

145 FERC ¶ 61,213
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

AEP Generation Resources Inc.

Docket No. ES14-2-000

ORDER AUTHORIZING
ISSUANCES OF SECURITIES AND ASSUMPTION OF LIABILITIES

(Issued December 16, 2013)

1. On October 15, 2013, as amended on October 17, 2013, November 14, 2013, and November 20, 2013, AEP Generation Resources Inc. (Applicant) filed an application, pursuant to section 204 of the Federal Power Act (FPA)¹ (Application) seeking Commission authorization to: (1) assume the obligations of Ohio Power Company (Ohio Power) under a \$1 billion term credit facility, which are due and payable in May 2015; (2) assume Ohio Power's obligations on several series of tax exempt pollution control bonds in the aggregate principal amount of \$872,225,000; (3) issue short-term debt in an amount not to exceed \$1 billion outstanding at any one time; and (4) issue long-term debt in an aggregate principal amount not to exceed \$2 billion. We will grant the authorizations, as discussed below.

I. Background

2. Applicant is a direct subsidiary of Ohio Power and an indirect, wholly-owned, subsidiary of American Electric Power Company Inc. (AEP or Guarantor), formed on December 8, 2011 for the purpose of owning and operating the former generating assets of Ohio Power.²

¹ 16 U.S.C. § 824c (2012).

² November 14, 2013 Amendment at 1 (Second Amendment).

3. Applicant states that the State of Ohio has enacted legislation that provides retail choice for Ohio electric customers and requires utilities that supply competitive and non-competitive retail electric service to implement a corporate separation plan approved by the Public Utilities Commission of Ohio (Ohio Commission). On October 17, 2012, the Ohio Commission approved a corporate separation plan for Ohio Power pursuant to which Ohio Power will transfer its existing generating units, contractual entitlements, fuel-related assets and contracts, and other generation assets to Applicant (Transaction).³ Under the terms of the Corporate Separation Order, at the Transaction's close, Applicant will also assume the liabilities associated with the transferred assets, including generation-related debt and liabilities associated with certain retired generating plants.⁴ Ohio Power will then distribute Applicant's shares to Guarantor, which will, in turn, contribute such shares to a wholly-owned direct subsidiary holding company (HoldCo).⁵ As a result of these steps, Applicant states that, at the Transaction's close, it will still be an indirect, wholly-owned, subsidiary of the Guarantor but it will no longer be in Ohio Power's chain of ownership.⁶

4. On October 31, 2012, in Docket No. EC13-26-000, American Electric Power Service Corporation filed, on behalf of Ohio Power and Applicant, an application pursuant to FPA sections 203(a)(1)(A) and 203(a)(1)(D)⁷ requesting Commission authorization of the Transaction.⁸ As a condition of its April 29, 2013 order authorizing

³ *Ohio Power Co.*, Docket No. 12-1126-EL-UNC (Public Utilities Commission of Ohio Oct. 17, 2012) (Corporate Separation Order).

⁴ American Electric Power Service Corporation December 17, 2012 Answer, Docket No. EC13-26-000, at 12 (citing Corporate Separation Order, Docket No. 12-1126-EL-UNC at ¶ 32(c), which requires Ohio Power to transfer to AEP Generation all generation-related liabilities "except those for which assumption or transfer is prohibited, cannot be effectively negotiated under the terms of the contract or that would result in substantially increased liabilities for Ohio Power if transferred, in which case [AEP Generation] must be contractually responsible for all costs resulting from such liabilities."

⁵ October 15, 2013 Application at 4 (Application).

⁶ Second Amendment at 1.

⁷ 16 U.S.C. § 824b(a)(1)(A), (D) (2012).

