

170 FERC ¶ 61,097
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. ER20-609-000

ORDER ACCEPTING AGREEMENTS SUBJECT TO COMPLIANCE FILINGS

(Issued February 14, 2020)

1. On December 16, 2019, pursuant to section 205(c) of the Federal Power Act (FPA)¹ and section 35.13 of the Commission's regulations,² 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), (together with AEPSC, AEP), filed a facilities agreement and an amended interconnection and local delivery service agreement (ILDSA).³ We accept for filing the agreements, to be effective February 14, 2020, as requested, subject to the condition that AEP make compliance filings, as discussed below. We also direct AEP to submit time-value refunds related to the facilities agreement, as discussed below.

I. Description of Filing

2. AEPSC states that, on November 24, 2019, it entered into a facilities agreement among AEP, South Central Power Company (SCP), and Buckeye Power, Inc. (Buckeye), to perform certain engineering, design, equipment procurement and construction activities related to the new Ilesboro delivery point (Ilesboro Facilities Agreement).⁴ The

¹ 16 U.S.C. § 824d(c) (2018).

² 18 C.F.R. § 35.13 (2019).

³ 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.

⁴ Transmittal at 1-2.

Ilesboro Facilities Agreement includes charges of \$8,000 to Buckeye due within 20 business days after the execution date of the agreement.⁵

3. AEPSC states that the Ilesboro Facilities Agreement supplements the ILDSA between AEPSC and Buckeye (Buckeye ILDSA). AEPSC states that AEP recently proposed updates to the Buckeye ILDSA in Docket Nos. ER19-2828, ER20-289, and ER20-431.⁶ AEPSC states that, in the instant proceeding, the amended Buckeye ILDSA contains the revisions proposed in all three of those dockets.⁷

4. AEPSC states that Buckeye protested the amended Buckeye ILDSA's Attachment 1 in Docket No. ER19-2828 and subsequent dockets.⁸ AEPSC notes that the parties are working towards developing a Buckeye ILDSA Attachment 1 that both agree is accurate and can serve as a basis for all subsequent versions of this oft-filed ILDSA.⁹ AEPSC further states that once the parties develop a consensus Attachment 1, AEPSC will file revisions to the Buckeye ILDSA submitted in the instant proceeding, and all versions of Attachment 1 filed subsequent to Docket No. ER19-2828, as appropriate, 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. ER19-2828.¹⁰

⁵ Ilesboro Facilities Agreement, section 4.c. & Exhibit 2.

⁶ 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.*

⁷ *Id.* at 2. The Buckeye ILDSAs filed in Docket Nos. ER20-289-000 and ER20-431-000 were each accepted for filing subject to compliance filings to: (1) refile the amended agreements 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); *Ohio Power Co.*, 170 FERC ¶ 61,016 (2020).

⁸ Transmittal at 2 n.2.

⁹ *Id.*

¹⁰ Transmittal at 2 n.2.

5. AEPSC requests an effective date of February 14, 2020 for each of the agreements.¹¹

II. Notice and Responsive Pleadings

6. Notice of AEPSC's December 16, 2019 filing was published in the *Federal Register*, 84 Fed. Reg. 72,354 (2019), with interventions and protests due on or before January 6, 2020. Buckeye submitted a timely intervention. On January 6, 2020, Buckeye filed a protest.

7. Buckeye states that it does not object to AEPSC supplementing the Buckeye ILDSA to add the Ilesboro delivery point and to the performance of certain engineering, design, equipment procurement and construction activities under the facilities agreement included as part of the filing in the instant proceeding.¹² 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, ER20-289-000, and ER20-431-000 (collectively, ILDSA Protests), including with respect to all charges shown in Attachment 1 under the Buckeye ILDSA.¹³ Buckeye states that it incorporates by reference the ILDSA Protests here.¹⁴ Buckeye states that the revised Attachment 1 to the Buckeye ILDSA in the instant proceeding should be approved consistent with the requirements of the December 30, 2019 order in Docket No. ER20-289-000¹⁵ and subject to the outcome of resolution of all Attachment 1 issues in Docket No. ER19-2828, et al., at which time AEP should be required to file reformed Attachment 1s to the Buckeye ILDSA in the instant proceeding, and in Docket Nos. ER19-2828, et al., ER20-289, and ER20-431, to reflect the outcome in Docket No. ER19-2828, et al.

¹¹ *Id.* at 2.

¹² Buckeye Protest at 3.

¹³ *Id.* at 3.

¹⁴ *Id.* at 3.

¹⁵ *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,258 (2019).

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 Buckeye a party to this proceeding.

B. Substantive Matters

9. We accept for filing the Ilesboro Facilities Agreement, and the Buckeye ILDSA, to be effective February 14, 2020, as requested, subject to the condition that AEP submit compliance filings, as discussed below.¹⁶ 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 AEP 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. It also appears subtotals and totals that may have been intended to be deleted and replaced in the total South Central Power Company and total monthly Buckeye charges rows were not deleted and therefore some columns appear to include two numbers as a subtotal or total. Accordingly, we direct AEP to include revisions to correct those subtotal and total lines.

10. Consistent with AEPSC's request, with which Buckeye agrees, we also direct AEP 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.

¹⁶ We remind AEP that it must submit required filings on a timely basis.

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

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 to operate at a loss, contrary to Commission policy.¹⁸

12. As mentioned above, the Ilesboro Facilities Agreement includes charges of \$8,000 to Buckeye due within 20 business days after the November 24, 2019 execution date of the agreement.¹⁹ We direct AEP to submit time-value refunds to Buckeye for the amounts collected under the Ilesboro Facilities Agreement prior to the agreement's February 14, 2020 effective date, or either demonstrate that time-value refunds would cause AEP to operate at a loss or that AEP did not collect monies under the agreement prior to its effective date.²⁰ We direct AEP 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 AEP 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) AEP's Ilesboro Facilities Agreement and amended Buckeye ILDSA are hereby accepted for filing to become effective February 14, 2020, as requested, subject to the condition that AEP submit compliance filings, as discussed in the body of the order.

(B) AEP 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.

¹⁷ *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).

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

¹⁹ Ilesboro Facilities Agreement, section 4.c. & Exhibit 2.

²⁰ Consistent with Commission policy, time-value refunds are required for the entire period that the rate was collected without Commission approval. *See Prior Notice*, 64 FERC at 61,979.

(C) AEP 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) AEP is hereby directed to make time-value refunds for monies received prior to the effective date of the Ilesboro Facilities Agreement and submit a refund report, or demonstrate that the time-value refunds would result in a loss or that AEP 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.