152 FERC ¶ 61,153
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

AEP West Virginia Transmission Company, Inc. Docket No. ES15-19-000

ORDER AUTHORIZING ISSUANCE OF SECURITIES

(Issued August 26, 2015)

1. On April 27, 2015, as amended on May 28, 2015, AEP West Virginia Transmission Company, Inc. (AEP West Virginia) filed an application pursuant to section 204 of the Federal Power Act (FPA)[1] requesting authorization to issue secured or unsecured long-term debt securities in an aggregate principal amount not to exceed $175 million.[2] AEP West Virginia also requests authorization to issue long-term debt to its intermediate corporate parents, AEP Transmission Company, LLC and AEP Transmission Holding Company, LLC (together, Parent Companies). We will grant the authorizations, as discussed below.

[1] 16 U.S.C. § 824c (2012).

[2] Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities, Docket No. ES15-19-000 (filed April 27, 2015) (Application). The Application was amended on May 28, 2015. Amendment to Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities, Docket No. ES15-19-000 (filed May 28, 2015) (Amendment). Together, the Application and the Amendment are referred to as the Amended Application.

I. Background

2. AEP West Virginia is a West Virginia corporation organized in 2009 that operates in West Virginia. AEP West Virginia states that it is a public utility that owns and operates transmission assets.[3]

3. AEP West Virginia was previously authorized to issue short-term debt, in the form of commercial paper, promissory notes and other forms of short-term indebtedness in amount not to exceed $175 million at any one time.[4]

4. AEP West Virginia was also previously authorized to issue secured and unsecured long-term debt securities consisting of first mortgage bonds, notes (secured and unsecured, including notes issued in connection with bank facilities), debentures, and preferred securities in an aggregate principal amount not to exceed $175 million.[5]

II. Application

A. Long-term Debt

5. AEP West Virginia requests Commission authorization through June 30, 2017 (Authorization Period), to issue "secured or unsecured, long-term debt securities in an aggregate principal amount not to exceed $175 million."[6] AEP West Virginia states that the long-term debt securities may consist of "first mortgage bonds, notes (secured or unsecured, including notes issued in connection with bank facilities) debentures and preferred securities."[7] AEP West Virginia adds that any long-term debt it may issue will have maturities of up to 60 years.[8] AEP West Virginia also requests authorization to issue long-term debt to its Parent Companies.[9] AEP West Virginia states that any

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[3] *See* Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities at 1, Docket No. ES14-21-000 (filed January 13, 2014).

[4] *See AEP West Virginia Transmission Co., Inc.*, 147 FERC ¶ 61,076 (2014).

[5] *See AEP West Virginia Transmission Co., Inc.*, 144 FERC ¶ 62,238 (2013).

[6] Amendment at 1.

[7] *Id.*

[8] *Id.*

[9] *Id.*

secured or unsecured debt securities issued pursuant to the authorization requested in the Amended Application will be subject to the four restrictions on such securities specified in *Westar Energy, Inc.*[10]

6. AEP West Virginia states that the interest rate on the long-term debt will be based upon the 30-year U.S. Treasury Rate, as referenced at www.treasury.gov, at the time of issuance, plus up to 400 basis points.[11]

7. According to AEP West Virginia, it is currently "in an early stage of commercial operation,"[12] and anticipates capital expenditures for the construction of new transmission facilities during the Authorization Period. AEP West Virginia explains that the funds obtained through the issuance of the long-term debt securities for which it seeks authorization will be used, along with other available funds, "to finance the construction, acquisition, maintenance of, and modification or improvement to, new and existing electric transmission facilities of [AEP West Virginia], to refinance existing debt, to meet working capital needs of [AEP West Virginia], and for other general corporate purposes."[13]

8. AEP West Virginia states that the facts set out in the Amended Application show that the proposed financing transactions are for lawful purposes, to fund the day-to-day operations of AEP West Virginia, which are within the corporate purposes of AEP West Virginia as set forth in its respective articles of incorporation, and properly authorized by its respective board of directors. AEP West Virginia further explains that the issuance of long-term debt securities proposed in the Amended Application is necessary, appropriate for and consistent with the proper performance by AEP West Virginia of its respective service obligations as a public utility.[14]

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[10] Application at n.1 (citing *Westar Energy, Inc.*, 102 FERC ¶ 61,186, at PP 20-21 (2003) (*Westar*)).

