

REDACTED

DIRECT TESTIMONY

of

Sheena Kight-Garlich

Finance Department
Financial Analysis Division
Illinois Commerce Commission

American Transmission Company LLC and ATC Management Inc.

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

May 5, 2016

PUBLIC VERSION
Confidential Information Identified As
*****BEGIN CONF*** XXXX ***END CONF*****

1 **Q1. Please state your name and business address.**

2 A1. My name is Sheena Kight-Garlich. My business address is 527 East Capitol
3 Avenue, Springfield, IL 62701.

4 **Q2. What is your current position with the Illinois Commerce Commission**
5 **(“Commission”)?**

6 A2. I am a Senior Financial Analyst in the Finance Department of the Financial
7 Analysis Division.

8 **Q3. Please describe your qualifications and background.**

9 A3. I received a Bachelor of Business degree in Finance and Marketing from
10 Western Illinois University in Macomb, Illinois in May of 1998. I also earned a
11 Master of Business Administration degree, with a concentration in Finance, from
12 Western Illinois University in May of 2001. I have been employed by the
13 Commission since January of 2001. I was promoted to Senior Financial Analyst
14 on October 1, 2004. I have previously testified before the Commission on a
15 variety of financial issues.

16 **Q4. Please state the purpose of your testimony in this proceeding.**

17 A4. On December 9, 2015, American Transmission Company LLC (“ATCLLC”) and
18 ATC Management Inc. (“ATCM”) (together, “ATC”) filed an Application
19 (“Application”) for approval of: (1) a corporate reorganization pursuant to 220

20 ILCS 5/7-204 and 7-204A; (2) affiliate interest agreements pursuant to 220 ILCS
21 5/7-101; (3) the transfer of certain interests pursuant to 220 ILCS 5/7-102, and;
22 (4) any other approvals required under the Public Utilities Act (“Act”) to effectuate
23 the proposed reorganization, The purpose of my testimony is to present my
24 evaluation of the reorganization under Sections 7-204(b)(4) and 7-102(A), (f), (g)
25 and (h) of the Act. I will also address the Company’s potential non-compliance
26 with Section VI of the Act.

27 **Q5. Have you included any Attachments or Exhibits as part of ICC Staff Exhibit**
28 **1.0?**

29 A5. Yes, I have included the following exhibit with my testimony:

30 ICC Staff Ex. 1.01: Conditions for Reorganization.

31 In addition, my testimony includes the following Attachments:

32 Attachment A: ATC Response to Staff Data Request (“DR”) OGC
33 1.03.

34 Attachment B: ATC Supplemental Responses to Staff DRs SK 1.08,
35 1.09 and 1.10.

36 **Q6. Why is it necessary to evaluate the financial implications of the proposed**
37 **reorganization?**

38 A6. To approve a proposed reorganization, the Commission must find, in part, that
39 “the proposed reorganization will not significantly impair the utility’s ability to raise
40 necessary capital on reasonable terms or to maintain a reasonable capital
41 structure.” 220 ILCS 5/7-204(b)(4). In addition, the Act states that, without prior
42 Commission consent and approval,

43 No public utility may in any manner, directly or indirectly, guarantee
44 the performance of any contract or other obligation of any other
45 person, firm or corporation whatsoever. 220 ILCS 5/7-102(A)(f).

46

47 No public utility may use, appropriate, or divert any of its moneys,
48 property or other resources in or to any business or enterprise
49 which is not, prior to such use, appropriation or diversion essentially
50 and directly connected with or a proper and necessary department
51 or division of the business of such public utility.... 220 ILCS 5/7-
52 102(A)(g).

53

54 No public utility may, directly or indirectly, invest, loan or advance,
55 or permit to be invested, loaned or advanced any of its moneys,
56 property or other resources in, for, in behalf of or to any other
57 person, firm, trust, group, association, company or corporation
58 whatsoever.... 220 ILCS 5/7-102(A)(h).

