146 FERC ¶ 61,098
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Ohio Power Company Docket No. ER14-7-000

ORDER GRANTING PETITION FOR WAIVER

(Issued February 20, 2014)

1. On October 1, 2013, as amended on December 6, 2013, American Electric Power Service Corporation (AEPSC), on behalf of its affiliate Ohio Power Company (Ohio Power), submitted a petition for waiver of section 35.14 of the Commission's regulations (Petition),[1] in order to recover a coal contract buy-down payment through the Wheeling Interconnection Agreement.[2] The Commission grants the requested waiver and directs Ohio Power to refund the time value of the buy-down costs collected from the Wheeling Power Company (Wheeling Power) prior to October 1, 2013 (the date that AEPSC's request was filed with the Commission).

I. Background

2. AEPSC states that, pursuant to the Wheeling Interconnection Agreement, Ohio Power supplies electric power and energy to Wheeling Power.[3] AEPSC also states that, on May 21, 2004, as agent for Columbus Southern Power Company, which merged into Ohio Power, AEPSC and a publically traded coal company (Coal Supplier) entered into a coal supply agreement for Units 5 and 6 of the Conesville Generating Plant (Coal Supply Agreement). AEPSC states that, beginning in 2012, the forecasted burn at the Conesville Generating Plant dropped off significantly, and the continued delivery of contracted coal

[1] 18 C.F.R. § 35.14 (2013).

[2] Ohio Power Company, FERC Rate Schedule No. 18.

[3] AEPSC Petition at 2.

pushed the coal inventory stored at the plant to its maximum physical limit.[4] AEPSC believes that this decrease in burn resulted from the rapid decline of natural gas prices driven by the introduction of new gas supplies into the market from shale regions, and from the declines in energy demand driven by the recession.

3. AEPSC asserts that it considered several options to address its coal inventory problem, including deferring future coal delivers, selling the contracted coal into the market, and storing excess coal off-site.[5] Ultimately, AEPSC states that it was able negotiate with the Coal Supplier a reduction of its 2012 delivery obligation at a buy-down cost. Ohio Power compensated the Coal Supplier $5,067,452 for the 389,804 ton reduction (buy-down payment). AEPSC also states that approximately $239,215 of this payment is allocable to Wheeling Power.

4. AEPSC seeks waiver of section 35.14 of the Commission regulations on behalf of Ohio Power in order to recover the buy-down payment through the fuel adjustment clause of the Wheeling Interconnection Agreement.[6] AEPSC argues that this buy-down transaction resulted in cost savings as compared to off-site storage, and creates the potential for ongoing benefits to the customers of Ohio Power in the form of lower fuel costs.

II. Notice of Filing

5. Notice of AEPSC's Petition was published in the *Federal Register*, 78 Fed. Reg. 61,999 (2013), with interventions and protests due on or before October 22, 2013. The West Virginia Consumer Advocate Division (WV Consumer Advocate) filed a motion to intervene. No comments or protests were filed.

6. On November 7, 2013, under delegated authority, the Commission's Staff issued a letter informing AEPSC that its filing was deficient and requested additional information (Deficiency Letter). In the Deficiency Letter, the Commission requested that AEPSC (1) provide further description of the buy-down payment, including all related agreements; (2) provide further description of the cost-benefit analysis presented in AEPSC's Petition, including all related documentation and analyses; (3) provide a buy-down recovery plan and an ongoing monthly net benefits test; and (4) explain why AEPSC chose to buy-down one of its coal supply agreements versus another.

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[4] AEPSC Petition at 2.

[5] AEPSC Petition at 3.

[6] AEPSC Petition at 4-5.

7. On December 6, 2013, AEPSC submitted its response to the Deficiency Letter (Response).

8. Notice of AEPSC's Response was published in the *Federal Register*, 78 Fed. Reg. 76,607 (2013), with interventions and protests due on or before December 27, 2013. No interventions or protests were received.

III. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules and Practice and Procedures, 18 C.F.R § 385.214 (2013), the timely, unopposed motion to intervene serves to make the WV Consumer Advocate a party to this proceeding.

IV. Discussion

10. As discussed below, we grant AEPSC's requested waiver and allow Ohio Power to recover the buy-down payment through the Wheeling Interconnection Agreement. However, we also direct Ohio Power to refund to Wheeling Power the time value of any buy-down payments, collected from Wheeling Power prior to October 1, 2013.

A. Rate Treatment

11. In *Kentucky Utilities*,[7] the Commission decided that public utilities may recover buyout costs through their fuel adjustment clause subject to a showing of ongoing benefits.[8] That is, an applicant for a fuel clause waiver "must demonstrate that the cost of the replacement fuel plus the cost of the . . . [buyout] is less than the cost that the applicant would have incurred if it had continued to purchase fuel under the terminated contract."[9] Further, the applicant must identify the specific contract involved, provide the methodology used to calculate savings, and provide for an ongoing benefits test.[10]

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[7] *Kentucky Utilities Co.*, 45 FERC ¶ 61,409 (1988) (*Kentucky Utilities*).

[8] *Id.* at 62,293.

[9] *Western Resources, Inc.*, 68 FERC ¶ 61,366, at 62,478, 62,480 (1994) (*Western Resources*), *order accepting compliance filing*, 81 FERC ¶ 61,089 (1997); *see also Interstate Power Co.*, 53 FERC ¶ 61,083, at 61,236 (1990).

