145 FERC ¶ 61,270
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners:

Appalachian Power Company	Docket No. ER13-238-000
Kentucky Power Company	Docket Nos. ER13-239-000 ER13-239-001
AEP Generation Resources Inc.	Docket Nos. ER13-240-000 ER14-86-000
	not consolidated

ORDER ON TARIFF FILINGS

(Issued December 23, 2013)

1. On October 31, 2012, American Electric Power Service Corporation (AEPSC), on behalf of Appalachian Power Company (APCo), Kentucky Power Company (KPCo), and AEP Generation Resources Inc. (AEP Genco), submitted, pursuant to section 205 of the Federal Power Act (FPA),[1] (1) the Sporn Plant Operating Agreement among APCo, AEP Genco, and AEPSC (Sporn Agreement)[2] and (2) the Mitchell Plant Operating Agreement

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[1] 16 U.S.C. § 824d (2012).

[2] Filed as APCo Rate Schedule No. 302 under Docket No. ER13-238-000. Each of these related filings is disposed of as set forth in the appendix to this order. The tariff record filed in Docket No. ER13-239-000 is rejected as moot. In the future, Kentucky Power Company should use Associated Filing and Record Identifiers at the record level when amending a tariff record in a pending proceeding. *See* FERC Staff's Responses to Discussion Questions, Tariff Record Related Codes, Questions 28 at 29 (discussing the need to provide a complete set of associated tariff record information); Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings at 23 (containing definitions of the associated record data elements).

among APCo, KPCo, and AEPSC (Mitchell Agreement).[3] The Sporn Agreement and the Mitchell Agreement provide the terms under which the Sporn Plant and the Mitchell Plant will operate subsequent to a restructuring of AEP affiliate Ohio Power Company (Ohio Power). The Sporn Plant consists of five coal-fired units located near New Haven, West Virginia. The Mitchell Plant consists of two coal-fired units in Moundsville, West Virginia. On October 15, 2013, AEPSC submitted (1) a withdrawal of the initially filed Mitchell Agreement and (2) a revised agreement for the Mitchell Plant (Superseding Mitchell Agreement).[4]

2. In this order we accept the Sporn Agreement and the Superseding Mitchell Agreement subject to condition, as discussed in the body of this order, to be effective January 1, 2014.[5]

I. Background

3. Under current arrangements, APCo owns Sporn Unit Nos. 1 and 3, and Ohio Power owns Sporn Unit Nos. 2, 4, and 5. Under the existing operating agreement, APCo has operated and maintained the Sporn Plant, including the units owned by Ohio Power. Under the restructuring plan approved by the Public Utilities Commission of Ohio, Ohio Power will divest its generation and AEP Genco will obtain Sporn Unit Nos. 2, 4, and 5. The Sporn Agreement sets out the terms under which APCo will continue to operate the Sporn Plant (with AEPSC as agent for APCo and AEP Genco) in accordance with good utility practice; pay costs associated with operation and maintenance; maintain the associated books, records, and joint bank accounts; and prepare statements for AEP Genco detailing the monthly costs associated with the plant's operation and maintenance. The Sporn Agreement further provides that each owner may call on the entire output of its own respective units, and details each party's obligations for installation of additional

[3] In a separate FPA section 203 (16 U.S.C. § 824b (2012)) application, AEPSC sought authority for (1) APCo to obtain, from AEP Genco, Ohio Power's former interest in Unit No. 3 of the John E. Amos Plant and a 50 percent undivided interest in the Mitchell Plant, and (2) KPCo to obtain from AEP Genco the remaining 50 percent undivided interest in the Mitchell Plant.

[4] Filed as KPCo Rate Schedule No. 303 under Docket No. ER13-239-001. AEPSC states that, on July 31, 2013, the State Corporation Commission of Virginia (Virginia Commission) issued an order that, among other things, denied APCo's request to acquire a 50 percent undivided interest in the Mitchell Plant. As a result of the Virginia Commission's ruling, AEP Genco will retain the 50 percent undivided interest in the Mitchell Plant.

[5] AEPSC withdrew the initially filed Mitchell Agreement.

or replacement facilities. The Sporn Agreement discusses the owners' working capital requirements, and apportions the costs of operating and maintaining the plant. The Sporn Agreement calls for the establishment of an Operating Committee (consisting of representatives of each owner and AEPSC, as agent), which will perform a variety of management tasks associated with the plant's operation.

