

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 28<sup>th</sup> day of September 2018.

CASE NO. 18-1028-E-PC

APPALACHIAN POWER COMPANY, WHEELING POWER COMPANY, AEP WEST VIRGINIA TRANSMISSION COMPANY, INC., MONONGAHELA POWER COMPANY, THE POTOMAC EDISON COMPANY, AND TRANS-ALLEGHENY INTERSTATE LINE COMPANY

Petition for consent and approval to enter into Grid Assurance Subscription Agreement.

**COMMISSION ORDER**

The Commission grants the petition for consent and approval, grants the requested waiver of the requirement to provide certain financial information, and defers ruling on the motion for protective treatment.

**BACKGROUND**

On July 13, 2018, Appalachian Power Company (APCo), Wheeling Power Company (WPCo), AEP West Virginia Transmission Company, Inc. (WV Transco), Monongahela Power Company (Mon Power), the Potomac Edison Company (PE), and Trans-Allegheny Interstate Line Company (Trailco) (together, Joint Petitioners) filed a joint petition, pursuant to W.Va. Code §24-2-12, seeking Commission consent and approval to enter into an affiliated agreement with Grid Assurance LLC (Grid Assurance). The Joint Petitioners are transmission owning electric public utility companies subject to the jurisdiction of the Commission.

The Joint Petitioners stated that the parties and Grid Assurance are currently affiliates, or will be in the near future. Petition at 1-3, July 13, 2018. APCo, WPCo and WV Transco are subsidiaries of American Electric Power Company (AEP) and affiliates of AEP Transmission Holding Company, LLC (AEPTHCo). Id. Mon Power, PE and Trailco are affiliates of FirstEnergy Transmission LLC (FET). The parties stated that AEPTHCo and FET are or will be investors of Grid Assurance and hold non-controlling interests. Id. at 3-4.

The Joint Petitioners intend to enter into an affiliated agreement specifically entitled Grid Assurance LLC Subscription Agreement (Agreement) to secure services

from Grid Assurance. Id. at 3; Exhibit A. Grid Assurance was established in May of 2016 “to address an increasingly critical and foreseeable grid resilience need facing transmission owning electric utilities.” Id. at 3. Berkshire Hathaway Energy U.S. Transmission, LLC, AEP (through APETHCo), Duke Energy, Edison Transmission, LLC, Eversource Energy, and Great Plains Energy, Inc. were the initial investors for Grid Assurance. Petition, July 13, 2018. Id. at 3-4.

The Petitioners assert that the services provided by Grid Assurance improve “the ability of participating utilities to avoid the potentially devastating impacts of prolonged transmission outages by providing Subscribers with ready access to a pre-positioned and optimized inventory of critical transmission grid equipment.” Id. at 6. Grid Assurance offers energy utility providers a subscription service that provides utilities the ability to promptly recover from a catastrophic power system failure resulting from natural disaster, cyber-attack, or physical attack. Id. at 5-6. Joint Petitioners stated that Grid Assurance would enable them to satisfy current and future federal regulatory requirements addressing electric grid reliability during emergencies. Id. at 4-5.

The Petition states that the platform established by Grid Assurance rapidly reduces grid vulnerability in times of crisis by providing Sparing Services, which include: (1) procuring and maintaining an inventory of critical equipment, (2) storing inventory in secure domestic locations, and (3) assisting with delivery logistics when qualifying events occur. Id. at 6. A Qualifying Event is a broadly defined term that includes damage to equipment resulting from an act of war, terrorism, physical or cyber attack, electromagnetic interference or a catastrophic event, natural or otherwise. Id. at 6, Exhibit A.

