

170 FERC ¶ 61,016  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Ohio Power Company  
AEP Ohio Transmission Company, Inc.  
PJM Interconnection, L.L.C.

Docket No. ER20-431-000

ORDER ACCEPTING AGREEMENTS SUBJECT TO COMPLIANCE FILINGS

(Issued January 17, 2020)

1. On November 21, 2019, pursuant to section 205(c) of the Federal Power Act (FPA)<sup>1</sup> and section 35.13 of the Commission's regulations,<sup>2</sup> American Electric Power Service Corporation (AEPSC), on behalf of various of its affiliates, including Ohio Power Company (Ohio Power) and AEP Ohio Transmission Company, Inc. (AEP Ohio), filed three facilities agreements and an amended interconnection and local delivery service agreement (ILDSA).<sup>3</sup> We accept for filing the agreements, to be effective January 21, 2020, as requested, subject to the condition that AEPSC make compliance filings, as discussed in the body of the order. We also direct AEPSC to submit time-value refunds related to one of the facilities agreements, as discussed in the body of the order.

**I. Description of Filing**

2. AEPSC states that, on October 30, 2019, it entered into three facilities agreements to perform certain engineering, design, equipment procurement and construction activities related to upgrading three existing delivery points.<sup>4</sup> AEPSC states that the three facilities agreements are: (1) the Mercerville Facilities Agreement among AEPSC, Buckeye Rural Electric Cooperative Inc. (BREC), and Buckeye Power, Inc. (Buckeye) related to upgrading the existing Mercerville delivery point; (2) the Windsor Facilities Agreement among AEPSC, BREC, and Buckeye related to upgrading the existing

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<sup>1</sup> 16 U.S.C. § 824d(c) (2018).

<sup>2</sup> 18 C.F.R. § 35.13 (2019).

<sup>3</sup> PJM Interconnection, L.L.C. (PJM) filed the agreements on behalf of AEPSC as the agreements are filed as part of the PJM Services Agreement Tariff.

<sup>4</sup> Transmittal at 1-2.

Windsor delivery point; and (3) the Pipe Creek Facilities Agreement among AEPSC, South Central Power Company (SCP), and Buckeye related to upgrading the existing Pipe Creek delivery point. The Pipe Creek Facilities Agreement includes charges of \$8,000 to Buckeye due within twenty business days after the execution date of the agreement.<sup>5</sup>

3. AEPSC states that the three facilities agreements are supplements to an ILDSA between AEPSC and Buckeye (Buckeye ILDSA). AEPSC states that the amended Buckeye ILDSA submitted in the instant proceeding is designated Fifty-Third Revised Service Agreement No. 1336.<sup>6</sup> AEPSC states that the Fifty-Second Revised Buckeye ILDSA was filed on November 1, 2019 in Docket No. ER20-289-000.<sup>7</sup>

4. AEPSC states the Buckeye ILDSA was recently amended in a filing in Docket No. ER19-2828, which is currently pending.<sup>8</sup> AEPSC states that Buckeye protested the amended Buckeye ILDSA's Attachment 1 in Docket No. ER19-2828 and AEPSC notes that the parties are working towards developing a Buckeye ILDSA Attachment 1 that both agree is accurate.<sup>9</sup> AEPSC states that, in the instant proceeding, AEPSC used as the baseline document the version of the Buckeye ILDSA that was submitted in Docket No. ER19-2828-001 and that the marked tariff in the instant filing is a redline against that pending version.<sup>10</sup> AEPSC further states that once the parties develop a consensus

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<sup>5</sup> Pipe Creek Facilities Agreement, section 4.c. & Exhibit 2.

<sup>6</sup> Transmittal at 2. AEPSC explains that because Ohio Power and AEP Ohio are transmission-owning members of PJM, and the Buckeye ILDSA involves interconnection and local delivery service over AEP's facilities located within the PJM footprint, the Buckeye ILDSA is designated as a service agreement under the PJM Open Access Transmission Tariff. *Id.* at 2 n.3.

<sup>7</sup> *Id.* at 2 n.2. The Buckeye ILDSA filed in Docket No. ER20-289-000 was accepted for filing subject to compliance filings to: (1) refile the amended agreement without the proposed changes currently pending in Docket No. ER19-2828, et al.; and (2) conform the accepted Buckeye ILDSA to reflect the outcome of Docket No. ER19-2828, et al. within 30 days of the issuance of an order in that docket. *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,258 (2019).

<sup>8</sup> Transmittal at 2.

<sup>9</sup> *Id.* at 2 n.3.

<sup>10</sup> We note that the Buckeye ILDSA submitted in the instant proceeding includes the revisions to the Buckeye ILDSA submitted in Docket No. ER20-289-000 in addition

Attachment 1, the Buckeye ILDSA submitted in the instant proceeding will be revised accordingly in a compliance filing and that AEPSC has no objection to the acceptance of the Buckeye ILDSA being conditioned on it being reformed to reflect the outcome of Docket No. ER19-2828.<sup>11</sup>

5. AEPSC requests an effective date of January 21, 2020 for each of the agreements and states that it is not seeking any waivers to permit an earlier effective date.<sup>12</sup>

## **II. Notice and Responsive Pleadings**

6. Notice of AEPSC's November 21, 2019 filing was published in the *Federal Register*, 84 Fed. Reg. 65,381 (2019), with interventions and protests due on or before December 12, 2019. Buckeye submitted a timely intervention. On December 12, 2019, Buckeye filed a protest.

