

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

American Transmission Company LLC

Docket Nos. ER04-108-000,  
ER04-108-001  
and ER04-108-002

Midwest Independent Transmission  
System Operator, Inc.

ORDER DISMISSING REHEARING AS MOOT, PROVIDING CLARIFICATION  
AND APPROVING UNCONTESTED SETTLEMENT

(Issued May 6, 2004)

1. On January 26, 2004, the Wisconsin Transmission Customer Group, *et al.*<sup>1</sup> filed a request for rehearing of the Commission's order issued in this proceeding on December 29, 2003 (December 29 Order).<sup>2</sup> On January 28, 2004, American Transmission Company LLC requested clarification or rehearing of the December 29 Order. On March 26, 2004, American Transmission Company LLC and its corporate manager, ATC Management Inc. (collectively, ATC),<sup>3</sup> on behalf of the Settlement

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<sup>1</sup> The joint filing was made by Wisconsin Transmission Customer Group, Wisconsin Industrial Energy Group, Inc., Dairyland Power Cooperative, Wisconsin Paper Council, and Manitowoc Public Utilities.

<sup>2</sup> American Transmission Company LLC and Midwest Independent Transmission System Operator, Inc., 105 FERC ¶ 61,388 (2003).

<sup>3</sup> The Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) joined in the initial application as the tariff administrator of the Open Access Transmission Tariff (OATT) to which its proposed changes are to be made.

Parties,<sup>4</sup> filed an Offer of Settlement and Settlement Agreement (Settlement Agreement) in response to the December 29 Order establishing hearing and settlement judge procedures concerning ATC's proposal to modify its rate formula in Attachment O of the Midwest ISO's OATT. As discussed below, we will approve the Offer of Settlement and Settlement Agreement to become effective January 1, 2004, and clarify the December 29 Order in certain respects. Because we are approving the Settlement Agreement, the requests for rehearing are deemed moot. This order benefits customers by ensuring the proposed modifications to the rate formula contained in Attachment O of the Midwest ISO's OATT are just and reasonable.

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

3. On October 30, 2003, ATC and the Midwest ISO filed modifications to ATC's rate formula in Attachment O of the Midwest ISO OATT. ATC proposed to modify its rate formula to: (1) include Construction Work in Progress (CWIP) in the calculation of transmission rates for new transmission investment in lieu of capitalizing an Allowance for Funds Used During Construction (AFUDC); (2) allow current year expensing of pre-certification costs for new transmission investment instead of capitalizing those costs and earning a return; and (3) increase the allowed return on common equity (ROE) from 12.20 percent to 12.38 percent and to return to a 50 percent debt, 50 percent equity, capital structure. ATC requested these modifications as alternative incentives to the ROE basis point incentive adders outlined in the Commission's Proposed Pricing Policy Statement.<sup>5</sup> ATC requested these alternative incentives to facilitate the financing of approximately \$2.3 to \$2.8

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<sup>4</sup> The Settlement Parties include: ATC, the Midwest ISO, Wisconsin Transmission Customer Group, Wisconsin Industrial Energy Group, Inc., Dairyland Power Cooperative, Wisconsin Paper Council, Manitowoc Public Utilities, WPS Resources Corporation (WPS Resources Corporation represents the interests of Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Power Development Inc. and WPS Energy Services, Inc.) and Wisconsin Electric Power Company.

<sup>5</sup> See Proposed Pricing Policy for Efficient Operation and Expansion of Transmission Grid, 102 FERC ¶ 61,032 (2003).

billion in new transmission facility construction over the next ten years. ATC states that this new transmission construction is needed to increase reliability on the system, meet load growth, and alleviate congestion.

4. In the December 29 Order, the Commission conditionally accepted ATC's proposed changes to its rate formula and made certain modifications effective on January 1, 2004, subject to refund, and established hearing and settlement procedures to address issues regarding the reasonableness of the proposed rate modifications; ATC's analysis of the rate impacts of the proposed modifications; and the reasonableness of the proposed revision of the capital structure to 50 percent debt and 50 percent equity.

5. The Commission also required that ATC apply the incentive rate treatment only to projects that are accepted by the Midwest ISO in the Midwest ISO's Transmission Expansion Plan; that the incentive rates could remain effective for only as long as ATC remains a member of the Midwest ISO; and directed ATC to continue to account for AFUDC and pre-certification costs according to the general requirements of the Commission's Uniform System of Accounts and separately recognize the economic effects of the rate plan approved for return on CWIP and expensing of pre-certification costs in accordance with the requirements for recognition of Other Regulatory Assets and Liabilities.

6. The Wisconsin Transmission Customer Group, et al. requested rehearing of the Commission's December 29 Order, contending that the Commission had erred by (1) accepting a return on equity of 12.38 percent, and (2) finding that ATC had provided the necessary support demonstrating that an additional incentive adder beyond a return on equity of 12.38 percent would be warranted.

7. ATC also filed a request for rehearing and/or clarification of the December 29 Order requesting that the Commission's accounting requirements set forth in the December 29 Order be fulfilled with footnote disclosures to ATC's financial statements. ATC sought clarification that the December 29 Order permits ATC to expense pre-certification costs in the year of occurrence for those projects that have been accepted by the Midwest ISO, even though the project in-service date is more than five years following the year in which the expense occurs since the Midwest ISO's planning period is shorter than ATC's or alternatively that pre-certification costs related to such projects can be included in current-year expenses subject to the outcome of the settlement procedures established by the Commission.

8. ATC states that if the Settlement Agreement is accepted by the Commission, it will render its request for clarification regarding precertification costs moot. On February 24, 2004, the parties reached a settlement in principle on the issues in this proceeding.