4. As originally filed in Docket No. ER13-238-000, the Mitchell Agreement provided for APCo to operate the Mitchell Plant (both the 50 percent interest proposed to be owned by APCo and the 50 percent interest proposed to be owned by KPCo). However, in filing the Superseding Mitchell Agreement in Docket No. ER13-239-001, AEPSC states that subsequent to its filing of the original Mitchell Agreement, the Virginia Commission denied APCo's request to acquire an interest in the Mitchell Plant. Due to the Virginia Commission's denial, AEPSC states that a 50 percent interest in the Mitchell Plant will remain with AEP Genco, rather than transferring to APCo. AEPSC states that the Superseding Mitchell Plant Agreement is similar to the originally filed Mitchell Plant Agreement (and the Sporn Agreement), with most of the changes reflecting that the parties to the Superseding Mitchell Agreement are AEP Genco, KPCo and AEPSC, rather than APCo, KPCo and AEPSC. Under the terms of the Superseding Mitchell Agreement, KPCo will operate the Mitchell Plant.

5. The Superseding Mitchell Agreement sets out KPCo's and AEPSC's functions, including their obligations to operate and maintain the plant in accordance with good utility practices, to maintain the necessary books, records, and joint bank accounts, and to prepare statements detailing for AEP Genco the monthly costs associated with operating and maintaining the plant. The Superseding Mitchell Agreement provides for the apportionment of capacity and energy between KPCo and AEP Genco; details each owner's responsibilities and obligations for the costs of installing additional or replacement facilities at the plant; specifies generally that the cost of facilities for jointly-owned property will be allocated in accordance with the ratio of each owner's ownership interest; and discusses the owners' working capital requirements. The Superseding Mitchell Agreement further provides that KPCo and AEPSC must establish and maintain a sufficient coal stock pile for fuel reserves and apportions the station costs, including fuel expenses. As with the Sporn Agreement, the Superseding Mitchell Agreement provides for an Operating Committee (consisting of representatives of each owner and AEPSC, as agent) and details its responsibilities in relation to the plant's operation.

6. AEPSC requests waiver of those provisions of section 35.13 of the Commission's regulations that would require it to submit cost-of-service data.[6] AEPSC also requests

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[6] 18 C.F.R. § 35.13 (2013).

waiver of section 35.3[7] to permit the Sporn Agreement and the Mitchell Agreement to become effective upon closing of the Ohio restructuring transaction.[8]

7. AEPSC requests that it be permitted to withdraw the originally filed Mitchell Agreement and that the Commission accept the Superseding Mitchell Agreement and the Sporn Agreement, to become effective January 1, 2014.[9]

II. Notice, Intervention and Responsive Pleading

8. Notice of the October 31, 2012 filing of the Sporn Agreement and the original Mitchell Agreement was published in the *Federal Register*, 77 Fed. Reg. 67,357 (2012), with protests and interventions due on or before December 15, 2012.

9. Notices of intervention were filed by Virginia State Corporation Commission, Public Service Commission of West Virginia, and Public Service Commission of Kentucky. Motions to intervene were filed by the Kentucky Office of Attorney General (Kentucky Attorney General), Steel Dynamics, Inc., Exelon Corporation, Duke Energy Corporation, Industrial Energy Users of Ohio, Indiana and Michigan Municipal Distributors Association, Old Dominion Committee for Fair Utility Rates and East Tennessee Energy Consumers, the West Virginia Consumer Advocate Division (West Virginia Consumer Advocate), Virginia Office of the Attorney General, Division of Consumer Counsel, and FirstEnergy Service Corporation. A protest was filed by the West Virginia Consumer Advocate, and a response was filed by AEPSC.

10. Notice of the October 15, 2013 Superseding Mitchell Agreement was published in the *Federal Register*, 78 Fed. Reg. 62,611 (2013), with protests and interventions due on or before November 5, 2013.

11. The Kentucky Attorney General filed a motion to intervene and on December 4, 2013, the Kentucky Public Service Commission filed an out-of-time motion to intervene. On December 10, 2013, the Kentucky Attorney General filed an out-of-time protest of

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[7] 18 C.F.R. § 35.3 (2013) (notice requirements).

[8] In separate filings, AEPSC is seeking limited waiver of certain affiliate restrictions to enable APCo, AEP Genco and AEPSC to enter into the Sporn Agreement and KPCo, AEP Genco and AEPSC to enter into the Superseding Mitchell Agreement. *See* Docket Nos. ER13-1874-000 and ER14-95-000.