7. Buckeye states that it does not object to AEPSC supplementing the Buckeye ILDSA to upgrade the existing Mercerville, Windsor, and Pipe Creek delivery points and to the performance of certain engineering, design, equipment procurement and construction activities under the facilities agreements included as part of the filing in the instant proceeding.<sup>13</sup> Buckeye states, however, that it protests Attachment 1 to the Buckeye ILDSA for the same reasons it protested Attachment 1 to the Buckeye ILDSA AEPSC filed in Docket Nos. ER19-2828 and ER20-289-000 (collectively, ILDSA Protests), including with respect to all charges shown in Attachment 1 under the Buckeye ILDSA.<sup>14</sup> Buckeye states that it incorporates by reference the ILDSA Protests here.<sup>15</sup> Buckeye states that the revised Attachment 1 to the Buckeye ILDSA in the instant proceeding should be approved subject to the outcome of resolution of all Attachment 1 issues in Docket No. ER19-2828, et al., at which time AEPSC should be required to file reformed Attachment 1s to the Buckeye ILDSA in the instant proceeding, and

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to the revisions submitted in Docket No. ER19-2828, et al. and that both sets of revisions are included in the baseline document.

<sup>11</sup> Transmittal at 2 n.3.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> Buckeye Protest at 3.

<sup>14</sup> *Id.* at 2-3.

<sup>15</sup> *Id.* at 3.

in Docket Nos. ER19-2828, et al., and ER20-289, to reflect the outcome in Docket No. ER19-2828, et al.

### III. Discussion

#### A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

#### B. Substantive Matters

9. We accept for filing the Mercerville Facilities Agreement, Windsor Facilities Agreement, Pipe Creek Facilities Agreement, and the Buckeye ILDSA, to be effective January 21, 2020, as requested, subject to the condition that AEPSC submit compliance filings, as discussed below.<sup>16</sup> The amended Buckeye ILDSA submitted in the instant proceeding contains changes that have not been accepted and are pending in Docket No. ER19-2828, et al. As a result, we direct AEPSC to submit a compliance filing within 30 days of the date of this order with a revised Buckeye ILDSA that uses as a baseline for the revisions proposed here the currently effective version of the Buckeye ILDSA, as opposed to the proposed version of the Buckeye ILDSA submitted in Docket No. ER19-2828. In other words, the agreement filed in this docket should not contain the proposed changes that are pending in Docket No. ER19-2828, et al.

10. Consistent with AEPSC's request, with which Buckeye agrees, we also direct AEPSC to submit a subsequent compliance filing to conform the Buckeye ILDSA accepted in this order to reflect the outcome of Docket No. ER19-2828, et al. within 30 days of the issuance of an order in that docket.

11. As the Commission stated in *Prior Notice*,

[i]f a utility files an otherwise just and reasonable cost-based rate after new service has commenced, or if waiver is denied and the proposed rate goes into effect after service has commenced, we will require the utility to refund to its customers the time value of the revenues collected, calculated pursuant to section 35.19a of our regulations (18 C.F.R.

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<sup>16</sup> We remind AEPSC that it must submit required filings on a timely basis.

§ 35.19a), for the entire period that the rate was collected without Commission authorization.<sup>17</sup>

The Commission has clarified that in cases involving late-filed agreements governing the construction, ownership, operation, and maintenance of transmission facilities to serve a specific customer, where the utility's costs of providing the service are passed through with no profit component, requiring the utility to make time-value refunds would require the utility operate at a loss, contrary to Commission policy.<sup>18</sup>

12. As mentioned above, the Pipe Creek Facilities Agreement includes charges of \$8,000 to Buckeye due within twenty business days after the October 30, 2019 execution date of the agreement.<sup>19</sup> We direct AEPSC to submit time-value refunds to Buckeye for the amounts collected under the Pipe Creek Facilities Agreement prior to the agreement's January 21, 2020 effective date, or, demonstrate that time-value refunds would cause AEPSC to operate at a loss or that AEPSC did not collect monies under the agreement prior to its effective date. Consistent with Commission policy, time-value refunds are required for the entire period that the rate was collected without Commission approval.<sup>20</sup> We direct AEPSC to pay the time-value refunds, and submit a refund report, or demonstrate that the time-value refunds would result in a loss or that AEPSC did not collect monies under the agreement prior to the effective date, within 30 days of the date of this order.

The Commission orders:

(A) AEPSC's Mercerville Facilities Agreement, Windsor Facilities Agreement, Pipe Creek Facilities Agreement, and amended Buckeye ILDSA are hereby accepted for filing to become effective January 21, 2020, as requested, subject to the condition that AEPSC submit compliance filings, as discussed in the body of the order.

(B) AEPSC is hereby directed to submit a compliance filing, removing the proposed changes currently pending in Docket No. ER19-2828, et al., from the amended Buckeye ILDSA, within 30 days of the date of this order, as discussed in the body of this order.

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<sup>17</sup> *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,979 (*Prior Notice*), *reh'g denied*, 65 FERC ¶ 61,081 (1993).

<sup>18</sup> *See International Transmission Co.*, 152 FERC ¶ 61,043, at PP 34-38 (2015); *ITC Midwest LLC*, 153 FERC ¶ 61,165, at P 8 (2015).

<sup>19</sup> Pipe Creek Facilities Agreement, section 4.c. & Exhibit 2.

<sup>20</sup> *See Prior Notice*, 64 FERC ¶ 61,139 at 61,979.

(C) AEPSC is hereby directed to submit a compliance filing conforming the amended Buckeye ILDSA to reflect the outcome of Docket No. ER19-2828, et al. within 30 days of an order issued in that proceeding, as discussed in the body of this order.

(D) AEPSC is hereby directed to submit time-value refunds for monies received prior to the effective date of the Pipe Creek Facilities Agreement and a refund report, or demonstrate that the time-value refunds would result in a loss or that AEPSC did not collect monies under the agreement prior to the effective date, as discussed in the body of the order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.