribution-transmission interconnection agreement bills of sale. In addition, there were 6 agreements that were no longer effective and for which ATC had not timely filed notices of termination. Between February 4, 2015 and October 21, 2015, ATC filed each of these 42 agreements with the Commission. The Commission accepted each of these filings.

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[3] *American Transmission Company*, 153 FERC ¶ 61,006, at P 7 (2015).

[4] *Id*. n.12.

7. During the pendency of the investigation and as the Commission has required in similar situations,[5] ATC paid a total of $1,401,575 in time-value refunds to its customers associated with agreements under which service commenced prior to making the filings required under FPA section 205 and Part 35 of the Commission's regulations.

II. Stipulation and Consent Agreement

8. Enforcement and ATC have resolved Enforcement's investigation by means of the attached Agreement.

9. As set forth in the Agreement, ATC stipulates to the facts and admits its 21 violations of FPA section 203 and Part 33 of the Commission's regulations and their 42 violations of FPA section 205 and Part 35 of the Commission's regulations.

10. ATC agrees to pay a civil penalty of $205,000 and submit to one year of compliance monitoring.

III. Determination of the Appropriate Sanctions and Remedies

11. Pursuant to Section 316A of the FPA, the Commission may assess a civil penalty of up to $1,000,000 for each day that a violation continues.[6] In determining the appropriate remedy for ATC's violations, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines.[7]

12. ATC's violations created a lack of transparency in the market by failing to have all of its jurisdictional agreements on file with the Commission, and by consummating purchases of Commission-jurisdictional assets without requesting and receiving prior Commission authorization.

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[5] *See International Transmission Company, et al*., 146 FERC ¶ 61,172 (2014); *see also, e.g*., *East Ridge Transmission, LLC*, 155 FERC ¶ 61,123, at P 9 (2016) ("Imposition of time value refunds is the Commission's method of encouraging compliance by public utilities with the requirements of section 205 of the Federal Power Act.") (citation omitted).

[6] 16 U.S.C. § 825*o*-1 (2012).

[7] *Enforcement of Statutes, Orders, Rules, and Regulations*, 132 FERC ¶ 61,216 (2010).

13. Enforcement determined that ATC's violations, although not willful, were the direct result of its failure to maintain a compliance program capable of identifying and ensuring compliance with its FPA sections 203 and 205 obligations.

14. Other factors considered in reaching the proposed penalty include: the significant volume of transactions and agreements that were not timely submitted to the Commission; the multi-year duration of the violations; ATC's self-reporting of the violations; the absence of direct harm caused by these violations; ATC's cooperation and admission of its violations; and ATC's resolution of this investigation without a hearing.

15. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned and is in the public interest, as it reflects the nature and seriousness of ATC's conduct. The Commission finds that the civil penalty contained in the Agreement is warranted and consistent with the Revised Policy Statement on Penalty Guidelines.[8] We remind market participants of the importance of the obligation to file with the Commission all required rates and charges for jurisdictional services and all contracts and agreements relating to such services subject to FPA section 205 and to obtain authorization for all transactions subject to FPA section 203(a)(1)(B). Absent such filings, the Commission cannot perform its necessary regulatory oversight responsibilities under the FPA. We further urge market participants to include in their compliance programs processes that will enable them to fulfill their FPA sections 203 and 205 obligations.

<u>The Commission orders:</u>

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(SEAL)

Kimberly D. Bose,
Secretary.

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[8] *Id*.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

American Transmission Company, LLC — Docket No. IN17-5-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and American Transmission Company, LLC (ATC) enter into this Stipulation and Consent Agreement (Agreement) to resolve an investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2016), into whether ATC has complied with its obligations to secure Commission authorization under Section 203(a)(1)(B) of the Federal Power Act (FPA) for the merger or acquisition of jurisdictional facilities and under Section 205 of the FPA to timely file contracts and agreements relating to rates and charges for jurisdictional service.

2. ATC admits the violations herein and agrees to pay a civil penalty of $205,000 to the United States Treasury, and to submit semi-annual compliance monitoring reports for one year.

II. STIPULATED FACTS

Enforcement and ATC hereby stipulate and agree to the following facts.

3. ATC, a Wisconsin limited liability company, is a single-purpose, transmission-only company. ATC currently owns and operates over 9,400 miles of jurisdictional transmission facilities in the states of Wisconsin, Illinois, Minnesota, and Michigan and is regulated as a "public utility" under Part II of the FPA.

