169 FERC ¶ 61,091
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

AEP Generating Company	Docket Nos. ES19-45-000
Kingsport Power Company	ES19-46-000

ORDER GRANTING REQUEST FOR
AUTHORIZATION TO ISSUE SECURITIES

(Issued November 1, 2019)

1. On July 29, 2019, as amended on October 8, 2019, pursuant to section 204 of the Federal Power Act (FPA),[1] AEP Generating Company (AEP Generating) and Kingsport Power Company (Kingsport Power) (together, Applicants) filed an application seeking Commission authorization to issue commercial paper, promissory notes, and other forms of short-term indebtedness (Short-Term Debt).[2] As discussed below, we grant the requested authorization for a two-year period beginning November 3, 2019 and ending November 2, 2021.

I. **Application**

A. **Request for Issuances of Securities**

2. Applicants state that AEP Generating and Kingsport Power are Ohio and Virginia corporations, respectively.[3] Applicants request authorization to issue Short-Term Debt in aggregate amounts not to exceed $150 million for AEP Generating and $30 million for

[1] 16 U.S.C. § 824c (2018).

[2] AEP Generating Company and Kingsport Power Company, Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities, Docket Nos. ES19-45-000 and ES19-46-000 (filed July 29, 2019) (Application).

[3] *Id.* at 1.

Kingsport Power. Applicants explain that the actual maturities of the Short-Term Debt will be determined by market conditions, the effective interest costs, and each Applicant's anticipated cash flow, including the proceeds of other borrowings, at the time of issuance. Applicants propose to issue Short-Term Debt either through the AEP Utility Money Pool (Utility Money Pool) or directly, provided that the aggregate Short-Term Debt does not exceed $150 million for AEP Generating and $30 million for Kingsport Power.[4]

3. Applicants seek permission to issue Short-Term Debt through participation as a borrower in the Utility Money Pool at interest rates not to exceed the 30-day London Interbank Offering Rate (LIBOR), as identified in the Bloomberg historical price table in effect at the time of borrowing plus up to 200 basis points, or through direct issuance. Applicants explain that the proposed 200 basis point spread reflects a reasonable range given possible disruptions in credit markets.[5]

4. Applicants state that they are each a member in the Utility Money Pool and make short-term borrowings from the Utility Money Pool. Applicants state that the current Utility Money Pool Agreement is filed with the Commission[6] and that the Utility Money Pool is currently funded by American Electric Power Company, Inc. (AEP), Applicants' parent company, through a commercial paper program. Applicants state that no participant in the Utility Money Pool (Participant) is required to borrow from the Utility Money Pool if that Participant could borrow more cheaply directly from banks or through the issuance of its own commercial paper and that AEP will not borrow funds from the Utility Money Pool or any Participant.[7]

5. Applicants explain that the interest rate on any day to then-outstanding loans through the Utility Money Pool will be the composite weighted average daily effective

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[4] *Id.* at 2.

[5] *Id.*

[6] Commission-regulated entities are required to file their cash management agreements with the Commission. *See* 18 C.F.R. § 141.500 (2019). The information provided is used to aid the Commission in monitoring cash management programs. Because the rule does not govern participation in cash management programs, this order does not address any request for authorization to participate in a cash management program. *See Regulation of Cash Management Practices*, Order No. 634-A, 105 FERC ¶ 61,098 (2003).

[7] Application at 4-5. Additional information on the specifics of the Utility Money Pool can be found on pages 4-7 of the Application.

cost incurred by AEP for short-term borrowings from external sources. Applicants state that, if there are no external borrowings outstanding, then the rate would be the certificate of deposit yield equivalent to the 30-day Federal Reserve "A2/P2" Nonfinancial Commercial Paper Composite Rate (Composite Rate). If no Composite Rate is established for that day, then the applicable rate will be the Composite Rate for the next preceding day for which a Composite Rate is established. Applicants explain that if the Composite Rate ceases to exist, then the rate would be the composite which, at the time, most closely resembles the Composite Rate and/or the pricing AEP would expect if it had external borrowings.[8] Applicants state that each participant receiving a loan through the Utility Money Pool shall repay the principal amount of such loan, together with all interest accrued thereon, on demand.

