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June 5, 2014

HAND DELIVERED

Jeff R. Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602-0615

RE: Case No. 2012-00578 (Post-Case Correspondence File)

Dear Mr. Derouen:

Enclosed please find a copy of the June 2, 2014 Order of the Federal Energy Regulatory Commission authorizing pursuant to Section 203 of the Federal Power Act the transfer by AEP Generation Resources Inc. of its interest in the Mitchell Power Generating Facility to Wheeling Power Company.

A copy of the FERC June 2, 2014 Order, along with a copy of this letter, are being served on counsel to the parties in the above matter. Please do not hesitate to contact me if you have any questions.

Very truly yours,


Mark R. Overstreet

MRO

cc: Jennifer B. Hans
Michael L. Kurtz
Shannon Fisk
Kristin A. Henry

147 FERC ¶ 62,174
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

American Electric Power Services Corporation
Wheeling Power Company
AEP Generation Resources Inc.

Docket No. EC14-75-000

**ORDER AUTHORIZING DISPOSITION OF
JURISDICTIONAL AND GENERATING FACILITIES
AND ACQUISITION OF GENERATING FACILITIES**

(Issued June 2, 2014)

On April 11, 2014, American Electric Power Services Corporation, Wheeling Power Company (Wheeling), and AEP Generation Resources Inc. (AEP Generation) (collectively, Applicants), filed an application pursuant to sections 203(a)(1)(A), (B), and (D) of the Federal Power Act (FPA)¹ requesting Commission authorization for the disposition and acquisition of jurisdictional facilities in connection with the internal asset transfer (Transaction) under which AEP Generation, an indirect, wholly-owned subsidiary of American Electric Power Company, Inc. (AEP), will transfer its interest in the Mitchell Power Generating Facility (Mitchell Plant) to Wheeling, which is also a wholly-owned subsidiary of AEP. The jurisdictional facilities involved in the Transaction include limited interconnection facilities.

Applicants state that AEP is a multi-state electric utility holding company system whose operating companies provide electric service at wholesale and retail in parts of eleven states: Appalachian Power Company (Appalachian) serves customers in Virginia and West Virginia (and one wholesale requirements customer in Tennessee); Kentucky Power Company (Kentucky Power) serves retail and wholesale customers in Kentucky; Ohio Power Company (Ohio Power) provides service to retail customers in Ohio; Indiana Michigan Power Company (Indiana & Michigan) serves retail and wholesale customers in Indiana and Michigan; Kingsport Power Company (Kingsport) serves retail customers in Tennessee; Wheeling serves retail customers in West Virginia; Southwestern Electric Power Company serves customers in Arkansas, Louisiana, and the Southwest Power Pool, Inc. portion of Texas; Public Service Company of Oklahoma serves customers in Oklahoma; and AEP Texas Central Company and AEP Texas North Company serve customers in the Electric Reliability Council of Texas portion of Texas.

¹ 16 U.S.C. § 824b (2012).

Applicants state that those AEP operating companies located within the footprint of PJM Interconnection, L.L.C. (PJM): Ohio Power, Appalachian, Kentucky, Indiana & Michigan, Kingsport, and Wheeling; have transferred control of their transmission facilities to PJM.

Applicants state that Wheeling is a public utility that engages in the transmission and distribution of electric power. It serves approximately 41,000 retail customers in northern West Virginia. PJM provides transmission over Wheeling's facilities pursuant to the PJM Open Access Transmission Tariff (PJM OATT).

Applicants state that AEP Generation is an indirect, wholly-owned subsidiary of AEP. AEP Generation was formed to acquire, own, and operate certain generation assets from Ohio Power as a result of retail restructuring in Ohio (Corporate Reorganization). Applicants state that the Commission approved the transaction pursuant to which these assets were transferred in *Ohio Power Co.*, 143 FERC ¶ 61,075 (2013), *order on reh'g*, 146 FERC ¶ 61,016 (2014) (*Ohio Power*). Among the assets transferred to AEP Generation was the Mitchell Plant, including assets and liabilities associated with that plant. Applicants add that the Commission approved a subsequent transaction pursuant to which an undivided 50 percent interest in the Mitchell Plant was transferred to Kentucky Power. *Appalachian Power Co.*, 143 FERC ¶ 61,074 (2013) (*Appalachian Power*).

