133 FERC ¶ 61,007
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

October 1, 2010

In Reply Refer to:
American Electric Power Service Corporation
Docket No. ER08-1329-000

Monique Rowtham-Kennedy, Esq.
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Dear Ms. Rowtham-Kennedy:

1. On April 8, 2010, American Electric Power Service Corporation on behalf of its affiliates, 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 or the AEP East Companies), and on behalf of Blue Ridge Power Agency, Craig-Botetourt Electric Cooperative, the Musser Companies (Black Diamond Power Co., Elk Power Co., and Union Power Co.), Indiana Municipal Power Agency, the City of Dowagiac, Michigan, Old Dominion Electric Cooperative, American Municipal Power-Ohio, Inc., the AEP Intervenor Group,[1] Wabash Valley Power Association, Inc., Buckeye Power and Indiana and Michigan Municipal Distributors Association (collectively, the Joint Intervenors), filed an Offer of Settlement which included a Settlement Agreement and Explanatory Statement pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2010). On April 13, 2010, the Kentucky Public Service Commission filed a Statement of Clarification, in which it stated that it takes no position regarding the Settlement Agreement. On April 27, 2010, Commission Trial Staff filed comments in support of the Settlement Agreement. On May 5, 2010, the Settlement Judge certified the Offer of Settlement to the Commission as uncontested.

[1] The AEP Intervenor Group consists of large industrial customers that take service from one or more AEP East Companies.

2. The Settlement Agreement contains specific provisions relating to the standard of review for modification. Except as specifically provided for in section 6.7 of the Settlement Agreement, the standard of review for any modification to the Settlement Agreement sought by a Settling Party that is not agreed to by all other Settling Parties shall be the just and reasonable standard.[2] The Settlement Agreement further provides that the standard of review for any modifications to this Settlement Agreement requested by an intervenor or other interested entity that is not a Settling Party or that is sought in a proceeding initiated by the Commission acting *sua sponte* will be the most stringent standard permissible under applicable law.[3] We note that the Commission cannot be held to a higher standard of review than the parties.[4]

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[2] Section 6.7 of the Settlement Agreement provides:

> This Settlement Agreement may be amended only by a written instrument duly executed by all Settling Parties. The standard of review for any modification to this Settlement Agreement sought by a Settling Party that is not agreed to by all other Settling Parties shall be the "just and reasonable" standard. A Settling Party or Settling Parties seeking to modify the Formula Rate in any respect shall bear the applicable burden under the FPA. Notwithstanding the foregoing, the "public interest" standard described in the *Mobile-Sierra* line of decisions shall apply to any modification of the following provisions that may be sought by a Settling Party and that is not agreed to by all Settling Parties: (i) the methodology set forth in Attachment A, section I.C.6, for determining whether AEP is required to file a change to the PBOP expense allowance; (ii) the duration and amount of the Equity Caps established pursuant to Attachment A, paragraph I.D.2.c; (iii) the duration and amount of the limitation, set forth in Attachment A, paragraph I.D.I.a, on the amount of any incentive return on common equity AEP may request; and (iv) the limitation on the amount of hedging gains and losses AEP may reflect in the cost of long-term debt.

[3] Section 6.8 of the Settlement Agreement provides:

> The standard of review for any modifications to this Settlement Agreement requested by an intervenor or other interested entity that is not a Settling Party or that is sought in a proceeding initiated by the Commission acting *sua sponte* will be the most stringent standard permissible under applicable law. For purposes of the application of sections 6.7 and 6.8, all parties who have formally represented in writing, by their respective authorized representative, that they did not object to the Agreement shall be treated as "Settling Parties."

[4] *See, e.g.*, *Virginia Electric and Power Co.*, 119 FERC ¶ 61,004, at P 5 (2007); *Pacific Gas and Electric Co.*, 124 FERC ¶ 61,234, at P 4 and n.3 (2008).

3. The Settlement Agreement is fair, reasonable, and in the public interest and is hereby approved. The Tariff Sheets for AEP East Companies' wholesale rates for their transmission services are designated under PJM Interconnection, L.L.C., FERC Electric Tariff, Sixth Revised Volume No. 1 (PJM Tariff). On September 17, 2010, as amended on September 23 and 27, 2010, PJM Interconnection, L.L.C. made its Electronic Tariff (eTariff) filing in compliance with Order No. 714.[5] Therefore, AEP is hereby directed to effect a compliance filing in eTariff format to ensure that the electronic tariff provisions of the PJM Tariff reflect the Commission's action in this order. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

4. AEP will make the refunds necessary to reflect the rates provided in the Offer of Settlement. AEP will file with FERC a refund report within thirty (30) days of the date on which AEP has provided refunds to all customers, as described in the Offer of Settlement.

5. The Settlement Agreement, having been approved, resolves all issues in the captioned proceeding. This letter order therefore terminates Docket No. ER08-1329-000.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

Cc: All Parties

[5] *See Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 96 (2008).