

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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American Transmission Company LLC and ATC )  
Management Inc. )  
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Application pursuant to Section 7-204 of the Public )  
Utilities Act for authority to engage in a )  
Reorganization, to enter into agreements with )  
affiliated interests pursuant to Section 7-101, and for )  
such other approvals as may be required under the )  
Public Utilities Act to effectuate the Reorganization. )

Docket No. 15-0630

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**DIRECT TESTIMONY OF  
MICHAEL HOFBAUER  
ON BEHALF OF AMERICAN TRANSMISSION COMPANY LLC  
AND ATC MANAGEMENT INC.**

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1 **INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. My name is Michael Hofbauer. My business address is P.O. Box 47, Waukesha, WI,  
4 53187-0047.

5 **Q. By whom are you employed?**

6 A. I am employed by ATC Management Inc. (ATCM), the corporate manager of American  
7 Transmission Company LLC (ATCLLC). In my testimony, I will refer to these entities  
8 collectively as "ATC." I currently serve as the as Executive Vice President, Chief  
9 Financial Officer, and Treasurer of ATC.

10 **Q. What are your duties in your position as Executive Vice President, Chief Financial**  
11 **Officer, and Treasurer of ATC?**

12 A. As Executive Vice President, Chief Financial Officer, and Treasurer, my duties include  
13 oversight of all of the financial aspects of the company: accounting, tax, treasury and  
14 cash management, financing, budgeting, and capital allocation. Included in my duties is  
15 development of ATC's revenue requirements and rates, as well as billing and collection  
16 for ATC transmission services.

17 **Q. What is the purpose of your testimony in this proceeding?**

18 A. My direct testimony will provide an overview of ATC and the multi-step corporate  
19 reorganization (Transaction) that would separate ATCLLC's existing transmission  
20 business in Wisconsin and adjacent states from its other assets currently consisting  
21 largely of the Duke-American Transmission Company (DATC) subsidiaries.

22 **Q. Please summarize the conclusions of your direct testimony.**

23 A. The corporate reorganization proposed by ATC will provide certain of ATC's owners the  
24 ability to pursue additional transmission investment opportunities outside of ATC's  
25 current footprint, while preserving the ability of other owners, who either cannot or are  
26 not interested in such investments, to continue to own their proportionate share of ATC's  
27 existing business. The reorganization will not negatively impact ATC's customers,  
28 impair its ability to raise capital, or result in the subsidization of non-utility activities by  
29 the utility or its customers.

30 **Q. Please describe your educational and business experience.**

31 A. I obtained a Bachelor of Arts degree in Accounting from the University of Notre Dame,  
32 and have a Master's of Business Administration degree from the University of Chicago.  
33 Since late 2000, I have been employed by ATC. I started with ATC as the Director of  
34 Accounting and was promoted to Chief Financial Officer and Treasurer in 2009. Prior to  
35 ATC, I worked for over ten years in the Chicago office of Arthur Andersen in both the  
36 audit and business consulting practices.

37 **Q. In addition to your direct testimony, which is marked as ATC Exhibit 13, are you**  
38 **sponsoring any exhibits?**

39 A. Yes. I am sponsoring the following, which were attached as exhibits to the Application:

- 40 • Exhibit 1, the Exchange Agreement;
- 41 • Exhibit 2, the Overhead Sharing Agreement;
- 42 • Exhibit 3, a list of ATC's owners;
- 43 • Exhibits 4 through 8, which show the steps of the Transaction at various stages;
- 44 • Exhibit 10, a copy of the articles of incorporation of ATCM, ATCLLC, ATC  
45 Holdco, Development Manager, ATC Development, and DATC;
- 46 • Exhibit 11, a verified copy of ATC's FERC Section 203 filing; and
- 47 • Exhibit 12, ATC's 10-Year Assessment.

