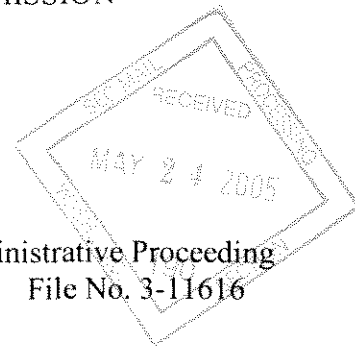


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

AMERICAN ELECTRIC POWER COMPANY, INC.

Administrative Proceeding
File No. 3-11616



**PETITION FOR REVIEW OF INITIAL DECISION
OF
AMERICAN ELECTRIC POWER COMPANY, INC.**

In accordance with Rule 410(a) of the Securities and Exchange Commission's ("Commission") Rules of Practice, 17 C.F.R. § 201.410(a) (2004), American Electric Power Company, Inc. ("AEP") hereby submits a Petition for Review of the Hearing Officer's May 3, 2005 Initial Decision in the above-captioned proceeding. This case is before the Commission on remand from a decision of the United States Court of Appeals for the District of Columbia Circuit.¹ In that decision, the Court found that the Commission failed to address adequately whether the holding company system resulting from the merger of AEP and the Central and South West Corporation ("CSW") satisfies two components of the definition of "single integrated public-utility system" under Section 2(a)(29)(A) of the Public Utility Holding Company Act ("Act"); specifically, whether the combined AEP/CSW system was physically interconnected or capable of physical interconnection and whether such system operates in a "single area or region." By Order dated August 30, 2004, the Commission set these two issues

¹ See *Nat'l Rural Elec. Coop. Ass'n v. SEC*, 276 F.3d 609 (D.C. Cir. 2002).

for hearing before a Hearing Officer. On May 3, 2005, the Hearing Officer issued an Initial Decision finding that the AEP/CSW system met the Act's interconnection requirement but failed to satisfy the "single area or region" requirement.

AEP petitions for Commission review of the Hearing Officer's finding that the AEP system is not "confined in [its] operations to a single area or region" and therefore "does not constitute a 'single integrated public-utility system' under the Act." Initial Decision at 23. As discussed below, the Initial Decision adopts an interpretation of Section 2(a)(29)(A) of the Act that is not based on the language of the statute, and that is inconsistent with the purposes of the Act and with the Commission's reasoning in a series of recent orders approving holding company mergers in which the Commission based its decisions on changes in the technology, structure and regulation of the electric power industry in the seventy years since the Act was enacted. Interpretation of the statute in the context of the electric power industry as it exists today is a task entrusted to the Commission.

Rule 411(b) provides that Commission review is mandatory in cases of "adjudication not required to be made on the record after notice and opportunity for hearing." 17 C.F.R. § 201.411(b). Although a full evidentiary hearing was held in this case, the Act does not "require" adjudication of merger applications "on the record after notice and opportunity for hearing." Therefore, according to the language of Rule 411(b), Commission review of the Initial Decision here is mandatory.

In any event, Commission review is clearly appropriate under the standards applicable to discretionary Commission review of Initial Decisions. Rule 411(b) states that the Commission will review an Initial Decision whenever the petitioner "makes a reasonable showing" either that "prejudicial error was committed in the conduct of the proceeding," *id.* § 201.411(b)(2)(i), or that

the Initial Decision embodies a “clearly erroneous” finding of fact, an “erroneous” conclusion of law, or “[a]n exercise of discretion or decision of law or policy that is important and that the Commission should review.” *Id.* § 201.411(b)(2)(ii). As shown below, the Initial Decision erred in its findings of both law and fact. In addition, the Initial Decision raises important public policy issues affecting the electric power industry that clearly warrant Commission review.

A. The Initial Decision Embodies Erroneous Conclusions of Law by Engrafting onto the Definition of “Single Integrated Public Utility System” Requirements That Are Not Found in the Statutory Language and That Are Inconsistent with the Purposes of the Act

The Initial Decision finds that the AEP/CSW system does not satisfy the “single area or region” requirement of Section 2(a)(29)(A) of the Act based on what the Hearing Officer calls “traditional considerations” of what constitutes an area or region. Initial Decision at 21. The Initial Decision finds that AEP improperly proposed to apply “broad-based economic considerations” to the analysis of this statutory standard, which the Hearing Officer found to be “contrary to the Commission’s traditional method of analysis.” *Id.*

The Initial Decision neither analyzed the text of the statute nor explained why AEP’s position does not conform to the statutory language. The statutory definition of “single integrated public-utility system” does not direct the Commission to apply any particular “traditional” notion of what constitutes a single area or region. Rather, the term “single area or region” in Section 2(a)(29)(A) of the Act should be interpreted, consistent with the statutory text and principles of statutory construction, so as to accomplish the statutory objectives of ensuring that holding company systems can be properly managed, effectively regulated and efficiently operated. AEP’s position and associated evidence conformed to the text of the provision and demonstrated that the AEP/CSW system can be operated in a manner that is consistent with accomplishment of the purposes of the Act. In contrast, the Initial Decision strayed beyond the

statutory language by imposing extra-statutory limitations on what constitutes an acceptable single area or region based solely on the Hearing Officer's interpretation of the factors that the Commission has supposedly applied in the past.