[11] Amendment at 2.

[12] *Id*. at 3.

[13] Application at 4.

[14] *Id*. at 5.

B. Request for Waiver

9. AEP West Virginia requests waiver of the Commission's competitive bidding or negotiated placement requirements set forth in the Commission's regulations, 18 C.F.R. §§ 34.2(a) and 34.2(c)(1) (2015), as applicable to the long-term debt securities that it proposes to issue.[15] AEP West Virginia states that upon issuing long-term debt it will select an underwriter or a private placement agent with a thorough knowledge of its business and finances and with the capability to maximize AEP West Virginia's access to capital markets and minimize its cost of funds. AEP West Virginia also states that it will 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, those incurred in similar transactions. AEP West Virginia states that it is committed to issuing securities with the best rates and terms for its customers and stockholders. AEP West Virginia believes it has implemented the necessary procedures to analyze the market in order to obtain the best rates at the lowest cost available. AEP West Virginia believes there would be no advantage to requiring it to competitively bid or negotiate placements pursuant to the provisions of 18 C.F.R. § 34.2 (2015).[16]

III. Notice of Filing

10. Notice of the Application was published in the *Federal Register*, 80 Fed. Reg. 26,915 (2015), with interventions and protests due on or before May 18, 2015. None was filed.

11. Notice of the Amendment was published in the *Federal Register*, 80 Fed. Reg. 31,901 (2015), with interventions and protests due on or before June 8, 2015. None was filed.

IV. Discussion

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[15] *Id*. at 7. 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.

[16] Application at 7-8.

12. 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.[17]

13. In reviewing an application under FPA section 204, the Commission utilizes an interest coverage ratio calculation to determine whether the issuances for which authorization are sought "will not impair [a public utility's] ability to perform" service as a public utility.[18] The Commission typically bases its finding that proposed issuances of securities will not impair an applicant's ability to perform service as a public utility in part upon the applicant's demonstration that it will have an interest coverage ratio that is 2.0 or higher.[19] In making this finding, the Commission reviews the financial statements submitted with an application filed under FPA section 204 and applicant's calculation of the interest coverage ratio, which is the sum of income before interest and income taxes divided by total interest expense.[20] The interest coverage ratio 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.[21] The Commission has stated, however, that whether or not an applicant meets the 2.0 interest coverage ratio screen does not by itself determine whether the Commission will authorize or deny the

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[17] 16 U.S.C. § 824c(a) (2012).

[18] *See, e.g., Old Dominion Electric Cooperative*, 145 FERC ¶ 61,132, at P 12 (2013); *Startrans IO, LLC*, 122 FERC ¶ 61,253, at P 18 (2008) (*Startrans*).

[19] *Startrans*, 122 FERC ¶ 61,253 at P 18 (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").

[20] *Westar*, 102 FERC ¶ 61,186 at P 15 n.15.

[21] *Montana Alberta Tie Ltd. and MATL LLP*, 128 FERC ¶ 61,217, at P 16 (2009) (citing *Startrans*, 122 FERC ¶ 61,253 at P 18). The Commission has also described the interest coverage ratio as a measure of a utility's ability to meet future debt and interest payments. *Westar*, 102 FERC ¶ 61,186 at P 15.

application.[22] The Commission has approved FPA section 204 applications that have not met the 2.0 interest coverage ratio threshold.[23]

14. AEP West Virginia has filed, as Exhibits C, D and E to the Amendment, *pro forma* financial statements as of December 31, 2014. Exhibit E of the Amendment shows that AEP West Virginia has a *pro forma* interest coverage ratio of 0.54, which is below the Commission's 2.0 times interest coverage test.