⁸ Additionally, on July 5, 2013, Applicant filed an application requesting authorization to sell energy, capacity, and ancillary services at market-based rates and requesting blanket authorization under FPA section 204 and Part 34 of the Commission's

(continued...)

the Transaction, the Commission required that “all debt associated with [the transferred assets] be transferred to AEP Generation, or that AEP Generation otherwise become responsible for the payment of such debt in accordance with Ohio Power’s commitments as reflected in the Corporate Separation Order” before the section 203 applicants submit their final accounting entries.⁹

II. Application

5. The liabilities that Applicant requests authorization to assume from Ohio Power consist of long-term debt under a \$1 billion credit facility (Credit Agreement) and tax-exempt pollution control bonds (Tax-Exempt Bonds).

6. Applicant also states that it will use the proceeds obtained through the issuance of new debt securities, for which authorization is requested, together with other available funds, to refinance the debt assigned to Applicant as part of the Transaction, to meet working capital needs (including construction expenses), and for other general corporate purposes.¹⁰ Applicant also states that Guarantor will fully guarantee any indebtedness that Applicant will issue pursuant to the Application.¹¹

7. Applicant requests that the Commission’s section 204 authorization be effective for two years from the date of the issuance of this order.¹²

A. Assumption of Liabilities

8. Applicant seeks Commission approval to assume Ohio Power’s long-term debt obligations under the Credit Agreement. Applicant explains that borrowings under the

regulations for all future issuances of securities or assumptions of liabilities. AEP Generation July 5, 2013 Application, Docket No. ER13-1896-000, at 1, 17. Applicant requested that its market-based rate tariff become effective on January 1, 2014. *Id.* at 1. This application was approved by delegated letter order issued on December 6, 2013. *AEP Generation Resources Inc.*, Docket No. ER13-1896-000, *et al.* (Dec. 6, 2013) (delegated letter order).

⁹ *Ohio Power Co.*, 143 FERC ¶ 61,075, at P 61 (2013) (203 Order).

¹⁰ Application at 10.

¹¹ October 17, 2013 Amendment at 1 (First Amendment).

¹² Application at 2.

Credit Agreement are due in May 2015. According to Applicant, pursuant to the Credit Agreement, Ohio Power may assign borrowings to Applicant upon closing of the Transaction. Applicant further states that, under the Credit Agreement, Guarantor will guarantee Applicant's obligations upon assignment of Ohio Power's borrowings to the Applicant.¹³

9. Applicant also seeks Commission approval to assume certain series of Ohio Power's Tax-Exempt Bonds in the aggregate principal amount of \$872,225,000. Applicant states that the structure of the Tax-Exempt Bonds does not permit Ohio Power to directly assign them to Applicant. Instead, Applicant will issue new Tax-Exempt Bonds (Replacement Bonds), the proceeds of which will retire Ohio Power's existing Tax-Exempt Bonds. Applicant states that, until all of the Tax-Exempt Bonds are refunded, it intends to issue to Ohio Power one or more notes that mirror the interest and principal repayment terms of the individual series of Tax-Exempt Bonds of Ohio Power (the Pass-through Notes).¹⁴

B. Short-Term and Long-Term Debt Issuance

10. The Applicant also seeks Commission approval to issue short-term debt securities in an aggregate principal amount not to exceed \$1 billion outstanding at any one time. Applicant states that the short-term debt securities will consist of commercial paper, promissory notes, and other forms of short-term debt securities having varied maturities not to exceed one year. Applicant also proposes to establish and maintain back-up lines of credit with banks or other institutions to support its commercial paper program and to establish other credit arrangements and/or borrowing facilities.¹⁵

11. Applicant states that it will issue any authorized short-term debt securities at rates not to exceed the 30-day London Interbank Offered Rate (LIBOR) as referenced in the Wall Street Journal in effect at the time of borrowing, plus up to 400 basis points.¹⁶

12. Applicant also seeks approval to issue secured or unsecured long-term debt securities in an aggregate principal amount not to exceed \$2 billion, with the support of one or more guaranties issued by the Guarantor, such securities to include the

¹³ Application at 4.

¹⁴ *Id.* at 5-6.