Each subscriber pays an annual Sparing Service fee that reflects expenses incurred by Grid Assurance to purchase, store and maintain equipment inventory, general and administrative costs and financing outlays. Id. at 7. The projected cost for the annual Sparing Service subscription from June 1, 2019, through May 31, 2020, for the Joint Petitioners, is as follows:

|            |             |
|------------|-------------|
| APCo       | \$ 160,000  |
| WV Transco | \$ 50,000   |
| WPCo       | \$ 2,100    |
| Mon Power  | \$ 116,280  |
| PE         | \$ 337,000  |
| Trailco    | \$1,045,143 |

Id. at 7-8. The initial term of the Agreement is five years. Id. at Exhibit A. A subscriber may terminate the Agreement for any or no reason, subject to a defined termination fee. Id.

By their petition, the Joint Petitioners have asked that the Commission waive the requirement that they and their affiliates each provide a statement of their financial condition, articles of incorporation or organization and other information required by Rule 21 of the Commission Rules of Practice and Procedure, 150 C.S.R. 1, (Procedural Rules).

On July 20, 2018, the Joint Petitioners filed a Motion for Protective Treatment. They requested the Commission protect data that they assert is exempt from public disclosure under the West Virginia Freedom of Information Act (WV FOIA), codified as W.Va. Code §29B-1-1 et seq. Affidavits in support of the request for protective treatment were filed also. Motion at Exhibits A and B, July 20, 2018; Affidavit, July 25, 2018. Commission Staff did not oppose the Motion for Protective Treatment. Initial Memorandum, August 20, 2018; Final Memorandum, September 25, 2018.

On September 25, 2018, Staff filed its Final Joint Staff Memorandum. Staff stated that on review of the Agreement “it appears that Grid Assurance has been well planned and covers the complexity and nuances of most of the aspects of maintaining and dispersing a comprehensive inventory of critical transmission equipment during emergencies.” Memorandum at 2. Staff recommended that the Commission grant the Joint Petitioners’ request for consent to enter the agreement with its affiliates and Grid Assurance; but that approval would not bind the Commission in future rate proceedings.

### DISCUSSION

#### Request for W.Va. Code §24-2-12 Approval

W.Va Code §24-2-12 provides that the Commission may grant its prior consent to a contract or agreement among affiliates “upon proper showing that the terms and conditions thereof are reasonable and that neither party thereto is given an undue advantage over the other, and do not adversely affect the public in this state.”

The pooling approach offered by Grid Assurance is intended to minimize costs and maximize benefits for the Joint Petitioners and their customers by facilitating cost-sharing among several transmission owning electric public utility companies to increase electrical grid resiliency. The Commission encourages this kind of cooperative agreement among public utilities as a reasonable manner of addressing some costs.

The proposed Agreement meets the requirements of W.Va. Code §24-2-12, and the Commission, therefore, grants its prior consent for the Joint Petitioners to enter into the Agreement without approving the specific terms and conditions of the Agreement. The Joint Petitioners, however, must be watchful of the costs to ensure they are reasonable and of value to the ratepayers. This approval will not bind the Commission in future rate proceedings involving the parties or their affiliates.

### Request for Waiver of Rule 21 Requirements

Unless otherwise ordered, when a petitioner desires to enter into an affiliated agreement, the petitioner and the affiliate must prepare and file a statement of their financial condition. Commission Procedural Rule 10.9. 150 C.S.R. 2. at Rule 10.9. A statement of financial condition must reflect of a detailed income statement, cash flow statement and comparative balance sheet for the prior fiscal year. Procedural Rule 21.1. The petitioner must also file, if available, its articles of incorporation or organization with the petition to describe the: (1) stock authorized for issuance, (2) outstanding stock, (3) terms of preference of all preferred stock, (4) outstanding mortgages, (5) authorized and issued bonds and convertible debentures, (6) other indebtedness, (7) interest paid, and (8) dividends paid. Procedural Rule 21.2.a.-b.

The Joint Petitioners have requested that they and their affiliates be relieved, in this instance, from providing the above information. Petition at 3, July 13, 2018. The Joint Petitioners organizations and financial conditions are known to the Commission. The Commission, therefore, will waive the requirements of Procedural Rule 21 to provide articles of incorporation and information on the financial condition of the Joint Petitioners and their affiliates.