4. On January 1, 2001, ATC began providing transmission service under a Commission-approved open access transmission tariff (OATT). Most of ATC's facilities were acquired from previously vertically-integrated companies, municipalities, and electric cooperatives. On February 2, 2002, ATC transferred operational control of its transmission facilities to the Midwest Independent Transmission System Operator, Inc. (MISO).[1] The Commission granted ATC's request to terminate its OATT on

[1] Effective April 26, 2013, MISO changed its legal name to "Midcontinent Independent System Operator, Inc.

November 23, 2010. As a transmission-owning member of MISO, ATC engages in the day-to-day operations of the facilities it owns.

5. In March 2014, the Commission issued an order approving the settlement of an investigation by Enforcement into conduct by a transmission facility owning public utility and certain of its affiliates. The investigation examined violations of Sections 205 and 203 of the FPA, which the utility admitted.

6. After becoming aware of the aforementioned 2014 settlement order and the issues to which it related, ATC undertook an internal review of its filing processes to ensure that its filings under Sections 203 and 205 of the FPA were up to date. The review encompassed all of ATC's filings under sections 203 and 205 from 2001 to the present. As a result of this review, ATC identified 21 transactions for which it had failed to file for authorization under Section 203, and 29 agreements that should have been filed under Section 205 but were not. On August 8, 2014, ATC submitted to Enforcement a written self-report (Self-Report) identifying these violations.

7. Enforcement opened a preliminary, non-public investigation into ATC's compliance with its filing obligations under Sections 203 and 205 of the FPA. On November 12, 2015, ATC supplemented its initial Self-Report by identifying an additional 13 agreements that should have been filed under Section 205 but were not. Thus, the total number of unfiled Section 205 agreements was 42.

III. VIOLATIONS

A. Section 203 Violations

8. Section 203 of the FPA requires public utilities to secure Commission authorization prior to consummating certain transactions. Section 203 provides, among other things, that "[n]o public utility shall, without first having secured an order of the Commission authorizing it to do so . . . merge or consolidate, directly or indirectly, such [jurisdictional] facilities or any part thereof with those of any other person, by any means whatsoever."[2] This requirement is reflected in Part 33 of the Commission's Regulations.[3]

9. Prior to 2005, the FPA established, and the Commission applied, a $50,000 threshold of value for all transactions subject to the prior approval requirements of Section 203 and Part 33. In 2005, however, Congress amended Section 203 of the FPA.[4]

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[2] 16 U.S.C. § 824b(a)(1)(C).

[3] *See* 18 C.F.R. § 33.1(a).

[4] Energy Policy Act of 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594 (2005) (the 2005 Amendments).

The 2005 Amendments raised the value threshold to $10,000,000 for certain specific public utility transactions subject to Section 203, *viz*., the sale or other disposition of jurisdictional facilities, the purchase of securities in another public utility, and the purchase of existing generation facilities.[5] The 2005 Amendments also eliminated any value threshold for the merger or consolidation of any jurisdictional facilities or any part thereof.[6]

10. On December 23, 2005, the Commission promulgated new Part 33 to reflect the 2005 Amendments to Section 203 effective February 8, 2006.[7] In so doing, the Commission required that prior Commission approval under Section 203 be secured for the purchase, lease, or other acquisition of jurisdictional facilities other than existing generation facilities regardless of the value of such facilities.[8]

11. ATC identified 21 jurisdictional facilities it acquired without obtaining Commission authorization under Section 203. These acquisitions involved facilities valued between $1,513 and $1,214,766 that ATC acquired during the period between August 8, 2006 and February 13, 2014. After identifying the facilities, ATC sought prospective Commission approval of the transfers between September 5, 2014 and December 19, 2015.[9] The Commission granted each such request.[10]

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[5] *Id*., *and see* 16 U.S.C. §§ 824b(a)(1)(A), (C), and (D).

[6] *Id*., *and see* 16 U.S.C. § 824b(a)(1)(B).

[7] *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats & Regs. ¶ 31,225 (2006).

[8] *See Transactions Subject to FPA Section 203*, Order No. 669, 113 FERC ¶ 61,315 at P 32 (2005) and *International Transmission Company, et al*., 146 FERC ¶ 61,172 at P 6 (2014).

