

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 22nd day of January 2015.

CASE NO. 14-0546-E-PC

APPALACHIAN POWER COMPANY and
WHEELING POWER COMPANY,
public utilities.

Petition for acquisition of Mitchell Plant
by Wheeling Power Company.

COMMISSION ORDER

The Commission approves the Indemnity Agreement, subject to certain modifications, and closes this case.

BACKGROUND

On March 4, 2014, Appalachian Power Company (APCo) and Wheeling Power Company (WPCo) (collectively, Companies) filed a plan (Updated Plan) to serve the WPCo customer load by transferring an undivided fifty percent interest of AEP Generation Resources Inc. (Generation Resources) in the Mitchell Power Plant (Mitchell Plant) and associated facilities (Mitchell Assets) from Generation Resources to WPCo at net book value (Mitchell Transfer).

Following hearings on September 17, October 21, and December 11, 2014, on the Updated Plan and the October 9, 2014 Joint Stipulation and Agreement for Settlement (Joint Stipulation) entered into by all but one party to the case, and with no objections raised by any party, the Commission issued an order on December 30, 2014 addressing the substance of the Mitchell Transfer. The Commission appreciated the effort that went in to the Joint Stipulation, and despite the complexity of the Joint Stipulation, the Commission in the December 30, 2014 order, among other things, adopted the Joint Stipulation recommending the transfer to WPCo of an undivided fifty percent interest in the Mitchell Plant, excluding the Conner Run Fly Ash Impoundment and Dam (Conner Run Impoundment) (the Mitchell Plant, excluding the Conner Run Impoundment, will be referred to as the Mitchell Settlement Interest).

One matter of concern expressed by the Commission in the December 30, 2014 Order was the possible liability for prior operation of the Mitchell Plant and prior and ongoing liability as to the Conner Run Impoundment. The Order stated:

The Commission understands the Stipulating Parties' resolution of the liability issues: that lack of ownership pre-transfer of Mitchell and lack of ownership of interest in the water discharged into the Conner Run Impoundment, post-transfer, equates to no liability for WPCo. Given, however, the concerns expressed in the record about the Conner Run Impoundment and in the interest of erring on the side of caution, the Commission believes a "belt and suspenders" approach would be better suited to protecting the ratepayers from the impact of any future liability regarding the Conner Run Impoundment. Specifically, the Commission will require that Companies submit appropriate agreements executed by an AEP corporate entity that will survive the transfer of the Mitchell Settlement Interest, that will indemnify WPCo and its ratepayers against any liability, including judgments, fines, penalties or other costs or expenses related to (i) the Mitchell Plant or its operations, including the Conner Run Impoundment, prior to the transfer of the Mitchell Settlement Interest to WPCo and (ii) any aspect of the Conner Run Impoundment subsequent to transfer of the Mitchell Settlement Interest to WPCo. The Commission is aware that indemnity agreements can be complex, contentious and complicated and can take on a life of their own. We will not undertake to dictate the terms of the indemnity agreements. The indemnification may be in a separate, standalone agreement or as a modification or addendum to the Agreement to Effectuate. The bottom line, however, is that the indemnity should fully protect WPCo and the WPCo ratepayers from any liability associated with the Mitchell Plant or its operations, including the Conner Run Impoundment, prior to the transfer of the Mitchell Settlement Interest to WPCo and any aspect of the Conner Run Impoundment subsequent to transfer of the Mitchell Settlement Interest to WPCo.

The Commission will, in this proceeding, promptly review the standalone document, or the modified agreement, submitted by WPCo, containing the indemnity provision as an affiliate agreement pursuant to W.Va. Code §24-2-12 and issue an Order at the close of that review. The Commission will attempt to complete that review within ten days of submission of those document or documents.

Order at 7-8.

On January 9, 2015, Generation Resources and WPCo (Indemnification Agreement Companies) filed their proposed Indemnification Agreement (attached as Appendix A to this Order).

DISCUSSION

Because the Indemnification Agreement was, of necessity, drafted without consultation among Generation Resources, WPCo, and the Commission, the Commission requires modification of the document.

