UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

American Electric Power Service Corporation Docket No. ER06-599-000

ORDER ACCEPTING RATE SCHEDULE EXHIBITS

(Issued March 29, 2006)

1. On February 1, 2006, American Electric Power Service Corporation (AEP)[1] filed additional exhibits to a previously accepted repair and maintenance agreement between itself and American Municipal Power-Ohio (AMP-Ohio) (February Filing). For the reasons described below, we will accept the additional exhibits for filing, but will deny AEP's request for waiver of the Commission's 60-day prior notice requirement to establish the Exhibits' effective date. We will also deny AMP-Ohio's request that we require AEP to renegotiate the terms of the previously accepted agreement.

Background

2. In Docket No. ER04-1018-000, AEP submitted a Facility Construction, Operations, Maintenance and Repair Agreement (Master Agreement), between itself and AMP-Ohio, that uses AEP's Formula Rate for Facility Construction, Operation, and Maintenance (Formula Rate). This Formula Rate allows AEP to recover only its incurred costs. The filing also contained, as Exhibits A-1 through A-4, executed contracts between AEP and AMP-Ohio, with supporting description, for AEP to upgrade metering facilities that it operates and maintains at four of AMP-Ohio's stations. At that time, the parties envisaged a total of thirteen meter upgrades. No entity intervened in the proceeding or commented upon the filing, which the Commission accepted, under delegated authority, by letter order on February 23, 2005.

3. In the February Filing, AEP asks the Commission to accept executed contracts under the Master Agreement covering five additional meter upgrades, Exhibits A-5 through A-9. AEP also asks the Commission to waive the 60-day prior notice

[1] AEP is acting as agent for two of its operating companies, Ohio Power Company and Columbus Southern Power Company.

requirement[2] and make the Exhibits effective as of January 1, 2006. AEP states that it has completed work on the four meter upgrades described in Exhibits A-1 through A-4 and also on the two meter upgrades performed under Exhibits A-5 and A-6. AEP states that it and AMP-Ohio disagreed regarding the actual cost of these six completed meter upgrades, but that, after negotiations, they agreed to settle the costs for $115,300[3] and to reduce the number of projects from the original thirteen to nine. AEP adds that it has not yet billed AMP-Ohio and that no money has changed hands.

Notice and Responsive Filings

4. Notice of AEP's February Filing was published in the *Federal Register*, 71 Fed. Reg. 8575 (2006), with interventions and protests due on or before February 22, 2006. AMP-Ohio filed a motion to intervene and comments. On March 8, 2006, AEP filed an answer to AMP-Ohio's comments. On March 22, 2006, AMP-Ohio filed a response to AEP.

AMP-Ohio's Comments

5. AMP-Ohio asserts that it originally executed the Master Agreement under duress because AEP was withholding, until execution of a maintenance agreement, meter upgrades that AMP-Ohio urgently needed for real-time load data. AMP-Ohio asserts also that the Master Agreement produces unjust and unreasonable charges. In support, AMP-Ohio references lower charges by other companies in earlier years for work that it claims is analogous to that covered by the Master Agreement.

6. AMP-Ohio asks the Commission to impose, as a condition of accepting the February Filing, the requirement that AEP renegotiate the Master Agreement, and, if negotiation does not produce agreement within three months, that AEP file an unexecuted agreement with the Commission for the Commission's review.

AEP's Answer and AMP-Ohio's Response

7. AEP answers that it drafted the Master Agreement to respond to AMP-Ohio's impatience for completion of the meter-upgrade work. AEP also states that AMP-Ohio was fully aware of the monthly charges associated with the meter upgrades. AEP points out that meter-upgrade work is not a monopoly activity performed exclusively by utilities in Ohio; other entities can and do perform metering work, and AMP-Ohio can look to them. AEP offers that, if AMP-Ohio regrets its choice of AEP as an "at cost" service

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[2] *See* 16 U.S.C. § 824d(d) (2000).

[3] The February Filing erroneously stated the agreed-upon sum as $110,000, an error that AEP corrected in its filing of March 8, 2006.

provider for meter upgrades, AMP-Ohio may terminate the Master Agreement after all outstanding charges are paid in full. AEP adds that it has finished the seventh and eighth meter upgrades, and that it expects to complete the last meter upgrade by the end of March 2006.

8. AMP-Ohio responds that its objection to the Master Agreement is not over AEP's prices for the new metering equipment but the meter maintenance charges, which it finds excessive. It states that since AEP appears to be willing to terminate the Master Agreement early, it and AEP may not be far apart.

Discussion

Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), AMP-Ohio's timely, unopposed motion to intervene serves to make it a party to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005) prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept AEP's answer and AMP-Ohio's response because they provide information that assisted us in our decision-making process.

Master Agreement and Exhibits

11. We will accept Exhibits A-5 through A-9, effective April 3, 2006 (*i.e.*, after 60 days from the date of filing). At issue in this proceeding is whether Exhibits A-5 through A-9 produce just and reasonable charges. AMP-Ohio offers no evidence that the cost figures in the Exhibits do not accurately reflect AEP's costs to perform the upgrades or are otherwise unjust or unreasonable. That another company may have charged less for comparable work performed in earlier years demonstrates only that different companies have different costs, not that AEP's costs are unjust and unreasonable.

12. AMP-Ohio's request that the Commission order AEP to renegotiate a new master agreement with AMP-Ohio is beyond the scope of this proceeding. The Master Agreement and Exhibits A-1 through A-4 were accepted over a year ago. They are not open to challenge in this proceeding, which concerns only the Exhibits included in the February Filing. Should AMP-Ohio wish to challenge the Master Agreement, which includes AEP's formula rate for meter maintenance activities, as unjust and unreasonable, the proper vehicle is a complaint under section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e (2000).

13. We will deny AEP's request for waiver of the 60-day prior notice requirement and will allow the February Filing to become effective on April 3, 2006, after sixty days from the date of filing. Absent a strong showing of good cause, which AEP has not advanced, the Commission will generally deny waiver of the prior notice requirement in situations like this involving an increase in rates that is not pursuant to an accepted contract or a rate schedule that specifies an effective date.[4] Insofar as AEP indicates that no money has changed hands, we need not order refunds.

The Commission orders:

AEP's February 1, 2006 filing in this proceeding is hereby accepted, to be effective April 3, 2006.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

[4] *See Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,338-39, *order on reh'g*, 61 FERC ¶ 61,089 (1992).