[9] *See* Docket Nos. EC15-97, EC15-92, EC15-94, EC15-93, EC15-95, EC15-50, EC15-5, EC15-14, EC15-134, EC15-7, EC15-8, EC15-55, EC15-6, EC15-111, EC15-112, EC15-101, EC15-115, EC15-128, EC15-149, and EC15-152.

[10] *See American Transmission Company LLC, Wisconsin Power and Light Company*, 152 FERC ¶ 62,152 (2015); *American Transmission Company LLC, Consolidated Water Power Company*, 152 FERC ¶ 62,149 (2015); *American Transmission Company LLC*, 152 FERC ¶ 62,151 (2015); *American Transmission Company LLC*, 152 FERC ¶ 62,150 (2015); *American Transmission Company LLC*, 151 FERC ¶ 62,065 (2015); *American Transmission Company*, 150 FERC ¶ 62,029 (2015); *American Transmission Company*, 150 FERC ¶ 62,050 (2015); *American Transmission Company LLC*, 150 FERC ¶ 62,032 (2015); *American Transmission Company LLC*, 150 FERC ¶ 62,031 (2015); *American Transmission Company LLC*, 150 FERC ¶ 62,033 (2015); *American Transmission*

B. Section 205 Violations

12. Section 205 of the FPA provides that "every public utility shall file with the Commission, within such time and in such form as the Commission may designate . . . all contracts which in any manner affect or relate to such [jurisdictional] rates, charges, classifications, and services."[11] Pursuant to this authority, the Commission requires that public utilities like ATC file with the Commission, at least 60 days before commencing jurisdictional service, all rates and charges for such service, as well as all contracts and agreements relating to such service.[12]

13. Part 35 of the Commission's Regulations requires that notices of cancellation or termination of a rate schedule, tariff or service agreement, or part thereof be filed "at least 60 days . . . prior to such cancellation or termination is proposed to take effect" for agreements that were entered into or filed with the Commission prior to July 9, 1996, or otherwise within 30 days after such termination takes place.[13]

14. Commission precedent requires that when service commences under a jurisdictional agreement that has not been properly filed with the Commission, the public utility must make time-value refunds to its customer.[14] In making such refunds, the

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Company, 150 FERC ¶ 62,051 (2015); *American Transmission Company*, 150 FERC ¶ 62,030 (2015); *American Transmission Company LLC*, 150 FERC ¶ 62,065 (2015); *American Transmission Company LLC*, 150 FERC ¶ 62,040 (2015); *American Transmission Company LLC, Wisconsin Power and Light Company*, 152 FERC ¶ 62,208 (2015); *American Transmission Company LLC, Wisconsin Public Service Corporation*, 152 FERC ¶ 62,209 (2015); *American Transmission Company LLC*, 152 FERC ¶ 62,175 (2015); *American Transmission Company LLC*, 153 FERC ¶ 61,006 (2015); *American Transmission Company LLC*, 153 FERC ¶ 62,019 (2015); *American Transmission Company LLC*, 153 FERC ¶ 62,020 (2015); *American Transmission Company LLC*, 153 FERC ¶ 62,021 (2015).

[11] 16 U.S.C. § 824d(c).

[12] 18 C.F.R. Part 35; *see Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993), *order on reh'g*, 65 FERC ¶ 61,081 (1993).

[13] 18 C.F.R. § 35.15(a) (2016).

[14] *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993), *order on reh'g*, 65 FERC ¶ 61,081 (1993) (requiring utilities to refund the time-value of payments received under a jurisdictional agreement commenced prior to the filing of such agreement with the Commission).

public utility is not required to operate at a loss.[15] As noted below, ATC has made the requisite time-value refunds.

15. ATC has identified 9 types of agreements that it failed to file pursuant to its Section 205 obligations.

a. <u>Common Facility Agreements</u>. Common facility agreements govern the relationship between ATC and a certain "distribution facility" with respect to jointly-owned and used substations. ATC identified 11 common facility agreements in which ATC is designated as the common facilities owner and performs work on transmission facilities in exchange for payment from the distribution utility. ATC late-filed these common facility agreements between February 24, 2015 and April 21, 2015.[16] The Commission has accepted each of these filings.[17] Where ATC had collected revenues under these agreements prior to filing, it has made time-value refunds.[18]

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[15] *See, e.g.*, *Southern California Edison Co.*, 98 FERC ¶ 61,304 (2002) (declining to require utility to make time-value refunds to the extent such refunds would require the utility to operate at a loss).

