

148 FERC ¶ 61,143
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

AEP Generating Company

Docket No. ES14-37-000

ORDER AUTHORIZING ISSUANCE OF SECURITIES

(Issued August 27, 2014)

1. On April 22, 2014, as amended on July 11, 2014, AEP Generating Company (AEP Generating) filed an application pursuant to section 204 of the Federal Power Act (FPA)¹ requesting authorization to issue the long-term debt securities described below.² We will grant the authorizations, as discussed below.

I. Background

2. AEP Generating states that it is a wholesale electric generating company, wholly-owned by American Electric Power Company, Inc. (AEP). According to AEP Generating, it owns a 50 percent undivided interest in Unit 1 of the Rockport Generating Station located in Spencer County, Indiana (Rockport Station), and has a 50 percent leasehold interest in Unit 2 of the Rockport Station with its affiliate Indiana Michigan Power & Light (Indiana Michigan Power). AEP Generating also states that it owns 100 percent of the Lawrenceburg Generating Station. AEP Generating notes that, collectively, these facilities total 2,420 megawatts (MW) of capacity attributable to AEP Generating. AEP Generating states that it sells all of its power from these facilities at wholesale to certain of its public utility affiliates under long-term contracts approved by the Commission, and that it makes no retail sales of power.³

¹ 16 U.S.C. § 824c (2012).

² Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities, Docket No. ES14-78-000 (Apr. 22, 2014) (Original Application); Amended and Restated Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities, Docket No. ES14-37-000 (July 11, 2014) (Amended Application). The Original and Amended Applications are referred to together as the Application.

³ Amended Application at 2.

II. Application

A. Long-Term Debt

3. AEP Generating requests Commission authorization through December 31, 2015 to issue secured or unsecured long-term debt securities in an aggregate principal amount not to exceed \$150 million. AEP Generating states that the long-term debt securities may consist of first mortgage bonds, pollution control revenue bonds, notes (secured and unsecured) and debentures, preferred securities, and long-term debt issued to AEP, its corporate parent.⁴ AEP Generating states that the funds obtained through the issuance of debt securities will be used, together with other available funds, to finance the costs for its share of pollution control facilities for the Rockport Station it owns and leases in equal parts with Indiana Michigan Power, the acquisition and/or construction of a generation facility, to redeem directly or indirectly long-term debt, to refinance existing debt, to reimburse AEP Generating's treasury for expenditures incurred in connection with its construction program, to meet working capital needs, and for other general corporate purposes.⁵

4. AEP Generating contends that the facts set out in the Application show that the proposed financing transactions are for lawful purposes, including to fund the day-to-day operations of AEP Generating, which are within the company's corporate purposes as set forth in its articles of incorporation, and properly authorized by its board of directors; and compatible with the public interest. AEP Generating further states that the issuance of debt securities as proposed in the Application is necessary, appropriate for, and consistent with the proper performance by AEP Generating of its service as a public utility, will not impair its ability to perform that service, and is reasonably necessary and appropriate for the purposes set out above.⁶

5. AEP Generating states that the long-term debt: (a) will have maturities up to 60 years; (b) may be subject to optional and /or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount thereof; (c) may be entitled to mandatory or optional sinking fund provisions; (d) may provide for reset of the coupon pursuant to a remarketing arrangement; (e) may be subject to tender or the obligation of the issuer to repurchase at the election of the holder or upon the occurrence

⁴ Original Application at 2; Amended Application at 3.

⁵ Original Application at 4; Amended Application at 3, 5.

⁶ Original Application at 4-5; Amended Application at 5-6.

of a specified event; (f) may be called from existing investors by a third party; and (g) may be entitled to the benefit of affirmative or negative financial or other covenants.⁷

6. AEP Generating states that the actual interest rate on the long-term debt will be determined based upon the benchmark 10-year Treasury yield at the time of issuance, as published at www.treasury.gov, with up to 400 basis points added.⁸

B. Request for Waiver

7. AEP Generating requests waiver of the Commission's competitive bidding or negotiated placement requirements, 18 C.F.R. § 34.2(a) and 34.2(c)(1) (2014), as applicable to the long-term debt securities proposed to be issued by AEP Generating.⁹ AEP Generating explains that it continuously monitors the capital markets and prevailing fees and charges of investment banks. According to AEP Generating, if the company should issue long-term debt using an underwriter or private placement agent, it will select an underwriter or a private placement agency with a thorough knowledge of AEP Generating's business and finances, and with the capability to maximize AEP Generating's access to capital markets and minimize its costs of funds. AEP Generating states that it will also review fees, commissions, and expenses incurred in similar transactions to ensure that the fees, commissions and expenses of the underwriter or private placement agent are consistent with, or better than, fees, commission and expenses incurred in similar transactions.¹⁰

8. AEP Generating asserts that it is committed to issuing securities with the best rates and terms for its customers and its stockholders, and believes that it has implemented the necessary procedures to analyze the market in order to obtain the best rates at the lowest cost available. According to AEP Generating, requiring it to competitively bid or negotiate placement of securities would hinder its ability to move quickly and cost-effectively in the market. AEP Generating states that, if it loses the ability to control the

⁷ Original Application at 2-3; Amended Application at 3.

