

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Midwest Independent Transmission System) Docket No. ER08-1146-000
Operator, Inc. and American Transmission)
Company LLC

**NOTICE OF INTERVENTION AND COMMENTS OF
THE MICHIGAN PUBLIC SERVICE COMMISSION**

Pursuant to Rule 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.214 (2007) the Michigan Public Service Commission (“MPSC”) hereby submits its notice of intervention and comments in the above-referenced proceeding. In support of its intervention, the MPSC states as follows.

I. NOTICE OF INTERVENTION

The MPSC is an agency of the State of Michigan, created by 1939 Pub. Acts 3, Mich. Comp. Laws Ann. § 460.1 *et seq.* As the Michigan regulatory agency having jurisdiction and authority to control and regulate rates, charges, and conditions of service for the retail sale of electricity in the State, the MPSC is a “state commission” as defined in 16 U.S.C. § 796(15) and 18 C.F.R. § 1.101(k) (2006). Accordingly, the MPSC hereby provides its notice of intervention pursuant to 18 C.F.R. § 385.214(a) (2) (2006).

Copies of all pleadings and correspondence in the proceeding should be addressed to:

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II. BACKGROUND

By the instant joint filing, American Transmission Company LLC, by its corporate manager ATC Management Inc. (collectively “ATCLLC”) is seeking approval from the Commission that ATCLLC meets the qualifications of an independent company under Appendix I of the Transmission Owners Agreement. In addition, the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”) and ATCLLC jointly are seeking Commission acceptance of a proposed Appendix I Agreement between ATCLLC and the Midwest ISO under the provisions of Appendix I of the Transmission Owners Agreement

Appendix I to the Transmission Owners Agreement sets forth the general framework for the inclusion and subsequent operation of “independent” transmission companies within the Midwest ISO, a regional transmission organization recognized by the Commission. According to the application, the Midwest ISO and ATCLLC have agreed upon the terms of the Appendix I Agreement and will execute the Agreement upon a Commission finding that ATCLLC meets the Commission’s independence requirements.

In January 2000, the Commission issued Order No. 2000, which identified the initial factors indicative of an entity’s independence from market participants.¹ The Commission subsequently issued a Policy Statement “to provide clarity and remove barriers to the formation of independent transmission companies.”² In the Policy Statement, the Commission explains its willingness to evaluate, on an individual basis, the merits of independent transmission company’s proposals which have market participants as “passive” minority equity owners. The

¹ *Regional Transmission Organizations*, Order 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. And Regs., Regulations Preambles July 1996-Dec. 2000 ¶ 31,089 (1999), *order on reh’g*, July 1996-Dec. 2000 ¶ 31,092 (2000), *aff’d sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v FERC*, 272 F.3d 607 (D.C. Cir. 2001).

² Policy Statement Regarding Evaluation of Independent Ownership and Operation of Transmission

Policy Statement identifies a non-exclusive list of relevant factors that will be considered to include:

- the percentage ownership held by market participants;
- the corporate governance structure of the applicant and any rights that could allow market participant owners to directly or indirectly affect the applicants operation, planning or investment decisions;
- the relationship, if any, of the capital investment policies with those governing capital contributions or dividend reinvestments by passive equity holders; and
- the ability of the applicant to operate free of market participant control or influence.

III. COMMENTS

At the outset, the MPSC would like to acknowledge and commend ATCLLC for the steps it has taken to serve customers in the Upper Peninsula of Michigan and for the consistent and timely efforts ATCLLC makes to keep the MPSC and its staff apprised of its activities; filings, such as the instant application; and areas of concern. While the MPSC believes that ATCLLC is taking seriously its responsibility to improve its transmission planning process in compliance with Order 890, the MPSC is concerned that the record, at this time, may not be sufficient to determine whether or not ATCLLC satisfies the Commission's qualifications of an independent company. Specifically, the MPSC agrees with ATCLLC that the Commission has recognized that the operational independence of an entity can provide the requisite assurance that the market participants do not adversely influence a company's independent operation to the detriment of other users of the transmission system. However, the MPSC is not convinced that historical activity is necessarily indicative of future behavior. The MPSC believes that more information from ATCLLC could resolve the various unanswered questions.

For example, page 4 of the application indicates that ACTLLC currently has a total of 29 equity owners consisting of the five companies that formed ATCLLC, as well as 24 other entities, primarily municipal electric utilities and cooperatives. Yet, it is not readily apparent

from the application what percentage of ownership interest (and/or voting rights) are held by the original five companies and/or the extent to which any such ownership would be viewed by the Commission to be “passive”.

ATCLLC has a ten member “hybrid” Board of Directors that consists of five members selected by ATCLLC’s founding members (which are market participants in that they are four vertically integrated, investor-owned public utilities and one public power entity), four members that are not associated with any market participant and the President/CEO of ATCLLC. Even though each of the members of the Board of Directors has one vote, it is unclear how, or if, the Commission will view the role of such market participants as passive when it considers operational independence in light of the fact that there are more market participant votes (5) than non-market participant votes (4).³

The MPSC appreciates the fact that ATCLLC explains its many statutory and contractual obligations containing rules that purport to require independence. However, the MPSC interprets the Commission’s policy as requiring more than just rules mandating independence. Rather, the MPSC interprets the Commission’s policy as requiring the implementation of such rules by a Board of Directors that can demonstrate that it is free from market influence and that the independent transmission company, itself, can be owned by market participants only if the ownership interest is passive.

For this reason, the MPSC believes it may be appropriate and helpful for the Commission to provide a forum in which ATCLLC, at a minimum, could provide more detailed responses to the Policy Statement factors listed above. Such a forum could consist of an opportunity for ATCLLC to provide responses to a FERC Staff –compiled data request or in a FERC Technical

³ This assumes that the Board of Directors itself selects the President/CEO (i.e., the tenth vote).

Conference that would facilitate the exchange of this important information. The MPSC defers to the Commission's preference to determine this forum.

The MPSC recognizes that any changes to an independent transmission company's governance (including board membership and voting) is required to be filed for approval by the Commission. In the event the Commission concludes that ATCLLC currently satisfies the independence requirement, the MPSC requests that, at a minimum, the Commission put into place additional safeguards to maintain and/or encourage more independence in the Board's composition. These safeguards should include a biennial review of the independence of ATCLLC's management and decision-making functions.

IV. CONCLUSION

The MPSC hereby provides its notice of intervention in this proceeding and requests Commission consideration and adoption of the recommendations set forth herein.

Respectfully submitted,

THE MICHIGAN PUBLIC SERVICE COMMISSION

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July 11, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, via electronic mail or first class mail, the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 11th day of July, 2008.

/s/ Kelly A. Daly