[16] *See* Docket Nos. ER15-1087, ER15-1188, ER15-1366, ER15-1406, ER15-1407, ER15-1408, ER15-1409, ER15-1411, ER15-1473, ER15-1542.

[17] *See Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1473-002 (Sep. 3, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1406-002 (Aug. 26, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1407-002 (Aug. 26, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1534-000 (Jun. 9, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1408-000 (May 7, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1409-002 (Sep. 3, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1411-002 (Sep. 3, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1366-000 (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1542-000 (Jun. 1, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1087-000 (Apr. 16, 2015) (delegated letter order); and *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1188-000 (Apr. 21, 2015) (delegated letter order).

[18] *See* Refund Report, *American Transmission Company*, Docket No. ER15-1411 (Sep. 24, 2015) (refunding $337), Refund Report, *American Transmission Company*, Docket No. ER15-1409 (Sep. 24, 2015) (refunding $38,105), Refund Report, *American Transmission Company*, Docket No. ER15-1406 (Sep. 21, 2015) (refunding $7,275), *American Transmission Company*, Docket No. ER15-1408 (Jun. 3, 2015)

b. Contribution-in-Aid-of-Construction (CIAC) Agreements. ATC identified 5 project service agreements, 5 project commitment agreements, and 3 facilities construction agreements which are essentially CIAC agreements. The Commission has always recognized CIACs as jurisdictional agreements.[19] ATC late-filed these CIACs between February 4, 2015 and August 3, 2015.[20] The Commission has accepted each of these filings.[21]

c. Ownership and Cost Sharing Agreements. ATC identified 2 ownership and cost sharing agreements for which ATC is performing services for certain jurisdictional facilities and engaged in cost-sharing. ATC late-filed these

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(refunding $13), and Refund Report, *American Transmission Company*, Docket No. ER15-1087 (May 18, 2015) (refunding $144,479).

[19] *Prior Notice & Filing Requirements Under Part II of the Fed. Power Act*, 64 FERC ¶ 61,139, 61,982 (1993); *see also*, *American Municipal Power-Ohio, Inc. v. Ohio Edison Co.*, 57 FERC ¶ 61,358 (1991), *reh'g denied*, 58 FERC ¶ 61,182 (1992); *Western Massachusetts Electric Co.*, 59 FERC ¶ 61,091, *reh'g denied*, 61 FERC ¶ 61,182 (1992).

[20] *See* Docket Nos. ER15-987, ER15-979, ER15-981, ER15-985, ER15-978 (project service agreements); ER15-977, ER15-983, ER15-986, ER15-984, ER15-1378 (project commitment agreements); and ER15-982, ER15-980, and ER15-2369 (facilities construction agreements).

[21] *See Midcontinent Independent System Operator, Inc.*, Docket No. ER15-987-000 (Mar. 25, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-979-000 (Mar. 24, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-981-000 (Mar. 24, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-985-000 (Mar. 24, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-978-000 (Mar. 24, 2015) (delegated letter order) (project services agreements); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-977-001 (Apr. 29, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1368-000 (May 7, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-983-000 (Mar. 24, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-986-000 (Mar. 24, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-984-000 (Mar. 24, 2015) (delegated letter order) (project commitment agreements); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-980-001 (Apr. 29, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-982-000 (Mar. 24, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-2369-000 (Sep. 16, 2015) (delegated letter order) (facilities construction agreements).

ownership and cost-sharing agreements on April 23, 2015.[22] The Commission has accepted those filings.[23]

d. Operating Agreements. ATC identified 2 operating agreements for which ATC is performing services in connection with certain jurisdictional facilities and receiving payment for that service. ATC late-filed these operating agreements on May 21 and 29, 2015.[24] The Commission has accepted these filings.[25] ATC has paid time-value refunds in connection with one of these agreements.[26]

e. Pole Removal and Replacement Agreements. ATC identified 2 agreements which allowed ATC to follow and share existing counterparties' rights of ways and double circuiting the counterparties' transmission lines for certain segments. ATC paid for all services under these agreements, which were late-filed on July 23, 2015 and October 16, 2015.[27] The Commission has accepted these filings.[28]

f. Design Agreement. ATC identified 1 design agreement that provides for both parties to share responsibility for the design, procurement, construction, commissioning, and placing in service certain 345kV

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[22] *See* Docket Nos. ER15-1554 and ER15-1555.

[23] *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1555-000 (Jun. 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1554-000 (Jun. 16, 2015) (delegated letter order).

[24] *See* Docket Nos. ER15-1759 and ER15-1812.