15. As noted above, AEP West Virginia states that it is in an early state of commercial operation and that it anticipates capital expenditures for the construction of new transmission facilities during the Authorization Period. AEP West Virginia explains that the expected construction activities have necessitated the need for the requested financing operation. According to AEP West Virginia, however, its Commission-approved formula rate mechanism "provides for the recovery of all costs associated with investments in transmission facilities, including the cost of operation and maintenance expense, depreciation and amortization expense, interest expense and financing costs, as well as other prudently incurred costs related to the transmission facilities."[24] Given its Commission-approved transmission tariff, AEP West Virginia requests that the Commission grant its request for long-term debt issuance authority "with the comfort that all debt service costs will be recovered through [AEP West Virginia's] transmission cost of service formula rate."[25]

16. As noted above, in FPA section 204 filings, the Commission 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.[26] In this case, AEP West Virginia's *pro forma* interest coverage ratio is below 2.0. Other factors, however, provide the Commission with an alternative basis upon which the

[22] *See, e.g.*, *Startrans*, 122 FERC ¶ 61,253 at n.7.

[23] *See, e.g.*, *NorthWestern Corp.*, 151 FERC ¶ 61,120 (2015); *ITC Great Plains, LLC*, 147 FERC ¶ 61,005 (2014); *Mississippi Power Co.*, 145 FERC ¶ 61,218 (2013); *Westar*, 102 FERC ¶ 61,186.

[24] Amendment at 3.

[25] *Id*.

[26] *See, e.g*., *Startrans*, 122 FERC ¶ 61,253 at P 18.

Commission may conclude that the proposed issuance of long-term debt will not impair AEP West Virginia's ability to service the proposed debt securities and continue to provide service as a public utility. Specifically, AEP West Virginia's individual formula rate mechanism, approved by the Commission, provides for the recovery of all costs associated with investments in transmission facilities, including the cost of operation and maintenance expense, depreciation and amortization expense, interest expense and financing costs, as well as other prudently incurred costs related to the transmission facilities.[27]

17. We find, based on the statements set forth in the Amended Application, that AEP West Virginia has demonstrated that the proposed issuance of securities described in the Application: (1) are for lawful objects within the corporate purposes of AEP West Virginia and compatible with the public interest, are necessary or appropriate for, or consistent with, the proper performance by AEP West Virginia of its 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.

18. Accordingly, based upon the terms and conditions and for the purposes specified in the Amended Application, AEP West Virginia is authorized to issue long-term debt in an aggregate principal amount not to exceed $175 million. The long-term debt securities may consist of first mortgage bonds, notes (secured or unsecured, including notes issued in connection with bank facilities), debentures and preferred securities. In addition, AEP West Virginia is authorized to issue long-term debt to its Parent Companies.

19. The interest rate for the long-term debt will not exceed the 30-year U.S. Treasury Rate in effect at the time of issuance, as published at www.treasury.gov, plus up to 400 basis points.

20. We also grant the requested waiver of the Commission's competitive bidding and negotiated placement requirements applicable to long-term debt.

21. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.[28] 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

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[27] *See, e.g.*, *AEP Appalachian Transmission Co., Inc.*, 147 FERC ¶ 61,076 (2014); *Transource Missouri, LLC*, 145 FERC ¶ 61,146 (2013); *Northern Pass Transmission, LLC*, 149 FERC ¶ 61,012 (2014).

[28] *Westar*, 102 FERC ¶ 61,186 at PP 20-21.

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. We will condition our authorization on AEP West Virginia abiding by these restrictions.

The Commission orders:

(A) AEP West Virginia is hereby authorized to issue long-term debt in an aggregate amount not to exceed $175 million at the interest rate stated in the body of this order. In addition, the Commission authorizes AEP West Virginia to issue long-term debt to its Parent Companies.

(B) The authorization is effective as of the date of this order and terminates on June 30, 2017.

(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) AEP West Virginia is hereby granted waiver of the Commission's competitive bidding and negotiated placement requirements at 18 C.F.R. § 34.2(a) (2015).

(E) AEP West Virginia must file a Report of Securities Issued, under 18 C.F.R. §§ 34.9 and 131.43 and 131.50 (2015), no later than 30 days after the sale or placement of long-term debt or equity securities or assumptions of liabilities.

(F) The authorizations granted in this order 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.

(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)

Kimberly D. Bose,
Secretary.