6. Regarding Short-Term Debt issued directly, Applicants state that commercial paper would be sold in established domestic or commercial paper markets through dealers at a discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. Applicants explain that it is expected that dealers transacting in either of the Applicant's commercial paper will re-offer such paper at a discount to corporate and institutional investors.[9]

7. Applicants specify that they each propose to establish and maintain back-up credit lines with banks or other institutional lenders to support their commercial paper programs and to establish other credit arrangements and/or borrowing facilities generally available to borrowers with comparable credit ratings as each Applicant may deem appropriate in light of its needs and existing market conditions. Applicants explain that only the amounts drawn and outstanding under these agreements and facilities will be counted against the proposed limits on Short-Term Debt for AEP Generating and Kingsport Power and, when aggregated with all other short-term borrowings, will not exceed those limits.[10]

8. Alternatively, Applicants state that they each may engage in other types of short-term financing generally available to borrowers with comparable credit rates as it may deem appropriate, in light of its needs and market conditions at the time of issuance. Applicants explain that any short-term indebtedness issued in such financings, when aggregated with all other short-term borrowings, would not exceed the proposed limits on Short-Term Debt. Applicants state that their commercial paper is not currently rated

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[8] *Id.* at 6-7.

[9] *Id.* at 3.

[10] *Id.*

because each borrows short-term debt through the Utility Money Pool. Applicants explain that AEP borrows short-term debt and that its commercial paper is currently rated A-2 by Standard & Poor's and P-2 by Moody's. Applicants state that they do not expect any short-term debt securities will be listed on any stock exchange.[11]

B. Purpose of Issuances

9. Applicants explain that the Short-Term Debt will be used, together with other available funds: (1) to finance the construction, acquisition, maintenance, and/or modification or improvement to, new and existing generation, transmission and/or distribution facilities; (2) to refinance existing debt, to meet working capital needs (including construction expenditures); and (3) for other general corporate purposes of Applicants.[12]

II. Notice of Filing

10. Notice of the Application was published in the *Federal Register*, 84 Fed. Reg. 37,856 (2019), with interventions and protests due on or before August 19, 2019. None was filed.

11. Applicants filed an amended application on October 8, 2019. Notice of the amended application was published in the *Federal Register*, 84 Fed. Reg. 55,308 (2019), with interventions and protests due on or before October 18, 2019. None was filed.

III. Discussion

A. Standard Under FPA Section 204

12. 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.[13]

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[11] *Id.* at 3-4.

[12] *Id.* at 9-10.

[13] 16 U.S.C. § 824c(a).

13. In reviewing an application under FPA 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.[14] 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.[15] In making this finding, the Commission reviews the financial statements submitted with an application filed under FPA section 204 and the applicant's calculation of the interest coverage ratio, which is the sum of income before interest and income taxes divided by total interest expense.[16] The interest coverage ratio is used primarily to provide the Commission with comfort that the financing authorized will not impair an applicant's ability to perform public utility service.[17] The Commission has stated, however, that whether or not an applicant has an interest coverage ratio that is 2.0 or higher does not by itself determine whether the Commission will grant or deny its application.[18] The Commission has granted FPA section 204 applications where the applicant did not have an interest coverage ratio that was 2.0 or higher.[19]

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[14] *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*).

[15] *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").

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

[17] *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.

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

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

B. Applicants' Analysis

14. Applicants filed, as Exhibits C, D, and E to the Application, actual and *pro forma* financial statements for the 12-month period that ended March 31, 2019.[20] Exhibit E of the Application shows that each Applicant has a *pro forma* interest coverage ratio that is below 2.0. However, Applicants argue that the issuances of Short-Term Debt up to the proposed limits for AEP Generating and Kingsport Power will not impact their ability to perform service as a public utility.[21]

15. Applicants assert that there are alternative bases upon which the Commission may conclude that the proposed issuances will not impair their ability to perform public utility service. In particular, Applicants explain that AEP Generating is the beneficiary of an agreement with its parent, AEP, in which AEP is obligated to pay AEP Generating in cash as capital contributions such amounts as necessary to enable AEP Generating to pay its indebtedness. Applicants state that AEP has investment grade credit ratings. Specifically, Applicants state that AEP's unsecured long-term debt is rated BBB+ by Standard & Poor's and Baa1 by Moody's. Applicants also state that AEP Generating has Commission-approved contracts for the sales of power at wholesale to utility company affiliates which provide for the flow through and recovery of its costs.[22]

16. As to Kingsport Power, Applicants state that Kingsport Power's regulatory structure in Tennessee allows for the recovery of costs pursuant to a fuel and purchased power rider and targeted reliability and major storm rider.[23] In addition, Applicants state that AEP, Kingsport Power's parent company, is committed to maintaining the capitalization of Kingsport Power to enable it to meet its financial obligations; in this regard, Applicants state that AEP has made a total of $13 million in equity contributions

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[20] Applicants state that their *pro forma* financial statements assume an interest rate of the maximum authorized principal indebtedness of 200 basis points above the 30-day LIBOR in effect as of March 31, 2019, resulting in an assumed interest rate of 4.49 percent per annum. Application at 2-3.

