

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Joint Application of American Transmission Company LLC, ITC Midwest LLC, and Dairyland Power Cooperative, for Authority to Construct and Operate a New 345 kV Transmission Line from the Existing Hickory Creek Substation in Dubuque County, Iowa, to the Existing Cardinal Substation in Dane County, Wisconsin, to be Known as the Cardinal-Hickory Creek Project

Docket No. 5-CE-146

**APPLICANTS' RESPONSE TO S.O.U.L. OF WISCONSIN'S MOTION FOR ORDER
COMPELLING DISCOVERY**

INTRODUCTION

On April 2, 2019, S.O.U.L. of Wisconsin, Inc. (SOUL or Intervenor) filed a Motion for Order Compelling Discovery from Applicants (Motion).¹ In the Motion, SOUL asks the Administrative Law Judge (ALJ) for an order compelling American Transmission Company LLC and ATC Management, Inc. (ATC), ITC Midwest LLC (ITC Midwest), and Dairyland Power Cooperative (Dairyland) (collectively, the Applicants) to produce additional material in response to three data requests: Data Request 02-SOUL-ATC-15A, 02-SOUL-ATC-15B, and 03-SOUL-ATC-59.²

The data requests at issue are lengthy and the Applicants will not reproduce them here, nor will Applicants repeat the objections and responses they have already provided to SOUL and on the Public Service Commission's (Commission) Electronic Regulatory Filing System (ERFS).³ Instead, pursuant to the telephonic discussion between the Applicants, SOUL, and the ALJ on

¹ See PSC REF#: 363491.

² See PSC REF#: 360493, 363722.

³ See *id.*

April 5, 2019, this response explains why it is infeasible for the Applicants to create the analyses that SOUL is asking for and why the ALJ should therefore deny SOUL's motion in its entirety.

ARGUMENT

The gist of SOUL's requests is to require the Applicants to create analyses that "estimate[] the economic benefits for each Alternative [i.e., the non-transmission alternative; the low-voltage alternative; and the Cardinal-Hickory Creek Project (Project)] under each planning Future for an average residential Wisconsin electric customer on a per month basis over the 40 year period."⁴ As the Applicants explained in their objections and responses to these requests, the Applicants do not possess any such estimates (because they have not prepared any) and are not capable of conducting the analysis that would be necessary to satisfy SOUL's request.⁵ Moreover, as the ALJ noted at the telephone status conference, the law does not require the Applicants to serve as the Intervenor's consultant or to create such analyses. A party is not required to produce documents not in its possession, custody, or control, and is only required to respond to interrogatories with information that is readily available to it.⁶

The ALJ did, however, request that the Applicants explain in more detail the inherent difficulties in responding to SOUL's requests. Those difficulties are described in more detail below.

At bottom, the difficulty in responding to SOUL's requests stems from the reality that the Applicants are transmission owners and do not serve any retail electric customers in Wisconsin. This means that Applicants do not charge, or have any control over the rates that are charged, to

⁴ See PSC REF#: 360493, Data Request 02-SOUL-ATC-15A

⁵ See PSC REF#: 360493, at 47-48; PSC REF#: 363722, at 32-33

⁶ See, e.g., Wis. Stat. §§ 804.08(1) and 804.09(1); Wis. Admin Code § PSC 2.24; see also James W. Moore, *Moore's Federal Practice* § 34.1[2] (3d ed. 1997 & Supp. 2017) (A party is not required to create a document or thing solely for the requesting party's use).

retail electric customers. Rather, in Wisconsin, ATC provides transmission service to multiple local distribution companies (LDCs) and charges those LDCs for transmission service under wholesale rates (or tariffs) approved by the Federal Energy Regulatory Commission (FERC).⁷ Dairyland provides transmission service to multiple member cooperatives through tariffs approved via bundled contracts that are designed as Option A Grandfathered Agreements (GFAs) by the MISO transmission tariff accepted by FERC.⁸ In other words, the Applicants transmit electricity from power generators throughout the region to each electric utility's distribution system, and the electric utilities pay the Applicants for these transmission services.⁹ It is those utilities—not the Applicants—that then deliver this power over their distribution systems to local retail customers (e.g., homes, businesses, schools, hospitals, and other electric consumers in the state). Electric utilities charge retail customers for this electric service pursuant to tariffs that the Commission approves (or, in the case of an electric cooperative, that the cooperative's board of directors approves).

SOUL assumes (incorrectly) that the Applicants can determine how the transmission charges they bill to electric utilities will translate into the electric rates that utilities bill to their retail customers. This sounds like a simple enough exercise—but it is not. Setting rates for retail electric customers is a complicated process over which the Applicants have no control. An electric utility sets its retail rates by calculating its revenue requirement, which is (generally speaking) the amount of revenue needed to recover the utility's operating costs, plus a reasonable rate of return on the capital it has invested in facilities. Once the revenue requirement is set, generally, the utility

⁷ LDCs are simply electric utilities that serve retail customers, such as Wisconsin Power and Light Company or Madison Gas and Electric. ITC Midwest is also a transmission utility, but does not currently serve any LDCs in Wisconsin.

⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,221, P43 (2009), *order on reh'g*, 131 FERC ¶ 61,163 (2010).

⁹ For the sake of simplicity, the Applicants refer to ATC's customers (LDCs) and DPC's customers (member cooperatives) as "electric utilities."

conducts a cost of service study to allocate its revenue requirement among different retail customer classes (i.e., residential, commercial, and industrial). The electric utility sets different rates for each retail customer class to recover the portion of the overall revenue requirement that has been assigned to that class. Oftentimes, utilities will split each customer class up even further, applying different rates (or tariffs) to certain segments of each class.