The Initial Decision states that the Commission has relied on certain traditional "geographic" considerations in defining a "single area or region" in other orders, including several issued in the 1940s shortly after the Act was passed. Initial Decision at 20-21. In fact, in several recent cases the Commission has applied the statutory definition of "single integrated public-utility system" in a manner that reflects the current state of the electric power industry rather than the outdated factors considered by the Hearing Officer, which AEP's evidence shows to bear little relevance to the way electricity is generated, distributed and sold in the markets in which AEP operates today. The Commission has recognized that the definition of a "single integrated public-utility system" should take into account changes in technology and in regulatory policy (such as FERC's open access policies) that have broadened the appropriate geographic scope of efficiently planned and operated electric systems.²

The Commission's recent interpretation of the Act, based on current industry conditions, conforms to longstanding principles of statutory construction. A long and unwavering line of cases supports agency interpretation (including changed interpretation) of the statutes they administer to reflect current economic and technological conditions.³ AEP cited to the applicable case law on brief and explained its relevance, but the Hearing Officer disregarded it.

² *E.g.*, *CP&L Energy, Inc.*, Holding Co. Act Release No. 27284, 54 S.E.C. 996 (Nov. 27, 2000).

³ *E.g.*, *New York v. FERC*, 535 U.S. 1, 7-8, 23 (2002); *Am. Trucking Ass'ns, Inc. v. Atchison, Topeka & Santa Fe Ry. Co.*, 387 U.S. 397, 416 (1967); *Florida Cellular Mobil Comm. Corp. v. FCC*, 28 F.3d 191, 196 (D.C. Cir. 1994).

B. The Initial Decision Embodies Legal Error by Disregarding Substantial Evidence Presented by AEP Demonstrating That the AEP/CSW System Is Confined to a Single Area or Region

Because the Initial Decision finds that only so-called “traditional” factors can be used to apply the single area or region requirement, it disregarded substantial evidence presented by AEP showing that the AEP/CSW system is within a single area or region based on current electric industry market conditions, technology and regulation. In addition, AEP submitted evidence of the substantial economic and infrastructure connections between its East and West zones. In fact, AEP’s evidence was the only evidence presented in the case that attempted to apply the statutory language to the relevant facts. The Commission set this case for hearing in order to develop an evidentiary record on the issues remanded from the Court of Appeals. The Hearing Officer took evidence as the Commission directed, but then decided the issue on the basis of an interpretation of the Act that made the hearing superfluous.

C. The Initial Decision Raises Important Public Policy Issues That Demand Careful Consideration By The Full Commission

The Commission should also revisit the Initial Decision because it raises important public policy issues that the Commission should consider. *See* 17 C.F.R. § 201.411(b)(2)(ii)(C). The Commission has approved several recent utility holding company mergers, in addition to the AEP/CSW merger, based on an interpretation of the Act’s “single integrated public-utility system” standard that is consistent with AEP’s position in this proceeding. The Initial Decision’s narrow and arcane interpretation of the Act is inconsistent with these decisions, and threatens future approvals of efficient holding company mergers that may benefit consumers. In addition, at a time when government policy supports the broadening of markets for electricity to enhance efficiency and reliability, the Initial Decision proposes that the Commission retreat to an interpretation of the Act that is based on an obsolete model of the electric industry that the Act

does not require to be used and that is inconsistent with the Act's pro-consumer objectives.

D. The Hearing Officer Exceeded His Delegated Authority

In the first Ordering paragraph of the Initial Decision, the Hearing Officer orders that AEP's application for approval of the acquisition of CSW "be, and hereby is, DENIED." Initial Decision at 23. The Commission's August 30, 2004, Order setting this matter for hearing directed the Hearing Officer to take evidence on two issues that were remanded by the Court of Appeals and to issue an Initial Decision on these two issues. The Hearing Officer was not delegated authority to reach ultimate conclusions as to the appropriate disposition of AEP's application to acquire CSW, which was appropriate in these circumstances in light of the fact that the acquisition was lawfully consummated pursuant to the Commission's prior order. Accordingly, the Hearing Officer erred in exceeding the scope of his delegated authority from the Commission.

E. Conclusion

In sum, the Initial Decision includes an erroneous conclusion of law by misinterpreting Section 2(a)(29)(A) of the Act. The Initial Decision also incorporates erroneous findings of law and fact because it disregards AEP's evidence that the AEP/CSW system operates in a single area or region. The Initial Decision also errs as a matter of law by failing to take into account Commission decisions which properly interpret Section 2(a)(29)(A) of the Act in accordance with current industry conditions. Finally, the Initial Decision represents bad public policy and threatens to harm the efficient development of the electric power industry.

For all of the foregoing reasons, the Commission should review the Initial Decision in this case so it can reconsider the important issues of statutory interpretation and public policy raised by that Decision.

Respectfully submitted,



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