### Motion for Protective Treatment

The Joint Petitioners have requested that certain information contained in the Agreement that has security and commercial value be sealed and protected from public disclosure. Motion, July 20, 2018; Petition, at 7-8, July 13, 2018. Un-redacted versions of Exhibits B through F of the Petition were filed under seal with the Commission. The redacted information includes (1) the exact quantity and specific type of equipment to be inventoried and (2) specific pricing and business terms. Id.; Motion at 1-2, July 20, 2018.

The Joint Petitioners stated that the redacted information falls within WV FOIA exceptions that prohibit public disclosure. Motion at 1-2, July 20, 2018; see W.Va. Code §§29B-1-4(a)(1), 29B-1-4(a)(17). The Vice President of Regulatory and Finance for the Appalachian Power Company and the Director of State Regulatory Affairs for FirstEnergy Service Corporation each filed affidavits that support the request for protective treatment. Id. at Exhibits A and B, July 20, 2018; Affidavit, July 25, 2018. The Staff did not oppose the motion. Final Memorandum, September 25, 2018. Currently, there are no Freedom of Information Act requests for this information.

The Commission concludes that presently there is no need to make a final ruling on the request for protective treatment. Instead the Executive Secretary should hold the un-redacted version of the confidential filings in a sealed condition separate and apart from the remainder of this case file until the Commission receives and reviews a request for the information pursuant to the WV FOIA. By deferring ruling on the Motion for

Protective Treatment the Commission is not taking any final position on the application of the WV FOIA to the sealed data.

### **FINDINGS OF FACT**

1. The Joint Petitioners are each transmission owning electric public utilities subject to the jurisdiction of the Commission. Petition at 3, July 13, 2018.

2. AEPTHCo and FET, affiliates of the Joint Petitioners, intend to invest in Grid Assurance and each has or will secure a non-controlling interest. Id. at 3.

3. The Joint Petitioners, AEP, AEPTHCO, FET and Grid Assurance are currently affiliates, or will be in the near future. Id. at 3-4.

4. Grid Assurance offers subscription services designed to timely recover power systems after a catastrophic event. Id. at 3, 6-10.

### **CONCLUSIONS OF LAW**

1. The service provided by Grid Assurance should enable the Joint Petitioners to more quickly and cost effectively restore service after a catastrophic event.

2. The Commission should approve the Agreement, without specifically approving its terms and conditions. The approval should not be deemed to bind the Commission in future rate proceedings.

3. The Commission should give its consent for the Joint Petitioners to enter the Agreement with its affiliates and Grid Assurance because the terms and conditions are reasonable, do not create an unfair advantage to any one affiliate over the others and are not adverse to the public. W.Va. Code §24-2-12.

4. The Commission should waive the filing requirements of Procedural Rule 21 because the information is not necessary in this case.

5. The Commission should defer ruling on the Motion for Protective Treatment. Deferral is reasonable because presently there is no request seeking the information pursuant to the WV FOIA.

### **ORDER**

IT IS THEREFORE ORDERED that the request of the Joint Petitioners and their affiliates for a waiver of the Procedural Rule 21 requirements to file copies of their articles of incorporation, organizational structure, or financial information is granted.

IT IS FURTHER ORDERED that the Joint Petition for consent and approval to enter into the affiliate transaction and subscribe to services provided by Grid Assurance, LLC, is granted without approving the specific terms and conditions therein.

IT IS FURTHER ORDERED that the request for permanent protective treatment of the data filed under seal is deferred until the filing and review of a request pursuant to the West Virginia Freedom of Information Act, codified as W.Va. Code §29B-1-1 et seq. The Executive Secretary shall maintain the un-redacted version of the sealed filing in its current condition, separate and apart from the rest of the file, pending further Order.

IT IS FURTHER ORDERED that upon entry of this Order, this case shall be removed from the Commission docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, and by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Commission Staff by hand delivery.

A True Copy, Teste,



Ingrid Ferrell  
Executive Secretary

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