

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Alternative Transmission Inc.)
)
) EL19-69-000

PROTEST OF THE ELECTRIC POWER SUPPLY ASSOCIATION

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or the “Commission”),¹ the Electric Power Supply Association (“EPSA”)² hereby submits this protest in response to Alternative Transmission Inc.’s (“ATI”) April 17, 2019 Petition for Issuance of Declaratory Order (“Petition”). EPSA opposes ATI’s requested relief in its filing because the services and/or products to be offered are not sufficiently defined and the Petition does not include adequate detail or a sound legal basis for the requested preliminary determination. In the absence of this information, EPSA has concerns that the technology and facilities described represent or include storage resources and capabilities, which are properly considered generation assets not transmission. To maintain a functional competitive market, resources that provide electricity must be treated similarly, certainly not in an unduly discriminatory manner. In the least, more information on technical and operational aspects of ATI’s proposal are necessary for the

¹ 18 C.F.R. §§ 385.211.

² Launched over 20 years ago, EPSA is the national trade association representing leading independent power producers and marketers. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. Power supplied on a competitive basis collectively accounts for 40 percent of the U.S. installed generating capacity. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue. EPSA moved to intervene in this proceeding on May 24, 2019. See (doc-less) Motion to Intervene of Electric Power Supply Association, Docket No. EL19-69-000 (filed May 24, 2019).

Commission to assess how ATI will function in the markets, and how it must be classified and compensated. Therefore, the ATI petition as filed should be rejected.

I. BACKGROUND

ATI's very short Petition asks that the Commission issue an order declaring that the alternative facilities and services described therein provide transmission of electric energy in interstate commerce subject to FERC jurisdiction, thereby designating ATI as an owner or operator of a "public utility." The Petition describes the proposed facilities and services as "flexible transmission" technology which involves electric energy transfer stations for charging and discharging. At those charging stations, "unaffiliated" electricity is transferred to a mobile medium (*e.g.*, a shippable container of an electrically chargeable, dischargeable, and rechargeable medium) which is then transported across state lines by rail or other modes of transportation, so that the mobile medium will be available for dispatch, until the charge is depleted, and the mobile medium becomes available for recharge.³

ATI then describes the application of its technology as a method of interstate transmission of electricity without the use of transmission wires, but rather by surface transportation (rail, truck, boat, airplane or any combination thereof). This is apparently a case of first impression, which is all the more reason to require more detailed information. Moreover, ATI's technology appears to be a theoretical one, which raises questions regarding whether its request is ripe for determination by the Commission.

To support its jurisdictional request, ATI cites language in Order No. 841 which recognizes "the distinction between transmission and storage when it eliminated the location of an electric energy resource from its originally proposed definition of storage

³ Petition at p. 2.

in Order No. 841.”⁴ ATI explains this language defines storage as a resource which defers the timing of delivery and consumption, and transmission as changing the location. ATI claims its facilities and services are transmission pursuant to that distinction. The Petition walks through the Commission’s FPA jurisdiction over the rates, terms and conditions of transmission of electric energy pursuant to the Commerce Clause and acts of Congress,⁵ highlighting that under the FPA “transmission” has never been defined as or confined to one mode of transmission, i.e., by wire. Therefore, ATI claims it is a public utility for purposes of the FPA with the ability to “compete fairly with traditional wire and wire corridor modes of transmission,”⁶ including as to regional transmission expansion plans and related competitive auctions for transmission expansion projects.

II. COMMENTS

A. ATI’s Description of Its Facilities and Services Lacks Sufficient Definition or Detail to Support Any Preliminary Designation

Over the course of a mere 10 pages with a short 2-page affidavit attached, ATI describes its proposed facilities as “flexible transmission” technology which,

[I]nvolves construction of electric energy transfer stations—charging and discharging—at locations in the continental United States. At the charging stations electric energy generated by unaffiliated entities will be transferred to a mobile medium—e.g., a shippable container of an electrically chargeable, dischargeable, and rechargeable medium. The charged mobile medium then will be transported across state lines by rail (and possibly tractor-trailer, boat or airplane, or any combination of these) to discharging stations at different locations. At the discharging station the medium in the containers will be available for instantaneous dispatch as instructed, until the charge is depleted, and the medium becomes available for recharge.⁷

⁴ Petition, p. 5, citing *Elec. Storage Participation in Markets Operated by Regional Trans. Orgs. & Indep. System Ops.*, Order No. 841, 162 FERC ¶ 61,127, at P29 (2018).

