

tariff sheets reflect an Order No. 679⁴ transmission rate incentive for each new subsidiary's participation in a regional transmission organization (RTO). We accept the revised tariff sheets for filing, suspend their effectiveness for five months, to be effective July 1, 2010, subject to refund and condition, and to the outcome of hearing and settlement judge procedures.

I. Background

A. Description of AEP's Corporate Structure

2. AEP⁵ is a newly-formed transmission-only limited liability company which serves as a holding company for the seven new AEP subsidiaries. AEP and American Electric Power Service Corporation are wholly-owned subsidiaries of AEP Transmission Holding Company, L.L.C., which in turn, is a wholly-owned subsidiary of American Electric Power Company, Inc.

3. The AEP Operating Companies, subsidiaries of American Electric Power, Inc., are public utilities that own existing generation, transmission and/or distribution facilities and are used to serve retail and wholesale customers. The AEP Operating Companies in PJM are: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company (collectively, AEP-East). The AEP Operating Companies in SPP are Southwestern Electric Power Company and Public Service Company of Oklahoma (collectively, AEP-West).

B. Formula Rates for AEP Operating Companies

4. AEP states that the OATTs of PJM and SPP each contain an "AEP Zone" designed to recover the ATRR of the AEP Operating Companies in that zone. AEP further states that the proposed formula rates filed in this proceeding are designed to recover the cost of service associated with the new facilities within the service territory of each new subsidiary.

Attachment H of SPP's OATT.

⁴ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁵ We will refer to AEP Transmission Company L.L.C. throughout this order as "AEP."

5. On June 22, 2007, in Docket No. ER07-1069-000, the AEP Operating Companies in AEP-West proposed to convert the stated rates contained in the SPP OATT into formula rates. On August 31, 2007, the Commission accepted the revised tariff sheets containing the formula rates, subject to conditions and set the proceeding for hearing and settlement procedures.⁶ On June 24, 2009, the Commission approved a settlement that established an ATRR effective February 2008 for AEP-West.⁷ In the settlement, the parties agreed to a base return on equity (ROE) of 10.7 percent, plus a 50 basis point adder for continued membership in an RTO, for a total ROE of 11.2 percent. In addition, AEP-West agreed to a moratorium which provided that AEP-West would not make a filing with the Commission pursuant to Order No. 679 that would increase the ROE above an equity cap of 12.45 percent for the period commencing February 1, 2008 through, and including, January 31, 2011.⁸

6. Similarly, on July 31, 2008, in Docket No. ER08-1329-000, the Operating Companies in AEP-East proposed to convert their stated rates into formula rates. On September 30, 2008, the Commission accepted and suspended the revised tariff sheets, subject to refund and conditions and set the proceeding for hearing and settlement procedures.⁹ The transmission rates in PJM are zonal, i.e., customers within a particular rate zone pay a rate for network transmission service that reflects the transmission cost of service of that transmission owner. Thus, the ATRR, including the appropriate level of ROE, for each of the AEP operating companies in AEP-East must be determined. The proceeding is currently pending before a Settlement Judge.

II. Proposal

7. In the instant filing, AEP proposes to establish formula rates for each of its seven new subsidiaries. AEP states that the sole purpose of its new corporate structure is to develop, construct, own, and operate transmission facilities interconnected across its existing eleven-state footprint. AEP states the new corporate structure serves as an alternate financing vehicle to eliminate competition for capital between generation and transmission investments and provides access to capital markets to support the continued need for infrastructure development. AEP explains that the new transmission facilities in its service areas will be owned by the new subsidiaries while existing facilities will

⁶ *American Elec. Power Svc. Corp.*, 120 FERC ¶ 61,205 (2007).

⁷ *American Elec. Power Svc. Corp.*, 127 FERC ¶ 61,292 (2009).

⁸ *American Elec. Power Service Corp.*, Offer of Settlement, Docket No. ER07-1069-000, at section I.D.1 (filed Feb. 23, 2009).

