

Utility Regulation Report

PSCW Open Meeting: Thursday, April 29, 2010 at 10:30 a.m.

Agenda Item 1. 2-0 (Azar abstains) Approved the Minutes of the Open Meeting of Thursday, April 22, 2010

Agenda Item 2. **5-AE-166** 3–0, The Commission approved the affiliated interest agreement in the above docket and directed Commission staff to prepare an order consistent with its decision in the Application of American Transmission Company LLC and Wisconsin Power and Light Company for Approval of a Generation-Transmission Interconnection Agreement and Guarantee or Letter of Credit Transaction as Affiliated Interest Arrangements..... 1

Agenda Item 3. Laid over **5-GF-144** – Request by Wisconsin Electric Power Company and Wisconsin Gas Company for a Three-Year Extension of its Low Income Pilot Program Through March 2013 (AR/JZ memorandum of 3/30/10) 2

Agenda Item 4. **6720-TI-221** 2–0 (Azar abstains), The Commission directed staff to draft an order consistent with its discussion in TDS Metrocom, LLC, and McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services, Petition to Determine Rates and Costs for Unbundled Network Elements or Unbundled Service Elements of Wisconsin Bell, Inc., d/b/a AT&T Wisconsin 7

Present: Chairman Callisto, Commissioners Meyer and Azar.

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Background. On March 20, 2008, Wisconsin Power and Light Company (WP&L) and American Transmission Company LLC, by its corporate manager, ATC Management Inc. (collectively ATC) applied for approval of an interconnection agreement (Agreement) relating to the interconnection of the proposed Nelson Dewey Generating Station Unit 2, docket 6680-CE- 170, to the transmission system of ATC, together with a guarantee or letter of credit transaction as affiliated

interest arrangements. WP&L and ATC had entered into the Agreement pursuant to the interconnection request process incorporated in Attachment X of the Midwest Independent Transmission System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserves Tariff, which was accepted by the Federal Energy Regulatory Commission (FERC) on October 23, 2008.

On December 12, 2008, the Commission denied WP&L's request for a Certificate of Public Convenience and Necessity (CPCN) in docket 6680-CE-170. As a result of the Commission's denial of Nelson Dewey Generating Station Unit 3 (NED 3), WP&L withdrew its interconnection request with MISO on March 2, 2009, and in accordance with the provisions of Attachment X, the interconnection agreement between and among ATC as Transmission Owner, MISO as the Transmission Provider, and WP&L as the interconnection customer, was effectively terminated.

Pursuant to the terms of the interconnection termination provisions included in the Agreement, WP&L, as the interconnection customer, is responsible for the pre-certification expenses incurred by ATC, as the Transmission Owner, for developing the required interconnection facilities for NED 3 prior to WP&L's withdrawal of its

disconnection predicate to facilitate this; he would eliminate the 12 month catch-up rule; the utility should issue a quarterly confirmation letter acknowledging forgiveness of arrearage; he would change the eligibility requirements to 60% of state median income; he would allow the program to retain customers who are making regular payments indefinitely as they are doing now; and he would allow re-enrollment two years after the previous removal date as recommended. With respect to the shared database, he said, while this seems to have already occurred it would not be relevant to the program he was proposing going forward. He said he did not agree with weatherization of 50 houses. He said there are a number of programs ongoing in this area already retrofitting low income homes in the Milwaukee area. Callisto said to the extent WEPCO wants to steer these customers to those existing programs that would be appropriate. He said he would also remove the education requirement because it does not appear to be working for unknown reasons. Finally, he said, he would move the entire program in-house to WEPCO and eliminate the counseling elements. He said counseling averaged 2.6 times per participant during their stay in the program for a total of 25 minutes. He noted that no other program reviewed by the evaluator offered counseling to every customer. He said community agency involvement comes at no small cost and while bringing that in-house to WEPCO would have a cost, he said, he believed it would be substantially less and would consist primarily of eligibility determinations and other activities similar to those already done by the utility. Callisto said this recommendation was not easy for him and he acknowledged the valuable role the community organizations play in the provision of the broad range of services to this population. But, he said, we need to justify each element of this program and he could not justify the continued involvement of community entities based on the evaluation of the program.