⁵ Petition, p. 6.

⁶ Petition, p. 7.

⁷ Petition, p. 2.

The Petition emphasizes that the electricity transferred to undefined “mobile mediums” will be generated by unaffiliated sources, and that ATI will not take title to or store this energy. Over the course of the Petition, it is unclear what the actual “facility” or “technology” is that ATI proposes to deploy. ATI appears to ignore or disavow the role of the “mobile medium,” which seems to be the charging and discharging “gizmo” that accepts, holds, and discharges the electricity produced by unaffiliated generators or sources. Based on discussion in the Petition, at times the technology is referred to as “container cars.” It is unclear if the container cars *carry* the mobile medium which is charged and discharges, or if the container cars *are* the mobile medium.

If it is the first, then is the technology the railroads & train infrastructure, precision-scheduled railroading (“PRS”), tractor trailers, boats and/or planes? If it is the second, EPSA is hard pressed to understand how this technology is not a storage or electricity supply resource. Very hard pressed.

The concern raised by an incorrect or imprecise designation of the ATI facilities and services is the effect that will have on all other resources on the system. This is why the Commission has spent *years* developing and refining guidelines and regulations for the participation of storage and distributed resources in wholesale markets.⁸ In this instance if, as EPSA believes based on the Petition, “Alternative Transmission” functions in part or even primarily as a storage resource or electricity supplier, it is imperative that it be subject to the Tariffs, Business Manuals, interconnection requirements, participation agreements, and other rules and regulations

⁸ See *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 841, 162 FERC ¶ 61,127; (2018); Order 841-A *reh’g* and clarification granted, 167 FERC ¶ 61,154 (2019); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,718, Notice of Inquiry, FERC Stats. & Regs. ¶ 35,576 (2016); *Integration of Variable Energy Resources*, Order No. 764, FERC Stats. & Regs. ¶ 31,331, *order on reh’g*, Order No. 764-A, 141 FERC ¶ 61,232 (2012), *order on reh’g*, Order No. 764-B, 144 FERC ¶ 61,222 (2013).

with which all wholesale storage providers and electricity suppliers comply. This is required for ATI to participate to any extent in the wholesale market in a manner that is not unduly discriminatory to other market participants.

The evidence that “Alternative Transmission” represents a new transmission technology is supported only by ATI’s declarations in the Petition. Although ATI attaches a very short affidavit to its Petition, this document does little more than reiterate the assertions made in ATI’s Petition.⁹ While ATI positions its technology as a new paradigm, there is no acknowledgement of the associated electricity that is taken and stored in one place and discharged in another only when it is needed. By its own description, what ATI proposes has electricity storage and supply occurring in this scenario. It seems a stretch to argue that a chemical transition that occurs based on the type of batteries being utilized is sufficient to change the nature of the service. Importantly, one of the claimed benefits of the ATI technology is the ability to “transmit” electrical energy both as to location and as to time, as the discharge cannot occur instantaneously upon the charge, but rather is moved by surface transportation to another location where it will be discharged *when dispatched* (as a power plant is dispatched).

ATI refers to the Commission’s Order No. 841 as supportive of its request in citing the following, “The Commission explained it was “removing the phrase ‘regardless of where the resource is located on the electrical system’ from the [notice of rulemaking] proposal” because “where an electric storage resource may be located does not change the applicability of the definition and will also provide a more adaptable definition for

⁹ For example, the attached affidavit qualifies the statements made therein regarding ATI’s technology as the “services ATI proposes in the Petition” or other such similar language.

other Commission actions.”¹⁰ Notably, early versions of Order No. 841 defined “location” as relating to whether a resource is located on the interstate grid or the distribution system, not based on geographic location.