As if the rate-setting process were not complicated enough, it varies from one utility to the next. For example, Wisconsin Electric Power Company—which serves Milwaukee, the largest city in Wisconsin—will have a revenue requirement that is at least an order of magnitude larger than a small rural cooperative in the western part of the state. Electric utilities also use different cost of service methodologies when allocating their revenue requirement among various customer classes, and there is substantial variety and nuance to the tariffs that utilities apply to customers within each customer class. Finally, the rates that these electric utilities charge change at different times, and they do so relatively often: rate cases for utilities occur every one to two years, and the proceedings can last for months at a time. And, of course, the Commission (or in the case of a cooperative, the cooperative’s board of directors) must approve any rates the utility desires to establish.

The Applicants have no control over this retail rate-setting process. The Applicants charge electric utilities for the transmission service the utilities use to obtain and deliver power to their retail customers. Constructing a new transmission line, such as the Project, can increase those transmission charges.¹⁰ But the retail utility is responsible for determining how that increase is divvied up among its various customer classes. Likewise, a new transmission line, such as the

¹⁰ Indeed, in this case, the Applicants have determined that the Project will have a present value revenue requirement of \$67 million, which represents the total increase in net transmission charges to Wisconsin network customers (i.e., LDCs and member cooperatives) over the Project’s expected 40-year life.

Project, may improve the ability to import low-cost, renewable energy into the state of Wisconsin. But again, the utility determines the terms and conditions on which it will access that power, and is responsible for determining how the benefit of that lower cost energy will be allocated among various customer classes, and ultimately reflected in customer bills.

In this case, the Applicants' planning analysis shows that the Project's benefits will exceed its costs, generating \$22.7 million to \$349.3 million in benefits for the state of Wisconsin (on a net present value basis).¹¹ Those benefits will be passed on to the Applicants' customers (electric utilities), and then to each utility's customers (retail ratepayers). But as the discussion above demonstrates, the Applicants are not capable of calculating, with any degree of reasonable certainty, how electric utilities will incorporate those costs and benefits into their retail tariffs. Put differently, the Applicants cannot (as SOUL has requested) determine the Project's economic benefits for "an average residential Wisconsin electric customer on a per month basis over the 40-year period."¹² Setting aside the inherent difficulty in determining what the "average residential Wisconsin electric customer" looks like, the Applicants would also have to obtain at least the following information to conduct this calculation:

- Each Wisconsin electric utility's revenue requirement over the next forty years;
- How each Wisconsin utility would allocate that revenue requirement among its various customer classes over the next forty years;
- The structure of each Wisconsin electric utility's retail tariffs (or rates) for each customer class, and how those rates or tariffs would change over the next forty years;
- How each Wisconsin electric utility would allocate the change in transmission charges resulting from the Project among each customer class over the next forty years;
- How the various categories of the Project's benefits (energy cost savings, capacity cost savings, insurance value, avoided reliability benefits, and asset renewal benefits) would be allocated among various electric utilities and their retail customers or members over the next forty years; and

¹¹ See CPCN Application, Appx. D: Table 1 (PSC REF#: 363769).

¹² See PSC REF#: 360493, Data Request 02-SOUL-ATC-15A.

- How each Wisconsin electric utility would incorporate those benefits into the utility’s retail rates over the next forty years.

Simply put, none of this information is ascertainable—even for the utilities who set their own retail rates, let alone for the Applicants, who do not. Trying to make assumptions about each of these variables—when the Applicants do not control retail ratemaking in Wisconsin to begin with—would not only be incredibly time consuming, but also futile and speculative.¹³

The Commission recognized as much when SOUL raised this very same issue four years ago, during the proceeding in which the Commission approved the CPCN Application to construct the Badger Coulee 345-kV transmission line.¹⁴ In that case, SOUL criticized ATC, Dairyland, and their co-applicants because they did not “estimate how much money the average Wisconsin ratepayer could expect to save in electricity costs should the Project be approved” and urged that the Commission deny the CPCN Application.¹⁵ The Commission firmly rejected this argument:

Opposing intervenors also criticize the applicants for not quantifying the projected net benefits of the project in terms of a per-retail-customer economic benefit, and for not providing guarantees of the magnitude of the benefit. Calculation of a per-retail-customer economic benefit would require a complex analysis of many individual transmission customers’ allocation of costs to retail customers and rate classes, considering each local distribution company’s (LDC) individual rate structure. The proposed project is anticipated to provide economic benefits to transmission customers as a whole, which in turn will be passed along to transmission customers and subsequently retail customers. As such, the Commission finds the intervenors’ criticism as misleading, inaccurate, and unnecessary.¹⁶

The ALJ should reach the same conclusion here and deny SOUL’s motion in its entirety.

¹³ The Applicants understand that Commission staff has also communicated to SOUL that staff does not believe the calculation SOUL has requested is feasible or meaningful.

¹⁴ See Docket No. 05-CE-142.

¹⁵ See *In Re American Transmission Co., LLC*, Docket No. 05-CE-142, *Intervenor Save Our Unique Lands of Wisconsin, Inc.’s Initial Brief in Opposition to the Application*, at 2-6 (Feb. 18, 2015) (PSC REF#: 231947).

¹⁶ *In Re American Transmission Co., LLC*, Docket No. 05-CE-142, *Final Decision*, at 14 (Apr. 23, 2015) (PSC REF#: 236151).

CONCLUSION

For the reasons stated above, the Applicants respectfully request that the ALJ deny Intervenor's Motion for Order Compelling Discovery.

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Respectfully submitted this 12th day of April, 2019:

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