Applicants state that the Corporate Reorganization transactions approved in *Ohio Power* and *Appalachian Power* closed on December 31, 2013. Since then, AEP Generation has been operating most of the generating facilities that were transferred from Ohio Power. Applicants state that the Commission granted AEP Generation market-based rate authority in *AEP Generation Resources Inc.*, Docket No. ER13-1896, Letter Order issued December 6, 2013. Applicants add that AEP Generation has no franchised service territory and no retail customers. According to Applicants, AEP Generation currently has one wholesale requirements customer, Wheeling, that is served under a contract that will terminate if the Transaction is consummated. Applicants submit that AEP Generation also provides capacity and energy to Ohio Power under a short-term agreement that enables Ohio Power to serve its non-shopping retail customers and to fulfill its capacity obligations in PJM. Applicants state that the Commission approved that agreement, which will run through May 31, 2015, in *AEP Generation Resources Inc.*, 145 FERC ¶ 61,275 (2013).

Applicants state that the Mitchell Plant is a coal-fired power plant located in West Virginia, with an average annual capacity rating of 1,560 megawatts (MW). Currently, Kentucky Power and AEP Generation each own an undivided fifty-percent interest in the station. Kentucky Power operates the Mitchell Plant pursuant to the Mitchell Plant

Operating Agreement that the Commission approved, subject to certain conditions, in *Appalachian Power Co.*, 145 FERC ¶ 61,270 (2013).

According to Applicants, AEP Generation had proposed to transfer to Appalachian an undivided fifty-percent interest in the Mitchell Plant immediately following AEP Generation's acquisition of the facilities from Ohio Power. The Commission approved that transfer in *Appalachian Power*. However, on July 13, 2013, the State Corporation Commission of Virginia (Virginia Commission) issued an order that denied Appalachian's request to acquire the interest in the Mitchell Plant. As a result, AEP Generation retained the fifty-percent interest that otherwise would have been transferred to Appalachian.

Applicants submit that Appalachian and Wheeling also proposed a transaction under which Wheeling would be merged with and into Appalachian (Wheeling-Appalachian Merger), through a transaction that was expected to take place on or about December 31, 2013. The Commission approved the Wheeling-Appalachian Merger by a delegated order, issued on April 29, 2013, in *Appalachian Power Co.*, 143 FERC ¶ 62,072 (2013). The Virginia Commission also approved the Wheeling-Appalachian Merger, subject to certain conditions, by an order issued on July 31, 2013. However, the Public Service Commission of West Virginia (West Virginia Commission) deferred ruling on the merger, by an order issued on December 13, 2013, subject to the requirement that Appalachian and Wheeling undertake an evaluation of alternatives to serve Wheeling's retail customers. Applicants state that as a result of the West Virginia Commission's ruling, the parties did not consummate the Wheeling-Appalachian Power Merger on December 31, 2013.

As the applicants in the prior proceedings discussed in their filings, and as the Commission recognized in *Ohio Power*, if the Wheeling-Appalachian Merger did not close by December 31, 2013, then a wholesale contract pursuant to which Ohio Power had agreed to serve Wheeling's full load requirements (Wheeling Contract) would be assigned to AEP Generation. According to Applicants, the Commission found that the assignment of the Wheeling Contract to AEP Generation, should it occur, would not adversely affect wholesale rates. On February 28, 2014, the Commission issued an order granting AEP Generation the authority to make sales to Wheeling under a revised Wheeling Contract through an initial term of December 31, 2014.