¹⁵ *Id.* at 6-7.

¹⁶ *Id.* at 8.

Replacement Bonds, pollution control revenue refunding bonds, secured and unsecured notes, debentures, and first mortgage bonds. Applicant states that all long-term debt will have maturities of up to 30 years.¹⁷

13. Applicant states that it will issue any authorized long-term debt at rates not to exceed the 30-year treasury level as referenced at www.treasury.gov, in effect at the time of borrowing, plus up to 500 basis points. Applicant states that the long-term interest rate will govern the “long-term indebtedness and long-term debt securities issued in both assigning liabilities to . . . Applicant and refunding indebtedness of . . . Applicant and includes the Credit Agreement, Pass-through Notes, the [Replacement Bonds], pollution control revenue refunding bonds, notes (secured and unsecured), debentures and first mortgage bonds.”¹⁸

14. Finally, Applicant agrees that any secured or unsecured debt securities issued pursuant to this Application will be subject to the four restrictions on such securities specified in *Westar Energy, Inc.*¹⁹

C. Waiver Request

15. With regard to long-term debt securities proposed to be issued, Applicant requests waiver of the competitive bidding and negotiated placement requirements laid out in section 34.2 of the Commission’s regulations.²⁰

III. Notices of Filing, Interventions, and Protests

16. Notice of the Application was published in the *Federal Register*, 78 Fed. Reg. 62,612 (2013), with interventions and protests due on or before November 5, 2013. None

¹⁷ *Id.* at 8-9.

¹⁸ Second Amendment at 2.

¹⁹ Application at 10 (citing *Westar Energy, Inc.*, 102 FERC ¶ 61,186, at PP 20-21, *order on reh’g*, 104 FERC ¶ 61,018 (2003) (*Westar*)).

²⁰ November 20, 2013 Amendment at 1. Section 34.2 of the Commission’s Regulations sets forth the Commission’s method of issuance requirements. It states, in part, that the utilities may issue securities by either a competitive bid or negotiated placement, provided that competitive bids are obtained from at least two prospective dealers, purchasers, or underwriters, or negotiated offers are obtained from at least three prospective dealers, purchasers, or underwriters. *See* 18 C.F.R. § 34.2(a) (2013).

was filed. Notice of the First Amendment was published in the *Federal Register*, 78 Fed. Reg. 64,488 (2013), with interventions and protests due on or before November 5, 2013. None was filed. Notice of the Second Amendment was published in the *Federal Register*, 78 Fed. Reg. 70,548 (2013), with interventions and protests due on or before November 25, 2013. None was filed.

IV. Discussion

17. FPA section 204(a) provides that requests for authorization to issue securities or to assume obligations or liabilities in respect of any security shall be granted if the Commission finds that the issuance or assumption: “(a) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service; and (b) is reasonably necessary or appropriate for such purposes.”²¹

18. In *Westar*, the Commission explained that, in reviewing filings under FPA section 204, “the Commission evaluates a utility’s financial viability based on a review of the financial statements submitted in the application and the utility’s interest coverage ratio. An interest coverage ratio is a measure of the utility’s ability to meet future debt and interest payments.”²² The interest coverage ratio is the sum of income before interest and income taxes divided by total interest expense.²³ The Commission generally requires that FPA section 204 applicants demonstrate, on a *pro forma* basis in accordance with its regulations, that net income will equal or exceed twice total interest expense. This is a screen test used primarily to provide the Commission with comfort that the financing authorized will not impair an applicant’s ability to perform public utility service.²⁴ Nevertheless, the Commission has stated that whether or not an applicant meets this interest coverage screen does not by itself determine whether the Commission will

²¹16 U.S.C. § 824c(a) (2012).

²² *Westar*, 102 FERC ¶ 61,186 at P 15.

²³ *Id.* n.15.

