171 FERC ¶ 61,209
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

AEP Generating Company	Docket Nos. ES20-28-000
AEP Texas Inc.	ES20-29-000
Southwestern Electric Power Company	ES20-31-000
Wheeling Power Company	ES20-32-000

ORDER GRANTING REQUESTS FOR AUTHORIZATION TO ISSUE SECURITIES

(Issued June 15, 2020)

1. On April 30, 2020, AEP Generating Company (AEP Generating), AEP Texas Inc. (AEP Texas), Southwestern Electric Power Company (Southwestern Electric), and Wheeling Power Company (Wheeling Power) (collectively, Applicants) filed applications pursuant to section 204 of the Federal Power Act (FPA)[1] (Applications) seeking Commission authorization to issue secured and unsecured long-term debt. As discussed below, we grant the requested authorizations for a two-year period.[2]

I. **Applications**

A. **Background**

2. Applicants state that AEP Generating, AEP Texas, Southwestern Electric, and Wheeling Power are Ohio, Delaware, and West Virginia corporations, respectively. Applicants state that American Electric Power Company, Inc. (AEP) owns all of the

[1] 16 U.S.C. § 824c (2018).

[2] Kingsport Power Company was separately authorized to issue secured and unsecured long-term debt for a two-year period beginning June 15, 2020 and ending June 14, 2022. *Kingsport Power Company*, 171 FERC ¶ 62,130 (2020).

common stock of the Applicants, which own and operate utility assets in their various jurisdictions.[3]

B. Request for Issuances of Securities

3. Applicants request authorization to issue secured or unsecured long-term debt securities in aggregate amounts not to exceed $150 million for AEP Generating, $1.1 billion for AEP Texas, $1 billion for Southwestern Electric, and $165 million for Wheeling Power.[4] Applicants explain that long-term debt securities may consist of first mortgage bonds, notes (secured and unsecured) and debentures and bank credit facilities. In addition, Applicants seek authorization to issue long-term debt to AEP, the direct parent of each Applicant.[5]

4. Applicants explain that each series of long-term debt issued by them would have such designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking fund terms and other terms and conditions as that Applicant may determine at the time of issuance. Applicants add that any long-term debt (1) will have maturities up to 60 years, (2) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount thereof, (3) may be entitled to mandatory or optional sinking fund provisions, (4) may be subject to tender or the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event, (5) may be called from existing investors by a third party, and (6) may be entitled to the benefit of affirmative or negative financial or other covenants.[6] Applicants further state that the maturity dates, interest rates, redemption and sinking fund provisions, tender or repurchase and conversion features, if any, with respect to the long-term debt of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation. Applicants represent that specific terms of any long-term debt will be determined by the Applicant at the time of issuance and will comply in all regards with the parameters on financing authorization set forth above.[7]

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[3] Applications at 1-2.

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

[5] *Id.* at 4.

[6] *Id.*

[7] *Id.*

5. Applicants state that the interest rates on long-term debt may be either fixed or variable. According to Applicants, the variable rates will be based on the London Interbank Offered Rate (or a commercially accepted equivalent or replacement) (collectively, LIBOR) plus an applicable margin reflecting the relative risk of indebtedness. The applicable LIBOR will be determined at the time of the borrowing(s), could be any rate from the one-month LIBOR to the one-year LIBOR for deposits in U.S. Dollars three business days before the date of issuance obtained through a nationally recognized service or publication such as the Money Rates Table in The Wall Street Journal, and may be different for different tranches. Applicants state that the variable interest rate applicable to any borrowing under a bank credit facility entered into pursuant to the requested authorization will not exceed the highest of (i) the one-month, three-month, six-month, or twelve-month LIBOR in effect at the date of issuance(s), plus an applicable margin of up to 400 basis points.[8]

6. Applicants state that any fixed-rate first mortgage bonds, notes (secured and unsecured) and debentures that any Applicant issues pursuant to the requested authorization will not have a stated interest rate that exceeds the U.S. Treasury Rate for a comparable term at the date of issuance(s) plus up to 400 basis points.[9]

7. Applicants request Commission action as soon as practicable and for authorization to be effective for two years from the date of the Commission's order. Applicants note that the authorizations requested in the Applications will supersede the authorizations granted by the Commission to AEP Generating in Docket No. ES18-31-000 (expiring June 15, 2020), AEP Texas in Docket No. ES19-49-000 (expiring October 31, 2021), and Southwestern Electric in Docket No. ES18-32-000 (expiring June 30, 2020).[10]

C. <u>Request for Waiver</u>

8. Applicants request that the Commission grant waiver of the Commission's competitive bidding and negotiated placement requirements set forth in sections 34.2(a)

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[8] *Id.* at 4-5.