48 **Q. Were these exhibits prepared by you or at your direction?**

49 A. Yes.

50 **OVERVIEW OF ATC**

51 **Q. Please describe ATC.**

52 A. ATCLLC is a Wisconsin limited liability company created as a single-purpose, for-profit  
53 transmission company. ATCM is a Wisconsin corporation serving as the corporate  
54 manager of ATCLLC. ATC is an Illinois public utility that owns and operates two 345  
55 kilovolt (“kV”) transmission lines and associated facilities, each less than two miles in  
56 length, that interconnect with the 345 kV system of Commonwealth Edison Company, as  
57 well as a 69 kV transmission line and associated facilities that form a nine-mile loop in  
58 Winnebago County and serves four distribution substations. *American Transmission Co.*  
59 *L.L.C. and ATC Management Inc.*, Docket No. 01-0142 (Jan. 23, 2003); *American*  
60 *Transmission Co. LLC*, Docket No. 11-0661 (April 10, 2012). ATC does not charge any  
61 retail rates to Illinois end-user customers or have any retail customers in Illinois. ATC’s  
62 transmission service rates are regulated exclusively by FERC.

63 ATC began operations under the terms of its own open access transmission tariff  
64 on January 1, 2001. ATC currently owns and operates approximately 9,500 miles of  
65 transmission facilities in Wisconsin, Michigan, Illinois, and Minnesota.

66 **Q. Please describe the new development-focused business.**

67 A. The proposed restructuring involves the creation of three new entities, ATC Holdco LLC  
68 (ATC Holdco), ATC Development Company LLC (ATC Development), and ATC  
69 Development Manager Inc. (Development Manager). ATC Holdco is a Delaware limited  
70 liability company created to allow those ATC owners who wish to participate in  
71 development outside of ATC’s traditional service territory to hold interests in both ATC  
72 and in new development opportunities. ATC Holdco is managed by Development

73 Manager, a Delaware corporation. ATC Holdco owns a 100% stake in ATC  
74 Development, a Delaware limited liability company created to pursue transmission  
75 development opportunities outside of ATC's traditional service territory. Through its  
76 subsidiaries, ATC Holdco will own and operate certain transmission facilities in other  
77 jurisdictions and with other parties, and wishes to acquire rights to operate additional  
78 transmission facilities.

79 **OVERVIEW OF THE TRANSACTION**

80 **Q. Please describe the Transaction.**

81 A. ATCLLC is currently owned by a number of electric utilities, co-operatives, and  
82 municipalities. In addition, a small interest is held by ATCM, which provides  
83 management services to ATCLLC and its DATC subsidiaries. The owners of ATCLLC  
84 own shares in ATCM in roughly the same proportion that they own membership interests  
85 in ATCLLC.

86 Some of ATCLLC's member owners, particularly the municipal and cooperative  
87 members, are not able, or do not want, to participate in project investments outside of  
88 ATCLLC's existing core transmission business in Wisconsin and adjacent states. ATCM  
89 has determined that it would be beneficial for ATCLLC to undertake a corporate  
90 reorganization that would separate ATCLLC's existing transmission business in  
91 Wisconsin and adjacent states from its other assets currently consisting largely of the  
92 DATC subsidiaries. To accommodate increased business development activities by  
93 DATC and ATCLLC member owners who are interested in such business development

94 activities, the proposed reorganization would create a new development-focused business  
95 under the holding company.

96 Under the proposed restructuring, existing ATCLLC owners (other than ATCM),  
97 through the Exchange Agreement, had the option to remain invested in ATCLLC only  
98 (Non-Exchanging Members) or exchange their interests in ATCLLC over time for  
99 interests in ATC Holdco (Exchanging Members). This arrangement will accommodate  
100 Non-Exchanging Members who wish to limit their investment to ATCLLC's current  
101 service territory and permit Exchanging Members to participate both in ATCLLC's  
102 current service territory assets (through their interest in ATC Holdco's ATCLLC Units)  
103 and in future ATC Development activities (through their interest in ATC Holdco's  
104 ownership of ATC Development, which will own all the subsidiaries and other assets  
105 outside of the current service territory).

106 Following ATC Holdco's formation, the Exchanging Members will make *de*  
107 *minimis* capital contributions to ATC Holdco in roughly the same proportion as they  
108 expect to own ATC Holdco membership interests (Holdco Units) following the exchange  
109 of ATC Units for ATC Holdco Units. Similarly, the Development Manager will issue a  
110 *de minimis* number of shares to the Exchanging Members in proportion to their  
111 ownership of Holdco Units. The proceeds of the purchase of shares will be contributed to  
112 ATC Holdco in exchange for an equal number of ATC Holdco Units. The Development  
113 Manager will cause ATC Holdco to organize ATC Development and to capitalize it  
114 initially with \$100.

