

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, AUGUST 8, 2024

2024 AUG -8 P 1:03
600 - CLECKSON CTIDE
LOCAL DISTRICT CLERK

APPLICATION OF

APPALACHIAN POWER COMPANY, *et al.*

CASE NO. PUR-2024-00084

For approval of affiliate transactions pursuant to
Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On May 15, 2024, Appalachian Power Company ("APCo"), *et al.* (collectively, "Applicants"),¹ completed the filing of an application ("Application") with the State Corporation Commission ("Commission") to request renewed approval of nine agreements ("Agreements"),² with amendments, between APCo and its Affiliates pursuant to Chapter 4 of Title 56 of the Code of Virginia ("Code").³ The Agreements were previously approved in Case No. PUR-2018-

¹ Twenty-two APCo affiliates ("Affiliates") are co-Applicants of the Application, including Ohio Power Company, Kentucky Power Company ("KPCo"), Indiana Michigan Power Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, AEP Generation Resources, Inc., AEP Generating Company, American Electric Power Service Corporation ("AEPSC"), Kingsport Power Company, Wheeling Power Company ("Wheeling"), Ohio Valley Electric Corporation, Indiana Kentucky Electric Corporation, AEP Appalachian Transmission Company, Inc., AEP Indiana Michigan Transmission Company, Inc., AEP Kentucky Transmission Company, Inc., AEP Ohio Transmission Company, Inc., AEP Oklahoma Transmission Company, Inc., AEP Southwestern Transmission Company, Inc., AEP Texas, Inc., AEP Transmission Company, LLC, AEP Transmission Holding Company, LLC, and AEP West Virginia Transmission Company, Inc. *See* Application at 2-6.

² The nine proposed Agreements include the: (1) Amended and Restated Central Machine Shop Agreement ("CMS Agreement"); (2) Second Amended and Restated Urea Handling Agreement ("Urea Agreement"); (3) Second Amended and Restated Cook Coal Terminal Transfer Agreement ("Coal Transfer Agreement"); (4) Amendment Nos. 1 and 2 to the Rail Car Maintenance Agreement ("Maintenance Agreement"); (5) Amendment Nos. 1, 2, and 3 to the Barge Transportation Agreement ("Barge Agreement"); (6) Amendment to the Affiliate Transactions Agreement ("Transactions Agreement"); (7) Amendment Nos. 1 and 2 and Consent to Affiliated Transactions Agreement for Sharing Capitalized Spare Parts ("Spare Parts Agreement"); (8) Amendment Nos. 1 and 2 and Consent to Affiliated Transactions Agreement for Sharing Materials and Supplies ("M&S Agreement"); and (9) Amendment Nos. 1, 2, and 3 and Consent to AEP System Rail Car Use Agreement ("RCU Agreement"). *See id.* at 6-14.

³ § 56-76 *et seq.* ("Affiliates Act").

00197.⁴ The Applicants also requested interim approval to continue operating under the Agreements pending the Commission's final action in this case. On May 22, 2024, the Commission issued an Order Granting Interim Approval.

APCo has operated under the proposed Agreements for decades.⁵ The proposed amendments to the Agreements add or subtract Affiliates to the Agreements. The other terms and conditions of the Agreements are not changed.

The nine Agreements are separated into three categories. First, APCo provides services to Affiliates under (1) the CMS Agreement. Second, APCo receives services from Affiliates under (2) the Urea Agreement; (3) the Coal Transfer Agreement; (4) the Maintenance Agreement; and (5) the Barge Agreement. Third, APCo shares assets with Affiliates under (6) the Transactions Agreement; (7) the Spare Parts Agreement; (8) the M&S Agreement; and (9) the RCU Agreement.

The Applicants represent that the Agreements are in the public interest because they allow APCo to share in the facilities, resources, and expertise of its Affiliates in a way that ultimately benefits its customers.⁶

NOW THE COMMISSION, upon consideration of this matter and having been advised by the Commission Staff ("Staff") through Staff's action brief and having considered the Applicants' comments thereon, is of the opinion and makes the following findings.

⁴ See *Application of Appalachian Power Company, et al., For approvals pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUR-2018-00197, 2019 S.C.C. Ann. Rept. 342, Order Granting Approval (May 9, 2019) ("2019 Order").

⁵ See Application at 1.

⁶ *Id.* at 16.

On September 1, 2022, KPCo transferred the ownership and operation of the Mitchell Power Plant in West Virginia to Wheeling, APCo's West Virginia Affiliate. At that time, Wheeling became a party to the CMS Agreement, Urea Agreement, Maintenance Agreement, Barge Agreement, and the Spare Parts Agreement, and began receiving services from APCo under the CMS Agreement and the Barge Agreement (collectively, "Wheeling Agreements"). However, no notice was provided to Staff or the Commission of the modified Wheeling Agreements, nor did APCo seek approval from the Commission as statutorily required.

