



Legal and Regulatory Update

American Transmission Company

Customer Meeting

May 26, 2005



Recent Events

- Rate Treatment for entities taxed as partnerships – the “BP” issue
- The Midwest Transmission Owners authorize Rate of Return – Affect on ATC
- Transmission –Distribution Agreements
- Limitation of Liability



Rate Treatment for Partnerships

- ATC is taxed as a “Partnership” under IRS Code
 - Issue: How to handle taxes of owners in Rates when regulated entity is not itself taxed
 - Raised in Oil Pipeline Proceeding (1992)
 - Raised again in “Path 15” electric rate filing
 - Raised again in FERC Policy PL05-5



Rate Treatment for Partnership Taxes (cont'd)

- ATC's Comments in PL05-5
 - "Return" to pre-Lakehead Policy
 - Allow Partnerships to be treated like corporations for Rate treatment of taxes
 - Otherwise, policy will likely adversely affect the creation of those entities or force their demise



Rate Treatment for Partnership Taxes (cont'd)

- Partnership entities create a mechanism for the formation of transmission-only companies
- Don't confuse types of owners
- Don't equate regulated earnings with partnership distributions (or corporate dividends for that matter)



FERC Tax Policy Statement

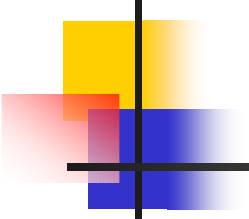
Docket No.PL05-5

- Issued May 4
- Affords Income Tax Allowance in the FERC-regulated rates
- Any form of ownership, I.e., corporation, partnership, limited liability company
- Actual or potential tax liability on income



The Midwest Transmission Owners Rate of Return Affect on ATC

- ER02-485-000 – Midwest ISO Transmission Owners Rate proceeding
- FERC determination –
 - 12.38 Return on Equity (ROE)(Midpoint)
 - .50% “adder” for joining RTO
- Appealed



The Midwest Transmission Owners Rate of Return Affect on ATC (cont'd)

- **ATC's Rate Case – ER04-108-000**
 - ATC's ROE "tied" to Midwest ISO TOs
 - ATC was not a participating TO
 - ATC did not tie its ROE to the "adder"
 - D.C. Circuit Court
 - Approved 12.38% ROE (Midpoint)
 - Rejected .5% "adder"
 - Not Final – can be either reconsidered by FERC or appealed
- **No Appeal taken**



Three Party Transmission – Distribution Agreements

- ER05-237-000, *etal.*
 - Transmission – Distribution Agreements for six municipals interconnected to ATC
 - January 10 FERC Order – Add MISO as party
 - 60 days to comply
 - No interventions – No protests
 - Sua Sponte



Three Party Transmission – Distribution Agreements (cont'd)

- February 9 – ATC Requested Rehearing
- February 9 – MISO “late” intervention and comments in support of ATC’s Request for Rehearing
 - T-D Agreements do not involve the rendition of “transmission service”
 - Different than G-T or T-T where MISO needs to be a party



Three Party Transmission – Distribution Agreements (cont'd)

- February 18 – Joint ATC/MISO motion for extension of time to comply
- February 28 – Requested date for FERC action on motion
- March 11 – Date revised T-D Agreements to be filed if not extended
- **Currently – Four More T-D Agreements filed Accepted subject to the request for rehearing**



Limitation of Liability

- ER04-1160-000 Joint ATC/MISO Request
- limits liability for Transmission Owner and Transmission Provider “for imperfections in service”
- similar to limitation previously provided to integrated utilities under state law



Limitation of Liability (cont'd)

- shall not be liable, whether based on contract, indemnification, warranty, tort, strict liability or otherwise, to any Transmission Customer, User, or any third party or other person for any damages whatsoever . . . arising or resulting from *any* act or omission *in any way associated with service* provided under this Tariff, *including, but not limited to*, any act or omission that results in an interruption, deficiency or imperfection of service, except to the extent that the Transmission Owner [Provider] is found liable for gross negligence or intentional misconduct .



Limitation of Liability (cont'd)

- Compliance filing due in 30 days
 - Remove definition of “Direct” Damages
 - Extend Indemnification provision to Generators
 - Leaves in place existing agreements entered into prior to October 2004
- Compliance filing made on 2/25/2005
- Accepted by FERC on 4/26/2005



Limitation of Liability (cont'd)

- Modifications that were accepted were made to the Open Access Transmission Tariff
- Revisions to the Open Access Transmission and Energy Market Tariff need to be made to conform to the approved changes