ATI overlooks an array of concerns raised even by the mere transmission of electricity in a manner unbounded by geographic markets or systems. Moving electricity – both as to transmission and as to supply – from one market or distribution system to another involves a complex and detailed range of import and export protocols and obligations, intertie protocols, interconnection requirements and agreements, not to mention market price issues and concerns over price manipulation or gaming across markets not otherwise connected by the interstate transmission system. Additionally, FERC has determined that transmission must be under the control of the system operator, or ISO/RTO.¹¹ The Petition does not address how an ISO/RTO would control the ATI mobile storage which is designed to move among/across markets.

Further, in the only case to date in which the Commission has permitted stationary storage to be deemed transmission,¹² that storage resource was clearly intended to address a transmission system need such as voltage support or stability, and therefore must be selected through the planning process to meet that need.

These are likely just the tip of the iceberg regarding issues and concerns that must be considered in more detail to determine ATI’s participation in the interstate wholesale electricity markets.

¹⁰ Petition at p. 5, citing *Elec. Storage Participation in Markets Operated by Regional Trans. Orgs. & Indep. System Ops.*, Order No. 841, 162 FERC ¶ 61,127, at P29 (2018).

¹¹ *The Nev. Hydro Co. Inc.*, 122 FERC ¶ 61,272 (2008).

¹² *Western Grid Dev., LLC*, 130 FERC ¶ 61,056 (Western Grid), reh’g denied, 133 FERC ¶ 61,029 (2010)).

B. Designating “Alternative Transmission” as Requested Confers Preferential Rate Treatment to Those Resources Based on Their Function

As EPSA has pointed out in numerous FERC proceedings on the integration of storage and other new resources and technologies into the wholesale markets, a primary responsibility of the Commission is to ensure that no tariff provision or rate mechanism is utilized or revised to confer preferential treatment on resources which participate in wholesale markets as generation supply and dispatchable demand. While EPSA recognizes that such reform proposals can be associated with the challenges in integrating a new technology or resource type, any changes or reforms that institute preferential or special treatment *will* distort price signals and place uncompensated reliability burdens on other resources, thereby producing inefficient market outcomes. As noted above, the ATI technology is charged with electrical energy at one point and dispatches it at another when needed/called upon to do so. How this service does not represent a storage or electricity supply function begs credulity and is supported only by the assertions by the company in the Petition.

Even if it is the case that the technology, which includes a “flow” battery, differs significantly from traditional chemical batteries in a manner that fundamentally or sufficiently changes the capabilities of the technology, it is premature and insufficiently supported that the service offered by ATI is interstate transmission to be paid transmission rates by some transmission provider or a changing combination of transmission providers.

EPSA supports the development and integration of innovations and new technologies into the interstate Bulk Power System to provide location-constrained resources with access to markets and to help meet future energy needs. In order to do

so in a manner that maintains to the extent possible a functional, reliable, competitive market, market rules and compensation mechanisms must treat all similarly situated resources and facilities largely the same, but certainly not in an unduly discriminatory manner. To allow ATI assured transmission treatment and cost compensation for the provision of electricity runs counter to those objectives by being unduly discriminatory. Barring a clear demonstration through record evidence that ATI will provide true, verifiable transmission service only, such a designation cannot be made based on the Petition as filed. Thus, the instant Petition should be rejected by the Commission.

III. CONCLUSION

For the reasons outlined above, EPSA respectfully urges the Commission to reject ATI's Petition for Declaratory Order confirming and declaring that its vaguely described facilities and services only provide interstate transmission subject to the Commission's jurisdiction pursuant to the FPA.

Respectfully submitted,

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Dated: June 3, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., June 3, 2019.

/s/ Nancy Bagot

Nancy Bagot, Senior Vice President