[25] *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1759-000 (Jul. 9, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1812-000 (Jul. 14, 2015) (delegated letter order).

[26] *See* Refund Report, *American Transmission Company*, Docket No. ER15-1759 (Aug. 7, 2015) (refunding $118,670).

[27] *See* Docket Nos. ER15-2251 and ER16-96.

[28] *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-2251-000 (Sep. 9, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER16-96-000 (Dec. 3, 2015) (delegated letter order).

facilities. ATC late-filed this design agreement on October 16, 2015.[29] The Commission accepted that filing on December 30, 2015.[30]

g. Transmission Line Relocation Agreement. ATC identified 1 agreement where it relocated a transmission line to accommodate the expansion of a power plant. ATC represents that the work under this agreement was done at cost. ATC late-filed this transmission line relocation agreement on October 21, 2015.[31] The Commission accepted that filing on December 29, 2015.[32]

h. Distribution-Transmission Interconnection Agreements (DTIA) Bills of Sale. ATC's DTIAs have been filed with the Commission. However, ATC entered into several Bills of Sale specifying charges for facilities and services for which ATC was paid and which were integral to the DTIAs. Four such Bills of Sale were not on file; ATC late-filed them between February 24, 2015 and April 21, 2015.[33] The Commission has accepted these filings.[34] ATC has made time-value refunds in connection with one of these agreements.[35]

i. Notices of Termination. Among the late-filed agreements identified above, ATC identified 6 agreements that were no longer effective and for which notices of termination had not been timely filed. ATC late-filed notices of

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[29] *See* Docket No. ER16-95.

[30] *Midcontinent Independent System Operator, Inc*., Docket No. ER16-95-001 (Dec. 30, 2015) (delegated letter order).

[31] *See* Docket No. ER16-128.

[32] *Midcontinent Independent System Operator, Inc*., Docket No. ER16-128-001 (Dec. 29, 2015) (delegated letter order).

[33] *See* Docket Nos. ER15-1086, ER15-1185, ER15-1364, and ER15-1541.

[34] *Midcontinent Independent System Operator, Inc*., Docket No. ER15-1086-000 (Apr. 16, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1185-000 (Apr. 24, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1364-000 (May 5, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc*., Docket No. ER15-1541-000 (June 9, 2015) (delegated letter order).

[35] *See* Refund Report, *American Transmission Company*, Docket No. ER15-1086 (May 18, 2015) (refunding $1,092,696).

termination for such agreements between February 24, 2015 and May 29, 2015, all of which the Commission accepted.[36]

16. All of the agreements ATC had failed to file under Section 205 were filed not later than October 21, 2015. The Commission has approved each of these filings.

17. Enforcement finds that ATC violated Section 205 of the FPA and Part 35 of the Commission's Regulations by failing to timely file the 42 agreements as discussed above.

C. Additional Factors

18. Enforcement determined that, although ATC's violations did not result in quantifiable market harm, they created a lack of transparency in the market by failing to have all of ATC's jurisdictional agreements on file with the Commission, and by consummating purchases of Commission-jurisdictional assets without Commission authorization.

19. Enforcement determined that ATC's violations were not willful, fraudulent, intentional, or manipulative, but were instead the result of failing to properly evaluate and meet FPA Section 203 and 205 filing requirements, as well as not having adequate compliance procedures in place at the time of the violations to ensure timely filings.

20. Upon becoming aware of the aforementioned March 2014 settlement order, ATC initiated an omnibus review of all of its agreements and related documents to determine whether it had any unfiled jurisdictional agreements. After identifying jurisdictional agreements that were not previously submitted to the Commission, ATC filed each of those agreements for approval.

21. Since commencement of Enforcement's investigation, ATC has taken steps to strengthen its compliance policies and procedures and to prevent non-compliance in the future regarding jurisdictional agreements. Specifically, ATC conducted over a dozen training seminars for employees between December 2014 and February 2015. ATC has also updated its internal guidance on Section 203 filing requirements, has begun requiring

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[36] *See Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1814-000 (Jul. 14, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1764-000 (Jul. 9, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1367-000 (Apr. 29, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1545-000 (Jun. 9, 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1088-000 (Apr. 2015) (delegated letter order); *Midcontinent Independent System Operator, Inc.*, Docket No. ER15-1191-000 (Apr. 24, 2015) (delegated letter order).

an internal review of any disposition of a jurisdictional facility, has developed internal guidance documents and training for Section 205 filing requirements, has improved its accounting processes to identify transactions potentially subject to Section 203 and 205 filing requirements, has established standing biweekly cross-functional meetings to ensure that all required Section 203 authorizations are obtained, and has developed an electronic training module for Sections 203 and 205 which is mandatory for all employees annually. ATC will continue to maintain an Ethics and Compliance Program to facilitate employee and contractor adherence to applicable laws, regulations, and standards. As part of its compliance program, ATC will continue to provide annual training to its employees.