[21] *Id.* at 9.

[22] *Id.* at 8.

[23] *Id.* at 8-9.

to Kingsport Power in the second quarter of 2019 to help support its overall capital program and maintain an appropriate capital structure.[24]

C. Commission Determination

17. Although Applicants do not meet the Commission's threshold interest coverage ratio, the Application provides other factors as alternative bases upon which the Commission may grant the requested authorization. In particular, Applicants explain that their parent company, AEP: (1) provides capital contributions to AEP Generating pursuant to a capital funds agreement and is committed to maintaining Kingsport Power's capitalization to enable it to meet its financial obligations; and (2) maintains investment grade credit ratings.[25] Relying on this showing of their parent company's financial health and support for Applicants, we conclude that the proposed issuances of Short-Term Debt will not impair Applicants' ability to provide service as public utilities.

18. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt authorized by the Commission.[26] First, public utilities seeking authorization to issue debt that is secured (i.e., backed) by utility assets must use the proceeds of the debt for utility purposes only. Second, with respect to such utility asset-secured debt issuances, if any utility assets that secure such debt issuances are divested or "spun off," the debt must follow the asset and also be divested or spun off. Third, if assets financed with unsecured debt are divested or spun off, the associated unsecured debt must follow those assets. Specifically, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt likewise must follow the non-utility assets and, if the non-utility assets are divested or spun off, then a proportionate share of debt must follow the associated non-utility assets by being divested or "spun off" as well. Finally, with respect to unsecured debt used for utility purposes, if utility assets financed by unsecured debt are divested or spun off to another entity, then a proportionate share of the debt must also be divested or spun off. We will condition

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[24] AEP Generating Company and Kingsport Power Company, Amended and Restated Application, Docket Nos. ES19-45-000 and ES19-46-000, at 9 (filed Oct. 8, 2019).

[25] *Cf. S.C. Elec. & GasCo., 167 FERC ¶ 61,038, at P 21 (2019) (relying on the applicant's investment grade credit ratings as a corporate issuer and for short-term borrowings, committed lines of credit, and access to increased financial backing from Dominion).*

[26] *Westar*, 102 FERC ¶ 61,186 at PP 20-21.

our authorization on Applicants abiding by these restrictions. Applicants commit to complying with the four restrictions on secured and unsecured debt specified in *Westar*.[27]

19. We find that Applicants meet the standards under FPA section 204. The Application demonstrates that Applicants' proposed issuances of Short-Term Debt: (1) will be for lawful objects within the corporate purposes of Applicants and compatible with the public interest, is necessary or appropriate for or consistent with the proper performances by Applicants of service as public utilities, and will not impair Applicants' ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.

20. Accordingly, we authorize the following for Applicants:

a. AEP Generating is authorized to issue Short-Term Debt in an aggregate amount not to exceed $150 million outstanding at any one time.

b. Kingsport Power is authorized to issue Short-Term Debt in an aggregate amount not to exceed $30 million outstanding at any one time.

c. The interest rate for Short-Term Debt shall not exceed the 30-day LIBOR as pulled from the Bloomberg historical price table in effect at the time of borrowing plus up to 200 basis points.[28]

The Commission orders:

(A) Applicants' requested authorization to issue Short-Term Debt in the amounts described, and subject to the interest rate established in the Application, is hereby granted and is based on the terms and conditions and for the purposes specified in the Application.

(B) The authorization is granted effective November 3, 2019 through November 2, 2021.

(C) The authorization is subject to the restrictions specified in the body of this order and the restrictions on secured and unsecured debt as outlined in *Westar.*

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[27] Application at 10.

[28] We note that the Application discusses several other rates depending on the type of Short-Term Debt borrowing. *Id.* at 3, 6-7. However, Applicants' *pro forma* financial statements assume an interest rate of the maximum authorized principal indebtedness of 200 basis points above the 30-day LIBOR in effect as of March 31, 2019. *Id.* at 2-3.

(D) Applicants must file a Report of Securities Issued, under 18 C.F.R. §§ 34.9, 131.43, and 131.50 (2019), no later than 30 days after the sale or placement of long-term debt securities or equity securities, or the entry into guarantees or assumption of liabilities.

(E) The authorization granted 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 this Commission.

(F) 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.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.