

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 Systems, Inc.

Docket Nos. ER04-618-000 and
ER04-618-001

ORDER ACCEPTING AND SUSPENDING TARIFF FILING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued May 6, 2004)

1. On March 4, 2004, American Transmission Systems, Inc. (ATSI) filed an application and proposed Schedule 2, Reactive Supply and Voltage Control from Generation Sources Services, under its Open Access Transmission Tariff. ATSI also filed a new Schedule 2.1, Revenue Requirement for Reactive Power, together with the testimony of Richard A. Ziegler, to demonstrate the reasonableness of its proposal.¹ This order accepts the proposed tariff filing, suspends it for a nominal period, permitting it to go into effect on May 1, 2004, subject to refund, and sets it for hearing and settlement judge procedures.
2. This action benefits customers because it provides an opportunity for the parties to develop a more complete factual record upon which the Commission may evaluate the justness and reasonableness of the proposed rate increase.

Background

3. ATSI is a wholly-owned subsidiary of FirstEnergy Corp. that owns certain transmission facilities in Ohio and Northwestern Pennsylvania in the FirstEnergy Control Area. Operational control over the ATSI facilities was transferred to the Midwest ISO on October 1, 2003. Schedule 2 of the Midwest ISO OATT states that charges for Reactive Supply service represent a pass through of the costs charged by the Control Area

¹ The application was supplemented by a filing on March 10, 2004, in which ATSI submitted revised exhibits to Mr. Ziegler's testimony.

operator.² ATSI will pass through charges for Reactive Supply in its Control Area for its generation affiliate FirstEnergy Solutions, Troy Energy³, and Orion Power Midwest, LP.⁴ The Commission accepted and suspended Troy Energy's reactive supply charge, effective on April 29, 2004, subject to refund and conditions.⁵

4. ATSI's formula rate in its proposed Schedule 2 provides for the pass-through of charges from non-affiliated generators. Upon Commission approval ATSI will pass on reactive power supply charges that flow through to transmission customers on its system. This situation will terminate in the future when the Midwest ISO completes its stakeholder process and has on file modifications to its Schedule 2 to allow compensation for reactive power service by multiple suppliers in a control area or pricing zone.

5. ATSI requests waiver of the Commission's regulations to allow its rates to take effect May 1, 2004 and to be relieved of the necessity of filing cost-of-service information, as its proposal will be a pass-through of charges approved by the Commission in other proceedings initiated by the generators.

Notice, Comments and Protests

6. Notice of ATSI's filings were published in the Federal Register, 69 Fed. Reg. 12,313 (2004) and 69 Fed. Reg. 13,516 (2004), with protests and interventions due on or before March 31, 2004. Consumers Energy Company (Consumers) and American Municipal Power-Ohio, Inc. (Amp-Ohio) filed timely motions to intervene and protests. On April 14, 2004, ATSI filed an answer to the protests.

7. Consumers raises the following issues: (1) Schedule 2 effectively prohibits customers from self-supplying reactive power and deducting load when computing the reactive power charges to customers; and (2) allows gross load charges when distribution systems produce vars to support all or a portion of that load. Amp-Ohio raises other issues: (1) Schedule 2 allows compensation adjustments to reactive power supplies

² ATSI, as the control area operator, does not own or operate generation facilities. Reactive Supply service that is required to support transmission within the FirstEnergy Control Area is acquired by ATSI from generators interconnected to the ATSI transmission system.

³ 105 FERC ¶ 61,250 (2003).

⁴ Troy Energy is a merchant power plant in the ATSI Control Area and Orion Power Midwest, LP is an independent power generator. Charges for Orion are currently pending in Docket No. ER04-717-000.

⁵ An offer of settlement in the Troy Energy proceeding is pending.

providing vars outside normal operating procedures without comparing var needs to var capabilities; (2) operates to the effect that behind the meter generation would be forced to pay for reactive power even though their loads do not cross into the transmission system; and (3) inappropriately allows reactive power suppliers 12 hours to meet the notice issued by the Control Area operator for additional reactive power.

Discussion

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213 (a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits the filing of an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept ATSI's answer and therefore reject it.

9. ATSI's filing presents a number of issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below. Our preliminary review indicates that ATSI's filing has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

10. Therefore, we will accept the proposed schedule for filing, suspend it for a nominal period, make it effective May 1, 2004 as requested, subject to refund, and set it for hearing and settlement judge procedures.

11. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁶ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in this proceeding; otherwise the Chief Judge will select a judge for this purpose.⁷

12. The settlement judge shall report to the Chief Judge and the Commission within (60) 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

⁶ 18 C.F.R. §385.603 (2003).

⁷ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience (www.FERC.gov --click on Office of Administrative Law Judges).

their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) ATSI's proposed tariff filing is hereby accepted for filing and suspended for a nominal period, to become effective May 1, 2004, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred on 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 I), a public hearing shall be held concerning the justness and reasonableness of the proposed rate increase. However, the hearing shall 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. § 385.603 (2003), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene an initial 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 sixty days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the 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 appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge to be designated by the Chief Judge, shall within (15) days of the date of the presiding judge designation, convene a conference in these proceedings 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)

Linda Mitry,
Acting Secretary.