⁹ *American Elec. Power Svc. Corp.*, 124 FERC ¶ 61,306 (2008).

continue to be owned by the AEP Operating Companies. The AEP subsidiaries align with the AEP Operating Companies and were formulated to accommodate state law requirements. All of these facilities will be under the functional control of PJM or SPP. AEP further states that it will ultimately be responsible for managing the transmission facilities of the AEP Operating Companies as well as the transmission facilities of its subsidiaries. Finally, AEP states that each subsidiary will become a public utility within the state or states in which it operates.

8. Specifically, the proposed tariff sheets to the OATTs of PJM and SPP provide for: (1) forward-looking formula rates established initially in this proceeding and thereafter in Annual Updates; (2) a True-up Mechanism to reconcile projected costs with actual costs; and (3) protocols governing the Annual Updates and the True-up Mechanism. The Annual Update and the True-up Mechanism are reflected in spreadsheet format which is contained in Attachment H-20B of the PJM OATT and Attachment H of the SPP OATT. The Annual Update will be used to true-up the previous rate year's cost of service. In its Annual Update, AEP will populate the formula rate spreadsheets with FERC Form No. 1 data from each AEP subsidiary, as adjusted to recognize the new transmission plant that has or will be placed in service. The Annual Update will be prepared in May of each year to be effective from July 1 of the same year to June 30 of the following year. The True-up Mechanism, which is a line item in the formula template, compares the estimated cost of service for the previous rate year with the actual costs for that year. The difference between the projected and actual costs, plus interest, will be added or subtracted from the next year's projected cost of service. The True-up Mechanism will reflect any over-collection or under-collection of costs, with interest, and will be included in the Annual Update. AEP proposes that the formula rates for each subsidiary be automatically adjusted each year without contemporaneous requests for approval under section 205 of the FPA.

9. AEP proposes a base ROE of 11.6 percent for the subsidiaries in PJM and a base ROE of 11.4 percent for the subsidiaries in SPP. In addition, AEP proposes a 50 basis point ROE adder for participation in a qualifying RTO.¹⁰ At this time AEP does not propose to recover under Order No. 679 any additional incentives. As discussed further below, AEP requests waiver of the Commission's requirements to "post by mailing" paper copies of its filing. In addition, it requests waiver of the Commission's rules to allow the use of the proposed depreciation rates until such time as sufficient data is available perform depreciation studies on the assets owned by AEP subsidiaries.

¹⁰ In AEP's Application, Exhibit No. AEP-200 at 6, AEP proposes ROEs of 11.9 percent for the PJM subsidiaries and 12.1 percent for the SPP subsidiaries, inclusive of the 50 basis point adder. However, in Exhibit Nos. AEP-307 at 4 and AEP-313 at 4, the illustrative ROEs match the ROE reflected in AEP's Transmittal at 9.

10. AEP requests an effective date of February 1, 2010, and requests that its proposed rates be accepted without an evidentiary hearing or with only a nominal suspension.¹¹

III. Notice of Filing and Responsive Pleadings

11. Notice of AEP's filing was published in the *Federal Register*, 74 Fed. Reg. 66,121 (2009), with interventions and comments due on or before December 22, 2009. The Kentucky Public Service Commission, the Public Utilities Commission of Ohio, and the Arkansas Public Service Commission filed notices of intervention.

12. Timely motions to intervene were filed by: Blue Ridge Power Agency, Craig-Botetourt Electric Cooperative, Public Service Electric and Gas Company, East Texas Cooperatives,¹² Indiana Municipal Power Agency, Old Dominion Committee for Fair Utility Rates, Old Dominion Electric Cooperative, AEP Intervenor Group, Buckeye Power, Inc., Indiana and Michigan Municipal Distributors Association and its Members (IMMDA),¹³ North Carolina Electric Membership Corporation, and Indiana Office of Utility Consumer Counselor, Steel Dynamics, Inc., Oklahoma Municipal Power Authority, SPP, Exelon Corporation, and American Municipal Power, Inc.

13. The Public Service Commission of Maryland (Maryland Commission) and the Pennsylvania Public Utility Commission (Pennsylvania Commission) filed motions to intervene out-of-time.