On March 4, 2014, Appalachian and Wheeling submitted to the West Virginia Commission their "Updated Plan to Serve the Load of Wheeling Power Company and Petition for the Commission's Consent and Approval to Implement the Updated Plan" (Updated Plan). Applicants submit that, as required by the West Virginia Commission's order, the Updated Plan reflects the companies' assessment of the options available to serve Wheeling's retail customers and their recommendation that the West Virginia Commission approve the transfer of AEP Generation's interest in the Mitchell Plant to

Wheeling as the best available option. The companies proposed that the transfer price be the net book value of the Mitchell Plant at the time of closing. In response to the filing of the Updated Plan, on April 8, 2014, the West Virginia Commission issued a procedural order that convened an evidentiary hearing to be held in mid-August of this year, with final briefs due to be submitted on September 17, 2014.

With Wheeling's proposed acquisition of an interest in the Mitchell Plant, the companies recommend that their proposed merger continue to be deferred pending further regulatory proceedings. The companies stated that, once the Transaction closes, AEP Generation and Wheeling will terminate the Wheeling Contract.

Applicants state that the Transaction will be effectuated through a series of nearly simultaneous transactions. First, AEP Generation will form a new wholly-owned subsidiary (NEWCO Wheeling). AEP Generation will contribute to NEWCO Wheeling its interest in the Mitchell Plant. This will be accomplished through the Asset Contribution Agreement between AEP Generation and NEWCO Wheeling. AEP Generation will then distribute its shares of NEWCO Wheeling to an intermediate holding company, AEP Energy Supply LLC (AEP Energy Supply), and AEP Energy Supply will distribute those shares to AEP, the parent company. In the final step, NEWCO Wheeling will merge with and into Wheeling, with Wheeling being the surviving entity. This will be accomplished through the Agreement and Plan of Merger of Wheeling and NEWCO Wheeling (Merger Agreement). According to Applicants, the Transaction will result in Wheeling owning an undivided 50 percent interest (approximately 780 MW) in Mitchell Units 1 and 2, and half of the various assets and liabilities associated with the Mitchell Plant.

Applicants state that the Transaction is consistent with the public interest because it will have no adverse impact on competition, rates, or regulation and will not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company.

Applicants state that the Transaction will not have an adverse effect on horizontal competition because no generation will enter (or leave) the AEP corporate family as a result of the Transaction. Therefore, the Transaction does not have a concentrating effect under the Commission's horizontal market power analysis, because the corporate family is treated as a single entity for purposes of that analysis.

Applicants state that the Transaction will have no adverse effect on vertical competition, because the Transaction is internal and will not result in the AEP corporate family owning or controlling any new entities that provide inputs to electricity products or electric generation products. Further, the Transaction does not involve the transfer of transmission facilities, except limited facilities needed to connect the generating units to the grid. Moreover, Wheeling has turned over operational control of its transmission

facilities to PJM, and wholesale transmission service over such facilities will continue to be provided pursuant to the rates and terms of the PJM OATT on file with the Commission, eliminating any concern about transmission-related vertical market power. Consequently, Applicants submit that the Transaction raises no vertical market power issues.

Applicants state that the Transaction will have no adverse effect on rates. With regard to transmission rates, Applicants submit that AEP Generation will not transfer any transmission facilities in connection with the Transaction, except limited facilities needed to connect the Mitchell generating units to the grid. No transmission facilities that are part of the bulk transmission system or included in transmission rate base will be transferred to Wheeling. Therefore, the Transaction will not cause Wheeling to incur additional transmission costs that will flow through AEP pricing zone rates under the PJM OATT.