⁸ Original Application at 3; Amended Application at 3-4.

⁹ Section 34.2 sets forth the Commission's requirements regarding placements of securities. Among other things, the regulation states that 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 that negotiated offers are obtained from at least three prospective dealers, purchasers or underwriters.

¹⁰ Original Application at 7; Amended Application at 8.

manner of its access to the market, it may be unable to continue to obtain the best rates for its customers and stockholders.¹¹

III. Notice of Filing

9. Notice of the Original Application was published in the *Federal Register*, 79 Fed. Reg. 24,702 (2014), with interventions and protests due on or before May 13, 2014. None was filed.

10. Notice of the Amended Application was published in the *Federal Register*, 79 Fed. Reg. 42,310 (2014), with intervention and protests due on or before July 21, 2014. None was filed.

IV. Discussion

11. FPA section 204(a) provides that requests for authorization to issue securities or to assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person shall be granted if the Commission finds that the issuance or assumption: (1) 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 (2) is reasonably necessary or appropriate for such purposes.¹²

12. Typically, under FPA section 204, the Commission utilizes an interest coverage calculation in order to determine whether the undertaking “will not impair [a public utility’s] ability to perform” service as a public utility.¹³ And, typically, the Commission bases its finding that a proposed issuance of securities will not impair an applicant’s ability to perform service as a public utility upon the applicant’s demonstration that it will have an interest coverage ratio that is 2.0 or higher.¹⁴

¹¹ Original Application at 8; Amended Application at 9.

¹² 16 U.S.C. § 824c(a) (2012).

¹³ 16 U.S.C. § 824c(a) (2012); *see, e.g., Mississippi Power Co.*, 145 FERC ¶ 61,218, at P 19 (2013); *Transource Missouri, LLC*, 145 FERC ¶ 61,146, at P 19 (2013) (*Transource Missouri*).

¹⁴ *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 18 (2008) (*Startrans*) (stating that “this screen is a mid-way number in a range that has been used by lenders and borrowers and provides a buffer against unforeseen, adverse financial events that might impair Startrans IO’s ability to perform as a public utility.”).

13. AEP Generating filed, as Exhibits C, D and E to the Application, actual and *pro forma* financial statements for the 12-month period ending December 31, 2013. Exhibit E of the Application shows that AEP Generating does not meet the 2.0 interest coverage threshold on a *pro forma* basis. Specifically, AEP Generating's *pro forma* interest coverage ratio is 1.69.¹⁵

14. AEP Generating explains that the interest expense associated with any new securities issuances by AEP Generating is recoverable in the rates it charges under its long-term power supply agreements with Indiana Michigan Power and Kentucky Power Company (Kentucky Power).¹⁶ AEP Generating states that those agreements are on file with the Commission.¹⁷ Further, those types of costs have been approved for recovery by Indiana Michigan Power under an order issued by the Indiana Utility Regulatory Commission approving the stipulation that authorizes Indiana Michigan Power to recover its direct and indirect (via AEP Generating) costs for pollution control facilities on the Rockport Station.¹⁸

¹⁵ See Original Application, Exhibit E: AEP Generating Company, Pro Forma Interest Coverage.

¹⁶ Amended Application at 4.

¹⁷ See AEP Generating Company, FERC Rate Schedule No. 1, Unit Power Service to Indiana Michigan Power Company; and AEP Generating Company, FERC Rate Schedule No. 2, Unit Power Service to Kentucky Power Company. These power supply agreements were accepted for filing via delegated letter order. See generally *AEP Generating Company*, Docket Nos. ER13-286-000 and ER13-286-001 (Jan. 31, 2013) (delegated letter order) (included as Exhibit G-3 to the Amended Application).

¹⁸ Amended Application at 4 (citing Verified Petition of Indiana Michigan Power Company ("I&M"), an Indiana Corporation, for Approval of Clean Coal and Energy Projects and Qualified Pollution Control Property and for Issuance of a Certificate of Public Convenience and Necessity for Use of Clean Coal Technology ("Projects"); for Ongoing Review; for Approval of the Timely Recovery of Costs Incurred During Construction and Operation of Such Projects through I&M's Clean Coal Technology Rider; for Approval of Depreciation Proposal for Such Projects; for Authority to Defer Costs Incurred During Construction and Operation, Including Carrying Costs, Depreciation, and Operation and Maintenance Costs, Until Such Costs are Reflected in the Clean Coal Technology Rider, for Approval of Cost Recovery of Costs Incurred for Rockport Environment Project, all Pursuant to Ind. Code §§ 8-1-2-6.1, 8-1-2-6.7, 8-1-2-6.8, 8-1-2-42(a), 8-1-8.4-6, 8-1-8.4-7, 8-1-8.7, 8-1-8.8, and 170 IAC 4-6-1, et seq., Cause No. 44331, Order of the Commission (Nov. 13, 2013), included as Exhibit G-4 to the Amended Application).