14. Maryland Office of People's Counsel (Maryland OPC) filed a timely motion to intervene, protest and request for hearing. The Indiana Utility Regulatory Commission (Indiana Commission) filed a timely notice of intervention and protest. The Indiana Commission further requested that the proceeding be set for settlement and hearing

¹¹ Citing *Potomac-Appalachian Trans. Highline, L.L.C.*, 122 FERC ¶ 61,188 (2008) (*PATH*); *Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 69 (2007); *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219 (2007); and *Commonwealth Edison Co.*, 119 FERC ¶ 61,238 (2007).

¹² The members of East Texas Cooperatives are: East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc.

¹³ The members of IMMDA are: the Town of Avilla, Indiana; the City of Bluffton, Indiana; the City of Dowagiac, Michigan; the City of Garrett, Indiana; the City of Mishawaka, Indiana; the Town of New Carlisle, Indiana; the Town of Warren, Indiana; the City of Niles, Michigan; the Village of Paw Paw, Michigan; the City of South Haven, Michigan; and the City of Sturgis, Michigan.

procedures. The Indicated Intervenors¹⁴ filed a protest and requested that the Commission: (1) suspend the tariff sheets for a nominal period, (2) set the proceeding for hearing but that the Commission hold the hearing in abeyance pending settlement discussions, (3) direct the parties to pursue settlement discussions under the supervision of a Settlement Judge, and (4) establish procedures for the filing of more detailed protests should settlement discussions terminate unsuccessfully. Arkansas Electric Cooperative Corporation¹⁵ and Golden Spread Electric Cooperative¹⁶ (collectively, the Cooperatives) filed jointly and severally, a timely motion to intervene and protest. The Cooperatives request that the Commission reject the filing; if the filing is not rejected, the Cooperatives request that the Commission suspend the tariff sheets for the maximum period and set the proceeding for hearing.

15. On January 6, 2010, AEP filed an answer to the comments and protests. AEP states that it supports the procedures proposed by Indicated Intervenors, and therefore, revises its filed position and now requests that the Commission: (1) set the case for hearing, (2) suspend the proposed rates for a nominal period, (3) hold the hearing in abeyance pending settlement discussion before a Settlement Judge, and (4) establish

¹⁴ The Indicated Intervenors are: American Municipal Power, Inc., Blue Ridge Power Agency, Buckeye Power, Inc., Craig-Botetourt Electric Cooperative, the Indiana Municipal Power Agency, Old Dominion Electric Cooperative, the AEP Intervenor Group, and the East Texas Cooperatives.

¹⁵ The Arkansas Electric Cooperative Corporation's members are: Arkansas Valley Electric Cooperative Corp., Ashley-Chicot Electric Cooperative, Inc., C&L Electric Cooperative Corp., Carroll Electric Cooperative Corp., Clay County Electric Cooperative Corp., Craighead Electric Cooperative Corp., Farmers Electric Cooperative Corporation, First Electric Cooperative Corp., Mississippi County Electric Cooperative, Inc., North Arkansas Electric Cooperative, Inc., Ouachita Electric Cooperative Corp., Ozarks Electric Cooperative Corp., Petit Jean Electric Cooperative Corp., Rich Mountain Electric Cooperative, Inc., South Central Arkansas Electric Cooperative, Inc., Southwest Arkansas Electric Cooperative Corp., and Woodruff Electric Cooperative Corp.

¹⁶ The Golden Spread Electric Cooperative's members are: Bailey County Electric Cooperative Association, Concho Valley Electric Cooperative, Inc., Coleman County Electric Cooperative, Inc., Deaf Smith Electric Cooperative, Inc., Greenbelt Electric Cooperative, Inc., Lamb County Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Lyntegar Electric Cooperative, Inc., Big Country Electric Cooperative, Inc., North Plains Electric Cooperative, Inc., Rita Blanca Electric Cooperative, Inc., South Plains Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., Swisher Electric Cooperative, Inc., Taylor Electric Cooperative, Inc., and Tri-County Electric Cooperative, Inc.

procedures that allow the protests to be updated if settlement procedures are not successful.

