

145 FERC ¶ 61,267
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Appalachian Power Company	Docket Nos. ER13-233-000 ER13-233-001
Kentucky Power Company	Docket No. ER13-234-000
Indiana Michigan Power Company	Docket No. ER13-235-000
AEP Generation Resources Inc.	Docket No. ER13-236-000
Ohio Power Company	Docket No. ER13-237-000 (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), Indiana Michigan Power Company (I&M), Kentucky Power Company (KPCo), and Ohio Power Company (Ohio Power),¹ (collectively, AEP) filed, pursuant to section 205 of the Federal Power Act (FPA),² the tariff associated with (1) a power coordination agreement among APCo, I&M, KPCo, and AEPSC (Power Coordination Agreement)³ and (2) a bridge agreement among APCo, I&M, KPCo, Ohio Power, AEP Generation Resources Inc. (AEP Genco), and AEPSC (Bridge Agreement).⁴ In conjunction with these tariff filings, AEPSC also provides notice of APCo's, I&M's, KPCo's, and Ohio Power's termination of an Interconnection

¹ On December 31, 2011, Columbus Southern Power Company (CSP) was merged into Ohio Power.

² 16 U.S.C. § 824d (2012).

³ Filed as APCo Rate Schedule No. 300 under Docket No. ER13-233-000. Each of these related filings is disposed of as set forth in the appendix to this order.

⁴ Filed as APCo Rate Schedule No. 301 under Docket No. ER13-233-000.

Agreement (Pool Agreement) and an AEP System Interim Allowance Agreement (Interim Allowance Agreement). On March 22, 2013, AEPSC, on behalf of APCo, I&M and KPCo, filed the tariff associated with a revised version of the Power Coordination Agreement (Revised Power Coordination Agreement).⁵

2. In this order, the Commission accepts the tariffs and approves the Revised Power Coordination Agreement and the Bridge Agreement to become effective January 1, 2014.

I. Background

3. APCo, I&M, KPCo, and Ohio Power, together with affiliates Kingsport Power Company (Kingsport) and Wheeling Power Company (Wheeling), make up the AEP East utilities. The AEP East utilities are members of and operate within the footprint of PJM Interconnection, L.L.C. (PJM), and AEPSC provides various services to the AEP East utilities.⁶ The AEP East utilities have operated as part of an integrated public utility holding company system under the now-repealed Public Utility Holding Company Act of 1935. As part of that arrangement, those companies that owned electric generating resources (APCo, CSP, I&M, KPCo, and Ohio Power) coordinated the planning and operations of their respective generating resources pursuant to the Pool Agreement.⁷ The Pool Agreement members also are parties to the Interim Allowance Agreement, pursuant to which they have coordinated and integrated their compliance with certain environmental rules and regulations.⁸

⁵ Filed as APCo Rate Schedule No. 300 under Docket No. ER13-233-001. The Revised Power Coordination Agreement replaces and supersedes in its entirety the Power Coordination Agreement that was submitted on October 31, 2012. The initially filed Power Coordination Agreement filed as APCo Rate Schedule No. 300 under Docket No. ER13-233-000 is rejected as moot.

⁶ AEPSC also provides various services to the AEP affiliate utilities that operate within the footprints of the Southwest Power Pool (SPP) and the Electric Reliability Council of Texas (ERCOT). The AEP utilities in SPP and ERCOT are not part of and are not affected by the AEP East utilities filing.

⁷ The Pool Agreement members included CSP prior to January 1, 2012. Kingsport and Wheeling are not parties to the Pool Agreement.

⁸ Kingsport and Wheeling are also not parties to the Interim Allowance Agreement.

4. Pool Agreement members jointly satisfied the combined need for capacity and energy even though, if viewed individually, some pool members from time to time had surplus generating capacity and others were in capacity deficit. Under the Pool Agreement, members make or receive capacity payments based upon the extent to which they are in deficit or surplus and the generation costs of the surplus members. AEPSC is responsible for, among other things, the coordination of the members' respective generating resources, the arrangement of capacity and/or energy transactions with third parties, and the accounting for and preparation of the settlements for internal pool transactions among the Pool Agreement members.

5. In accordance with the termination provision in the agreement, Pool Agreement members provided notice to the other members (including AEPSC) that they will terminate their participation under the Pool Agreement effective January 1, 2014. Coordinated with the termination of the Pool Agreement, the Pool Agreement members have agreed to terminate the Interim Allowance Agreement.⁹

6. APCo, I&M, and KPCo, together with AEPSC, have agreed to proceed under a new arrangement, the Power Coordination Agreement, and those members together with Ohio Power and AEP Genco, have agreed to enter into the Bridge Agreement as an interim arrangement to address post-Pool Agreement matters.