Meyer stated that in view of the sweeping changes proposed by Callisto, he would prefer that the issue be laid over for one week. In particular he said he wanted to look closer at what the impact would be of eliminating the counseling aspect and community agency involvement.

Azar requested that Callisto provide his recommendations in writing to the others. She said her main concerns were that some of the proposals set forth actually expanded the program and that was not the direction she was heading in. She said

the Commission's over arching charge is to protect the utility customer and one component of that was to ensure the financial health of the utility. She noted that the WEPCO service territory included a higher percentage of low income population than others in the state. She said unpaid utility bills hurt WEPCO and the rest of WEPCO's customers. She said this program is an attempt to diminish the negative impact of the non-paying customers on the rest of WEPCO's customers and it may be viewed as a Good Samaritan program from a societal perspective. But, she said, the Commission is not a social service agency. She said the Commission's jurisdiction is limited to protecting utility customers and the success of this program should be based on whether it succeeds in diminishing the negative impact of non-paying utility customers on the remaining WEPCO customers. She said the program does not seem to result in improving payment habits hence there is no long-term benefit of improved customer performance under the program. Given that, she said, the question for her was whether the revenue received from the high risk customers exceeded the cost of running the program. She said she believed the Utility Test described in the consulting group report is the only metric the Commission should use in determining whether it should approve the continuation of this program. She said under the Utility Test the 2009 consulting report concludes the program is only cost effective if escrow accounting is used. If escrow accounting is ignored, she said, the program was not cost effective. In other words, she said, it was a Lifeline rate. Azar said she stated in her introduction today and in her comments relating to the WPL economic development rate that the Commission's role is not social engineering. She said she was not inclined to approve this program. She said if her colleagues were so inclined she urged only a one-year extension, having WEPCO cut as many costs as possible to see if it can get closer to the black. If the program comes back next year and it was not in the black, she said she would be hard-pressed to approve it again. Azar said she was also concerned with expanding the program into different populations, such as the elderly, but said she would be delighted to look at Callisto's entire list of changes.

Agenda Item 4. **6720-TI-221** 2-0 (Azar abstains), The Commission directed staff to draft an order consistent with its discussion in

TDS Metrocom, LLC, and McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services, Petition to Determine Rates and Costs for Unbundled Network Elements or Unbundled Service Elements of Wisconsin Bell, Inc., d/b/a AT&T Wisconsin

Background. [See *WURR* dated October 22, 2009.

Prior to the discussion, Azar stated that she would be abstaining from this discussion, having been focused on energy cost allocation matters for the last few weeks and because of that had been unable to prepare for this.

Callisto stated the Commission opened up this case on its own motion in the fall of last year and self-imposed a 180-day time line for resolution. After reading the record, he said, he felt compelled to comment on its length. He said in his perspective the case was over litigated. He said while the issues were complex, the record for most sides was full of redundant evidence and data of little consequence to key issues. He said he was weary of making these kinds of comments in telecommunications cases and suspected his comments would be of little consequence. He said he would continue to dig through these unnecessarily large dockets but suspected that the quality of his decision-making would not be enhanced in proportion to the number of trees felled to produce the relevant records.

Meyer said that Callisto's comments on the nature of the record were very well taken by him. He said he found this to be much longer and involved a lot more facts that he didn't find relevant to the questions the Commission was looking at. He noted that it could be difficult to make decisions on complicated issues with only two Commissioners at the table.

