167 FERC ¶ 61,281
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

MidAmerican Energy Company Docket No. ES19-26-000

ORDER ON REQUEST FOR AUTHORIZATION TO ISSUE SECURITIES

(Issued June 28, 2019)

1. On April 26, 2019, MidAmerican Energy Company (MidAmerican) filed an application pursuant to section 204 of the Federal Power Act (FPA)[1] seeking authorization to issue preferred stock and long-term debt securities (Application). As discussed below, we grant MidAmerican's requested authorization for a two year period beginning July 1, 2019 and ending June 30, 2021.

I. Application

A. Background

2. MidAmerican states that it is incorporated under the laws of the State of Iowa and operates within the states of Illinois, Iowa, Nebraska, and South Dakota. MidAmerican was previously granted authorization to issue not more than $500 million of preferred stock and not more than $2.35 billion in long-term debt securities during the two year period ending August 31, 2019.[2]

B. Request for Issuances of Securities

3. MidAmerican requests Commission approval to issue preferred stock, the shares of which may be issued in such series and at such dividend rates as may be fixed by the

[1] 16 U.S.C. § 824c (2012).

[2] *MidAmerican Energy Company*, 160 FERC ¶ 62,188 (2017).

Board of Directors of MidAmerican prior to the issuance of the shares, based upon market conditions at the time of sale.[3]

4. MidAmerican requests Commission approval to issue long-term debt securities, including: (1) secured debt securities; (2) unsecured notes or debentures; and (3) other types of indebtedness.[4]

5. MidAmerican states that the interest to be paid on long-term debt securities will not exceed the highest interest rate on a nominal United States Treasury security having a constant maturity of between two years and 30 years at the time of issuance, as listed by the Federal Reserve, plus an applicable margin of up to 175 basis points.[5]

6. MidAmerican explains that the proceeds of the security issuances will be applied to the following: (1) the cost of annual capital projects, construction of electric generation projects, construction of electric transmission projects, and construction of environmental projects to enhance emission controls and solid waste disposal, and handling facilities at existing coal-fired generating facilities of MidAmerican, including the prefunding of such costs in whole or in part; (2) maturing or refunding of long-term debt; (3) the discharge and lawful refunding of short-term debt used for construction and/or working capital; (4) the early redemption of debt or other securities; (5) the replacement of cash utilized for either (1), (2), (3), and/or (4); and (6) other general corporate purposes.[6]

7. MidAmerican also requests waiver of the Commission's competitive bidding and negotiated placement requirements set forth in sections 34.2(a) and 34.2(c)(1) of the Commission's regulations[7] for the following reasons: (1) the securities will be issued in underwritten public offerings registered with the Securities and Exchange Commission or the securities will be issued to commercial and investment banks, insurance companies, sophisticated investors or similar institutions; (2) all securities will bear dividend or interest, as applicable, at rates based on then current market conditions; and (3) a cost

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[3] Application at 3-4.

[4] *Id*. at 4-7.

[5] *Id*. at 9. Based on interest rates listed in the Federal Reserve weekly publication H.15 "Selected Interest Rates (Weekly)" published at http://www.federalreserve.gov/releases/h15/current/.

[6] *Id*. at 14.

[7] *Id*. at 13 (citing 18 C.F.R. §§ 34.2(a) and 34.2(c)(1) (2018)).

advantage would not be achieved by the imposition of the competitive bidding and negotiated placement requirements.[8]

II. Notice of Filing

8. Notice of the Application was published in the *Federal Register*, 84 Fed. Reg. 19,918 (2019), with interventions and protests due on or before May 17, 2019. None was filed.

III. Discussion

A. Analysis Under Section 204 of the FPA

9. Section 204(a) of the FPA 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.[9]

10. In reviewing an application under section 204, the Commission uses 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.[10] 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.[11] In making this finding, the Commission reviews the financial statements submitted with an application filed under section 204 and applicant's calculation of the

[8] *Id.*

[9] 16 U.S.C. § 824c(a).

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

[11] *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").

interest coverage ratio, which is the sum of income before interest and income taxes divided by total interest expense.[12] The interest coverage ratio is a screen used primarily to provide the Commission with comfort that the financing authorized will not impair an applicant's ability to perform public utility service.[13] 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 application.[14] The Commission has approved section 204 applications that have not met the 2.0 interest coverage ratio screen.[15]

11. MidAmerican filed, as Exhibits C, D, and E to the Application, actual and *pro forma* financial statements for the 12-month period that ended December 31, 2018. Exhibit E of the Application shows that MidAmerican has a *pro forma* interest coverage ratio below the Commission's 2.0 times interest coverage ratio screen. However, MidAmerican asserts that the issuance of long-term debt will not impair its ability to perform service as a public utility, notwithstanding that it does not meet the 2.0 interest coverage ratio screen.[16]

12. First, MidAmerican states that its interest coverage ratio is skewed by the fact that its books reflect a federal and state income tax benefit as a result of significant production tax credits it receives for renewable generation projects. This benefit offsets the federal and state income tax expense ordinarily incurred, resulting in a negative net federal and state income tax number.[17] MidAmerican believes its unique tax situation merits an alternative method to calculating its interest coverage ratio and therefore provides, in Exhibit E, an alternative computation that removes federal and state income taxes from

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[12] *Westar Energy, Inc.*, 102 FERC ¶ 61,186, at P 15 & n.15 (2003) (*Westar*).