[9] AEPSC requests, in its October 15, 2013 filing, that the Commission issue an order in this proceeding on or before December 16, 2013, in order to enable an orderly closing on December 31, 2013.

the Superseding Mitchell Agreement and the request for limited waiver of certain affiliate restrictions in Docket No. ER14-95-000. On December 11, 2013, AEPSC filed a response objecting to the untimely protest.

III. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[10] the notices of intervention and timely, unopposed motions to intervene serve to make the parties that filed them parties to this proceeding.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority.[11] We accept the answers of AEPSC because they have aided us in our decision-making process.

B. Substantive Matters

14. We find the Sporn Agreement and the Superseding Mitchell Agreement, subject to the revisions discussed below, to be just and reasonable and not unduly discriminatory or preferential, and conditionally accept them effective January 1, 2014. The Sporn Agreement provides for the continued operation of the Sporn Plant by APCo, and reflects the divestiture by Ohio Power and acquisition by AEP Genco of Sporn Plant units pursuant to the AEP corporate reorganization to implement restructuring in Ohio. The Superseding Mitchell Agreement reflects the divestiture by Ohio Power and acquisition by AEP Genco and KPCo of Mitchell Plant units. Both the Sporn Agreement and the Superseding Mitchell Agreement set out the obligations and responsibilities for operation and maintenance of the applicable facilities, including provisions for coordination among operating committee members and resolution of disputes.

15. The West Virginia Consumer Advocate contends that the Mitchell Agreement, as originally filed, appears to favor KPCo over APCo should a load curtailment be required. In its answer, AEPSC states that it met with representatives of the West Virginia Consumer Advocate and has agreed to make a compliance filing clarifying the proportional sharing of Mitchell Plant Total Net Capability. AEPSC states that it is authorized to state that the West Virginia Consumer Advocate withdraws its protest. The Superseding Mitchell Agreement contains no provision for the apportionment of energy

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[10] 18 C.F.R. § 385.214 (2013).

[11] 18 C.F.R. § 385.213(a)(2) (2013).

and capacity to APCo, as APCo is not a party to the agreement. With the withdrawal of the initially filed Mitchell Agreement, the concerns raised by the West Virginia Consumer Advocate are no longer an issue.

16. The Kentucky Attorney General protests the Superseding Mitchell Agreement and AEPSC's accompanying waiver request on the following grounds: (1) the agreement could allow the diversion of the lowest priced supply of fuel to AEP Genco at the expense of KPCo's captive customers; (2) the agreement's treatment of fuel replenishment and operations and maintenance expenses may result in higher costs for KPCo's captive customers to the benefit of AEP Genco; (3) the role of AESPC is unclear, providing opportunities for abuse of affiliate restrictions; (4) the role of the Mitchell Operating Committee is unclear, providing opportunities for abuse of affiliate restrictions; and (5) AEPSC has not proposed adequate safeguards against improper sharing of information.

17. The issues related to the Kentucky Attorney General's treatment of fuel replenishment and operations and maintenance expenses are discussed below; the remaining issues are addressed in the Commission's order on AEPSC's waiver request, which is issuing concurrently with this order.[12]

18. The Kentucky Attorney General first contends that the fuel replenishment provisions in the Superseding Mitchell Agreement may result in higher costs for KPCo's captive customers to the benefit of AEP Genco. Such an outcome could result, according to the Kentucky Attorney General, if AEP Genco uses significantly more fuel than KPCo during a period when prices are rising, causing coal and/or oil to be replenished using more expensive fuel. The Kentucky Attorney General also objects to the apportionment of operation and maintenance expenses, which are shared according to ownership interests, that is, equally. The Kentucky Attorney General argues that if AEP Genco generates more power in any period than does KPCo, it is likely that AEP Genco's share of operating and maintenance expenses would be higher than those imposed by KPCo. However, under the Agreement, 50 percent of these costs would be imposed on KPCo and its captive customers regardless of KPCo's use of the plant, potentially benefiting AEP Genco to the detriment of KPCO's captive customers.

