

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

American Electric Power Service Corporation

Docket No. ER06-780-000

ORDER GRANTING AUTHORIZATION TO MAKE AFFILIATE SALES

(Issued May 18, 2006)

1. In this order, the Commission grants an application by American Electric Power Service Corporation (AEP) requesting Commission authorization to make wholesale sales of electric energy and capacity to its affiliate, Ohio Valley Electric Corporation (Ohio Valley Electric), from time to time for the sole purpose of enabling Ohio Valley Electric to resell such energy and capacity at retail to the Department of Energy (DOE) for use at the DOE's uranium enrichment facility in Ohio. This order concludes that the power procurement process for the DOE, as described below, satisfies the Commission's concerns regarding affiliate abuse and will result in rates that are just and reasonable.

Background

2. On March 24, 2006, AEP filed the instant application under section 205 of the Federal Power Act (FPA)¹ requesting authorization to make sales to its affiliate, Ohio Valley Electric. AEP states that the DOE uranium enrichment facilities in southern Ohio are used for uranium enrichment and are being operated in a cold standby mode and the power needs at the facility are primarily for routine maintenance and environmental restoration activities. Pursuant to a letter agreement between DOE and Ohio Valley Electric, Ohio Valley Electric solicits third-party bids for the supply of capacity and energy, as requested by DOE, to meet DOE's needs (DOE bidding process). AEP states that these ongoing solicitations have typically requested the supply of about 35 MW to 50 MW, with the requirements generally higher in the winter months due to the facilities' heating requirements. According to AEP's description of the DOE power procurement

¹ 16 U.S.C. § 824d (2000).

solicitation process, in accordance with the letter agreement between DOE and Ohio Valley Electric, DOE instructs Ohio Valley Electric to solicit bids from a group of potential suppliers for firm capacity and energy, typically for one-month periods.

3. AEP states that Ohio Valley Electric has advised AEP that the eligible bidders consist of about eight utilities and power marketers. AEP states that it understands that for reasons of cost and ease of implementation, the number of bidders has been limited by DOE and Ohio Valley Electric. AEP further states that DOE and Ohio Valley Electric treat as confidential the list of bidders who actually participate in each power procurement solicitation.

4. AEP states that while the solicitations are undertaken at the request of DOE, the bids are reviewed and ultimately approved by DOE. Ohio Valley Electric is charged with summarizing the bids for DOE, which includes a listing of the price(s) offered and other terms and conditions relating to the bid. According to AEP, Ohio Valley Electric also notes whether the bidder has secured firm transmission service. DOE selects the winning bidder of each power procurement solicitation and DOE then directs Ohio Valley Electric to arrange the transactions. AEP states that Ohio Valley Electric acts as a middleman and that DOE has the ultimate authority and responsibility for determining the winning bidders. AEP states that Ohio Valley Electric's charges to DOE in connection with the bidding process are unrelated to the price of the bids or the identity of the winning bidder.

5. AEP seeks authorization to engage in wholesale electric power sales to its affiliate in connection with the DOE's power procurement solicitation process as described herein.

6. AEP is a subsidiary of American Electric Power Company, Inc., a public utility holding company. Ohio Valley Electric was formed by a group of investor-owned utilities for the purpose of providing the electric power requirements of the uranium enrichment facility.² AEP states that Ohio Valley Electric owns a network of transmission facilities linking its two generating facilities to the DOE facility and other

² Ohio Valley Electric is currently owned by Allegheny Energy Inc. (3.50 percent), American Electric Power Company, Inc. (39.17 percent), Buckeye Power Generating, LLC (9.00 percent), The Cincinnati Gas & Electric Company (9.00 percent), Columbus Southern Power Company (4.30 percent), The Dayton Power and Light Company (4.90 percent), Kentucky Utilities Company (2.50 percent), Louisville Gas and Electric Company (5.63 percent), Ohio Edison Company (16.50 percent), Southern Indiana Gas and Electric Company (1.50 percent), and The Toledo Edison Company (4.00 percent).

neighboring transmission systems. AEP states that because Ohio Valley Electric's transmission system is interconnected with transmission systems operated by PJM Interconnection, L.L.C. (PJM) and the Midwest Independent System Operator, Inc. (Midwest ISO), the rates and terms for service are those set out in open access transmission tariffs administered by PJM and the Midwest ISO. AEP states that it must therefore obtain transmission service under the same terms and procedures as any other qualified bidder. AEP states that Ohio Valley Electric has an open access transmission tariff on file.³

7. AEP argues that the typical affiliate abuse concerns are not present here. AEP states that any sales it makes to Ohio Valley Electric as part of the DOE power procurement solicitation process are solely for the purpose of retail sales to DOE and will be priced based on the result of a limited open-bid process. AEP states that DOE will select the winning bidder to supply DOE's power needs. AEP states that neither it nor Ohio Valley Electric will be able to control or otherwise influence the bid award process and that Ohio Valley Electric is serving as an intermediary to assist DOE in procuring power to meet DOE's power needs.