In any event, Wheeling commits to hold wholesale customers harmless from any transaction costs related to the Transaction for a period of five years following the closing date of the Transaction. Applicants' commitment is interpreted to include all transaction-related costs, not only costs related to consummating the transaction.² The Commission will be able to monitor the Applicants' hold harmless provision under its authority under section 301(c) of the FPA and the books and records provision of PUHCA 2005, and the commitment is fully enforceable based on the Commission's authority under section 203 of the FPA.³

If Applicants seek to recover transaction-related costs through their wholesale power or transmission rates they must submit a compliance filing that details how they are satisfying the hold harmless requirement. If Applicants seek to recover transaction-related costs in an existing formula rate that allows for such recovery, then that compliance filing must be filed in the section 205 docket in which the formula rate was approved by the Commission, as well as in the instant 203 docket. In this case the filing would be a compliance filing in both the section 203 and section 205 dockets. If Applicants seek to recover transaction-related costs in a filing whereby they are proposing a *new* rate (either a new formula rate or a new stated rate), then that filing must be made in a *new* section 205 docket as well as in the instant section 203 docket. In this case the filing would be a compliance filing in the section 203 docket, but a rate application in the section 205 docket. The Commission will notice such filings for public comment. In such filings, Applicants must: (1) specifically identify the transaction-

² *PPL Corporation and E.ON U.S. LLC*, 133 FERC ¶ 61,083 (2010).

³ *PPL Corporation and E.ON U.S. LLC*, 133 FERC ¶ 61,083 (2010), *ITC Midwest LLC and Northern States Power Company*, 133 FERC ¶ 61,169 (2010), and *BHE Holdings Inc. and Main & Maritimes Corporation*, 133 FERC ¶ 61,231 (2010).

related costs they are seeking to recover, and (2) demonstrate that those costs are exceeded by the savings produced by the Transaction, in addition to any requirements associated with filings made under section 205.⁴ Such a hold harmless commitment will protect customers' wholesale power and transmission rates from being adversely affected by the Transaction.

Applicants state that the Transaction will not have any adverse effect on federal or state regulation. Applicants submit that the Transaction will not diminish the Commission's regulatory authority. Wheeling and AEP Generation each will remain a public utility and will continue to be subject to the Commission's jurisdiction under the FPA. Further, the Commission will have jurisdiction over wholesale sales from the Mitchell Plant after the Transaction closes. Accordingly, Applicants state that the Transaction will have no adverse effect on federal regulation.

According to Applicants, the Transaction will not adversely affect state regulation. After the Transaction closes, Wheeling will continue to be subject to regulation by the West Virginia Commission. Further, AEP Generation is not subject to regulation by any state commissions. Accordingly, Applicants submit that the Transaction will have no adverse effect on state regulation.

Applicants state that, based on facts and circumstances that are known to the Applicants or are reasonably foreseeable, the transfer of jurisdictional facilities pursuant to the Transaction will not result in any improper cross-subsidization of a non-utility affiliate. According to Applicants, the purpose of the Transaction is to allow Wheeling to obtain generating assets to meet its capacity and load requirements, and the Transaction will not close unless Wheeling obtains approval from the West Virginia Commission, and that process will include a review of whether the Transaction confers an undue advantage upon AEP Generation over Wheeling and whether the Transaction adversely affects the public interest. Further, the Mitchell Plant and appurtenant facilities will transfer at AEP Generation's then-current net book value. This is the same arrangement that the Commission approved for the transfer of the Mitchell Plant from Ohio Power to AEP Generation in *Ohio Power* and for the near simultaneous transfer of an undivided fifty percent interest in the plant from AEP Generation to Kentucky Power in *Appalachian Power*. Finally, Wheeling has committed to hold its wholesale requirements customers harmless with regard to transaction costs incurred under the Transaction.