16. On January 21, 2010, the Cooperatives filed an answer to AEP's answer. The Cooperatives stated that they would be willing to accept the procedures proffered by Indicated Intervenor if AEP would agree to accept the formula rate protocols established for AEP-West.

IV. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), the Commission will grant the motions to intervene out-of-time by the Maryland and Pennsylvania Commissions given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

18. Pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), answers to protests are prohibited unless otherwise permitted by the decisional authority. We accept AEP's answer because it has assisted us in the decision-making process. We deny the Cooperatives' answer. The Cooperatives' answer is an offer for negotiation, which is more appropriately addressed in the settlement proceeding phase of this proceeding.

B. Substantive Matters

19. As discussed below, we find that AEP's proposal raises issues of material fact that cannot be resolved based on the record before us and have not been shown to be just and reasonable and may be unjust, unreasonable, and unduly discriminatory. Therefore, we will accept AEP's proposal, subject to five months' suspension, to be effective July 1, 2010, subject to refund and condition and to the outcome of hearing and settlement judge procedures. Except for the issues discussed below, all other issues raised in the proceeding, including but not limited to formula rates, formula rate protocols, ROE, capital structure, plant balances, development and start-up costs, depreciation rates, and costs associated with the new subsidiaries, are set for hearing.

1. 50-Basis Point Incentive for RTO Membership

a. Proposal

20. AEP requests Commission approval of a 50-basis point adder incentive to its proposed base ROEs for participation in PJM and SPP. This would result in a total ROE

of 12.1 percent for the new AEP subsidiaries in PJM and 11.9 percent for the new AEP subsidiaries in SPP. AEP contends that these ROEs fall within the zone of reasonableness. AEP further states that on November 30, 2009, each of its new subsidiaries applied for membership in PJM and SPP.

b. Commission Determination

21. We find that AEP's proposal to include a 50-basis point adder to each subsidiary's base ROEs for participation in PJM and SPP is just and reasonable and not unduly discriminatory. Section 219 of the FPA specifically provides that the Commission shall provide incentives to each transmitting utility that joins an RTO.¹⁷ The consumer benefits, provided by such organizations, including reliable grid operation, are consistent with the purpose of section 219. As we stated in Order No. 679-A, we will authorize incentive-based rate treatment for public utilities that continue to be a member of an RTO.¹⁸ This decision to provide incentives for RTO participation is based on the policy of encouraging utilities to join and remain in an RTO.¹⁹

2. Cash Working Capital

a. Proposal

22. AEP proposes to calculate cash working capital by multiplying operation and maintenance expenses by 1/8, which is approximately 45 days of the year.

b. Protest

23. The Indicated Intervenors object to AEP's use of the 45-day rule. They contend that because projected costs are trued up to actual costs, AEP does not need a provision for cash working capital.

c. Commission Determination

24. Indicated Intervenors have failed to explain why AEP's proposal would result in unjust and unreasonable rates. Further, unless a formula rate provides for the recovery of costs at the same time that the costs are incurred, there will be a mismatch in the timing of the recovery of costs. Although AEP's forward-looking formula rates helps reduce this time lag, it is not eliminated. Accordingly, we accept AEP's proposal for cash

¹⁷ 16 U.S.C. § 824s(c) (2006).

¹⁸ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86.

¹⁹ *American Elec. Power Svc. Corp.*, 121 FERC ¶ 61,245, at P 10 (2007).

working capital as just and reasonable because it conforms to our policy which allows for 45 days or one-eighth of a year's operations and maintenance expenses, less purchased power costs and is consistent with our finding on cash working capital in other proceedings.²⁰

3. Request for Waiver of Filing Requirements

a. Proposal

25. AEP requests waiver of the Commission's regulations to serve members of PJM and SPP by mailing them paper copies. AEP states that it has provided advance notice of the planned filing to the consumer advocates and state commissions within their regions. It also states that it posted the filing on the PJM and SPP websites and made a copy available on the AEP website. AEP states that they will make paper copies available to any person upon request by contacting the counsel of record.