[9] *Id.* at 5.

[10] *Id.* at 3.

and 34.2(c)(1) of the Commission's regulations[11] in relation to the securities identified in the Applications. Applicants explain that: (1) the securities will be issued to commercial and investment banks, insurance companies, sophisticated investors or similar institutions; (2) all securities will bear interest at rates related to current market conditions; and (3) a cost advantage will not be achieved by the imposition of such requirement.[12]

II. Notice of Filing

9. Notice of the Applications was published in the *Federal Register*, 85 Fed. Reg. 26,970 (May 6, 2020), with interventions and protests due on or before May 21, 2020. None was filed.

III. Discussion

A. Analysis Under FPA Section 204

10. FPA section 204(a) 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]

11. 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

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[11] Section 34.2 sets forth the Commission's method of issuance requirements. It states, in part, that utilities may issue securities either by a competitive bid or negotiated placement, provided that competitive bids are obtained from at least two prospective dealers, purchasers or underwriters or negotiated offers are obtained from at least three prospective dealers, purchasers or underwriters. *See* 18 C.F.R. § 34.2(a) (2019). These requirements do not apply to securities that have a maturity of one year or less.

[12] Applications at 22-23.

[13] 16 U.S.C. § 824c(a).

[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*).

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 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 meets the 2.0 interest coverage ratio screen does not by itself determine whether the Commission will authorize or deny the application.[18] The Commission has approved FPA section 204 applications that have not met the 2.0 interest coverage ratio screen.[19]

12. Applicants have each filed, as Exhibits C, D, and E to the Applications, actual and *pro forma* financial statements for the 12-month period that ended December 31, 2019. Exhibit E of the Applications shows that each Applicant has a *pro forma* interest coverage ratio that is below the Commission's 2.0 times interest coverage ratio screen. However, Applicants argue that they nevertheless will be able to meet their financial obligations and perform their obligations as a public utility following Commission approval of the Applications.[20]

13. 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. Applicants explain that AEP Generating is the beneficiary of an agreement with

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[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).

[20] Applications at 10.

its parent, AEP, in which AEP is obligated to pay AEP Generating in cash capital contributions such amounts as are necessary to enable AEP Generating to pay its indebtedness. Applicants state that AEP Generating has investment grade credit ratings, i.e., A- by Standard & Poor's (S&P). Applicants also represent that AEP's senior unsecured long-term debt is currently rated BBB+ by S&P and Baa1 by Moody Investor Services, Inc. (Moody's). Applicants also state that AEP Generating is an electric generating company that sells power at wholesale to utility company affiliates pursuant to Commission-approved contracts which provide for the flow through and recovery of its costs.[21]

14. Applicants state that AEP Texas is rated A- by S&P and Baa1 by Moody's and is committed to maintaining its investment-grade ratings. Applicants state that AEP, the parent of AEP Texas, made two $100 million capital contributions to AEP Texas in 2019, one in January and one in March, to help support AEP Texas's overall capital program and maintain its capital structure. In addition, Applicants state that AEP Texas provides transmission and distribution service on a cost-of-service basis at rates approved by the Public Utility Commission of Texas (Texas Commission) and wholesale transmission service under tariffs approved by the Commission consistent with Texas Commission rules. According to Applicants, these transmission and distribution rates are established on a cost-of service basis, which is designed to allow a utility an opportunity to recover its cost of providing service and to earn a reasonable return on its investment used in providing that service. Applicants state that AEP Texas has every reason to expect that the costs associated with the requested financing authorization will be recovered in the regulatory approval process and that such recovery will be more than sufficient to permit AEP Texas to maintain its current investment grade credit ratings.[22]

15. Applicants state that Southwestern Electric does not meet the Commission's 2.0 interest coverage ratio screen. Applicants note that the large size of its long-term debt financing request, i.e., $1 billion, is largely due to the capital needs of the anticipated acquisition of the North Central Wind Energy Facilities, comprised of three Oklahoma wind facilities totaling 1,485 megawatts. Applicants explain that Southwestern Electric is seeking various regulatory approvals by July 2020.[23] Applicants state that Southwestern Electric is rated A- by S&P and Baa2 by Moody's and is committed to maintaining its investment-grade ratings. Applicants explain that AEP, the parent of Southwestern Electric, expects to make substantial contributions to Southwestern Electric in order to enable it to complete the acquisition of the North Central Wind Energy Facilities. Applicants also state that Southwestern Electric will not proceed with the

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

[22] *Id.* at 8.