7. AEPSC requests that the Commission accept the Power Coordination and Bridge Agreements without condition or modification and without initiating any further proceedings,¹⁰ and permit the Power Coordination Agreement and the Bridge Agreement to become effective on January 1, 2014, in conjunction with the termination of the Pool Agreement and the Interim Allowance Agreement.

⁹ The Interim Allowance Agreement provided for coordinated and integrated compliance with the 1990 amendments to the Clean Air Act to allocate emission allowances to the Pool Agreement members and to allocate either the cost of acquiring, or the proceeds associated with the sale of, allowances to or from non-affiliated third parties.

¹⁰ AEPSC requests waiver of the requirement to provide cost-of-service and revenue data. 18 C.F.R. § 35.13(c) (2013).

II. October 31, 2013 Filing

A. Power Coordination Agreement

8. AEPSC states that the Power Coordination Agreement, as filed in Docket ER13-233-000, provides APCo, I&M, and KPCo with the opportunity to (1) participate collectively under a common Fixed Resource Requirement (FRR)¹¹ capacity plan in PJM, and (2) participate in specified collective off-system sales and purchase activities.¹² AEPSC states that the key difference between the proposed Power Coordination Agreement and the existing Pool Agreement is that under the Power Coordination Agreement, generation will not be planned on a single-system basis. Specifically, APCo, I&M, and KPCo individually will be required to own or contract for sufficient generation to meet their respective load and reserve obligations.¹³ Further, AEPSC states that the Power Coordination Agreement does not impose capacity equalization charges on deficit members.

9. AEPSC contends that the Power Coordination Agreement provides for APCo, I&M, and KPCo (Operating Companies) to coordinate their respective power supply resources. As with the current Pool Agreement, AEPSC will continue to act as the agent with responsibility for: assisting each Operating Company in its evaluation of power supply resources to meet load requirements; assisting in the coordination and operation of each Operating Company's power supply resources; conducting off-system purchases and sales on behalf of the Operating Companies; and coordinating the procurement of fuel, consumables, emission allowances, and transportation services.¹⁴ AEPSC states that

¹¹ The FRR provisions were added to the PJM Reliability Assurance Agreement in connection with PJM's Reliability Pricing Model (RPM). PJM developed the FRR alternative, under which a load-serving entity (FRR Entity) has the option to submit an FRR Capacity Plan and meet a fixed capacity resource requirement rather than participate through the RPM capacity auction.

¹² Ohio Power will not be a party to the Power Coordination Agreement.

¹³ APCo and KPCo plan to obtain base load generating assets previously owned by Ohio Power to enable them to meet their respective load and reserve obligations. *See Ohio Power Co.*, 143 FERC ¶ 61,075 (2013), *reh'g pending*; *Appalachian Power Co.*, 143 FERC ¶ 61,074 (2013).

¹⁴ Governance under the Power Coordination Agreement will be accomplished through an Operating Committee consisting of representatives of each Operating Company with AEPSC as the agent.

the Power Coordination Agreement sets out the terms for collective participation under a common FRR self-supply plan to meet the Operating Companies' capacity obligations in PJM, and provides for the AEPSC to coordinate the scheduling of planned generation outages, and to coordinate the dispatch of the Operating Companies' respective generating resources subject to the direction of the applicable regional transmission organization.

B. Bridge Agreement

10. With the termination of the Pool Agreement, APCo, I&M, KPCo, Ohio Power, AEP Genco, and AEPSC will operate under the Bridge Agreement.¹⁵ The Bridge Agreement addresses (1) the treatment of those purchases and sales made by AEPSC on behalf of the Pool Agreement members that extend beyond termination of the Pool Agreement, and (2) how the Bridge Agreement Operating Companies will fulfill their existing FRR obligations through the PJM planning year 2014/2015 (ending May 31, 2015).

11. AEPSC states that the Bridge Agreement commits AEP Genco to make its generation available to meet the Bridge Agreement Operating Companies' FRR capacity obligations through the PJM Planning Year that ends on May 31, 2015.¹⁶ Accordingly, fulfillment of the Bridge Agreement Operating Companies' FRR capacity obligations, including the allocation of charges and credits, are to be governed by the Bridge Agreement and not by the Power Coordination Agreement until the 2015/2016 PJM planning year.