b. Protest

26. The Cooperatives state that the AEP's filing fails to comply with the Commission's posting rule found at 18 C.F.R. section 35.2(d) because AEP did not serve customers from whom the revenues raised by the proposed rates will be collected. The Cooperatives contend that requesting that the RTOs post the filing does not constitute adequate service in this proceeding. They further state that AEP should have at least notified by email the customers on the electronic mailing list for providing notice of the Annual Updates under the existing formula rate in Docket No. ER07-1069-000 that AEP intended to submit the instant filing with a link to the posted filing on AEP's website. Further, the Cooperatives state that the filing does not comply with the Commission's requirements in section 35.12(b)(3) because AEP did not provide a comparison of the proposed initial rate with other rates for similar transmission services.

c. Commission Determination

27. We deny AEP's request for waiver of section 35.2(e) of the Commission's regulations. At a minimum, AEP should have served email notice to all of PJM and SPP members of the instant filing.

28. We agree with the Cooperatives that AEP should have provided a comparison of the proposed rates as required by section 35.12(b)(3). Without such a comparison, it is impossible to determine how transmission customers' rates will be affected by the new

²⁰ See *Virginia Elec. and Power Co.*, 123 FERC ¶ 61,098 at P 75, citing *Trans-Elect NTD PATH 15, LLC*, 117 FERC ¶ 61,214, at P 39, 43 (2006); see also *PATH*, 122 FERC ¶ 61,188 at P 158.

corporate structure. Further, to the extent that the new subsidiaries are taking over functions from the AEP Operating Companies, there should be a corresponding decrease in charges from AEP-East and AEP-West. We will allow the presiding judge to determine when and how AEP should provide such a comparison.

29. We remind AEP that in future filings, it must comply with Commission regulations.

4. Acceptance and Suspension of AEP's Proposal

30. For the reasons discussed above, we will accept AEP's proposal, subject to five months' suspension, to be effective July 1, 2010, subject to refund and condition and to the outcome of hearing and settlement judge procedures.

31. AEP's proposal raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. These issues include, but not limited to, formula rates, ROE, capital structure, plant balances, and costs associated with the new subsidiaries.

32. Our preliminary analysis indicates that AEP's proposed revisions to the OATTs of PJM and SPP have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), the Commission explained that, when our preliminary analysis indicates that proposed rates may be unjust and unreasonable and substantially excessive, the Commission will generally impose a maximum suspension (i.e., five months).²¹ In the instant proceeding, our preliminary analysis indicates that the proposed rates may be substantially excessive. Therefore, we will accept AEP's filing subject to refund as discussed below, suspend it for five months to be effective on July 1, 2010, subject to refund, and set it for hearing and settlement judge procedures.

33. At the hearing, AEP will be required to demonstrate the justness and reasonableness of its proposal. To the extent that AEP wishes to rely on the Commission's treatment of other formula rate proposals, AEP may cite that treatment as precedent.

²¹ *West Texas Utilities Co.*, 18 FERC ¶ 61,189, at 61,374-75 (1982) (the Commission will suspend a proposed rate for the maximum period, five months, if the proposed rate increase is found to be substantially excessive); *see also Tucson Elec. Power Co.*, 76 FERC ¶ 61,235, at 62,147 (1996) (the purpose of the Commission's suspension policy is to provide consumers with maximum protection).

34. While we are setting this matter for a trial-type evidential hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²² If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.²³ The settlement judge shall report to the Chief Judge and the Commission within 30 days of appointment of the settlement judge concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) AEP's proposed tariff sheets are hereby accepted for filing, suspended for five months, to be effective July 1, 2010, subject to refund and condition, and to the outcome of hearing and settlement judge procedures.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning AEP's proposed formula rates. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2009), the Chief Administrative Law Judge is hereby directed to appoint a Settlement Judge in this proceeding within fifteen (15) days of the date of this order. Such Settlement Judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief

²² 18 C.F.R. § 385.603 (2009).

²³ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

Judge designates the Settlement Judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within thirty (30) days of the date of this order, the Settlement Judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the Settlement Judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.