[23] *Id.* at 9.

acquisition without first obtaining regulatory approval, including approval of cost recovery for the debt associated with the acquisition. Applicants maintain that Southwestern Electric has every reason to expect that the costs associated with the requested financing authorization will be recovered in the regulatory approval process and that such recovery will be more than sufficient to permit Southwestern Electric to maintain its current investment-grade credit ratings.[24]

16. Applicants state that Wheeling Power is rated A- by S&P and is committed to maintaining its investment-grade rating. Applicants represent that Wheeling Power provides retail electric service at bundled rates approved by the Public Service Commission of West Virginia, with rates set on a cost-of-service basis, including recovery of the costs to service the indebtedness sought here. Applicants state that Wheeling Power has every reason to expect that the costs associated with the requested financing authorization will be recovered in the regulatory approval process and that such recovery will be more than sufficient to permit Wheeling Power to maintain its current investment-grade credit rating.[25]

B. Commission Determination

17. We find that, although Applicants do not meet the Commission's threshold 2.0 interest coverage ratio screen, Applicants have provided other factors that are an alternative basis upon which to conclude that they should reasonably be able to both service the proposed new debt securities for which authorization is sought in the Applications and to continue to be able to provide service as public utilities. Specifically, Applicants currently maintain investment grade credit ratings; AEP Generating receives capital contributions from AEP pursuant to a capital contributions agreement; AEP Texas and Southwestern Electric each have received capital contributions from AEP; and certain of the applicants are able to recover the cost of servicing their debt through rates.

18. On balance, we find that, notwithstanding the failure to meet the interest coverage ratio screen, given the statements set forth in the Applications, Applicants meet the standards of section 204. Applicants' proposed issuances of long-term debt securities: (1) will be for lawful objects within the corporate purposes of Applicants and compatible with the public interest, are 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) are necessary or appropriate for such purposes.

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

[25] *Id.* at 10.

19. Accordingly, we authorize the following for Applicants:

a. Applicants are authorized to issue long-term debt securities not to exceed the following amounts: $150 million for AEP Generating, $1.1 billion for AEP Texas, $1 billion for Southwestern Electric, and $165 million for Wheeling Power.

b. The interest rate for the long-term debt shall be either fixed or variable. The variable interest rate applicable to any borrowing under a bank credit facility entered into pursuant to the requested authorization shall not exceed the highest of (i) the one-month, three-month, six-month, or twelve-month LIBOR in effect at the date of issuance(s), plus an applicable margin of up to 400 basis points. The fixed rate shall not exceed the U.S. Treasury Rate for a comparable term at the date of issuance(s) plus up to 400 basis points.

20. We grant the requested authorization effective June 15, 2020, to be effective for a two-year period until June 15, 2022. Finally, we find good cause to grant the requested waiver of the Commission's competitive bidding and negotiated placement requirements.

C. *Westar* Restrictions

21. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.[26] First, public utilities seeking authorization to issue debt backed by a utility asset must use the proceeds of the debt for utility purposes. Second, if any utility assets that secure debt issuances are divested or "spun off," the debt must follow the asset and also be divested or spun off. Third, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt must follow the non-utility assets. Specifically, if the non-utility assets are divested or spun off, then a proportionate share of the debt must follow the divested or spun-off non-utility asset by being divested or spun off as well. Finally, 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 our authorization on Applicants abiding by these restrictions. Applicants acknowledge an obligation to comply with the four restrictions on secured and unsecured debt specified in *Westar*.[27]

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[26] *Westar*, 102 FERC ¶ 61,186 at P 21.

[27] Applications at 11.

<u>The Commission orders</u>:

(A) Applicants are hereby authorized to issue long-term debt securities in an aggregate amount not to exceed $150 million for AEP Generating, $1.1 billion for AEP Texas, $1 billion for Southwestern Electric, and $165 million for Wheeling Power at the interest rates stated in the body of this order.

(B) The authorization is granted effective June 15, 2020, for a two-year period until June 14, 2022.

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

(D) Applicants are granted waiver from compliance with the Commission's competitive bidding and negotiated placement requirements at 18 C.F.R. § 34.2(a).

(E) 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.

(F) The authorization granted in Ordering Paragraph (A) above 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.

(G) 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)

Kimberly D. Bose,
Secretary.