IV. REMEDIES AND SANCTIONS

22. ATC stipulates to the facts set forth in Section II of this Agreement, and admits the violations described in Section III of this Agreement. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation, ATC agrees to the remedies set forth in the following paragraphs.

A. Civil Penalty

23. ATC shall pay a civil penalty of $205,000, which it will pay to the United States Treasury within ten days of the Effective Date of this Agreement.

B. Time-Value Refunds

24. ATC has not been unjustly enriched by its violations and represents that it has already made all appropriate time-value refunds associated with its § 205 violations, totaling $1,401,575. Disgorgement is therefore not required under this Agreement.

C. Compliance

25. ATC has instituted new compliance policies and associated processes aimed specifically at preventing and detecting reoccurrences of the sort of violations at issue in this investigation as discussed in Section III.C. above.

26. ATC shall maintain an effective written FERC compliance program with a strong emphasis on compliance with applicable Commission filing requirements.

27. ATC shall make semi-annual compliance monitoring reports to Enforcement for one year following the Effective Date of this Agreement. The first semi-annual report shall be submitted no later than ten days after the end of the second calendar quarter after the quarter in which the Effective Date of this Agreement falls. The second report shall be submitted six months thereafter.

28. Each compliance monitoring report shall: (1) identify any known violations of Commission regulations that occurred during the reporting period, including a description of the nature of the violation and what steps were taken to rectify the situation; (2) describe in detail all compliance measures and procedures instituted or modified, and all compliance training administered, during the reporting period; and (3) include an affidavit executed by an officer of ATC stating that the compliance monitoring report is true and accurate to the best of his or her knowledge.

29. Upon request by Enforcement, ATC shall provide to Enforcement documentation to support its reports.

V. TERMS

30. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters addressed herein as to ATC and any affiliated entity, and their respective agents, officers, directors, or employees, both past and present.

31. Commission approval of the Agreement without material modification shall release ATC and any successor or affiliate, and forever bar the Commission from holding ATC and any successor or affiliate, and their respective agents, officers, directors, and employees, past and present, liable for any and all administrative or civil claims arising out of the conduct addressed and stipulated to in this Agreement that occurred on or before the Agreement's Effective Date.

32. Failure by ATC to make timely payment or comply with any other provision of the Agreement shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act (FPA), 16 U.S.C. §792, *et seq*., and may subject ATC to additional action under the enforcement provisions of the FPA.

33. If ATC fails to make the civil penalty payment described above within the times agreed by the parties, interest shall begin to accrue at the rates specified at 18 C.F.R. § 35.19a(a)(2)(iii) from the date that payment is due, in addition to any other enforcement action and penalty that the Commission may take or impose.

34. The Agreement binds ATC and its agents, successors, and assignees. The Agreement does not create any additional or independent obligations on ATC, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in the Agreement.

35. ATC agrees that it enters into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member,

employee, officer, director, agent or representative of Enforcement or ATC has been made to induce the signatories or any other party to enter into the Agreement.

36. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor ATC shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and ATC.

37. In connection with the payment of the civil penalty provided for herein, ATC agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 316A(b) of the Federal Power Act, 16 U.S.C. § 825o-1(b). ATC waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

38. The Agreement can be modified only if in writing and signed by Enforcement and ATC, and any modifications will not be effective unless approved by the Commission.

39. Each of the undersigned representative(s) of ATC warrants that he or she is an authorized representative of ATC, is authorized to bind ATC, and accepts the Agreement on ATC's behalf.

40. The undersigned representative(s) of ATC affirm that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

41. The Agreement may be executed in counterparts.

42. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

ACCEPTED AND AGREED TO:

Larry R. Parkinson
Director, Office of Enforcement
Federal Energy Regulatory Commission
Date: 8/15/17

William P. Marsan
Executive Vice President, General Counsel and Corporate Secretary
American Transmission Company, LLC
Date: 8/2/17