Section 56-77 of the Affiliates Act states in part that "[n]o contract or arrangement...between a public service company and any affiliated interest shall be *valid or effective* unless it shall have been filed with and approved by the Commission" (emphasis added). Section 56-80 further states that "[t]he Commission shall have the same jurisdiction over the modification or amendment of contracts or arrangements herein described as it has over such original contracts or arrangements." Additionally, the 2019 Order directs APCo that "[s]eparate Commission approval shall be required for any changes in the terms or conditions of the Amended Agreement."⁷ Accordingly, APCo was required to obtain Commission approval to enter into the modified Wheeling Agreements, which it did not do. APCo attributes this failure to an oversight.⁸ Staff's review of APCo's 2023 Annual Report of Affiliate Transaction ("ARAT") indicates that while APCo's CMS work performed for Wheeling was booked to Virginia cost of service accounts, the transactions were offset with credits to both expense and capital accounts, so that Virginia customers were not adversely affected.

⁷ See 2019 Order, Appendix, Requirement (4).

⁸ See July 25, 2024 comment letter from the Company included with Staff's action brief which is filed concurrently with this order.

We find that the proposed Agreements are in the public interest and are approved subject to the requirements listed in the Appendix attached to this Order. However, we direct APCo to provide ninety (90) days' notice to the Commission prior to any contemplated changes in the approved Agreements. Secondly, while we exercise our discretion not to take further action at this time, we expect and direct APCo to exercise due diligence and care to ensure compliance with the Affiliates Act and Commission orders in the future.

Accordingly, IT IS ORDERED THAT:

- 1) The Agreements are approved subject to the requirements listed in the Appendix attached to this order.
- 2) APCo must seek Commission approval at least ninety (90) days prior to any contemplated changes in the approved Agreements becoming effective.
- 3) If APCo wishes to continue the Agreements beyond the timeframe approved in this Order, APCo must seek separate approval by submitting a complete filing at least ninety (90) days prior to the expiration of the Commission's approval in this matter.
- 4) This case is dismissed.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

APPENDIX

- 1) APCo shall exercise due diligence and care to ensure compliance with the Affiliates Act and Commission orders in the future.
- 2) The Commission's approval of the Agreements shall extend for five (5) years from the effective date of the Order in this case. If APCo wishes to continue the Agreements beyond that date, separate approval shall be required.
- 3) The Commission's approval shall have no accounting or ratemaking implications.
- 4) The Commission's approval shall be limited to the specific services and transactions ("Services") identified in the Agreements. If APCo wishes to exchange additional Services with its Affiliates under the Agreements, separate Commission approval shall be required.
- 5) Separate approval shall be required for APCo to exchange Services with its Affiliates through the engagement of affiliated third parties, other than AEPSC, under the Agreements.
- 6) APCo shall be required to maintain records, available upon request, demonstrating that any Services exchanged between APCo and the Affiliates under the Agreements are cost-beneficial to Virginia ratepayers. Services exchanged between APCo and a rate-regulated Affiliate shall be at cost. APCo Services provided to an unregulated Affiliate shall be priced at the higher of cost or market where a market exists. APCo Services received from an unregulated Affiliate shall be priced at the lower of cost or market where a market exists. APCo shall bear the burden, in any rate proceeding, of proving that it complied with the Commission's asymmetric pricing policy for affiliate transactions as described above.
- 7) Separate Commission approval shall be required for any changes in the terms and conditions of the Agreements.
- 8) The approval granted in this case shall not preclude the Commission from exercising its authority under Code § 56-76 *et seq.* hereafter.
- 9) The Commission shall reserve the right to examine the books and records of APCo and any affiliate in connection with the approval granted in this case, whether or not such affiliate is regulated by the Commission.
- 10) APCo shall file signed and executed copies of the approved Agreements within sixty (60) days of the effective date of the order in this case, subject to administrative extension by the Commission's Director of the Division of Utility Accounting and Finance ("UAF Director").

- 11) APCo shall include all transactions associated with the approved Agreements in its ARAT submitted to the UAF Director by May 1 of each year, subject to administrative extension by the UAF Director. The ARAT shall include:
- (a) the case number in which the Agreements were approved;
 - (b) APCo, the Affiliate(s), and the Services exchanged; and
 - (c) schedule(s) in Excel electronic media format, with formulas intact, listing the prior calendar year's Services transactions by affiliate, month, Service, FERC⁹ account, and amount as the transactions are recorded on APCo's books.

⁹ "FERC" stands for Federal Energy Regulatory Commission.