19. With respect to fuel replenishment, AEPSC argues in its answer that the fact that fuel prices may fluctuate due to market conditions does not mean that there is affiliate abuse or diversion of benefits from captive customers to shareholders. These fluctuations, AEPSC asserts, are simply a function of changes in market conditions that are beyond the applicant's control, and could work to the benefit of KPCo. AEPSC contends that the fact that AEP Genco and KPCo will pay the same unit price for the fuel

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[12] 145 FERC ¶ 61,269 (2013).

they consume fully protects captive customers against the possibility that lower-cost fuel could be diverted to AEP Genco. With respect to operations and maintenance, AEPSC argues that equal apportionment is fair and reasonable, because, while the parties' usage may vary from month to month, in the long-run, the parties' usage should approximate their ownership interests.

20. As to the fuel replenishment issue, we agree with AEPSC's observation that variations in fuel costs could work to the benefit of either party. It is true that if AEP Genco takes more energy than KPCo during a period of rising prices, causing fuel to be replenished with more expensive coal and/or oil, KPCo's costs could rise. However, the reverse is also true. That is, if KPCo takes more energy than AEP Genco during a period of rising prices, or if AEP Genco takes more energy than KPCo during times of declining prices, KPCo's burden from fuel replenishment costs could be reduced. Under these circumstances, we agree with AEPSC that the fact that AEP Genco and KPCo will pay the same unit price for the fuel they consume adequately protects KPCo's captive customers.

21. As to the operations and maintenance issue, the Superseding Mitchell Agreement requires that these expenses be shared in proportion to ownership and imposes on KPCo and its captive customers 50 percent of these costs regardless of KPCo's use of the plant. The Commission is concerned that, because certain operations and maintenance costs vary with output, if AEP Genco generates more power in a given period than KPCo, AEP Genco's share of the operations and maintenance costs would likely be higher than those imposed by KPCo. Requiring that these expenses be shared equally would thus benefit AEP Genco to the detriment of KPCo's captive customers. We therefore accept the Superseding Mitchell Agreement conditioned upon AEPSC filing, within 30 days of the date of this order, revisions to the agreement that apportion those operations and maintenance expenses that vary with plant output according to each party's respective use of the plant during the relevant time period. We find that this proposed revision will ensure that KPCo's captive customers will not be harmed.

22. Under the Sporn Agreement, operations and maintenance costs will, to the extent practicable, be attributed to a specific unit for assignment to and payment by the owner of that unit.[13] Operations and maintenance costs not attributable to a specific unit will be allocated 50 percent to AEP Genco and 50 percent to APCo.[14] Consistent with our Superseding Mitchell Agreement determination, to the extent that Sporn's non-attributable operations and maintenance costs are variable, we accept the Sporn Agreement conditioned upon AEPSC filing, within 30 days of the date of this order,

[13] Sporn Agreement at sections 5.1 and 5.2.

[14] *Id.*

revisions to the Sporn Agreement that apportion those operations and maintenance costs that are not attributable to a specific unit and that vary with plant output to each plant owner according to each plant owner's use of its units. We find that this proposed revision will ensure that APCo's captive customers will not be harmed.

23. We grant AEPSC's request for waiver of 18 C.F.R. § 35.3 (2013) and those provisions of 18 C.F.R. § 35.13 (2013) that would require it to provide cost-of-service information.

The Commission orders:

(A) The proposed tariffs for the Sporn Agreement are hereby accepted, effective January 1, 2014, subject to revisions to be filed within 30 day of the date of this order, as discussed in the body of this order.

(B) The proposed tariffs for the Superseding Mitchell Agreement are hereby accepted, effective January 1, 2014, subject to revisions to be filed within 30 day of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Appalachian Power Company
Rate Schedule No. 302, Sporn Plant Operating Agreement, 0.0.0
Docket No. ER13-238-000
Accept effective 1/1/2014

Kentucky Power Company
Rate Schedule No. 303, Mitchell Plant Operating Agreement KPCo Concurrence, 0.0.0
Docket No. ER13-239-000
Reject as moot

Rate Schedule No. 303, Mitchell Plant Operating Agreement, 1.0.0
Docket No. ER13-239-001
Accept effective 1/1/2014

AEP Generation Resources Inc.
Rate Schedule No. 302, Sporn Plant Oper Agreement AEP Gen Resources Concurrence, 0.0.0
Docket No. ER13-240-000
Accept effective 1/1/2014

Rate Schedule No. 303, Mitchell Plant Operating Agreement AEP GR Concurrence, 0.0.0
Docket No. ER14-86-000
Accept effective 1/1/2014