III. Notice, Intervention, Protests and Responsive Pleading

A. October 31, 2013 Filing

12. Notice of AEPSC's filing was published in the *Federal Register*, 77 Fed. Reg. 67,357 (2012), with protests and interventions due on or before November 30, 2012.¹⁷

¹⁵ APCo, I&M, KPCo, and Ohio Power are referred to in the Bridge Agreement as Operating Companies (Bridge Agreement Operating Companies).

¹⁶ After that, Ohio Power's role as an FRR Entity will terminate, and Ohio Power will participate in the RPM auctions to meet its residual capacity requirements.

¹⁷ The Commission granted a motion by the West Virginia Consumer Advocate Division (West Virginia Consumer Advocate) to extend the comment period to January 14, 2013.

13. Notices of intervention were filed by Public Service Commission of West Virginia, Public Service Commission of Kentucky (Kentucky Commission), and Virginia State Corporation Commission (Virginia Commission). Timely motions to intervene were filed by Industrial Energy Users of Ohio, Steel Dynamics, Inc., Exelon Corporation, Duke Energy Corporation, West Virginia Consumer Advocate, Indiana Office of Utility Consumer Counselor (Indiana Consumer Counselor), Kentucky Industrial Utility Customers, Inc. (Kentucky Industrial Customers), Indiana and Michigan Municipal Distributors Association (Indiana and Michigan Municipal Association), Old Dominion Committee for Fair Utility Rates (Old Dominion Committee) and East Tennessee Energy Consumers (East Tennessee Consumers), FirstEnergy Service Corporation, Office of the Ohio Consumer Council, and Kentucky Office of Attorney General (Kentucky Attorney General). Late-filed motions to intervene were filed by Virginia Office of the Attorney General, Division of Consumer Counsel (Virginia Attorney General), and Michigan Public Service Commission (Michigan Commission), and Indiana Utility Regulatory Commission (Indiana Commission).¹⁸

14. Protests and comments were filed by Old Dominion Committee and East Tennessee Consumers, Indiana Commission, Indiana Consumer Counselor, Indiana and Michigan Municipal Association, West Virginia Consumer Advocate, Kentucky Attorney General and Kentucky Industrial Customers, Virginia Attorney General, Kentucky Commission, and Virginia Commission. AEPSC filed a motion for leave to answer and answer to the protests and comments.¹⁹

15. Protesters argue that AEPSC has not shown how the Power Coordination Agreement and Bridge Agreement will function and has not demonstrated that they are just and reasonable. Protesters argue that the filing does not provide an analysis of the cost impacts of the agreements on wholesale customers or on the AEP companies. Several protesters argue that because the parties to the agreements are affiliates, the agreements may allow the improper subsidization of one affiliate at the expense of another. The Kentucky Commission contends that the continued participation of APCo, I&M, and KPCo under a common FRR alternative has not been adequately supported. The Kentucky Attorney General and Kentucky Industrial Customers contend that the Power Coordination Agreement unnecessarily complicates generation resource planning.

¹⁸ The Michigan Commission and the Indiana Commission submitted notices of intervention after the intervention date published in the Federal Register notice. *See* 18 C.F.R. § 385.214(a)(2) (2013).

¹⁹ On behalf of APCo, I&M, KPCo, and Ohio Power.

The Virginia Commission states that the filing does not adequately define “reserve margin” as used for allocation of costs among Operating Companies.

16. Protesters argue that AEPSC has not demonstrated that application of the *Mobile-Sierra* standard of review is just and reasonable.²⁰ Several protesters request that the matter be set for hearing and settlement procedures, and the Indiana Commission also requests a technical conference. Finally, protesters request that the Commission deny AEPSC’s waiver requests.

B. March 22, 2013 Filing

17. Notice of March 22, 2013 Revised Power Coordination Agreement was published in the *Federal Register*, 78 Fed. Reg. 19,475 (2013), with protests and interventions due on or before April 12, 2013. No additional interventions or protests of the Revised Power Coordination Agreement were filed.

18. AEPSC submitted status reports to the Commission on February 28, 2013 and March 15, 2013.²¹ In the February 28, 2013 status report, AEPSC states that AEP’s representatives met with representatives of the parties to the proceeding and provided additional information.