115 Following the formation and organization of the Holdco entities, ATCLLC will  
116 transfer 98% of its DATC ownership interest (which represents a 49% interest in DATC)

117 to ATC Holdco. ATC Holdco would thereupon assign and contribute the DATC interest  
118 to ATC Development. ATCLLC will make a corresponding cash distribution to the Non-  
119 Exchanging Members of equivalent value. The distribution will enable the Non-  
120 Exchanging Members to receive the benefit of their investments in DATC and its  
121 subsidiaries to date.

122 At least a year and a day later, ATCLLC will distribute its remaining 1% interest  
123 in DATC to ATC Holdco and the Exchanging Members with a deemed contribution by  
124 the Exchanging Members of their share of such interest to ATC Holdco. ATC Holdco  
125 will contribute that interest to ATC Development, with the result that ATC Development  
126 ultimately would own 50% of DATC. At the same time, there would also be a  
127 corresponding cash distribution to the Non-Exchanging Members.

128 Upon receipt of all necessary regulatory approvals, the Exchanging Members will  
129 exchange a portion of their ATCLLC Units for ATC Holdco Units. Although the  
130 exchange of ATCLLC Units for ATC Holdco Units generally will be a tax-deferred  
131 transaction for the Exchanging Members, the transfers will be regarded as a transfer of an  
132 interest for purposes of the provision that effects a tax termination if interests in 50% or  
133 more of the profits and capital of a tax partnership are transferred in any twelve-month  
134 period. Accordingly, the exchange will be effected in two or more transactions to ensure  
135 that an ATCLLC tax termination would not ensue.

136 Subject to the ability of any Exchanging Member to opt-out of its obligation to  
137 exchange its remaining ATCLLC Units for ATC Holdco Units at any time up to 366 days  
138 after the initial exchange, the Exchanging Members will exchange the balance of their

139 ATCLLC Units for Holdco Units, provided again that no more than 49% of the ATCLLC  
140 Units may be exchanged.

141 ATC Holdco will be managed by Development Manager. Development Manager  
142 will enter into an Overhead Sharing Agreement with ATCM, whereby Development  
143 Manager will pay for overhead services provided by ATCM. ATCM will become a  
144 centralized service company that provides administrative, managerial, financial,  
145 accounting, record-keeping, legal, and engineering services to ATCLLC, ATC Holdco,  
146 ATC Development, DATC, and any other public utility subsidiaries that are formed in  
147 the future. ATCM will be regulated by FERC pursuant to Part 367 of FERC's  
148 Regulations pertaining to the Uniform System of Accounts for Centralized Service  
149 Companies.

150 **REGULATORY APPROVALS**

151 **Q. For which Transaction-related approvals is ATC applying?**

152 A. ATC is applying for approval of a corporate reorganization pursuant to 220 ILCS 5/7-204  
153 and 7-204A, approval of affiliate interest agreements pursuant to 220 ILCS 5/7-101,  
154 approval of transfer of certain interests pursuant to 220 ILCS 5/7-102, and such other  
155 approvals as may be required under the Public Utilities Act to effectuate the proposed  
156 reorganization.

157 **Q. Does ATC satisfy the necessary regulatory requirements for Section 7-204 approval?**

158 A. Yes. ATC provided all of the information required by Section 7-204 along with its  
159 Application. That information supports the findings that:

- 160 • The proposed reorganization will not negatively impact ATC’s ability to provide  
161 adequate, reliable, efficient, safe, and least-cost public utility service. The reorganization  
162 proposes to address specific financing and investment issues on behalf of some of ATC’s  
163 municipal and cooperative owners. While the Exchanging Members will now hold their  
164 interests in ATCLLC indirectly, through ATC Holdco, the ultimate owners and operation  
165 of ATCLLC will not change as a result of the Transaction.
- 166 • The proposed reorganization will not result in the unjustified subsidization of non-utility  
167 activities by the utility or its customers. To the contrary, by further separating ATC’s  
168 utility and business development operations, the reorganization would provide additional  
169 safeguards against cross-subsidization. Mr. Rusch’s affidavit, attached to the Application  
170 as Exhibit 9, provides additional clarity on how the Overhead Sharing Agreement  
171 mitigates cross-subsidization concerns.
- 172 • The Overhead Sharing Agreement, as further discussed by Mr. Rusch’s affidavit, clarifies  
173 the allocation of costs and facilities between the utility and non-utility aspects and  
174 safeguards ratepayer interests.
- 175 • The proposed reorganization will not significantly impair ATC’s ability to raise  
176 necessary capital. Moreover, by transferring ATCLLC’s interests in DATC and other  
177 business development opportunities to the new holding company structure, the risk  
178 profile of ATCLLC (and thus any concerns about raising capital) should be reduced.
- 179 • ATC will not merge or otherwise change corporate form as a result of the reorganization.  
180 ATC will remain an Illinois public utility and will remain subject to all applicable laws,