59 To determine whether or not it should approve the proposed reorganization, the
60 Commission should evaluate the financial implications of allowing ATC to provide

61 guarantees and other credit support to Duke American Transmission Company
62 (“DATC”).¹

63 **Q7. Please summarize your conclusions.**

64 A7. In my opinion, the proposed reorganization, subject to the conditions proposed in
65 ICC Staff Exhibit 1.01, meets the requirements of Sections 7-204(b)(4) and 7-102
66 of the Act. Without these conditions, the proposed reorganization, as currently
67 structured, could significantly impair ATC’s ability to raise necessary capital on
68 reasonable terms and maintain a reasonable capital structure.

69 Additionally, it appears that ATC has not filed for approval of any issuance of
70 stocks or of bonds, notes, or other evidence of indebtedness under Article VI of
71 the Act since it became an Illinois public utility in 2003.^{2, 3} I recommend that ATC
72 seek a Commission determination as to the applicability of Article VI to ATC’s
73 issuances, or request approval of any previous issuance since January 23, 2003,
74 of stocks, bonds, notes, or other evidence of indebtedness pursuant to Article VI
75 of the Act.

¹ DATC is not an Illinois public utility.

² Attachment A.

³ ATC became an Illinois public utility on January 23, 2003. *American Transmission Co., L.L.C.*, ICC Order Docket No. 01-0142, 6-8 (Jan. 23, 2003).

76 **Q8. Please describe the proposed reorganization.**

77 A8. ATC proposes to spin off its subsidiary, DATC, to a newly created holding
78 company affiliate. To effectuate the proposed reorganization, a holding
79 company, ATC Holdco LLC (“ATC Holdco”) will be created. ATCLLC’s current
80 owners will have a choice to remain invested in ATCLLC only (“Non-Exchanging
81 Members”) or to exchange their current ownership interest in ATCLLC for an
82 ownership interest in ATC Holdco (“Exchanging Members”). Exchanging
83 Members will continue to have the same ownership interest in ATCLLC through
84 their interest in ATC Holdco. ATC Holdco will create a subsidiary called ATC
85 Development. ATC Development will own the assets that ATCLLC is
86 transferring. ATCLLC will transfer its 50% ownership in DATC to ATC
87 Development. Non-Exchanging Members will receive a cash distribution to
88 compensate them for their investment in DATC that is being transferred to the
89 Exchanging Members through their holdings in ATC Holdco.

90 **Q9. How does ATC raise capital?**

91 A9. ATCLLC currently raises debt and equity capital on behalf of ATC and will
92 continue to do so after the reorganization, if required.⁴

⁴ ATC Response to Staff DRs SK 1.01, 1.02, 1.03, and 1.04.

93 **Q10. What is your assessment of ATCLLC's financial condition?**

94 A10. On a standalone basis, ATCLLC's financial condition is strong. ATCLLC
95 currently has A1 and A+ issuer ratings from Moody's and Standard and Poor's,
96 respectively.⁵ Moody's issuers with an A1 credit rating "are judged to be upper-
97 medium grade and are subject to very low credit risk."⁶ Similarly, Standard and
98 Poor's views an issuer with an A+ credit rating as having a "strong capacity to
99 meet its financial commitments."⁷

100 **Q11. How could the proposed reorganization significantly impair ATC's ability to**
101 **raise necessary capital on reasonable terms and maintain a reasonable**
102 **capital structure?**

103 A11. The proposed reorganization will not directly impact ATC's financial strength or
104 affect its capital structure at the time of reorganization.⁸ However, ATC
105 guarantees the following for DATC: 1) a *****BEGIN CONF***** XXXXXXXX *****END**
106 **CONF***** credit facility for DATC ("Credit Facility"); 2) *****BEGIN CONF*****
107 XXXXXXXX *****END CONF***** in financial obligations for the Zephyr project;
108 ("Zephyr"); 3) *****BEGIN CONF***** XXXXXXXX *****END CONF***** for Southwest
109 Power Pool, Inc. ("SPP"); and 4) *****BEGIN CONF***** XXXXXXXXXXXXXXXXXXXX

⁵ www.moodys.com; and Standard and Poor's Ratings Direct, Research Update: American Transmission Co. 'A+' Rating Affirmed, Off Watch; Outlook Stable, June 29, 2015.