19. In the March 15, 2013 status report, AEPSC states that, as a result of discussions with the parties, there are no longer any outstanding issues with or objections to the Bridge Agreement. AEPSC also states that parties had agreed to revisions to the Power Coordination Agreement.²²

20. On March 22, 2013, AEPSC, in Docket No. ER13-233-001, filed a Revised Power Coordination Agreement containing what AEPSC describes as “certain clarifying

²⁰ See *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *Federal Power Comm’n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*). See also *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish County*, 554 U.S. 527 (2008); and *NRG Power Marketing, LLC v. Maine Public Util. Comm’n*, 558 U.S. 165 (2010).

²¹ On February 28, 2013, AEPSC requested that the Commission not rule on the filings until the submission of a final report on the status of discussions with the parties.

²² In its March 15, 2013 filing, AEPSC states that the revisions were under review by the Kentucky Commission. On April 12, 2013, AEPSC filed comments stating that the Kentucky Commission does not oppose the Revised Power Coordination Agreement.

wording changes” to reflect the revisions agreed to by the parties.²³ Among these changes are: the addition of language to clarify that there will be no sales of wholesale power between APCo, I&M, and KPCo under the agreement, deletion of the stated purpose of the agreement, clarification of the functions of the Agent and the duties of the Operating Committee, clarification of the parties’ responsibilities for capacity planning, clarification of the parties’ indemnification obligations, and deletion of the *Mobile-Sierra* provision. AEPSC states in its March 22, 2013 filing that there are no changes to the requested effective date.

IV. Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,²⁴ the notices of intervention and timely, unopposed motions to intervene serve to make the parties that filed them parties to this proceeding. Given the early stage of this proceeding and the absence of undue prejudice or delay, we grant the unopposed out-of-time motion to intervene submitted by the Virginia Office of the Attorney General, Michigan Commission and Indiana Commission.

22. 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.²⁵ We accept the answer and status reports of AEPSC because they have aided us in our decision-making process.

B. Substantive Matters

23. We find the Bridge Agreement to be a just and reasonable transition agreement, and the March 22, 2013 Revised Power Coordination Agreement to be a just and reasonable means of providing the parties the opportunity to engage in certain collective activities. We accept the proposed tariff records and approve the Bridge Agreement and the Revised Power Coordination Agreement, to become effective January 1, 2014. As previously noted, the Revised Power Coordination Agreement replaces and supersedes in its entirety the Power Coordination Agreement that was submitted on October 31, 2012. AEPSC states that, as a result of further information provided to the parties and

²³ AEPSC March 22, 2013 Filing at 1.

²⁴ 18 C.F.R. § 385.214 (2013).

²⁵ 18 C.F.R. § 385.213(a)(2) (2013).

clarification of the agreements, the parties have no objection to the Bridge Agreement and the Revised Power Coordination Agreement. No protests were filed to the Revised Power Coordination Agreement.

24. We grant the AEPSC's request for a waiver of 18 C.F.R. § 35.13(c) (2013).

The Commission orders:

The proposed tariffs are hereby accepted, effective January 1, 2014, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Appalachian Power Company

[Rate Schedule No. 300, Power Coordination Agreement, 0.0.0](#)

Docket No. ER13-233-000

Reject as moot

[Rate Schedule No. 301, Bridge Agreement, 0.0.0](#)

Docket No. ER13-233-000

Accept effective 1/1/2014

[Rate Schedule No. 300, Power Coordination Agreement, 1.0.0](#)

Docket No. ER13-233-001

Accept effective 1/1/2014

Kentucky Power Company

[Rate Schedule No. 300, Power Coordination Agreement KPCo Concurrence, 0.0.0](#) and
[Rate Schedule No. 301, Bridge Agreement KPCo Concurrence, 0.0.0](#)

Docket No. ER13-234-000

Accept effective 1/1/2014

Indiana Michigan Power Company

[Rate Schedule No. 300, Power Coordination Agreement I&M Concurrence, 0.0.0](#) and
[Rate Schedule No. 301, Bridge Agreement I&M Concurrence, 0.0.0](#)

Docket No. ER13-235-000

Accept effective 1/1/2014

AEP Generation Resources Inc.

[Rate Schedule No. 301, Bridge Agreement AEP Generation Resources Concurrence, 0.0.0](#)

Docket No. ER13-236-000

Accept effective 1/1/2014

Ohio Power Company

[Rate Schedule No. 301, Bridge Agreement OPCo Concurrence, 0.0.0](#)

Docket No. ER13-237-000

Accept effective 1/1/2014