

166 FERC ¶ 61,189
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Cube Yadkin Transmission LLC

Docket No. ES19-5-000

ORDER DENYING AUTHORIZATION FOR ASSUMPTION OF LIABILITIES

(Issued March 21, 2019)

1. On December 12, 2018, as amended on January 31, 2019, Cube Yadkin Transmission LLC (Cube Yadkin) filed an application pursuant to section 204 of the Federal Power Act (FPA)¹ requesting authorization to issue debt securities or assume obligations and liabilities as a guarantor of its parent company's obligations in the aggregate amount of \$170 million. As discussed below, we deny the application.

I. Background

2. Cube Yadkin owns and operates approximately 21 miles of 13.8 kilovolt (kV) and 100 kV transmission lines that comprise the Yadkin Balancing Authority Area and offers interconnection and transmission service under the rates, terms, and conditions of a Commission-approved Open Access Transmission Tariff.

3. Cube Yadkin requests authorization under section 204 of the FPA to act as a guarantor for its parent company, Helix North America I, LLC (Helix NA), under the terms of a Note Purchase Agreement. Cube Yadkin states that its obligations will take the form of both a guaranty to certain lenders and the grant of a security interest in Cube Yadkin's real estate holdings. Helix NA's debt securities comprise an aggregate principal amount of up to \$170 million, which include fixed and floating rate notes and a senior secured revolving note. The term of the debt will not exceed ten years. Cube Yadkin states that the funds from the debt transaction will be used by Helix NA and its subsidiaries for payment or reimbursement of interconnection and transmission-related upgrade expenses, other capital expenditures, and general corporate purposes, including dividends.

¹ 16 U.S.C. § 824c (2012).

4. Cube Yadkin claims its proposed guarantee of Helix NA is for a lawful object within the corporate purpose of Cube Yadkin and is compatible with the public interest, or consistent with the proper performance by Cube Yadkin as a public utility and will not impair its ability to perform as a public utility.²

II. Notice of Filing

5. Notice of Cube Yadkin's application was published in the *Federal Register*, 84 Fed. Reg. 2845 (2019), with interventions and protests due on or before February 21, 2019. None was filed.

III. Discussion

6. 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.³

7. In reviewing an application under 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.⁴ 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.⁵ In making this finding, the Commission reviews the financial statements submitted with an application filed under section 204 and applicant's calculation of the interest coverage

² Application at 7.

³ 16 U.S.C. § 824c(a) (2012).

⁴ See, e.g., *Old Dominion Elec. Coop.*, 145 FERC ¶ 61,132, at P 12 (2013); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 18 (2008) (*Startrans*).

⁵ *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").

ratio, which is the sum of income before interest and income taxes divided by total interest expense.⁶ The interest coverage ratio is a screen used primarily to provide the Commission with comfort that the financing authorized will not impair an applicant's ability to perform public utility service.⁷ 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.⁸ The Commission has approved section 204 applications that have not met the 2.0 interest coverage ratio threshold where the applicant provided other evidence to support a finding that the proposed issuances of securities will not impair its ability to perform public utility service.⁹

8. Here, Cube Yadkin submitted an interest coverage ratio to demonstrate that the proposed issuances of securities will not impair its ability to perform public utility service. However, Cube Yadkin did so using the combined financial statements of itself and its sister utility, Cube Yadkin Generation, LLC (Cube Generation). The combined financial statements of Cube Yadkin and Cube Generation indicate that together they pass the interest coverage ratio test. However, Cube Generation is not an applicant in this case, and the financial statements required to be submitted in Exhibits A through E under the Commission's regulations are specific to the applicant.¹⁰ Accordingly, we cannot accept this interest coverage ratio screen relying on those financial statements as persuasive evidence that the proposed assumption of liability will not impair Cube Yadkin's ability to perform public utility service. The instant facts are similar to the section 204 application that the Commission recently denied authorization for in *Baja California Power, Inc.*,¹¹ where the owner of a transmission line requested authorization

⁶ *Westar Energy, Inc.*, 102 FERC ¶ 61,186, at P 15 & n.15 (2003) (*Westar*).

⁷ *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.

⁸ See, e.g., *Startrans*, 122 FERC ¶ 61,253 at n.7.

⁹ See, e.g., *NorthWestern Corp.*, 151 FERC ¶ 61,120 (2015); *ITC Great Plains, LLC*, 147 FERC ¶ 61,005 (2014); *Mississippi Power Co.*, 145 FERC ¶ 61,218 (2013).

¹⁰ See 18 C.F.R. § 34.4 (2018); see also *Entergy Arkansas, Inc.*, Docket No. ES15-22-000 et al. (submitting separate financial statements for each operating company applicant).

¹¹ 165 FERC ¶ 61,167 (2018) (*Baja*).

to act as a guarantor for its parent company, but failed to provide evidence that it would have the means to provide utility service if it were granted authorization to act as, and then had to act as, a guarantor of its parent company.

9. As in *Baja*, Cube Yadkin also has not demonstrated that the guarantee of its parent company is necessary or appropriate for, or consistent with, the proper performance by Cube Yadkin of utility service and that a guarantee will not impair its ability to perform that service.

10. Accordingly, we deny Cube Yadkin's application.

The Commission orders:

Cube Yadkin's application under section 204 of the FPA to act as a guarantor for its parent company Helix NA is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.