⁶ Moody's Investors Service, Rating Symbols and Definitions, February 2013, 5.

⁷ Standard and Poor's Ratings Direct, Standard and Poor's Ratings Definitions, November 20, 2014, 7.

⁸ ATC Response to Staff Data Request SK 1.07.

110 *****END CONF***** for MISO projects (“MISO”).⁹ While the guarantee for MISO
111 projects *****BEGIN CONF***** XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
112 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX *****END CONF***** could significantly
113 impair ATC’s ability to raise necessary capital on reasonable terms and maintain
114 a reasonable capital structure.

115 The Company claims that by transferring ATCLLC’s interest in DATC “the risk
116 profile of ATCLLC . . . should be reduced.”¹⁰ However, ATCLLC will continue to
117 be exposed to risk from DATC until the guarantees are transferred to ATC
118 Holdco, which it estimates will take approximately six months.¹¹ To accomplish
119 the transfer, ATC proposes certain conditions as described in Attachment B
120 designed to ensure compliance with the Act. For purposes of clarity and
121 efficiency, I have summarized ATC’s proposed conditions and my
122 recommendations into a single document, Exhibit 1.01, attached to this
123 testimony.

⁹ Application, 13; ATC Response to Staff DR OGC 1.04, Attachments OGC 1.04a, b, c, d (Confidential and Proprietary) and Supplemental Response to Staff DR OGC 1.04 (Confidential and Proprietary).

¹⁰ Application, 14.

¹¹ ATC Response to Staff DRs SK 1.08, 1.09, and 1.10.

124 **Q12. Please describe the conditions that would place the proposed**
125 **reorganization in compliance with the requirements of Section 7-204(b)(4)**
126 **and 7-102 of the Act.**

127 A12. Exhibit 1.01 to this testimony provides the conditions that ATC must meet in
128 order to be in compliance with the requirements of Section 7-204(b)(4) and
129 Section 7-102 of the Act. The first condition requires ATC to transfer its Credit
130 Facility, Zephyr, SPP and MISO guaranties for DATC obligations within 180 days
131 of the later of the receipt of regulatory approval from the ICC and the Public
132 Service Commission of Wisconsin (“PSCW”). Condition two requires ATC, upon
133 successful transfer, or in any event no later than 180 days after receipt of the last
134 necessary regulatory approval, to make a compliance filing in this docket
135 confirming the guaranties have been transferred. Condition three requires that,
136 if the transfer of the guaranties is not completed within 180 days, ATC will file for
137 approval from the Commission for the guaranties under Section 7-102 of the Act.
138 The fourth condition imposes a limit of \$30 million on ATC’s aggregate liability
139 under the four applicable guaranties. Currently, there is *****BEGIN CONF***** XX
140 **XXXXXXXXXXXX** *****END CONF***** on ATC’s obligation under the MISO
141 guarantee. Condition four sets a self-imposed cap on ATC’s liability. ATC has
142 complete discretion upon which MISO projects it bids. Thus, ATC can adhere to
143 the self-imposed cap by only bidding on MISO projects that would not exceed the
144 cap.

145 **Q13. Is ATC compliant with Article VI of the Act?**

146 A13. At this time, it is unclear if ATC has properly complied with Article VI of the Act.
147 Article VI requires public utilities to seek Commission authorization before issuing
148 capitalization and to pay applicable fees for that authority. ATC has not
149 previously filed for Commission authorization under this section of the Act.¹²
150 Absent a Commission ruling stating that ATC is not required to comply with
151 Article VI of the Act, I recommend that ATC request approval of any previous
152 issuance since January 23, 2003, of stocks, or of bonds, notes, or other evidence
153 of indebtedness pursuant to Article VI of the Act.

154 **Q14. What are your recommendations?**

155 A14. I recommend that the Commission approve the proposed reorganization with the
156 conditions shown in Exhibit 1.01. However, I also recommend that ATC should
157 be required to file a petition with the Commission before a final Order is issued in
158 this docket seeking a ruling addressing the applicability of Article VI of the Act to
159 ATC's issuances of capitalization, or request approval of any previous issuance
160 since January 23, 2003, of stocks or bonds, notes, or other evidence of
161 indebtedness pursuant to Article VI of the Act.