Callisto stated the 48 volt direct current collocation methodology for setting of rates was originally approved in the UNE 1 case, docket 6720-TI-161. In that docket, he said, the Commission accepted a stipulated settlement stating that the terms of the stipulation were not outside the range of results that are reasonable application of the TELRIC methodology would produce. Here, he said, the Commission is being asked to modify the existing rates for co-located power. He said a preliminary question is who has the burden of proof or persuasion. He said he concluded that the burden is on petitioners, consistent with both state and federal common law. He said while it could be argued that AT&T should

have the burden to produce its own cost information because it controlled that information, the petitioners did not make this argument. In the end, he said, the record demonstrates that all burdens have been met. Callisto said he would be concluding that the existing methodology is flawed and that billing should be based on usage. He said if his colleague arrives at the same conclusion they must then determine when the new methodology takes effect. He said certainly the methodology would apply to new interconnection agreements going forward. Whether it would apply to current interconnection agreements would depend upon whether an existing agreement includes a change of law provision. Consistent with the Commission's decision in a UNE 2 case, 6720-TI-187, he said, if an existing interconnection agreement includes a change of law provision, that provision would control implementation. He said if the Commission agreed that the change of billing methodology is appropriate that the change of law provisions will dictate the next step for these companies and any other companies that may be affected.

Meyer thanked staff and others for breaking down these issues to the point where he could grasp the issues in the case. He said this is one of the most complicated cases he'd experienced in his tenure at the Commission. He said it made the recent MISO issues seem downright understandable. Meyer stated the unique part of the request here is that petitioners are concerned about a single part of the collocation cost related to the power and the HVAC. He said petitioners believe that by calculating the cost of power based on the number of amps ordered versus usage makes their cost for power almost 50% of the total cost for collocation and bears little relationship to how the costs are incurred. He said petitioners also believed that this is not the way AT&T allocates the cost of power to itself which is in violation of provisions of 47 USC 251. Meyer said AT&T responds that petitioners were aware of the cost components ordered by the Commission and voluntarily agreed to them as recently as 2008 therefore the Commission does not have the authority to change the terms and conditions of the interconnection agreement. Further, he said, AT&T argues that the Commission has previously ruled that it can't change the substantive rights and provisions of an ICA based solely upon complaints and that petitioners have failed to meet their burden of proving that collocation power is being provided on rates, terms and conditions that are unjust, unreasonable or discriminatory. Complicating the

issues, he said, is the fact that the Telecommunications Act of 1996 established that parties can voluntarily agree to interconnection agreements that can in fact include rates, terms and conditions that are unjust, unreasonable and discriminatory as long as those rates, terms and conditions don't discriminate against others.

Issue discussion.

Issue 1 decision. 2-0, The Commission does have subject matter jurisdiction over this dispute.

Callisto stated that for the reasons both Commissioners had just articulated and in its response to AT&T's motion to dismiss, the Commission has jurisdiction over the subject matter.

Meyer agreed.

Issue 2 decision. 2-0, The CLECs should be charged for collocation power based on usage.

Callisto stated AT&T's current method charges CLECs based on their cable orders. He said List 2 Drain, worst-case conditions, is what the CLECs currently order and is what is used to size the power cables. Callisto stated that in his view cable capacity is not the best method to allocate power consumption costs. As the record reflects, he said, cable capacity can be very different from the actual load drawn from the power plant through those cables and the difference varies considerably by user. He said AT&T's argument that the ordering documentation clearly shows that CLECs are ordering power is unpersuasive. He said the ordering forms are at best unclear and, regardless of the form language, the size of the pipe doesn't drive the size of the plant. He said he found the CLECs "milkshake" argument better captures the situation. He said the CLECs should pay for how much milkshake they pull through the straw, not the size of the straw. He said this is particularly true when they are separately paying for the size of the straw. The disconnect, he said, is evident in the fact that the cables are sized in a fashion such that the plant could never simultaneously provide power to all CLECs at that cable size. While it is true that the CLECs can reduce the cable size to a certain extent, he said, List 2 Drain ultimately limits that reduction. Furthermore, he said, the record reflects that AT&T has never changed the size of its plant as a result of reduction in cable size. Finally, he

said, plants cannot be reserved for the CLECs but serves all load at the facility. He said its costs should be shared evenly among all load using it and the measured load amp methodology more fairly apportions those costs to those using the plant. Callisto stated that he found the existing ordered amp rate discriminatory and not TELRIC compliant.