²⁴ *Montana Alberta Tie Ltd.*, 128 FERC ¶ 61,217, at P 16 (2009) (citing *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 18 (2008) (*Startrans*)).

authorize or deny the application,²⁵ and the Commission has approved section 204 applications that have not met this threshold.²⁶

19. As noted above, in considering section 204 filings, the Commission utilizes an interest coverage ratio calculation in its evaluation of a public utility's financial viability, and generally requires a section 204 applicant to demonstrate, on a *pro forma* basis, that net income will equal or exceed twice total interest expense.²⁷ In this case, however, because Applicant is a newly formed company, it does not have the historical data necessary to produce the financial statements required under our rules and, therefore, cannot calculate an interest coverage ratio.²⁸

20. Despite this absence of an interest coverage ratio to assist our evaluation, we have alternative reasons to grant section 204 authorization here. First, we note that in a delegated order issued on December 6, 2013 in Docket No. ER13-1896-000 granting Applicant authorization to sell energy, capacity, and ancillary services at market-based rates, Applicant also received blanket authorization under FPA section 204 for all future issuances of securities and assumptions of liabilities. While this blanket authorization would appear to make the authorization requested in the instant proceeding unnecessary, Applicant still requests the specific 204 authorization in this proceeding, and the terms of that blanket 204 authorization do not become effective until January 1, 2014. Given Applicant's wish to close the Transaction on December 31, 2013, Applicant has requested action on the instant Application by December 16, 2013, to proceed to closing in an orderly manner.

21. Additionally, as noted above, Applicant's assumption of Ohio Power's long-term debt obligations under the Credit Agreement and of the existing Tax Exempt Bonds (through issuance of the Pass-through Notes) are requirements of this Commission and the Ohio Commission, as embodied in the 203 Order and the Corporate Separation Order,

²⁵ *Id.* n.7.

²⁶ *See, e.g., Westar*, 102 FERC ¶ 61,186 at P 15; *Aquila, Inc.*, 107 FERC ¶ 61,044, at P 15 (2004).

²⁷ *Startrans*, 122 FERC ¶ 61,253 at P 18.

²⁸ Applicant states that, because it is a newly formed generation company, it has no historical financial information available and is unable to provide the Balance Sheet, Income Statement, and Cash Flows for the most recent 12-month period and computation of interest coverage required under sections 34.4(c), (d), and (e) of the Commission's Regulations. Application at n.7; *see* 18 C.F.R. § 34.4(c)-(e) (2013).

respectively.²⁹ Moreover, Ohio Power's assignment of such debt obligations to Applicant in connection with the generating asset transfer is consistent with the conditions set forth in *Westar*.³⁰ We also note that, as a result of the Transaction, Applicant will become a competitive wholesale seller without captive customers. Finally, we note Applicant's statement that its parent, AEP, has offered to act as Guarantor of all of Applicant's debt.³¹ Thus, despite Applicant's inability to provide financial data in its Application, we are able to find that the issuances and assumptions comply with the statutory standards.

22. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.³² First, public utilities seeking authorization to issue debt backed by a utility asset must use the proceeds of the debt for utility purposes. Second, if any utility assets that secure debt issuances are divested or "spun off," the debt must follow the asset and also be divested or spun off. Third, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt must follow the non-utility assets. Specifically, if the non-utility assets are divested or spun off, then a proportionate share of the debt must follow the divested or spun off non-utility asset. Finally, if utility assets financed by unsecured debt are divested or spun off to another entity, then a proportionate share of the debt must also be divested or spun off. Applicant agrees that the Debt Securities will be subject to the four restrictions on such securities specified in *Westar*.³³

23. We conclude that Applicant meets the standards of FPA section 204. Applicant's proposed issuance of securities and assumption of obligations or liabilities sought in this Application: (1) will be for lawful objects within Applicant's corporate purposes and compatible with the public interest, is necessary or appropriate for or consistent with the proper performances by Applicant of service as a public utility, and will not impair Applicant's ability to perform that service; and (2) remains reasonably necessary or

²⁹ 203 Order, 143 FERC ¶ 61,075 at P 61; Corporate Separation Order at ¶ 32(c).