181 regulations, rules, decisions, and policies governing the regulation of Illinois public  
182 utilities.

183 • The proposed reorganization is unlikely to have a significant adverse effect on  
184 competition. ATC's transmission service rates are regulated exclusively by FERC, and  
185 ATC provides service subject to its FERC-approved tariff. ATC owns no generation and  
186 cannot exercise market power. Further, the reorganization will not change the ultimate  
187 owners of ATCLLC.

188 • ATC serves no retail customers, and ATC does not anticipate that the reorganization will  
189 have any adverse rate impacts, directly or indirectly, on retail customers.

190 **Q. Does ATC satisfy the necessary regulatory requirements for Section 7-204A**  
191 **approval?**

192 A. Yes. ATC's application to the Commission and Exhibits to the application 1 through 12  
193 satisfy the Commission's requirements for Section 7-204A approval.

194 **Q. Does ATC satisfy the necessary regulatory requirements for Sections 7-101 and 7-**  
195 **204A(b) affiliated interest agreement approval?**

196 A. Yes. Sections 7-101 and 7-204A(b) require Commission approval of certain agreements  
197 between affiliated interests. ATCM and Development Manager are affiliated interests  
198 within the meaning of Section 7-101. Accordingly, ATC requests approval of the  
199 Overhead Sharing Agreement, attached as Exhibit 2 to the application.

200 ATCM and Development Manager wish to enter into a reimbursement  
201 arrangement whereby ATCM will pay all of the expenses for the shared personnel, office  
202 facilities, and administrative overhead, and Development Manager will reimburse ATCM

203 for its pro rata share of those expenses, as well as for any direct expenses of Development  
204 Manager that are paid by ATCM.

205 ATCM is not in the business of providing personnel, office facilities, or  
206 administrative overhead services and will not derive any profit from the reimbursement  
207 arrangement with Development Manager. The parties intend for the amounts paid by  
208 Development Manager to ATCM as reimbursements pursuant to the Agreement to be  
209 treated as repayments of amounts advanced and not to be included in ATCM's gross  
210 income for federal income tax purposes.

211 Additionally, Robert A. Rusch, the Director of Finance and Accounting at ATC,  
212 provides direct testimony that contains analysis and discussion of the cost impact to ATC  
213 of the Overhead Sharing Agreement. The Agreement is reasonable and consistent with  
214 the Commission's goal stated in Section 7-101(3) of safeguarding the public interest: the  
215 Agreement provides for administrative efficiency while ensuring, as discussed in Mr.  
216 Rusch's testimony, that ratepayers do not subsidize any portion of the non-utility Holdco  
217 activities.

218 **Q. Is ATC applying for other Transaction-related approvals?**

219 A. Yes. In Wisconsin, ATC has applied for regulatory approval of the reorganization  
220 (PSCW Docket No. 137-BE-100), as well as affiliate interest approvals for the overhead  
221 sharing agreement (PSCW Docket No. 137-AE-116) and the operating agreement  
222 (PSCW Docket No. 137-AE-117).

223 ATC also applied for FPA § 203<sup>1</sup> approval from FERC in FERC Docket No.  
224 EC16-47. That approval was received on January 20, 2016. *Am. Transmission Co. LLC*,  
225 154 FERC ¶ 62,044 (Jan. 20, 2016).

226 **CONCLUSION**

227 **Q. Does this complete your direct testimony?**

228 **A. Yes.**

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<sup>1</sup> 16 U.S.C. § 824b.