

158 FERC ¶ 61,021
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER17-349-000

ORDER ACCEPTING SUBJECT TO CONDITION AND SUSPENDING PROPOSED
AGREEMENT

(Issued January 12, 2017)

1. On November 14, 2016, PJM Interconnection, L.L.C. (PJM) submitted, pursuant to section 205 of the Federal Power Act (FPA)¹, an executed designated entity agreement (DEA) entered into between PJM and Transource Energy, LLC for itself and on behalf of Transource Maryland, LLC and Transource Pennsylvania, LLC (collectively, Transource).² The DEA provides for the construction, ownership and/or financing of transmission enhancements and expansions the PJM Board of Directors (PJM Board) approved for inclusion in the Regional Transmission Expansion Plan (RTEP). In this order, the Commission accepts the DEA for filing subject to condition and suspends it for a nominal period, to become effective November 2, 2016, as requested, subject to refund, as discussed below.

I. Background

2. Transource is a nonincumbent transmission developer that is active in PJM's Order No. 1000 process.³ Transource is pre-qualified under section 1.5.8(a) of Schedule 6 as eligible to be designated construction and ownership rights for a proposed transmission project should its project be selected in the RTEP for purposes of cost allocation. On October 30, 2014, PJM opened the 2014/2015 Long Term Proposal Window seeking technical solution alternatives to resolve potential reliability criteria

¹ 16 U.S.C. § 824d (2012).

² PJM Interconnection, L.L.C., PJM Service Agreements Tariff, [PJM SA No. 4579](#), [PJM SA No. 4579 between PJM and Transource Energy, 0.0.0.](#)

³ PJM November 14, 2016 Filing at 2.

violations, market efficiency congestion, and Reliability Pricing Model (RPM) constraints. On August 2, 2016, the PJM Board approved baseline upgrades b2743 and b2752 (i.e., the AP South Congestion Improvement Project (Project)) for selection in the RTEP for purposes of cost allocation and notified Transource that it satisfied the requirements of section 1.5.8 of Schedule 6 to be the Designated Entity for the Project.

II. PJM's Filing

3. PJM states that the DEA designates Transource's responsibility for construction, ownership, and financing of baseline upgrades b2743.1, b2743.5, b2752.1, and b2752.5.⁴ PJM states that consistent with section 1.5.8(j) of Schedule 6, Transource submitted security in the amount of \$5,550,000, three percent of PJM's independent cost estimate for the Project. The projected in-service date for the Project is on or before June 1, 2020.⁵

4. PJM states that the DEA contains non-standard terms and conditions that do not conform to the *pro forma* Designated Entity Agreement. Specifically, PJM explains that Schedule E of the DEA, Non-Standard Terms and Conditions, includes details regarding project development unique to the Project as well as details specific to Project costs. PJM represents that the non-conforming language is necessary to clarify the role of Transource's wholly-owned subsidiaries, Transource Pennsylvania, LLC and Transource Maryland, LLC, in fulfilling Transource's obligations to design, engineer, procure, install and construct the project. PJM states that Transource's wholly-owned subsidiaries were

⁴ According to PJM, baseline upgrade b2743.1 includes: (i) tapping the existing Conemaugh to Hunterstown 500 kV line to tie in the new 500/230 kV Rice substation connecting to the new Rice to Ringgold 230 kV line; and (ii) installing two 500/230 kV transformers to be operated in parallel. Baseline upgrade b2743.5 includes construction of a new 230 kV double circuit overhead transmission line between the existing Ringgold substation and the new Rice substation, which will be operated as a single circuit. PJM states that baseline upgrade b2752.1 includes: (i) tapping the existing Peach Bottom to Three Mile Island 500 kV line to tie in the new 500/230 kV Furnace Run substation connecting to the new Furnace Run to Conastone 230 kV line; and (ii) installing two 500/230 kV transformers, operating in parallel. Baseline upgrade b2752.5 includes construction of a new 230 kV double circuit overhead transmission line between the existing Conastone substation and the new Furnace Run substation, operated as a single circuit. *Id.* at 4.

⁵ The Project also involves associated work under separate baseline projects designated to the respective incumbent transmission owners, Baltimore Gas and Electric Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company and The Potomac Edison Company. *Id.* at n.8.

formed specifically in order to carry out these obligations. PJM further notes Transource's representation that the non-conforming language provides greater transparency as to the cost containment measures presented in Transource's proposal, which PJM accepted.⁶

5. As to the Project costs, Schedule E of the DEA states:

Project Cost

The Estimated Project Cost is \$197.1 million plus an escalation compounded adjustment of three percent per year to account for inflation as measured from the bid submission date of February 27, 2015 and the Project In-Service Date.

Consistent with the proposal submitted by Transource on February 27, 2015, Transource commits to the following terms and conditions relevant to the Project:

(a) The Transource Subsidiaries shall be entitled to recover the FERC approved return on equity plus incentives on the costs incurred for the Project up to the Estimated Project Cost;

(b) The Transource Subsidiaries shall be entitled to recover the FERC approved return on equity on the costs incurred for the Project above the Estimated Project Cost, but shall forego any return on equity incentives approved by FERC (including the RTO [Regional Transmission Organization] participation adder) for the project cost portion that exceeds the Estimated Project Cost; and

(c) The Transource Subsidiaries commit to an actual equity content of no greater than 50 percent for the Project, once permanent financing is in place. Transource shall be granted relief from this commitment if the capital market conditions do not remain normal and the Transource Subsidiaries do not have the ability to finance these transmission projects with the proposed capital structure.⁷

⁶ *Id.*

⁷ *Id.* at Attachment "Transource DEA, Service Agreement No. 4579" at 25.