Meyer stated 47 USC 251 requires ILECs to provide collocation on rates, terms and conditions that are just, reasonable and nondiscriminatory. He said the parties agree that when the Commission made its decision on that UNE case, it was under tremendous pressure to provide collocation arrangements to new CLECs but did not have historic data from which it could compare the CLEC's actual power usage to the amount of power order. He said that data now exists. He said he found the CLECs' and staff's analysis of how AT&T plans its power systems to be compelling evidence that AT&T does not provide collocation power to itself on the same terms and conditions it provides to TDS and PAETEC. He said AT&T plans for and allocates costs based on normal operating conditions while it requires CLECs to order and assume costs related to worst-case operating conditions. Despite the fact that TDS/PAETEC entered into these agreements voluntarily, he said, such cost allocation methodology has the potential to discriminate against other competitors.

Issue three decision. 2-0, The staff's cost model should be used to calculate collocation power rates.

Callisto stated he believed the staff model was better for two reasons: First, he said, staff's model determines the capacity of each component of the power plant separately and thus better matches the capacity of each component of the way power plants are actually engineered. This differs from the original Collocation Cost Model (CCM) that is used by both AT&T and the CLECs that effectively models all components of the power plant to have the same capacity and accordingly is not consistent with how power plants are actually engineered. Second, he said, staff's model also provides a clear relationship between the number of units over which costs are allocated in developing rates and the billing units that will be charged. He said the original CCM contains multiple numerators and denominators in the calculation of cost per unit and was not clear as to how the resulting rates were intended to be applied.

He said staff's model will avoid any future confusion as to how the resulting rates are intended to be applied and will also avoid the potential for over or under charges that could occur if rates were developed on one basis and charged on a different basis.

Meyer stated that in developing its model staff relied on the guidance provided by FCC rule 47 CFR 51.511 that the cost per unit should be developed by dividing the cost of providing elements by the sum of the number of units that will be provided to both the ILECs and other requesting carriers such as the CLECs. He said the main difference between the staff model and the CCM is the calculation of the cost per unit of the required power plant investment. Meyer said, based on testimony, he would support staff's cost model. He said he found it particularly persuasive that staff caught errors that benefited both parties which the benefiting parties sometimes did not catch.

[Because Staff's model was chosen, there was no need to discuss Issue four.]

Issue 5 decision. This decision relates to how much capacity should be assumed for shared power plant cables and the range is between 4000 amps and 7200 amps. It remains open and will be decided when the staff brings the draft order back before the Commission.

Callisto said this concerns power plant cable capacity and staff's model that one half primary cable fuse capacity is valued at 3.6 times load. He said AT&T argues that this value is too high and should be two times load. The basis for this is the sample size used by staff which AT&T argues was skewed toward small central offices. Callisto said the CLECs appear to agree and so did he. He said he was inclined to go with the two times load ratio.

Meyer stated staff's model is supported in the record in particular by Exhibit 3.4 C. which provides data for seven AT&T power plants. He said he was inclined to go with the staff position on this.

After a break, the Commissioners determined that it was reasonable to use 4000 amps and 7200 amps as bookends. They instructed Commission staff to look at using something in the range of 5000 amps in the model and come back with an array of model results in the draft order that the Commissioner's could discuss at that time.

Issue 6 decision. 2-0, A 99% measurement error factor should be used as an input in the staff model.

Callisto stated the staff used a 99% measurement error factor based upon data points selected over a period of nine days for PAETEC and two days for TDS. Callisto said that while that data showed limited variability in the load, he thought AT&T's argument that something closer to 80% better reflects the appropriate metric. He said he thought AT&T's argument is supported in the record including the data responses by other CLECs and the testimony of CLEC witness Starkey at the hearing. He said he was inclined to use the 80% measurement error factor in the staff model or something approaching that.

Meyer stated he found the CLEC argument in the staff analysis regarding the measurement error factor to be persuasive. In addition, he said he could not follow AT&T's logic that simply averages the actual to estimates of the List 1 Drain to arrive at the 80% measurement error. He said while the staff analysis isn't perfect, it was a reliable and responsible proxy based on actual data and he would support 99%.

After a break, Callisto agreed to support 99%.

Issue 7 decision. This decision relates to the cost input that should be included in the staff model to recover Battery Distribution Fuse Bay (BDFB) costs and needs to be consistent with the decision in Issue Five. It remains open and will be decided when the staff brings the draft order back before the Commission.