[10] *See, e.g., Western Resources*, 68 FERC ¶ 61,366 at 62,478-79 & n.4; *accord Kentucky Utilities*, 45 FERC ¶ 61.409 at 62,293 (there must be timely and periodic verification of benefits).

12. AEPSC submitted a net benefits test comparing the costs from continuing to receive the contractually committed delivery volumes and incurring off-site storage costs to the actual costs of the buy-down.[11] AEPSC states that the buy-down transaction produced net savings of about $4.8 million for Ohio Power customers in 2012, as compared to the alternative of storing excess coal off-site.[12] We find that AEPSC's net benefits test demonstrates that Ohio Power's customers have realized actual savings from the buy-down of the Coal Supply Agreement.[13] Accordingly, we will approve AEPSC's petition for fuel adjustment clause recovery of the buy-down payment.

B. Accounting Treatment

13. In *Kentucky Utilities*, the Commission determined that public utilities should charge buyout costs to expense as incurred or, in the event that the Commission allows future rate recovery, amortize buyout costs to expense from a deferred charge account, consistent with the rate recognition.[14] In *Western Resources*, the Commission directed the utility to record the buyout payment as a regulatory asset in Account No. 182.3, Other Regulatory Assets, and amortize it to Account No. 501, Fuel.[15]

14. AEPSC states that the buy-down payment was accomplished by amending the contract base price ($/ton) for coal delivered in 2012.[16] It states that this amended contract base price coal was received and consumed during 2012.[17] AEPSC also states

[11] AEPSC states that deferring coal deliveries was not a viable alternative, nor was selling the contract coal into the market because the Conesville Generating Plant is land-locked with very limited loading and unloading abilities, and because of the unique heat and ash qualities of the coal supplied. AEPSC Petition at 3.

[12] AEPSC Petition at 4.

[13] Because the reduction in coal delivered and the related buy-down payment were limited to 2012, we will accept AEPSC's net benefit test to the extent that it demonstrates customers realized actual savings in 2012. We find that because the buy-down payment is no longer ongoing, it is not necessary for the net benefits test to be ongoing in this case.

[14] *Kentucky Utilities*, 45 FERC ¶ 61,409 at 62,292 n.16.

[15] *Western Resources*, 81 FERC ¶ 61,089 at 62,480.

[16] AEPSC Response at 3.

[17] AEPSC states that the Coal Supplier continued ratably delivering coal at the contracted quantity in 2013. AEPSC Response at 5.

that this expense was recorded to Account No. 501. AEPSC argues that, because the buy-down payment was made through a contractual premium to the base price as coal was delivered by the coal supplier during 2012, it was not necessary for Ohio Power to establish a regulatory deferral on its balance sheet, i.e., a regulatory asset. AEPSC adds that Wheeling Power's entire share of the buy-down payment was recovered during 2012.

15. We disagree with AEPSC's position that, because the buy-down payment was reflected as a premium added to the base price as coal was delivered, and thus was part of the cost of the fuel, it was not necessary to record a regulatory asset. However, because the buy-down payment has already been recovered in its entirety from Wheeling Power, we will not direct Ohio Power to revise its accounting treatment for this buy-down payment. Consistent with our precedent, any future fuel buy-down payments must be recorded in Account No. 182.3 and amortized to Account No. 501 over the period permitted in rates.

C. Time Value Refunds

16. AEPSC states that Wheeling Power's entire share of the buy-down payment was recovered through the Wheeling Interconnection Agreement in 2012.[18] However, Ohio Power did not seek Commission approval for fuel clause treatment of the buy-down payment at the time or prior to when it began to recover these costs. Consistent with our precedent,[19] the Commission will allow Ohio Power to retain the principal of the buy-down costs already collected from its customer under the ongoing benefits test for the period prior to the petition, but we will direct Ohio Power to refund to Wheeling Power the time value of that principal, for the period from when it first recovered the principal from Wheeling Power until AEPSC filed for a waiver (October 1, 2013). We will require Ohio Power to compute the time value in the same manner as our regulations require for interest, 18 C.F.R. § 35.19a (2013). Additionally, following completion of this refund, we will require Ohio Power to file a refund report with the Commission, showing how it computed the refund and the disbursement(s).

The Commission orders:

(A) AEPSC's petition for waiver of the Commission's fuel adjustment clause regulation is hereby granted.

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[18] AEPSC Response at 3.

[19] *See, e.g.*, *Tucson Electric Power Company*, 87 FERC ¶ 61,257, at 61,980-81 (1999); *Western Resources, Inc.*, 65 FERC ¶ 61,271, at 62,252-53 (1993), *order on reh'g*, 66 FERC ¶ 61,120 (1994).

(B) Ohio Power shall, within 45 days of the date of issuance of this order, refund to Wheeling Power the time value of the buy-down payment, collected from Wheeling Power prior to October 1, 2013, calculated pursuant to 18 C.F.R. § 35.19a (2013).

(C) Ohio Power shall, within 15 days of the date on which it makes the refund discussed in Ordering Paragraph (B), file a refund report with the Commission, showing how it computed the refund and the disbursement(s).

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.