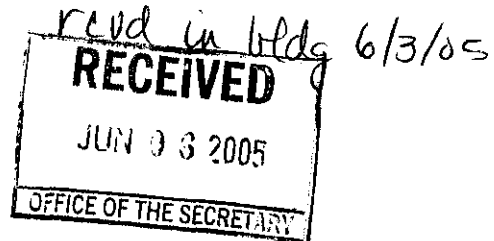


Public Citizen

Buyers Up • Congress Watch • Critical Mass • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

June 3, 2005

Jonathan G. Katz
Secretary of the Commission
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549



**Re: In the Matter of American Electric Power Company, Inc.,
Administrative Proceeding No. 3-11616**

Dear Secretary Katz:

Enclosed for filing are the original and three copies of the Cross-Petition for Review of Initial Decision of Public Citizen, Inc.

If there are any questions regarding this filing, please contact the undersigned. Thank you for your assistance in this matter.

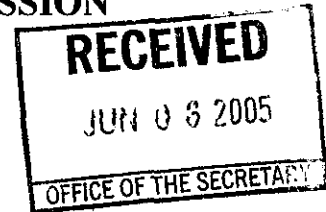
Respectfully submitted,

Lynn N. Hargis
Counsel for Public Citizen, Inc.
(202) 454-5183

Enclosures

Cc: Administrative Law Judge Robert G. Mahony
All Parties Identified on Attached Certificate of Service

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
)
_____)

CROSS PETITION FOR REVIEW OF
INITIAL DECISION OF PUBLIC CITIZEN, INC.

Pursuant to Rule 410(b) of the Commission’s Rules of Practice (17 C.F.R. § 201.410(b)(2004), Public Citizen, Inc. (Public Citizen) submits a cross-petition for review of Initial Decision Release No. 283, filed on May 3, 2005, in the above-captioned proceeding. Public Citizen petitions for review of the Initial Decision’s conclusion that the utility assets of the American Electric Power Company, Inc., (AEP) and Central and South West Corporation (CSW) systems satisfy the “interconnection” requirement of section 2(a)(29)(A) of the Public Utility Holding Company Act (PUHCA), which provides that the utility assets of a “single integrated public-utility system” must be “physically interconnected or capable of physical interconnection.” 15 U.S.C. § 79b(a)(29)(A)(2000).

AEP and the Commission’s Division of Investment Management (together, the Merger Supporters) each filed on May 24, 2005, a petition for review of the Initial

Decision. If the Commission reviews the Initial Decision as requested in their petitions, such review should also include the issues raised in the instant cross-petition.

The background of this proceeding has been included in both the petitions for review of the Merger Supporters, as well as in the Cross-Petition for Review of the National Rural Electric Cooperative Association (NRECA) and the American Public Power Association. (APPA), and will not be repeated here.

Exceptions to Findings and Conclusion of Initial Decision

A. The Initial Decision Contains Errors of Fact and Law.

The Initial Decision contains clearly erroneous findings of fact and erroneous conclusions of law regarding the question of whether AEP and CSW are “physically interconnected or capable of physical interconnection” and whether their systems can therefore be “economically operated as a single interconnected and coordinated system.”

The Initial Decision finds that the interconnection requirement is met because “energy has been consistently transferred in both directions since approval of the merger” although AEP has made a “business decision” not to obtain contractual rights to transmit energy from west to east because it was too costly.” Initial Decision at 12. On its face, this very finding shows that the statutory requirements have *not* been met; AEP’s own business decision testifies to the fact that the two utility systems cannot be “economically operated as a single interconnected and coordinated system” because it is too costly to do so.

Both the Merger Supporters at hearing attempted to hack up the statutory definition of a “single integrated system” so that they could argue that the mere ability of two utilities to reach each other by electric transmission contracts is all that is required

under the statute to meet the interconnection standard. This is not so; such utility assets must not only be “interconnected” but they must also be “economically operated as a single *interconnected* and coordinated system.”