Applicants submit that in July 2013, Ohio Power entered into a \$1 billion term credit facility due in May 2015 (Credit Agreement) to provide liquidity and flexibility to reassign Ohio Power's indebtedness during Ohio Power's corporate separation process

⁴ *Id.*

and the subsequent transfer of generation assets and liabilities to AEP Generation, Appalachian, and Kentucky Power. Under the Credit Agreement, Ohio Power assigned all of its borrowings to AEP Generation upon the transfer of Ohio Power's generation assets to AEP Generation. AEP Generation further assigned a portion of the borrowings to Appalachian and Kentucky Power upon AEP Generation's subsequent transfer of certain of those generation assets to Appalachian and Kentucky Power. Applicants state that AEP Generation may assign up to \$200 million of such borrowings under the Credit Agreement to NEWCO Wheeling, subject to the lenders' consent under the Credit Agreement (Existing Credit Agreement). Alternatively, NEWCO Wheeling may enter into a new credit agreement and borrow up to \$200 million (New Credit Agreement). Pursuant to the Merger Agreement with NEWCO Wheeling, Wheeling would become the obligor on such borrowings under the Existing Credit Agreement or the New Credit Agreement. As its rights and obligations with respect to such indebtedness would arise solely pursuant to the merger, Wheeling would have no obligations under either credit agreement unless and until the merger is completed and the Transaction at issue here is consummated.

In addition, Applicants propose that one series of pollution control revenue bonds (PCR Bonds) in the principal amount of \$65 million related to the Mitchell Plant be assigned to NEWCO Wheeling, subject to the consent of the PCR Bond lenders. Upon merger with NEWCO Wheeling, Wheeling will succeed to the obligations of NEWCO Wheeling with respect to the PCR Bonds. Applicants state that, as a result, Wheeling will be made contractually responsible for the costs of these assigned PCR Bonds after closing.

Applicants state that Wheeling will not enter into any new pledge or encumbrance of its assets in connection with the Transaction, at the time of the Transaction or in the future. Further, there are no other traditional utilities involved in the Transaction.

Applicants submit that, other than the Merger Agreement, the Asset Contribution Agreement between AEP Generation and NEWCO Wheeling, Wheeling will not be a party to any new contracts with AEP Generation or any non-utility associate company related to the Transaction, at the time of the Transaction or in the future. Wheeling will be a party to a joint operating agreement under which Kentucky Power will operate the jointly-owned Mitchell Plant after the closing of the Transaction. Applicants thus maintain that the Transaction satisfies the Commission's four-factor test and will not result in improper cross-subsidization.

The filing was noticed on April 11, 2014, with comments, protests or interventions due on or before May 2, 2014. None were received. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Any opposed or untimely filed motion to intervene is governed by the provision of Rule 214.

Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.⁵ The foregoing authorization may result in a change in status. Accordingly, Applicants are advised that they must comply with the requirements of Order No. 652. In addition, Applicants shall make appropriate filings under section 205 of the FPA, to implement the Transaction.

Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to the information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc. must comply with all applicable reliability and cybersecurity standards. The Commission, NERC or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

After consideration, it is concluded that the Transaction is consistent with the public interest and is hereby authorized, subject to the following conditions:

- (1) The Transaction is authorized upon the terms and conditions described in this Order and for the purposes set forth in the application;
- (2) The foregoing authorization is 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 the Commission;
- (3) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;

⁵ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, order on reh'g, 111 FERC ¶ 61,413 (2005).

- (4) The Commission retains authority under sections 203(b) and 309 of the FPA, to issue supplemental orders as appropriate;
- (5) If the Transaction results in changes in the status or the upstream ownership of Applicants' affiliated Qualifying Facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2012) shall be made;
- (6) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Transaction;
- (7) Wheeling shall account for the Transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. Wheeling shall submit final accounting entries within six months of the date that the Transaction is consummated, and the accounting submission shall provide all the accounting entries and amounts related to the Transaction along with narrative explanations describing the basis for the entries;
- (8) Applicants must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Transaction; and
- (9) Applicant shall notify the Commission within 10 days of the date that the Transaction has been consummated.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation – West under 18 C.F.R. § 375.307. This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order pursuant to 18 C.F.R. § 385.713.

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Steve P. Rodgers
Director
Division of Electric Power Regulation - West