15. According to AEP Generating, as it incurs costs for its pollution control facilities construction activity, those costs, along with the debt and equity financing costs recorded as Allowance for Funds Used During Construction (AFUDC), are recorded on its books as Construction Work-in-Progress. Once construction is completed and the new asset is placed into service, both the construction costs and associated AFUDC will be moved to plant in service and included in AEP Generating's future monthly billing calculations to Indiana Michigan Power and Kentucky Power. AEP Generating states that at that time it will begin recovering the costs of the new asset, including financing costs, in revenues under the power supply agreements with Indiana Michigan and Kentucky Power. AEP Generating states it will recover financing costs through the rate mechanism of its existing Commission-approved contracts.¹⁹

16. As noted above, in section 204 filings, the Commission typically utilizes an interest coverage ratio calculation in its evaluation of a public utility's financial viability, and generally requires an applicant filing under FPA section 204 to demonstrate, on a *pro forma* basis, that net income will equal or exceed twice total interest expense.²⁰ In this case, AEP Generating's *pro forma* interest coverage ratio is below 2.0. Other factors, however, provide the Commission with an alternative basis upon which the Commission may conclude that the proposed issuance of long-term debt will not impair AEP Generating's ability to service the proposed debt securities and to continue to provide service as a public utility. Specifically, the long-term power supply agreements between AEP Generating and Indiana Michigan Power, and AEP Generating and Kentucky Power, provide for the recovery of the costs of long-term debt.²¹

17. We find, based on the statements set forth in the Application, that AEP Generating has demonstrated that the proposed issuances of securities described in the Application: (1) are for lawful objects within the corporate purposes of AEP Generating and compatible with the public interest, are necessary or appropriate for, or consistent with, the proper performance by AEP Generating of service as a public utility, and will not impair its ability to perform that service; and (2) are reasonably necessary or appropriate for such purposes. Accordingly, based upon the terms and conditions and for the purposes specified in the Application, AEP Generating is authorized to issue long-term debt at the interest rates described in the Application in an amount not to exceed \$150 million.

¹⁹ Amended Application at 4-5.

²⁰ See, e.g., *Startrans*, 122 FERC ¶ 61,253 at P 18.

²¹ See *Transource Missouri*, 145 FERC ¶ 61,146 at PP 21, 23.

18. We grant these authorizations effective as of the date of this order, through December 31, 2015. We also grant the requested waiver of the Commission's competitive bidding and negotiated placement requirements applicable to long-term debt.

19. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.²² 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. In the Application, AEP Generating acknowledges that any secured or unsecured debt securities issued pursuant to the authorization requested in the Application will be subject to, and we will condition our authorizations granted here upon, the four restrictions on such securities specified in *Westar*.²³

20. Accordingly, we authorize the following:

- a. AEP Generating is authorized to issue secured or unsecured long-term debt securities in an aggregate principal amount not to exceed \$150 million. The long-term debt securities may consist of first mortgage bonds, pollution control revenue bonds, notes (secured and unsecured) and debentures, preferred securities, and long-term debt issued to AEP, its corporate parent.
- b. The interest rate for the long-term debt securities will not exceed the 10-year Treasury Rate at the time of issuance, as published at www.treasury.gov, plus up to 400 basis points.²⁴

²² *Westar Energy, Inc.*, 102 FERC ¶ 61,186, at PP 20-21 (2003) (*Westar*).

²³ Amended Application at 11.

²⁴ *Id.* at 4.

The Commission orders:

(A) AEP Generating is hereby authorized to issue secured or unsecured long-term debt securities that may consist of first mortgage bonds, pollution control revenue bonds, notes (secured and unsecured) and debentures, preferred securities, and long-term debt issued to AEP, its corporate parent, in an aggregate principal amount not to exceed \$150 million, at the interest rate stated in the body of this order.

(B) The authorizations are effective as of the date of this order and terminate on December 31, 2015.

(C) The authorizations granted in this order are subject to the restrictions specified in the body of this order and the restrictions on secured and unsecured debt as outlined in *Westar*.

(D) The requested waiver of the Commission's competitive bidding or negotiated placement requirements under 18 C.F.R. § 34.2(a) (2014) is hereby granted.

(E) AEP Generating must file a Report of Securities Issued, under 18 C.F.R. §§ 34.9, 131.43 and 131.50 (2014), no later than 30 days after the sale or placement of long-term debt securities.

(F) The authorization granted in Ordering Paragraph (A) above is 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.

(G) 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.