Callisto stated the cost of the BDFB is a proxy for other costs. The first issue is the frequency of occurrence in the BDFB and a dispute over how often the CLECs use of facilities, he said. AT&T argues that the CLECs use the BDFB for a majority of the time and that if they don't, use of a separate charge is appropriate. Callisto stated he agreed with that approach which best follows cost causation with a separate rate for power arrangements over 50 amps per feed. Anything under 50 amps, he said, would be assigned 100% frequency of occurrence. He said the second issue concerns the capacity of the feeder side of the BDFB. TDS and PAETEC provided data showing the disparity between the capacity of the feeder

side of the BDFB and the distribution side for the Madison Main Central Office. That data, he said, showed the feeder cables had one third of the capacity of the distribution cables. He said AT&T did not refute this data. Based on this, he said, he essentially agreed with alternative C.iii.4. on the decision matrix which is described on the matrix as: \$146,941 plus AT&T alternative of having a separate rate when no BDFB is used, based on feeder side capacity at one third the distribution side capacity and 7200 amps which is 3.6 times load*\$61.34/amp and 100% frequency of occurrence. He noted however that he was at the 4000 amp number.

Meyer suggested that because the Commissioners had disagreement on a couple of issues already, that they break to discuss matters with staff, and reconvene.

Callisto agreed stating they would take a break after they got through the rest of the decision matrix.

Issue 8 decision. 2-0, Rectifiers and Batteries: The Qwest cost of \$73.46 and 2800 amps per spare capacity of 1.4 times the load of 2000 amps.

Callisto stated this issue concerns the competing cost of rectifiers and batteries proposed by the parties. He said it was a relatively close call for him but he was inclined to go with the CLEC number which comes from a recent Qwest study in Minnesota and is more consistent with TELRIC forward-looking principles than the number used by AT&T.

Meyer said this is one of the large cost items and it was also a close call for him. Here, he said, he came down with the CLEC proposal.

Issue nine decision. 2-0, Investment costs should not be reduced by 30% based on Qwest's costs.

Callisto said he disagreed with the CLECs that, because in Minnesota Qwest agreed to lower stipulated rates, their initial figure must have been inflated, therefore, investment costs here should be reduced by 30%. He said adding an arbitrary reducer is too blunt a tool to capture the full flavor of the Minnesota negotiations and he agreed with AT&T on this issue.

Meyer agreed.

Issue 10 decision. 2-0, The Commission should accept all relevant undisputed cost model inputs.

Callisto said he generally would agree that the Commission should accept what have been characterized as all the undisputed cost model inputs. Obviously, he said, from the parties' comments on the decision matrix there appeared to be at least two issues that the Commission should make specific statements about. With respect to the cost for the BDFB, he said, the thing that is undisputed was \$61.34 per amp. As to the cost of the power distribution centers, he said, he was inclined to go with the CLEC numbers for consistency with other Qwest figures.

Meyer agreed.

Issue 11 decision. 2-0, The cost of HVAC that should be included in final rates is \$1.23 based on the CLECs alternative proposed input using staff's model.

Callisto said he found the CLEC's witness and evidence more credible here. He noted AT&T's witness on cross examination had difficulty explaining away the CLEC's analysis that the AT&T costs were based upon inflated estimates. Further, he said, AT&T's witness had difficulty describing how he got to his figure. He said Mr. Starkey on behalf of the CLECs concedes that the reduced amount of \$1.23 is high but defensible. He said he was inclined to go with that amount or something similar.

Meyer stated he found the evidence in the record as to the Qwest rates more persuasive.

After the break, Meyer agreed with Callisto's position.

Issue 12 decision. 2-0, The Commission's final decision will be implemented immediately in all new interconnection agreements. Consistent with the Commission's decision in the UNE 2 case, 6720-TI-187, if an existing interconnection agreement includes a change of law provision, that provision would control implementation.

Callisto outlined his position in his opening remarks.

Meyer agreed.

The next open meeting is scheduled for Tuesday, May 11, 2010, at 10:30 a.m.