

# SECURITIES AND EXCHANGE COMMISSION

(Release No. 35-28022; 70-10317)

August 30, 2005

## Order Authorizing Acquisition of Certain Utility Assets

### American Electric Power Company, Inc., et al.

American Electric Power Company, Inc. (“AEP”), a registered public-utility holding company, and Columbus Southern Power Company (“CSP”), a wholly owned electric utility subsidiary of AEP (together, “Applicants”), both located in Columbus Ohio, have filed an application-declaration, as amended (“Application”), with the Securities and Exchange Commission (“Commission”) under sections 9(a)(1) and 10 of the Public Utility Holding Company Act of 1935, as amended (“Act”), and rule 54. A notice of this Application was issued on July 27, 2005.<sup>1</sup> The Commission has not received any request for a hearing.

CSP is requesting authority to purchase the Waterford Energy Center, a natural-gas fired combined cycle power plant (“Waterford Facility”) and an exempt wholesale generator, as defined under section 32 of the Act (“EWG”), from Public Service Enterprise Group, Incorporated (“PSE”), an electric and gas utility holding company that claims exemption from registration under section 3(a)(1) of the Act by rule 2, and PSEG Power LLC, a wholly owned subsidiary of PSE (together, “PSEG”).

#### I. Background

CSP is engaged in the generation, transmission and distribution of electric power

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<sup>1</sup> See American Electric Power Company, Inc., et al., Holding Co. Act Release No. 28005.

to approximately 707,000 retail customers in Ohio and in supplying and marketing electric power at wholesale to other electric utilities, municipalities and other market participants.<sup>2</sup> Applicants state that the Waterford Facility has a nominal generating capacity of 821 megawatts and is located in southeastern Ohio and that its sellers, PSE and PSEG Power LLC, are a New Jersey corporation and its wholly owned Delaware subsidiary, respectively. PSE is the holding company of a utility serving approximately 2.1 million electric customers and 1.7 million natural gas customers in New Jersey. PSE also owns significant assets which are not regulated under the Act.

## II. The Transaction

CSP proposes to purchase the Waterford Facility from PSEG, having entered into a purchase and sale agreement dated as of May 24, 2005, for a purchase price of \$220,000,000 (“Purchase Price”). Applicants state that the Purchase Price is less than the original book value of the facility and, by virtue of the arms-length negotiations between the parties, represents the fair market value of the asset.

Applicants anticipate a closing date for the proposed transaction in the third quarter of 2005. Applicants propose that PSEG will sell and transfer to CSP, and CSP will purchase from PSEG, substantially all of the assets and related liabilities associated with the Waterford Facility and that PSEG will deliver the assets and related liabilities,

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<sup>2</sup> Applicants state that CSP was organized in Ohio in 1937, with its earliest direct predecessor company having been organized in 1883. CSP’s service area is comprised of two areas in Ohio. One area includes the City of Columbus and the other is a predominantly rural area in south central Ohio. Applicants also state that, in addition to its AEP system interconnections, CSP is interconnected with several unaffiliated utility companies and that it joined PJM on October 1, 2004.

free and clear of any mortgage, lien or other security.<sup>3</sup> Applicants state that CSP will finance payment of the Purchase Price through a combination of cash on hand (which may be increased by a capital contribution from AEP) and the issuance of indebtedness. The financing of the acquisition is not expected to alter significantly the capitalization of CSP.

Applicants also state that, under an interconnection and operation agreement between PSEG and American Electric Power Service Corporation (the service company affiliate of CSP) dated as of October 20, 2000 (“Interconnection Agreement”), the Waterford Facility is interconnected with CSP’s transmission grid and its public utility affiliates. Applicants state that, as part of the proposed transaction, all of PSEG’s rights and obligations under the Interconnection Agreement will be assigned to CSP.

Applicants further state that, upon completion of the Waterford Facility acquisition, the facility will be integrated with AEP’s electric public-utility system and the Waterford Facility will no longer be an EWG.

Applicants’ proposed transactions are also subject to rule 54. Rule 54 states that, if the provisions of rule 53(a), (b) and (c) are satisfied, the Commission will not consider the effect of the capitalization or earnings of registered holding company subsidiaries that are exempt wholesale generators (“EWGs”), or foreign utility companies (“FUCOs”) (as defined in sections 32 and 33 of the Act, respectively), in determining whether to approve other transactions that are other than with respect to EWGs or FUCOs. AEP states that, currently, it meets all the requirements of rule 53(a) and that, although none of the

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<sup>3</sup> Applicants explain that related liabilities include certain environmental liabilities but exclude any liability for offsite disposal and for environmental fines and penalties that may arise from PSEG’s ownership of the facility.

circumstances described in rule 53(b)(1) or (b)(3) have occurred, the circumstances described in rule 53(b)(2) have occurred.<sup>4</sup> AEP does, however, satisfy the requirements of rule 53(c), so that approval of the transactions proposed in this Application would not have a substantial adverse impact upon the financial integrity of registered holding company system within the meaning of section 32(h)(4) of the Act and the effect of the investments upon system capitalization need not be considered under section 7(d) of the Act. AEP further represents that the common equity ratios of its utility subsidiaries will continue to be maintained at not less than 30 percent.

### III. Conclusion

We have examined the Application under the applicable standards of the Act and have concluded that the proposed transactions are consistent with those standards. We have reached those conclusions on the basis of the complete record before us.

Applicants state that the fees and expenses to be paid or incurred in connection with the proposed transactions are approximately \$289,000. Applicants state that approval of the US Department of Justice under the Hart-Scott-Rodino Act will be required for the proposed purchase and sale of the facility and, further, that the

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<sup>4</sup> AEP would otherwise meet the safe harbor requirements of rule 52(a) and, further, be authorized by the Commission to invest, among other things, up to 100% of its consolidated retained earnings, with consolidated retained earnings to be calculated on the basis of the combined consolidated retained earnings of AEP and CSW. See American Electric Power Co., Inc., et al., Holding Co. Act Release No. 27186 (June 14, 2000).

Applicants state that, as of March 31, 2005, AEP's "aggregate investment," as defined in rule 53(a)(1), in EWGs and FUCOs was approximately \$211 million, or about 11% of AEP's "consolidated retained earnings," also as defined in rule 53(a)(1), for the four quarters ended March 31, 2005 (\$1.62 billion). As of March 31, 2005, AEP's consolidated capitalization consisted of 59.8% debt, 40.2% common and preferred equity (consisting of common stock representing 39.9% and \$61 million principal amount of preferred stock representing 0.3%).

transaction is not subject to the jurisdiction of any federal commission other than the Federal Energy Regulatory Commission, the Federal Communications Commission and the Commission.<sup>5</sup>

Due notice of the filing of the Application has been given in the manner prescribed by rule 23 under the Act and no hearing has been requested of, or ordered by, the Commission. Based on the facts in the record, the Commission finds that the applicable standards of the Act are satisfied and that no adverse findings are necessary.

IT IS ORDERED that the Application is granted and permitted to become effective immediately.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz  
Secretary

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<sup>5</sup> Applicants state that the purchase and sale of the Waterford Facility is not subject to the jurisdiction of, or other review by, The Public Utilities Commission of Ohio, as generation facilities have been deregulated by law in Ohio. They further state that the purchase and sale of the transmission assets are subject to the jurisdiction of the Federal Energy Regulatory Commission and the transfer of communication licenses from PSEG to CSP requires the approval of the Federal Communications Commission.