8. AEP notes that the Commission's concern when a public utility sells power to a marketing affiliate is that the prices will be below market prices and will enable the affiliate to resell the power at prevailing market prices, thereby benefiting the shareholders at the expense of ratepayers. AEP argues that this concern is not present here because, under Ohio Valley Electric's arrangement with DOE, Ohio Valley Electric cannot mark up the price of the winning bidder. AEP states Ohio Valley Electric will be compensated by DOE at rates approved by the Public Utilities Commission of Ohio which include components for providing delivery service and arranging power purchases. AEP also states that this price is in no way tied to the price of power purchased or the identity of the winning bidders. AEP therefore argues that under these circumstances there would be no incentive for AEP to sell power to Ohio Valley Electric at below-market prices, and Ohio Valley Electric has no ability to resell the power to the disadvantage of AEP's customers.

9. Even though AEP argues that the Commission's affiliate abuse concerns are not applicable in this case, AEP nevertheless states that the bidding procedures that DOE employs to enable Ohio Valley Electric to procure power on DOE's behalf satisfy the Commission's guidelines as set forth in *Allegheny*.⁴

³ *Ohio Valley Electric Corporation*, 80 FERC ¶ 61,143 (1997).

⁴ *Allegheny Energy Supply, Inc.*, 108 FERC ¶ 61,082 (2004) (*Allegheny*).

Notice and Pleadings

10. Notice of AEP's filing was published in the *Federal Register*, 71 Fed. Reg. 18,311 (2006), with motions to intervene and protests due on or before April 14, 2006. None was filed.

Discussion

11. As noted above, AEP seeks Commission authorization to make sales to its affiliate, Ohio Valley Electric, pursuant to a power procurement solicitation process to secure power supplies for the DOE's uranium enrichment facility in Ohio. In order to satisfy the Commission's standards for sales between affiliates, AEP offers evidence that this power procurement solicitation process is consistent with the Commission's guidelines for determining when a competitive bidding process satisfies the Commission's concerns regarding affiliate abuse.

12. The Commission has stated that, in cases where affiliates are entering into market-based rate sales agreements, it is essential that ratepayers be protected and that transactions be above suspicion in order to ensure that the market is not distorted.⁵ The Commission has approved affiliate sales resulting from competitive bidding processes after the Commission has determined that, based on the evidence, the proposed sale was a result of direct head-to-head competition between affiliated and competing unaffiliated suppliers.⁶ When an entity presents this kind of evidence, the Commission has required assurance that: (1) a competitive solicitation process was designed and implemented without undue preference for an affiliate; (2) the analysis of bids did not favor affiliates, particularly with respect to non-price factors; and (3) the affiliate was selected based on some reasonable combination of price and non-price factors.⁷

13. In *Allegheny*, the Commission provided guidance as to the factors the Commission will consider in determining whether a competitive solicitation process such as Ohio Valley Electric's power procurement solicitation for DOE process meets the *Edgar* criteria. As the Commission stated, the underlying principle when evaluating a

⁵ See *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 at 62,167 (1991) (*Edgar*).

⁶ See *Connecticut Light & Power Co. and Western Massachusetts Electric Co.*, 90 FERC ¶ 61,195 at 61,633-34 (2000); *Aquila Energy Marketing Corp.*, 87 FERC ¶ 61,217 at 61,857-58 (1999); *MEP Pleasant Hill, LLC*, 88 FERC ¶ 61,027 at 61,059-60 (1999); *Edgar*, 55 FERC ¶ 61,382 at 62,167-69; *Allegheny*, 108 FERC ¶ 61,082.

⁷ *Edgar*, 55 FERC ¶ 61,382 at 62,168.

competitive solicitation process under the *Edgar* criteria is that no affiliate should receive undue preference during any stage of the process. The Commission indicated that the following four guidelines will help the Commission determine if a competitive solicitation process satisfies that underlying principle: (1) Transparency: the competitive solicitation process should be open and fair; (2) Definition: the product or products sought through the competitive solicitation should be precisely defined; (3) Evaluation: evaluation criteria should be standardized and applied equally to all bids and bidders; and (4) Oversight: an independent third party should design the solicitation, administer bidding, and evaluate bids prior to the company's selection. As discussed below, the Commission finds that the bidding process used here is an example of a process that meets these guidelines.

