

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

American Electric Power Service Corporation

Docket No. ER05-837-000

ORDER DISMISSING NOTICE OF CANCELLATION AND REFERRING
PROCEEDING TO DISPUTE RESOLUTION SERVICE

(Issued June 17, 2005)

1. On April 18, 2005, American Electric Power Service Corporation (AEP), on behalf of its affiliate, Ohio Power Company,¹ filed a proposed notice of cancellation of an Interconnection and Operating Agreement (IA)² between Lima Energy Company, LLC (Lima) and Ohio Power Company. As discussed below, the Commission dismisses AEP's proposed notice of cancellation as premature, and refers the proceeding to the Commission's Dispute Resolution Service. This order benefits customers by enforcing the IA and initiating a non-adjudicatory process that may lead to resolution of the issues raised in this proceeding.

Filing

2. AEP states that the IA is for the interconnection of a generating facility to the AEP transmission system that will be constructed by Lima. AEP states that under the IA, Lima agreed to provide AEP a security payment (section 5.1) and to begin making monthly payments under the payment schedule (Appendix E) in November 2004. It says that Lima did not keep either of these commitments. AEP explains that Lima missed its November 2004 commitment, but then provided written assurance to AEP that the security payment would be posted and that payment under the monthly payment schedule

¹ Ohio Power Company is an operating company of the American Electric Power System.

² Second Revised Service Agreement No. 463 under American Electric Power System's FERC Electric Tariff, Third Revised Volume 6.

would begin by March 31, 2005. AEP states that Lima has not paid and has requested a further extension. In view of these facts, AEP asserts that it is “compelled” to request that the Commission terminate the IA effective April 15, 2005.

3. AEP suggests that Lima request interconnection through PJM Interconnection, L.L.C., since AEP has transferred functional control over its transmission system to PJM.

Notice of Filing, Interventions, Protests and Answer

4. Notice of AEP’s filing was published in the *Federal Register*, 70 Fed. Reg. 22,026 (2005), with interventions, comments or protests due on or before May 6, 2005. Lima, the City of Lima, Ohio (City), and Ormet Primary Aluminum Corporation (Ormet) filed timely motions to intervene and protests. On May 20, 2005, AEP filed an answer to the protests. On May 26, 2005, Lima filed an answer to AEP’s answer.

5. Protestors essentially assert that cancellation of the IA would be detrimental to the financing and completion of the project. Lima adds that: (1) the delays have not prejudiced AEP; (2) the payment schedule in the IA is designed to recover costs that have not yet been incurred; and (3) the initial postponement of payment was allowed under the IA and the subsequent postponement was informally agreed to by AEP.

6. The City states that the renegotiation of the IA would be detrimental to its economic development efforts. It states that it has spent more than \$1.5 million in furtherance of the Lima project and is in the process of planning a \$30 million water reservoir to be used in conjunction with the facility.

7. Ormet states that its power marketing affiliate has an agreement with Lima for the purchase of the output of the generating facility and that cancellation of the IA could prevent its affiliate from obtaining the benefits of that contract. Ormet states that cancellation of the IA will hurt its plans to reactivate its manufacturing facilities in Hannibal, Ohio which currently have reduced operations. Ormet states that construction of the generating facility will remedy one of the issues, high power prices, facing these facilities and is essential to its growth and survival.

Discussion

Procedural Matters

8. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 384.213 (2004), prohibits an answer to protests unless otherwise ordered by the decisional authority. We are not persuaded to accept AEP's answer or Lima's answer to AEP's answer and will, therefore, reject them.

Dismissal and Dispute Resolution Service

10. We will dismiss AEP's proposed notice of cancellation and refer this matter to the Commission's Dispute Resolution Service.

11. Article 6.1 of the IA states, in part :

If an Event of Default shall occur and continue for more than 90 days from the date the notice of default is received, the non-defaulting Party may, by notice and subject to FERC approval, terminate this Agreement as of the date such later notice is received.

Therefore, Lima would have to be in default for 90 days before AEP can terminate the agreement. After Lima missed its November 2004 commitment, Lima provided AEP written assurance that it would begin making monthly security payments by March 31, 2005. According to AEP, Lima failed to make the payment. AEP has now filed a proposed notice of cancellation, which appears to be the first written "notice of default" that qualifies as such under Articles 6 and 7 of the IA. Thus, because notice of the default was given on April 18, 2005, the same date of this filing, the termination cannot be effective until July 17, 2005. As a result, we find that AEP's proposed notice of cancellation is premature and will dismiss it.

12. The Commission notes that the proposed generating facility will be an integrated gasification combined-cycle generating facility that will supply clean efficient energy that will benefit the City and the industrial base in Ohio. AEP's proposed cancellation of the IA would delay development of this facility. Further, the Commission has in several recent orders extended construction milestones where it found that such extension would promote the development of the facilities and not adversely affect other competing generators.³

³ See, e.g., *Virginia Electric and Power Co.*, 110 FERC ¶ 61,039 at P 14 (2005); 104 FERC ¶ 61,249 at P 15 (2003). See also *Florida Power & Light Co.*, 98 FERC ¶ 61,226 at 61,896, *order on reh'g*, 99 FERC ¶ 61,318 (2002).

13. Given the circumstances of this proceeding, we find it appropriate to refer this filing to Dispute Resolution Service. The Commission will direct the Director of its Dispute Resolution Service⁴ to convene a meeting of the parties on or before June 30, 2005 to determine whether they can agree to a process to foster negotiation and eventual agreement on the matters at issue. If during the meeting, the parties are unable to agree to the use of a neutral third party to assist them in the negotiations, the Director of Dispute Resolution Service will promptly notify the Commission. If the parties agree to the use of a neutral third party to assist them in the negotiations, the parties are directed to report the progress of any negotiations to the Commission on or before July 17, 2005, and every 30 days thereafter.

The Commission orders:

(A) AEP's proposed notice of cancellation is hereby dismissed.

(B) The Dispute Resolution Service is hereby directed to convene a meeting of the parties on or before June 30, 2005, to determine whether they can agree to a process to foster negotiation and eventual agreement on the matters at issue.

(C) The parties must report to the Commission the status of their negotiations by July 17, 2005.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁴ The Director of the Dispute Resolution Service is Richard L. Miles, who may be reached at (202) 502-8702 or 1-877-FERC-ADR (1-877-337-2237).