Indemnification Agreement, Paragraph 1

Paragraph 1 of the Indemnification Agreement reads:

1. AEPGR shall indemnify, defend at its expense, and save WPCo harmless from any liabilities, costs and claims, including judgments, fines and penalties or other costs or expenses, imposed upon WPCo to the extent related to the Conner Run Impoundment, whenever arising, except for liabilities, cost or claims to the extent arising out of the use by WPCo, its employees, agents or contractors, of its right to enter upon and use roads pursuant to Paragraph 3 of the Agreement to Effectuate. [Emphasis added.]

The underlined language appears to exclude indemnity for any actions taken by WPCo while using the Conner Run Impoundment roads. This goes too far. The underlined language should be modified to clarify that the exclusionary language is limited to negligence on the part of WPCo. The Commission considers the following modification as acceptable and more appropriate:

except for liabilities, cost or claims to the extent attributable to the negligent use by ~~arising out of the use by~~ WPCo, its employees, agents or contractors, of its right to enter upon and use roads pursuant to Paragraph 3 of the Agreement to Effectuate.

The Indemnification Agreement Companies should modify the Indemnification Agreement accordingly.

Indemnification Agreement, Paragraph 2

As noted in the December 30, 2014 Order, the Commission sought an indemnity agreement that would fully protect WPCo and the WPCo ratepayers from any liability associated with the Mitchell Plant or its operations, including the Conner Run Impoundment, prior to the transfer of the Mitchell Settlement Interest to WPCo and any aspect of the Conner Run Impoundment subsequent to transfer of the Mitchell

Settlement Interest to WPCo. Paragraph 2 appears to succinctly implement the intended indemnification from any liability associated with the Mitchell Plant, or its operations prior to the transfer, but it contains an exception that is not quantified in the agreement, and to our knowledge is not specifically quantified in the record of this proceeding. The indemnification in paragraph 2 states:

With regard to any other Assumed Liabilities under Section 2.03(a) of the Asset Contribution Agreement related to Liabilities arising out of tort claims or a breach of Laws, Permits, or Environmental Permits, owing to third parties, not factored into the Net Book Value of the Transferred Assets, and to the extent arising during periods prior to the Effective Time, [Emphasis added.]

The underlined phrase limits the indemnification as to certain items depending on whether the item was factored into the net book value of the transferred assets. We assume that Exhibit C, page 2 of 2, attached to the March 4, 2014 Updated Plan, which described proposed accounting entries reflecting the proposed transfer of generation assets and related liabilities from Generation Resources to WPCo, fully reflects the liability accounts that were factored into the net book value of the transferred assets.¹ The Indemnification Agreement Companies should attach and incorporate by reference to the Indemnification Agreement, a quantification of the dollar amounts along with an explanation of the make-up of those accounts and whether those amounts include any liabilities arising out of tort claims or a breach of Laws, Permits, or Environmental Permits, and arising during periods prior to the Effective Time, that are factored into the net book value of the transferred assets.

As modified above, the terms and conditions of the Indemnification Agreement are reasonable, neither party thereto is given an undue advantage over the other, and the Indemnification Agreement does not adversely affect the public in this State. The Commission will approve the Indemnification Agreement, as modified, without specifically approving the terms and conditions therein. WPCo should file the signed version of the revised Indemnification Agreement as a closed entry to this case as soon as possible after closing on the Mitchell Settlement Interest.

CONCLUSION OF LAW

1. Portions of the Indemnity Agreement require modification.

¹ Specifically, it appears that account 230 (asset retirement obligations), 236 (taxes accrued), 242 (miscellaneous current and accrued liabilities), and 253 (other deferred credits) constitute the referenced liability accounts.

2. As modified, the Indemnity Agreement is reasonable, no party thereto is given an undue advantage over the other, and the agreement does not adversely affect the West Virginia public.

ORDER

IT IS THEREFORE ORDERED that the Commission grants its consent and approval for Wheeling Power Company to enter into the Indemnification Agreement, as modified by this Order.

IT IS FURTHER ORDERED that as soon as possible after closing of the Mitchell Settlement Interest, Wheeling Power Company file a copy of the revised Indemnification Agreement as a closed entry in this case.

IT IS FURTHER ORDERED that on entry of this order this case shall be removed from the Commission docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this order by electronic service on all parties of record who have filed an e-service agreement, by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Staff by hand delivery.