Transparency Principle

14. AEP contends that the DOE bidding process satisfies the Commission's guidelines regarding the transparency principle. AEP states that DOE, based upon its power needs for a given period, will request Ohio Valley Electric to seek bids for capacity and energy from third parties for quantities and on terms and conditions requested by DOE. AEP states that Ohio Valley Electric will then solicit bids from a group of potential suppliers, including affiliates and non-affiliates of Ohio Valley Electric. AEP states that all bidders will have equal access to relevant data as a result of the bid letter that Ohio Valley Electric, on behalf of DOE, distributes in advance of the bid. AEP states that this process ensures all bidders will have access to the same data and each can respond effectively to the power procurement solicitation process.

15. Based on these representations, the Commission finds that the DOE bidding process is consistent with the transparency principle guidelines.

Definition Principle

16. AEP contends that the DOE bidding process satisfies the Commission's guidelines regarding the definition principle. AEP states that DOE, based upon its power needs, notifies Ohio Valley Electric what power products it should solicit from potential suppliers. AEP states that DOE notifies Ohio Valley Electric of DOE's power needs in terms of amount, duration, and firmness of the supply it seeks. AEP states that over the past several years, DOE has requested Ohio Valley Electric to solicit bids for firm capacity (24 hours per day/7 days per week) typically for a certain defined period and ranging from 30 MW (for the summer months) to 50 MW (in the winter months). AEP states that the products DOE is seeking through Ohio Valley Electric are clearly defined and do not favor Ohio Valley Electric's affiliates over any other potential bidders.

17. Based on these representations, the Commission finds that the DOE bidding process is consistent with the definition principle guidelines.

Evaluation Principle

18. AEP contends that the DOE bidding process satisfies the Commission's guidelines regarding the evaluation principle. AEP states that Ohio Valley Electric summarizes all bids submitted, including non-conforming or non-responsive bids. AEP states that Ohio Valley Electric does not reject any bids that are non-conforming. Instead, Ohio Valley Electric will summarize all bids received and provide that summary for DOE's review. AEP states that the letter agreement specifies that DOE, not Ohio Valley Electric, will select the winning bidder based on the price and other terms and conditions provided by the bidders. AEP states that Ohio Valley Electric will have no decision-making authority in evaluating the bids and selecting the winners.

19. Based on these representations, the Commission finds that the DOE bidding process is consistent with the evaluation principle guidelines.

Oversight Principle

20. AEP contends that the DOE bidding process satisfies the Commission's guidelines regarding the oversight principle. AEP states that each auction will be conducted and implemented by Ohio Valley Electric under the oversight authority of DOE. AEP further states that neither it nor Ohio Valley Electric will be able to control or otherwise influence the bid award process. AEP reiterates that the DOE, not Ohio Valley Electric, ultimately will be responsible for reviewing all bid responses and selecting the over-all best offer.

21. Based on these representations, the Commission finds that the DOE bidding process is consistent with the oversight principle guidelines.

22. The Commission concludes that the DOE bidding process as described by AEP, pursuant to which Ohio Valley Electric procures power on DOE's behalf, satisfies the Commission's concerns regarding affiliate abuse. Therefore, the Commission grants AEP's request for authorization to make sales to its affiliate, Ohio Valley Electric, pursuant to AEP's market-based rate tariff, as part of the DOE bidding process described above.

23. This order satisfies the requirement that AEP first receive Commission authorization pursuant to section 205 of the FPA before engaging in power sales at market-based rates with an affiliate. In addition to requesting that we find that the proposed RFP is consistent with the *Allegheny* guidelines, AEP also specifically requests that we accept for filing the agreement under which these sales will be made. However,

the Commission's regulations provide that service agreements under market-based rate tariffs shall not be filed with the Commission.⁸

24. Consistent with the procedures the Commission adopted in Order No. 2001, AEP must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.⁹ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁰

⁸ 18 C.F.R. § 35.1(g) (2005) (“[A]ny market-based rate agreement pursuant to a tariff shall not be filed with the Commission.”). Order No. 2001, which implemented section 35.1(g) of the Commission's regulations, obviates the need to file with the Commission service agreements under market-based power sales tariffs, and requires, among other things, that public utilities electronically file Electric Quarterly Reports which include a summary of the contractual terms and conditions in every effective service agreement for market-based power sales. *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002).

⁹ Required data sets for contractual and transaction information to be reported in Electric Quarterly Reports are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

¹⁰ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2005). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

The Commission orders:

The application for authorization for AEP to make sales to its affiliate, Ohio Valley Electric, pursuant to the DOE bidding process described by AEP in its filing and supporting documents, is hereby granted, effective May 1, 2006, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.