6. PJM asserts that the provisions of Schedule E conform to the terms and conditions submitted in Transource's proposal.⁸ PJM requests waiver of the Commission's 60-day prior notice requirements to allow an effective date of November 2, 2016. PJM states the waiver is appropriate because the DEA was filed within 30 days of the requested effective date.⁹

III. Notice of Filing and Responsive Pleadings

7. Notice of the filing was published in the *Federal Register*, 81 Fed. Reg. 81,756 (2016) with interventions and protests due on or before December 5, 2016. American Municipal Power, Inc. filed a timely motion to intervene. Old Dominion Electric Cooperative (ODEC) filed a timely motion to intervene and protest. On December 6, 2016, American Electric Power Service Corporation (AEPSC) filed a motion to intervene out of time on behalf of Transource.

8. On December 14, 2016, AEPSC filed a motion for leave to answer and answer to ODEC's protest. On December 29, 2016, ODEC filed a motion for leave to answer and answer to AEPSC's answer.

A. ODEC's Protest

9. ODEC asserts that the Commission should reject the DEA without prejudice to submission of a revised DEA that does not include rate provisions.¹⁰ ODEC contends that the DEA contains non-conforming provisions that establish cost and rate matters that must first be approved by the Commission. ODEC further contends that such provisions are beyond the scope of a DEA and must not be used as an end-run around the Commission's ratemaking authority.¹¹ ODEC asserts that, once the Commission approves the DEA, Transource will have in place a filed rate which will allow it to recover a Commission approved return on equity (ROE) on those costs above the estimated Project cost as well as incentives up to the estimated Project cost, all without condition.¹² ODEC states these issues should and presumably will be addressed in Docket No. ER17-419-000, where Transource has submitted for Commission review and

⁸ *Id.*

⁹ *Id.* at 6.

¹⁰ ODEC December 5, 2016 Protest at 2-3.

¹¹ *Id.* at 2-3.

¹² *Id.* at 5.

approval a formula rate, including a 10.4 percent base ROE, as well as a request for certain transmission rate incentives.¹³

B. AEPSC Answer

10. AEPSC states that ODEC's objection to the DEA as a cost and rate matter that must first be approved by the Commission fundamentally ignores the purpose and design of the nonconforming provisions.¹⁴ AEPSC explains that the nonconforming provisions provide transparency to Transource's cost containment commitments that are the subject of the pending formula rate and incentive filing that Transource submitted in Docket No. ER17-419-000.¹⁵ AEPSC assures ODEC and the Commission that the provisions were intended to track those rates and incentives approved by the Commission through the appropriate FPA section 205 filings, and that the nonconforming provisions were never intended to circumvent or supplement any rate approval processes.¹⁶

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R., § 385.214 (2016), the timely, unopposed motions to intervene serve to make American Municipal Power, Inc. and ODEC parties to this proceeding.

12. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2016), the Commission will grant AEPSC's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept AEPSC's answer because it has provided information that assisted us in our decision-making process.

¹³ *Id.*

¹⁴ AEPSC December 14, 2016 Answer at 3.

¹⁵ *Id.*

¹⁶ *Id.*

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept ODEC's answer to AEPSC's answer and will, therefore, reject it.

B. Substantive Matters

15. As discussed below, the Commission accepts the DEA for filing subject to condition and suspends it for a nominal period, to become effective November 2, 2016, as requested, subject to refund.¹⁷

16. While we acknowledge AEPSC's assurance in its answer that the provisions are to track those rate and incentive filings approved by the Commission in an appropriate FPA section 205 proceeding and AEPSC's representation that the DEA will not circumvent the ratemaking process, we are concerned that, as filed, the proposed non-standard terms and conditions could conflict with any transmission rate incentive determinations made by the Commission in Docket No. ER17-419-000. For example, in item (c) of Project Cost in Schedule E of the DEA, Transource commits to an actual equity content of no greater than 50 percent for the Project, once permanent financing is in place. In Docket No. ER17-419-000, Transource requests Commission authorization to use a hypothetical capital structure of 40 percent debt and 60 percent equity until the Project enters service and then to use its actual capital structure thereafter. To alleviate these concerns regarding the potential for conflict and ensure consistency between the DEA and the Commission's determination regarding Transource's filing in Docket ER17-419-000, we accept this filing subject to the outcome in Docket No. ER17-419-000. Thus, we direct PJM, within 30 days of the date of issuance of a final order in Docket No. ER17-419-000, to submit a compliance filing in this proceeding noting the cost and rate-related issues that were resolved in that proceeding, if any, and proposing appropriate changes to the DEA at issue in this proceeding, if necessary. Accordingly, the Commission will accept the DEA for filing subject to condition and suspend it for a nominal period, to become effective November 2, 2016, as requested, subject to refund.

¹⁷ The Commission can revise a proposal filed under section 205 of the Federal Power Act as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

The Commission orders:

(A) The DEA is hereby accepted subject to condition and suspended for a nominal period, to become effective November 2, 2016, as requested, subject to refund, as discussed in the body of this order.

(B) PJM is hereby directed to make a compliance filing in Docket No. ER17-349-000 within 30 days of the date of issuance of a final Commission order in Docket No. ER17-419-000, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.