

## **SECURITIES AND EXCHANGE COMMISSION**

**(Release No. 35-28065)**

**Allegheny Energy, Inc., et al (70-10330)**

### **Order To Sell Certain Utility Assets And To Pay Dividends Out Of Unearned Surplus**

**November 21, 2005**

Allegheny Energy, Inc. ("Allegheny"), a registered holding company under the Public Utility Holding Company Act of 1935, as amended ("Act"), and its wholly-owned public utility company subsidiary, Monongahela Power Company ("Monongahela" and, together with Allegheny, the "Applicants"), Greensburg, Pennsylvania 15601, have filed with the Securities and Exchange Commission ("Commission") a declaration under sections 12(c) and 12(d) of the Act and rules 44, 46, and 54 under the Act. The Commission issued a notice of the declaration on September 12, 2005 (Holding Co. Act Release No. 28028).

The Applicants request authorizations in connection with Monongahela's proposal to sell its utility assets located in Ohio, except certain excluded assets, to Columbus Southern Power Company ("CSP").<sup>1</sup> The sale is the result of a series of developments in connection with the restructuring of the electric utility industry in Ohio. In response to 1999 Ohio legislation that required Monongahela to provide its Ohio retail electric customers the right to choose their electric generation supplier beginning January 1, 2001, the Public Utilities Commission of Ohio ("PUCO") approved a settlement of

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<sup>1</sup> CSP is an electric utility company and a subsidiary company of American Electric Power Company, Inc., a registered holding company, and is not an affiliate of Allegheny.

Monongahela's transition plan, which included a transfer of its Ohio generation assets to an affiliate at book value and under which Monongahela guaranteed that its large commercial and industrial customers would be provided capped rates through 2003 and its other retail customers would be provided capped rates through 2005 should they elect not to choose an alternative supplier.

Monongahela and CSP have entered into an Asset Purchase Agreement ("APA") under which Monongahela has agreed to sell, assign, convey, transfer and deliver to CSP all of Monongahela's right, title, and interest in assets used by Monongahela in its Ohio transmission and distribution business, with the exception of certain excluded assets. These assets include 59 miles of transmission lines, related substations and associated property, and approximately 1,167 miles of distribution facilities that are located in Ohio and that constitute utility assets under the Act. The associated property includes the easements and/or real property interests on which the lines and related substations are located and other physical property required for transmission and distribution service. In addition, Monongahela will transfer to CSP other assets, such as contracts, books, records, accounts, inventories, machinery, tools, furniture, and other personal property.

The purchase price for these assets will be the net book value at the time the Transaction closes of the assets identified as Acquired Assets in Section 2.1 of the APA, plus \$10,000,000, less Monongahela's share of property taxes as specified in the APA. The net book value of the utility assets to be sold to CSP was approximately \$46.6 million at March 31, 2005. The consideration for the utility assets to be sold in the Transaction was the product of arm's-length bargaining between unaffiliated parties. In

addition, the Transaction is being undertaken at the behest, and under the review of, the PUCO.

Applicants also seek authority for Monongahela to dividend to Allegheny out of unearned surplus the proceeds received from the sale of those assets. The proceeds would be used by Allegheny to reduce debt and for other lawful corporate purposes.

The transaction is subject to rules 53 and 54 under the Act. Rule 54 states that in determining whether to approve the issue or sale of a security by a registered holding company for purposes other than the acquisition of an exempt wholesale generator ("EWG") or a foreign utility company ("FUCO"), or transactions by a registered holding company or its subsidiaries other than with respect to EWGs or FUCOs, the Commission shall not consider the effect of the capitalization or earnings of any subsidiary which is an EWG or a FUCO upon the registered holding company system if rules 53(a), (b) or (c) are satisfied.

Although Allegheny states that it does not satisfy the requirements of rule 53(a)(1),<sup>2</sup> Allegheny is in compliance with, and will comply with rule 53(a)(2), rule 53(a)(3) and rule 53(a)(4). None of the circumstances described in rule 53(b)(1) have

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<sup>2</sup> Allegheny states that it does not satisfy the requirements of rule 53(a)(1). By prior order (Holding Co. Act Release No. 27468 (December 31, 2001) ("Financing Order")), the Commission authorized Allegheny to invest up to \$2 billion in EWGs and FUCOs and found that this investment would not have either of the adverse effects set forth in rule 53(c). As of September 30, 2005, Allegheny's "aggregate investment," as defined in rule 53(a)(1), was approximately \$232 million. However, at present Allegheny cannot make any investments in EWGs and FUCOs without further authorization from the Commission because it is no longer in compliance with the financing conditions required by prior order (Holding Co. Act Release No. 27963 (April 29, 2005)), except that Allegheny is authorized to make additional investments in EWGs to the extent necessary to complete any project or desirable to preserve or enhance the value of Allegheny's investment in a project or in connection with the qualification of an existing project as an EWG.

occurred. The circumstances described in rule 53(b)(2) and rule 53(b)(3) have occurred. The requirements of rule 53(c) are met. Specifically, the Applicants maintain that the requested authorization will not have a substantial adverse impact upon the financial integrity or operations of Allegheny, its operating companies<sup>3</sup> or their customers. The ratio of common equity to total capitalization of each of the Operating Companies will continue to be maintained at not less than 30%.<sup>4</sup> In addition, each of the Operating Companies is subject to regulation by state commissions that are able to protect utility customers within their respective states.

The fees, commission and expenses incurred or to be incurred in connection with this declaration will be approximately \$25,000.

The Federal Energy Regulatory Commission and the Public Utilities Commission of Ohio have approved the proposed transactions. No other state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of this declaration has been given in the manner prescribed in 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 and rules are satisfied and that no adverse findings are necessary.

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<sup>3</sup> Allegheny's utility subsidiaries are Monongahela, West Penn Power Company ("West Penn"), and The Potomac Edison Company ("Potomac Edison"). They are collectively referred to as the operating companies ("Operating Companies").

<sup>4</sup> The common equity ratios of the Operating Companies as of June 30, 2005, were: West Penn: 65.3%; Potomac Edison: 49.2%; and Monongahela Power: 37.2%.

IT IS ORDERED, under the applicable provisions of the Act and the rules under the Act, that the declaration, as amended, be permitted to become effective immediately, subject to the terms and conditions prescribed in rule 24 under the Act.

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

Jonathan G. Katz  
Secretary