¹² Attachment A.

162 **Q15. Does this complete your direct testimony?**

163 A15. Yes, it does.

1 **Conditions for Reorganization**

2 ATC currently has four agreements that guarantee DATC obligations. ATC's four
3 guaranties for DATC obligations are: 1) a *****BEGIN CONF***** XXXXXXXX *****END**
4 **CONF***** credit facility for DATC ("Credit Facility"); 2) *****BEGIN CONF***** XXXXXXXX
5 *****END CONF***** in financial obligations for the Zephyr project; ("Zephyr"); 3) *****BEGIN**
6 **CONF***** XXXXXXXX *****END CONF***** for Southwest Power Pool, Inc. ("SPP"); and 4)
7 *****BEGIN CONF***** XXXXXXXXXXXXXXXXXXXX *****END CONF***** for MISO projects
8 ("MISO"). The conditions for approval are as follows:

9 **Condition 1** - ATC must transfer its Credit Facility, Zephyr, SPP and MISO guaranties
10 for DATC obligations within 180 days of the later of the receipt of regulatory approval
11 from the ICC and the Public Service Commission of Wisconsin ("PSCW").

12 **Condition 2** - Upon successful transfer, or in any event no later than 180 days after
13 receipt of the last necessary regulatory approval, ATC will file a special report in this
14 docket. The special report should state if the Credit Facility, Zephyr, SPP and MISO
15 guaranties were transferred and if so, when the four guaranties were transferred, who
16 they were transferred to, and the date the guaranties were transferred.

17 **Condition 3** - If the Credit Facility, Zephyr, SPP or MISO guaranties have not been
18 transferred within 180 days of the later of the receipt of regulatory approval from the ICC
19 and the PSCW, ATC will initiate a proceeding under Section 7-102 of the Public Utilities
20 Act to secure the Illinois Commerce Commission's approval for the any of the
21 guaranties that have not been transferred.

22 **Condition 4** - ATC will not accrue aggregate liability under the Credit Facility, Zephyr,
23 SPP or MISO guaranties in an amount greater than \$30 million.

American Transmission Company
Docket No. 15-0630

Response to ICC Data Request Set OGC-1

ICC Data Request OGC-1.03:

Please identify the Commission docket number of all cases in which ATC applied for Commission approval for issuance of capitalization. If no Commission approval was sought, please provide a detailed explanation of why the Company did not apply for approval of its issuance(s) of capitalization under Article VI of the Act.

Response to Data Request No. OGC-1.03:

ATC did not apply for Commission approval under Article VI of the Act for any previous issuance of capitalization. To the extent that Article VI approvals may have applied, we note that the Commission has in the past declined to require Article VI approvals for out-of-state corporations financing multi-state operations outside of Illinois, relying on Commerce Clause principles and Illinois Supreme Court case law. *See Order, Teleconnect Co., Inc. Application for CPCN*, Docket No. 85-0208 (1985) (“a state may not regulate interstate firms’ securities issuances where the issuance will finance multi-state operations, simply because they do business in that state.”); *Order, GTE Sprint Communications Corp. Application for CPCN*, Docket No. 83-0633 (1984) (“with respect to those securities issuances not for the sole purpose of financing GTE Sprint’s intrastate interMSA business in Illinois, the Commission is of the opinion that it should ... disclaim jurisdiction over all such securities issuances ...”); *United Air Lines, Inc. v. ICC*, 32 Ill. 2d 516, 526-27 (Ill. 1965). Should the Commission require additional relevant information on any such capitalizations, ATC is willing to provide it.

This response was prepared by or at the direction of:

*Michael Hofbauer
Executive Vice President, Chief Financial Officer, and Treasurer
American Transmission Company
262/506-6818 (phone)*

Dated this 31st day of March, 2016.