A True Copy, Teste,



Ingrid Ferrell
Executive Secretary

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INDEMNIFICATION AGREEMENT

This Indemnification Agreement is made effective on January 31, 2015 (the "Effective Date"), by and between AEP Generation Resources Inc., a Delaware corporation ("AEPGR"), and Wheeling Power Company, a West Virginia corporation ("WPCo") (collectively, the "Parties").

RECITALS

WHEREAS, AEPGR and WPCo are subsidiaries of American Electric Power Company, Inc. ("AEP"), the parent company in an integrated public utility holding company system; and

WHEREAS, AEPGR owns a fifty percent (50%) undivided interest in the Mitchell Power Generating Facility consisting of two 800 MW generating units and associated plant, equipment and real estate, located in Moundsville, West Virginia; and

WHEREAS, AEPGR desires to transfer to WPCo, and WPCo desires to have transferred to it, AEPGR's interest in the Mitchell Power Generating Facility but excluding AEPGR's interest in the Conner Run Fly Ash Impoundment and Dam (the "Mitchell Settlement Interest") pursuant to the terms of an Asset Contribution Agreement between AEPGR and Newco Wheeling Inc., a West Virginia corporation to be merged into WPCo (the "Asset Contribution Agreement"), defined terms from which may be used herein; and

WHEREAS, Appalachian Power Company, another subsidiary of AEP, and WPCo have entered into a Joint Stipulation and Agreement for Settlement submitted on October 9, 2014, in Case No. 14-0546-E-PC before the Public Service Commission of West Virginia ("Joint Stipulation"), and AEPGR and WPCo will enter into an Agreement to Effectuate the Terms of the Joint Stipulation and Agreement for Settlement ("Agreement to Effectuate") as approved by the Public Service Commission of West Virginia; and

WHEREAS, the Public Service Commission of West Virginia issued an Order dated December 30, 2014 in Case No. 14-0546-E-PC (the "Order") requiring that, in addition to the protections afforded WPCo in the Joint Stipulation, an AEP entity provide indemnification to WPCo for certain liabilities relevant to the Conner Run Fly Ash Impoundment and Dam ("Conner Run Impoundment") and the transfer of the Mitchell Settlement Interest; and

WHEREAS, the Parties intend that this Indemnification Agreement shall satisfy the requirements of the Order;

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

1. AEPGR shall indemnify, defend at its expense, and save WPCo harmless from any liabilities, costs and claims, including judgments, fines and penalties or other costs or expenses, imposed upon WPCo to the extent related to the Conner Run Impoundment,

whenever arising, except for liabilities, cost or claims to the extent arising out of the use by WPCo, its employees, agents or contractors, of its right to enter upon and use roads pursuant to Paragraph 3 of the Agreement to Effectuate.

2. The Asset Contribution Agreement sets forth in Section 2.03 the "Assumed Liabilities" that Newco Wheeling Inc. as Transferee shall assume. Nothing herein shall affect Transferee's assumption of the Assumed Liabilities set forth in Section 2.03(b)-(e). With respect to the Assumed Liabilities in Section 2.03(a), nothing herein shall affect Transferee's assumption of the Assumed Liabilities for obligations arising under contracts or otherwise, whether arising from or related to periods prior to, on or after the Effective Time of the Asset Contribution Agreement with regard to Assumed Liabilities for obligations arising in the normal course of business or factored into the establishment of the Net Book Value of the Transferred Assets. With respect to the Assumed Liabilities in Section 2.03(a), nothing herein shall affect Transferee's assumption of the Assumed Liabilities for obligations arising on or after the Effective Time. With regard to any other Assumed Liabilities under Section 2.03(a) of the Asset Contribution Agreement related to Liabilities arising out of tort claims or a breach of Laws, Permits, or Environmental Permits, owing to third parties, not factored into the Net Book Value of the Transferred Assets, and to the extent arising during periods prior to the Effective Time, AEPGR shall indemnify, defend at its expense, and save WPCo harmless from any such liabilities, costs and claims, including judgments, fines and penalties or other costs or expenses, imposed upon WPCo related to the Mitchell Settlement Interest.

IN WITNESS WHEREOF, the parties have executed this Agreement effective upon the Effective Date set forth above.

AEP GENERATION RESOURCES INC.

WHEELING POWER COMPANY

By: Charles E. Zebula
Charles E. Zebula
President

By: Charles R. Patton
Charles R. Patton
President