³⁰ *Westar*, 102 FERC ¶ 61,186 at PP 20-21.

³¹ First Amendment at 1. Applicant states that Guarantor's current debt rating for long-term unsecured indebtedness is BBB by Standard & Poor's and Baa2 by Moody's. Application at n.7. These ratings levels are defined as "investment grade" by the ratings agencies.

³² *Westar*, 102 FERC ¶ 61,186 at PP 20-21.

³³ Application at 10.

appropriate for such purposes. We note Applicant's assertion that it will use the proceeds of the new debt securities it is authorized to issue and other available funds to refinance the debt assigned to it, as described above, to meet working capital needs (including construction expenses), and for other general corporate purposes related to its ability to perform as a public utility.

24. Accordingly, we authorize the following:

- a. Applicant is authorized to assume Ohio Power's obligations under the \$1 billion Credit Agreement and to assume Tax-Exempt Bonds in the aggregate principal amount of \$872,225,000.
- b. Applicant is authorized to issue short-term debt securities, in an aggregate principal amount not to exceed \$1 billion outstanding at any one time, subject to the interest rate limitation below. Such debt securities may consist of commercial paper, promissory notes, and other of forms of short-term debt securities having varied maturities not to exceed one year.
- c. The short-term debt securities will be issued at rates not to exceed the 30-day LIBOR, as referenced in the Wall Street Journal, in effect at the time of borrowing plus up to 400 basis points.
- d. Applicant is authorized to issue long-term debt securities in an aggregate principal amount not to exceed \$2 billion, subject to the interest rate limitation below. The long-term debt securities will consist of secured and unsecured long-term debt securities, the Replacement Bonds, pollution control revenue refunding bonds, notes (secured and unsecured), debentures, and first mortgage bonds and will have maturities of up to 30 years.
- e. The long-term debt will be issued at rates not to exceed the 30-year treasury level as referenced at www.treasury.gov in effect at borrowing, plus up to 500 basis points. The long-term interest rate will apply to the issuance of the long-term debt and the long-term debt issued in both assigning liabilities to the Applicant and refunding indebtedness of the Applicant and includes borrowings under the Credit Agreement, Pass-through Notes, the Replacement Bonds, pollution control revenue refunding bonds, notes (secured and unsecured), debentures, and first mortgage bonds.

25. Finally, we will grant the requested waiver of the Commission's competitive bidding and negotiated placement requirements applicable to long-term debt.

The Commission orders:

(A) Applicant is hereby authorized to assume Ohio Power's obligations under the \$1 billion Credit Agreement and the Tax-Exempt Bonds in the amount of \$872,225,000, subject to the terms, conditions, and interest rates described in the body of this order.

(B) Applicant is hereby authorized to issue short-term debt securities, in an aggregate principal amount not to exceed \$1 billion outstanding at any one time, subject to the terms, conditions, and interest rates described in the body of this order.

(C) Applicant is hereby authorized to issue long-term debt securities in an aggregate principal amount not to exceed \$2 billion, subject to the terms, conditions, and interest rates described in the body of this order.

(D) The authorizations granted in this order are effective as of the date of this order and terminate two years thereafter.

(E) The authorizations granted are subject to the restrictions on secured and unsecured debt as outlined in *Westar*.

(F) The requested waiver of the Commission's competitive bidding and negotiated placement requirements for long-term debt at 18 C.F.R. § 34.2(a) (2013) is hereby granted.

(G) Applicant must file a Report of Securities Issued, under 18 C.F.R. §§ 34.9, 131.43, and 131.50 (2013), no later than 30 days after the sale or placement of long-term debt securities or the entry into guarantees or assumption of liabilities.

(H) The authorizations granted in Ordering Paragraphs (A), (B), and (C) above are without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost, or any other matter whatsoever now pending or which may come before this Commission.

(I) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.