American Transmission Company
Docket No. 15-0630

Response to ICC Data Request Set SK-1

ICC Data Request SK-1.08:

Please identify which entity will "backstop DATC's \$30 million credit facility" after the proposed reorganization. (Application, 13.) Does the Company agree that it will not proceed with the reorganization until ATCLLC and ATCM (together "ATC") are no longer responsible for the \$30 million parent guaranty of DATC's credit facility?

Supplemental Response to Data Request No. SK-1.08:

Based on discussions with Commission Staff, ATC is supplementing its previous response to this data request. It is ATC's intention to transfer the guaranty from ATCLLC to the new development-focused holding company as soon as practicable. However, because the guaranty will be secured by cash flows from ATC Holdco, ATC does not anticipate being able to transfer the guaranty until after closing. That is, if the Commission approves the reorganization, ATC will proceed with the Transaction, as outlined in the Application. Once the initial transfer is complete (which ATC anticipates will occur within 60 days of final regulatory approval from the ICC and the PSCW), ATC will work assiduously with its counterparties to transfer the guaranties to ATC Holdco.

To accomplish this transfer while ensuring the protection of ratepayer interests, ATC would propose that the Commission include in its Order the following conditions:

- (1) ATC must transfer the guaranty within 180 days of the later of the receipt of regulatory approval from the ICC and the PSCW.
- (2) Upon successful transfer, or in any event no later than 180 days after receipt of the last necessary regulatory approval, ATC must make a compliance filing to confirm that the guaranties have been transferred.
- (3) If at the time of the compliance filing the guaranties have not been transferred, ATC will initiate a proceeding under 220 ILCS 5/7-102 to secure Commission approval for the guaranties.
- (4) At no time prior to such a transfer may ATC accrue aggregate liability under the relevant guaranties of an amount greater than \$30 million outstanding.

Certain of the guarantees referred to in the Application and previous responses may be in support of obligations that are not capable of exact quantification. In such cases, ATC will determine the exposure under such guarantee by appropriate means including estimation of exposure based on loss experience or projected potential payment amounts. As appropriate, such estimates will be made in accordance with generally accepted accounting principles and/or sound financial practices, and reevaluated periodically.

This response was prepared by or at the direction of:

*Michael Hofbauer
Executive Vice President, Chief Financial Officer, and Treasurer
American Transmission Company
262/506-6818 (phone)*

Dated this 29th day of April, 2016.

**State of Wisconsin)
County of Waukesha)**

Michael Hofbauer, being first duly sworn on oath, deposes and states that he has personal knowledge of the information stated in the responses, and the answers made therein are true, correct and complete to the best of his knowledge and belief.



Signature

SUBSCRIBED AND SWORN to before me
this 29th day of April, 2016

Carolyn A. Tanchester
NOTARY PUBLIC



American Transmission Company
Docket No. 15-0630

Response to ICC Data Request Set SK-1

ICC Data Request SK-1.09:

Please identify which entity will "guarantee Zephyr's payment of financial obligations in connection with the development of the project" after the proposed reorganization. (Application, 13.) Does the Company agree that it will not proceed with the reorganization until ATC is no longer responsible for the \$1.8 million guaranty of Zephyr's financial obligations?

Supplemental Response to Data Request No. SK-1.09:

Based on discussions with Commission Staff, ATC is supplementing its previous response to this data request. It is ATC's intention to transfer the guaranty from ATCLLC to the new development-focused holding company as soon as practicable. However, because the guaranty will be secured by cash flows from ATC Holdco, ATC does not anticipate being able to transfer the guaranty until after closing. That is, if the Commission approves the reorganization, ATC will proceed with the Transaction, as outlined in the Application. Once the initial transfer is complete (which ATC anticipates will occur within 60 days of final regulatory approval from the ICC and the PSCW), ATC will work assiduously with its counterparties to transfer the guaranties to ATC Holdco.