9. On March 26, 2004, ATC filed a proposed Settlement Agreement in Docket No. ER04-108-000. On April 15, 2004, Commission Trial Staff filed comments in support of the Settlement Agreement. The Michigan Public Service Commission also filed comments, explaining that it did not object to the Settlement. ATC submitted additional comments on April 26, 2004. On April 27, 2004, the Settlement Judge certified the Settlement to the Commission as an uncontested settlement.

## **II. DISCUSSION**

### **A. Settlement Agreement**

10. The Settlement is in the public interest and is hereby approved. The rate schedule revisions submitted with the settlement are in compliance with Order No. 614<sup>6</sup> and are accepted for filing as designated and are made effective on January 1, 2004. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

11. As described in section III of the Explanatory Statement accompanying the Settlement, ATC requested waivers and/or Commission authorization on two accounting issues necessary to implement certain accounting requirements to account for ATC's CWIP in rate base treatment accurately. We will grant such waivers and authorization to implement such accounting requirements as described in the Explanatory Statement, effective as of January 1, 2004.

12. Consistent with Article 1, Paragraph 1 of the Settlement, ATC shall make refunds reflecting the settlement rate of return on its rate base for service on and after January 1, 2004, which refunds are to be included in ATC's annual rate true-up process in its Attachment O rate formula under the Midwest ISO OATT.

### **B. Accounting Clarification and Dismissing Rehearing Requests**

13. In the proposed Settlement Agreement, ATC proposes a rate plan that 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, as noted in the December 29 Order, results in ATC recovering costs in rates in a different period than costs are ordinarily charged to expense under the general requirements of the Uniform System of Accounts (USOA).

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<sup>6</sup> Designation of Electric Rate Schedule Sheets, Order No. 614, 65 Fed. Reg. 18,221, FERC Statutes and Regulations ¶ 31,096 (2000).

14. In its October 30, 2003 application, ATC proposed to recognize the effects of its rate plan for accounting purposes by deviating from the general requirements of the USOA in certain respects. First, ATC proposed to discontinue the capitalization of AFUDC on construction projects started after January 1, 2004. Second, ATC proposed 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.

15. In its December 29 Order, the Commission found that while ATC's proposed accounting captured the economic effects of its rate plan, its proposal undermined the comparability of financial information between entities.<sup>7</sup> This lack of comparability resulted from the fact that while other entities capitalized AFUDC and pre-certification costs as required by the general requirements of the USOA, ATC would not. Further, the Commission found that this loss in comparability reduced the usefulness of the financial information. Consequently, as an alternative to ATC's proposal, the Commission required 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.<sup>8</sup> This approach would result in comparable financial information being reported to the Commission.

16. ATC now requests clarification as to whether the accounting requirements that the Commission set forth in its December 29 Order can be met with footnote disclosures to ATC's financial statements. ATC states that the proposed footnote disclosures would provide the Commission with substantial information to address the Commission's concerns set forth in the December 29 Order. Further, ATC indicates that the proposed footnote disclosures would maintain comparability between utility financial statements and meet the Commission's comparability goals, while simplifying the accounting needed for compliance.<sup>9</sup>

17. Since ATC's new accounting proposal provides the Commission with the relevant financial information needed for comparability purposes, while simplifying compliance, we will clarify that ATC can fulfill the accounting requirements set forth in the December 29 Order through the use of footnote disclosures in its FERC Form No. 1 and Form No. 3-Q. The footnote disclosure should: 1) explain thoroughly

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<sup>7</sup> December 29 Order at P 39.

<sup>8</sup> December 29 Order at P 40.

<sup>9</sup> ATC Request for Clarification and/or Rehearing at 1.

ATC's changes to its rate formula, 2) include details of amounts not capitalized because of changes made to the rate formula for the current year and previous two years and the sum of all years beginning January 1, 2004, and 3) include a partial balance sheet consisting of the Assets and Other Debits section of the balance sheet to include the amounts not capitalized because of the changes made to the rate formula for the current year and previous two years.

18. Our approval of the Settlement Agreement and the clarifications contained herein, make the requests for rehearing filed by the Wisconsin Transmission Customer Group, et al. and ATC moot.

The Commission orders:

(A) The proposed Settlement Agreement is hereby approved and accompanying tariff sheets are hereby accepted for filing, to become effective January 1, 2004, subject to refund.

(B) ATC's request for clarification is hereby granted, and the requests for rehearing are hereby dismissed as moot.

(C) Docket Nos. ER04-108-000, ER04-108-001, and ER04-108-002 are hereby terminated.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

( S E A L )

Linda Mitry,  
Acting Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

American Transmission Company LLC

Docket Nos. ER04-108-000, ER04-  
108-001, ER04-108-002

(Issued May 6, 2004)

KELLY, Commissioner, dissenting in part:

For the reasons I have previously set forth in Wisconsin Power & Light Co., 106 FERC ¶ 61,112 (2004), I do not believe that the Commission should depart from its precedent of not approving settlement provisions that preclude the Commission, acting *sua sponte* on behalf of a non-party, or pursuant to a complaint by a non-party, from investigating rates, terms and conditions under the “just and reasonable” standard of section 206 of the Federal Power Act at such times and under such circumstances as the Commission deems appropriate.

Therefore, I dissent from this order to the extent it accepts for filing an agreement that provides, in relevant part: “It is the intent of the Settlement Parties that the right to change any provision of this Settlement Agreement shall be limited to the maximum extent permissible by law and that any such change shall be in accordance with the *Mobile-Sierra* public interest standard.”

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Suede G. Kelly