The Initial Decision errs in finding that the statutory standard is that there has been “consistent” transfer of energy in both directions to constitute “interconnection.” Initial Decision at 12. To the contrary, if AEP transferred one megawatthour a year across the contract paths, whenever the intervening systems were able to carry it, this would be a “consistent” transfer of energy, but it would in no way indicate that the systems were operated in an “interconnected” manner. “Consistent” transmission is not the statutory standard, which requires the two--in this case widespread sets of utility assets--to be interconnected in such a way that they can be “economically operated as a single interconnected and coordinated system.” AEP has admitted at the hearing that it would not be economic to obtain the firm contract rights necessary to actually interconnect these assets in a way that would allow them to operate as an electrically interconnected and coordinated system because it would be “too costly.”

In any event, it is clear from the evidentiary record and from AEP’s own evidence that the vast majority of energy was only transferred in one direction, 98% from east to west, and only 2% from west to east. AEP’s own exhibits clearly show that in some months no energy traveled to the west at all. In addition, AEP—which bears the burden of proof—provided no information regarding when the handful of megawatthours of energy actually traveled, but only show a monthly average of megawatthours transferred. Public Citizen’s expert public utility witness testified on cross examination that such

evidence is meaningless to show any interconnected or coordinated operation but only shows sporadic transfers of energy that could occur anytime and for any reason.

- B. Even if the Commission Reverses the Initial Decision on the Single-Area-or-Region Issue, it Must Deny the Merger Unless it Can Explain How the Two Systems are Interconnected in a Way that Allows them to be Economically Operated As a Single Interconnected and Coordinated System Under the Facts of This Case.

The Court of Appeals remanded this matter to the Commission along with a map to, *inter alia*, get an explanation of why the Commission departed from its own precedent and no longer required “interconnection” to consist of, at the very least, firm contractual transmission in two directions between these “non-contiguous and seemingly disparate” sets of utility assets. The “interconnection” theories advanced by the Merger Supporters herein would mean virtually every utility in the United States (with the possible exception of Hawaii) would qualify as “interconnected” with every other utility for purposes of the statutory definition. This would thus effectively result in the Commission eliminating this vital part of the definition of a “single integrated system,” which--as the Court of Appeals has held--the Commission may not do.

As noted by NRECA and APPA in their cross-petitions for review, the mere existence of the possibility of AEP’s and CSW’s obtaining transmission under FERC’s “open access” transmission program—which, of course, equally means the existence of the possibility that no transmission will be available when needed—does not in any way change the requirements for firm interconnection that would be required for widespread utility assets to economically operate as a single integrated utility system. Public Citizen’s expert public utility witness testified to this effect and this testimony was not challenged on cross examination.

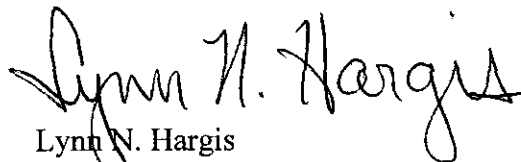
Finally, Public Citizen notes that, while AEP and CSW may be *financially* interconnected, this was equally true of Samuel Insull's utility holding company empire and the many others that did, indeed, collapse together financially and declare bankruptcy in an interconnected manner, prior to passage and enforcement of PUHCA. There were 53 utility holding company bankruptcies and 23 bank loan defaults from 1925 to 1936 according to the 1995 SEC staff report to Congress, but there has not been a single PUHCA-regulated electric utility holding company that has declared bankruptcy since (although a number of PUHCA-*exempt* electric utilities have gone bankrupt). The Commission must therefore take very seriously its consumer and investor protection responsibilities under PUHCA, especially after granting Enron Corp numerous exemptions from PUHCA prior to Enron's bankruptcy.

CONCLUSION

For the reasons given above and in the Cross-Petition for Review of NRECA and APPA, Public Citizen petitions the Commission to review the Initial Decision's resolution of the interconnection issue, should it decide to review the Initial Decision's resolution of the single-area-or-region issue, and to set both sets of issues for concurrent briefing.

Public Citizen believes that summary affirmance of the Initial Decision on the single-area-or-region issue is fully justified on the merits. Nonetheless, Public Citizen believes in due process and that AEP is entitled to argue its case to the Commission. This belief is held despite that holding company's arrogant disregard for the statute and the petition for review in the Court of Appeals in going forward with such a huge holding company merger, covering eleven widespread states, that was clearly questionable as to whether it could result in a "single integrated system" within a "single area or region" of the country.

Respectfully submitted,



Lynn N. Hargis
Counsel for Public Citizen, Inc.

Cc: Presiding Administrative Law Judge Mahony
Service List