To accomplish this transfer while ensuring the protection of ratepayer interests, ATC would propose that the Commission include in its Order the following conditions:

- (1) ATC must transfer the guaranty within 180 days of the later of the receipt of regulatory approval from the ICC and the PSCW.
- (2) Upon successful transfer, or in any event no later than 180 days after receipt of the last necessary regulatory approval, ATC must make a compliance filing to confirm that the guaranties have been transferred.
- (3) If at the time of the compliance filing the guaranties have not been transferred, ATC will initiate a proceeding under 220 ILCS 5/7-102 to secure Commission approval for the guaranties.
- (4) At no time prior to such a transfer may ATC accrue aggregate liability under the relevant guaranties of an amount greater than \$30 million outstanding.

Certain of the guarantees referred to in the Application and previous responses may be in support of obligations that are not capable of exact quantification. In such cases, ATC will determine the exposure under such guarantee by appropriate means including estimation of exposure based on loss experience or projected potential payment amounts. As appropriate, such estimates will be made in accordance with generally accepted accounting principles and/or sound financial practices, and reevaluated periodically.

This response was prepared by or at the direction of:

*Michael Hofbauer
Executive Vice President, Chief Financial Officer, and Treasurer
American Transmission Company
262/506-6818 (phone)*

Dated this 29th day of April, 2016.

**State of Wisconsin)
County of Waukesha)**

Michael Hofbauer, being first duly sworn on oath, deposes and states that he has personal knowledge of the information stated in the responses, and the answers made therein are true, correct and complete to the best of his knowledge and belief.



Signature

SUBSCRIBED AND SWORN to before me

this 29th day of April, 2016

Carolyn A. Tanchester

NOTARY PUBLIC



American Transmission Company
Docket No. 15-0630

Response to ICC Data Request Set SK-1

ICC Data Request SK-1.10:

Please identify which entity will have "guaranty agreements with MISO and SPP to backstop DATC project development in those RTOs" after the proposed reorganization. (Application, 13.) Does the Company agree that it will not proceed with the reorganization until ATC is no longer responsible to MISO and SPP for DATC project development in those RTOs?

Supplemental Response to Data Request No. SK-1.10:

Based on discussions with Commission Staff, ATC is supplementing its previous response to this data request. It is ATC's intention to transfer the guaranty from ATCLLC to the new development-focused holding company as soon as practicable. However, because the guaranty will be secured by cash flows from ATC Holdco, ATC does not anticipate being able to transfer the guaranty until after closing. That is, if the Commission approves the reorganization, ATC will proceed with the Transaction, as outlined in the Application. Once the initial transfer is complete (which ATC anticipates will occur within 60 days of final regulatory approval from the ICC and the PSCW), ATC will work assiduously with its counterparties to transfer the guaranties to ATC Holdco.

To accomplish this transfer while ensuring the protection of ratepayer interests, ATC would propose that the Commission include in its Order the following conditions:

- (1) ATC must transfer the guaranty within 180 days of the later of the receipt of regulatory approval from the ICC and the PSCW.
- (2) Upon successful transfer, or in any event no later than 180 days after receipt of the last necessary regulatory approval, ATC must make a compliance filing to confirm that the guaranties have been transferred.
- (3) If at the time of the compliance filing the guaranties have not been transferred, ATC will initiate a proceeding under 220 ILCS 5/7-102 to secure Commission approval for the guaranties.
- (4) At no time prior to such a transfer may ATC accrue aggregate liability under the relevant guaranties of an amount greater than \$30 million outstanding.

Certain of the guarantees referred to in the Application and previous responses may be in support of obligations that are not capable of exact quantification. In such cases, ATC will determine the exposure under such guarantee by appropriate means including estimation of exposure based on loss experience or projected potential payment amounts. As appropriate, such estimates will be made in accordance with generally accepted accounting principles and/or sound financial practices, and reevaluated periodically.

This response was prepared by or at the direction of:

*Michael Hofbauer
Executive Vice President, Chief Financial Officer, and Treasurer
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Dated this 29th day of April, 2016.

**State of Wisconsin)
County of Waukesha)**

Michael Hofbauer, being first duly sworn on oath, deposes and states that he has personal knowledge of the information stated in the responses, and the answers made therein are true, correct and complete to the best of his knowledge and belief.



Signature

SUBSCRIBED AND SWORN to before me
this 29th day of April, 2016

Carolyn A. Tanchester

NOTARY PUBLIC