[13] *Montana Alberta Tie Ltd.*, 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.

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

[15] *See, e.g.*, *NorthWestern Corp.*, 151 FERC ¶ 61,120 (2015); *ITC Great Plains, LLC*, 147 FERC ¶ 61,005 (2014).

[16] Application at 12-13.

[17] *Id*. at 11.

net income but adds back the production tax credit amounts. Under this alternative computation, MidAmerican's *pro forma* interest coverage ratio is 2.72.[18]

13. Second, MidAmerican states that it has high investment grade ratings from S&P and Moody's. Specifically, MidAmerican notes that its secured long-term debt is currently rated A+ and Aa2 by S&P and Moody's, respectively, and its issuer credit rating for senior unsecured long-term debt is currently rated A and A1 by S&P and Moody's, respectively.[19]

14. Third, MidAmerican states that the retail electric tariffs in all states in which it operates contain cost riders which provide for the flow through, and thus full recovery, of all energy costs and the majority of transmission costs.[20]

B. Commission Determination

15. MidAmerican provides an alternative interest coverage ratio computation that takes into account production tax credit benefits from its renewable generation projects and results in an alternative *pro forma* interest coverage ratio greater than 2.0. However, the net income before interest and income taxes that is used to calculate the interest coverage ratio should exclude all tax effects on net income, including production tax credits.[21] Therefore, while we agree with MidAmerican's assertion that production tax credits skew the interest coverage ratio, we find that the resulting interest coverage ratio is still the appropriate figure to use to determine whether the financing authorized will not impair an applicant's ability to perform public utility service. Nevertheless, we find that, although MidAmerican does not meet the Commission's interest coverage ratio screen, MidAmerican has provided other factors that are an alternative basis upon which to conclude that the company should reasonably be able to both service the proposed new debt securities for which authorization is sought in the Application, and continue to be able to provide service as a public utility. Specifically, MidAmerican has investment grade ratings from both S&P and Moody's, as well as retail electric tariffs with cost riders which provide for the full recovery of all energy costs and the majority of transmission costs.[22]

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[18] *Id*.

[19] *Id*. at 12.

[20] *Id*.

[21] 18 C.F.R. § 34.4 (2018).

[22] We also add that no protests to the requested authorizations were filed.

16. On balance, we find that, notwithstanding the failure to meet the interest coverage ratio screen, given the statements set forth in the Application, MidAmerican meets the standards of section 204. MidAmerican's proposed issuance of preferred stock and long-term debt securities: (1) will be for lawful objects within MidAmerican's corporate purposes and compatible with the public interest, is necessary or appropriate for or consistent with the proper performance by MidAmerican of service as a public utility, and will not impair MidAmerican's ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.

17. Accordingly, we authorize the following for MidAmerican:

a. MidAmerican is authorized to issue preferred stock in an aggregate amount not to exceed $500 million.

b. The dividend rate for preferred stock will be fixed by the Board of Directors of MidAmerican prior to the issuance of the shares, based upon market conditions at the time of sale.

c. MidAmerican is authorized to issue long-term debt in an aggregate amount not to exceed $1.7 billion.

d. The interest rate for long-term debt will not exceed the highest interest rate on a nominal United States Treasury security having a constant maturity of between two years and 30 years at the time of issuance as listed in the Federal Reserve weekly publication H.15 "Selected Interest Rates (Weekly)" published at http://www.federalreserve.gov/releases/h15/current/ plus an applicable margin of up to 175 basis points.

18. Finally, we find good cause to grant the requested waiver of the Commission's competitive bidding and negotiated placement requirements.

C. **Westar Restrictions**

19. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.[23] 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 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, and 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 by being divested or "spun off" as well. Finally, if utility assets financed by unsecured debt are divested or spun off

[23] *Westar*, 102 FERC ¶ 61,186 at PP 20-22.

to another entity, then a proportionate share of the debt must also be divested or spun off. We will condition our authorization on MidAmerican abiding by these restrictions. MidAmerican acknowledges an obligation to comply with the four restrictions on secured and unsecured debt specified in *Westar*.[24]

The Commission orders:

(A) MidAmerican is hereby authorized to issue preferred stock in an aggregate amount not to exceed $500 million, at the dividend rates stated in the body of this order.

(B) MidAmerican is hereby authorized to issue long-term debt securities in an aggregate amount not to exceed $1.7 billion, at the interest rates stated in the body of this order.

(C) The authorizations are granted to MidAmerican effective for a two year period beginning July 1, 2019 and ending June 30, 2021, as requested.

(D) The authorizations granted in this order supersede and replace MidAmerican's previously granted authorizations.

(E) 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.*

(F) MidAmerican is granted waiver from the Commission's competitive bidding and negotiated placement requirements at 18 C.F.R. §§ 34.2(a) and 34.2(c)(1) (2018).

(G) MidAmerican must file a Report of Securities Issued, under 18 C.F.R. §§ 34.9, 131.43, and 131.50 (2018), no later than 30 days after the sale or placement of preferred stock or long-term debt.

(H) The authorizations granted in Ordering Paragraphs (A) and (B) above 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.

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[24] Application at 14-15.

(I) 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.

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Nathaniel J. Davis, Sr.,
Deputy Secretary.