SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Rel. No. 28084 / February 9, 2006

Admin. Proc. File No. 3-11616

In the Matter of

AMERICAN ELECTRIC POWER COMPANY, INC.

ORDER DISMISSING PROCEEDINGS

American Electric Power Company, Inc. ("AEP") and the Division of Investment Management ("the Division") appeal an administrative law judge's decision denying AEP's application for approval of its acquisition of Central and South West Corporation ("CSW") under the Public Utility Holding Company Act of 1935 ("PUHCA"). 1/ Intervenors National Rural Electric Cooperative Association ("NRECA") and American Public Power Association ("APPA") filed a cross-petition for review, and limited participant Public Citizen, Inc. ("Public Citizen") was granted leave to continue participating on a limited basis.

The law judge's decision followed the remand of this proceeding to the Commission by the United States Court of Appeals for the District of Columbia Circuit. 2/ The court of appeals vacated and remanded after the Commission initially issued an order approving the application (the "Approval Order"). 3/ AEP and CSW completed their merger following the Approval Order.

I.

Under PUHCA, the Commission reviews all transactions in which a registered holding company proposes to acquire securities or utility assets of another holding or public-utility company. 4/ PUHCA prohibits approval of an acquisition if the Commission finds that the

1/ American Electric Power Company, Inc., Initial Decision Rel. No. 283 (May 3, 2005), 85 SEC Docket 1454.

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

3/ American Electric Power Company, Inc., 54 S.E.C. 697 (2000).

4/ Nat'l Rural Elec. Coop. Ass'n, 276 F.3d at 611 (citing 15 U.S.C. § 79j).

resulting holding company will no longer constitute a single "integrated public-utility system." 5/ In order for the Commission to find that a system constitutes an integrated pubic-utility system, the Commission must find, among other requirements, that the post-acquisition public-utility system's assets are "physically interconnected or capable of physical interconnection" (the interconnection requirement) and that the system itself is confined to a "single area or region" (the single area or region requirement). 6/ In the Approval Order, the Commission made the findings required for the Commission to approve the merger under PUHCA, but the court of appeals vacated and remanded on the grounds that the Commission failed to explain and justify its findings and conclusions regarding the interconnection and single area or region requirements.

We ordered a hearing in response to the court of appeals' remand to address whether the combined system satisfied the interconnection and single area or region requirements. On remand, AEP and the Division argued that the combined AEP/CSW system satisfied these requirements. NRECA, APPA, and Public Citizen all oppose the acquisition and argued that the combined system did not meet these standards. The law judge found that, although the combined AEP/CSW system satisfied the "interconnection" requirement, the combined system did not satisfy the "single area or region" requirement. This appeal followed. 7/

II.

On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (the "Act"). Section 1263 of the Act repeals PUHCA. 8/ On August 9, 2005, the parties and limited participant were directed to file briefs discussing the implications of the repeal of PUHCA for our consideration of the case. In response, AEP and the Division argued that the repeal of PUHCA rendered the issues in this proceeding moot and contended that the Commission should suspend the proceeding until February 8, 2006, when the repeal of PUHCA became effective, and thereafter dismiss the proceeding. NRECA and APPA argued that AEP's application would become moot on February 8, 2006, and that, under the circumstances, the Commission should

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5/ Id. (citing 15 U.S.C. §§ 79j(c)(1), 79k(b)(1)).

6/ See id. (citing Electric Energy, Inc., 38 S.E.C. 658, 668 (1958)); see also PUHCA § 2(a)(29)(A), 15 U.S.C. § 79b(a)(29)(A).

7/ We deny the motions of AEP and Public Citizen for oral argument because the repeal of PUHCA, discussed below, makes oral argument inadvisable. See 17 C.F.R. § 201.451(a).

8/ Pub. L. No. 109-58, Title XII, Subtitle F, § 1263, 119 Stat. 594, 974 (2005) ("The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is repealed."). The repeal has now become effective. See id. § 1274(a), 119 Stat. 977.

take no further action in the proceeding. 9/ Public Citizen argued that the proceeding was not moot and that the Commission should proceed with the case and issue a new briefing schedule.

An issue becomes moot if intervening events leave the parties without a "legally cognizable interest" in the resolution of the issue, such as when intervening events make it impossible to grant the prevailing party effective relief. 10/ In this case, we could not prevent AEP and CSW from remaining merged because, even if we found that the merger did not satisfy either the interconnection requirement or the single area or region requirement, under current law AEP and CSW may merge without Commission approval. 11/ Accordingly, the issue of whether the combined AEP/CSW system constitutes an integrated public utility system as required for Commission approval under PUHCA is mooted by PUHCA's repeal. 12/ In fact, we no longer have legal authority to either approve or deny the merger application. 13/

It is well-recognized that the federal courts will dismiss a matter as moot unless the complaining party has "'suffered some actual injury that can be redressed by a favorable judicial

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9/ NRECA and APPA also requested that their cross-petition be withdrawn. We grant that request.

10/ Pine Tree Med. Assocs. v. Sec'y of Health and Human Servs., 127 F.3d 118, 121 (1st Cir. 1997) (citing Powell v. McCormack, 395 U.S. 486, 498 (1969) and Burlington N. R.R. Co. v. Surface Transp. Bd., 75 F.3d 685, 688 (D.C. Cir. 1996)).

11/ See Pine Tree, 127 F.3d at 121 (rejecting as moot claim that guidelines issued by Department of Health and Human Services were invalid for failing to comply with the notice and comment provisions of the Public Health Service Act because Congress subsequently repealed those provisions and "[t]hus, as a practical matter, even were we to . . . conclude that the . . . guidelines were invalid for failing to provide for notice and comment pursuant to the former PHSA, as the law is today HHS can simply re-issue identical guidelines without notice and comment").

12/ Id. ("The issue of whether the . . . [g]uidelines violated the then applicable notice and comment provision of the PHSA is mooted by Congress's repeal of that provision.").

13/ The Act amended the authority of the Federal Energy Regulatory Commission (the "FERC") to review public utility acquisitions under Section 203(a) of the Federal Power Act ("FPA"). The Act provides that the amendments shall not apply to any application under Section 203 of the FPA that was filed on or before the date of enactment of the Act. On March 15, 2000, the FERC issued an order authorizing the proposed merger between AEP and CSW under Section 203 of the FPA subject to conditions specified in the order, and the FERC noted that it retained authority under Section 203(b) of the FPA to issue supplemental orders if AEP and CSW did not comply with those conditions.

decision.'" 14/ We note that we have substantial discretion to determine whether the resolution of an issue is precluded by mootness, but we have declined to consider an appeal where even a favorable decision by the Commission would entitle the prevailing party to no relief. 15/ We dismiss this proceeding as moot because we perceive no relief that is available here. 16/ Accordingly, it is ORDERED that this proceeding be, and it hereby is, dismissed.

By the Commission.

Nancy M. Morris
Secretary

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14/ Marshall Financial, Inc., Securities Exchange Act Rel. No. 48917 (Dec. 12, 2003), 81 SEC Docket 3241, 3242 (quoting GTE California, Inc. v. FCC, 39 F.3d 940, 945 (9th Cir. 1994)).

15/ Id.

16/ Public Citizen argues that whether the merger satisfied PUHCA's standards remained a live issue between the time of the passage of the Act and the effective date of PUHCA's repeal. Public Citizen stated that the Act had no impact on whether the merger was lawful when it was consummated, whether the merger was lawful between that time and the enactment of the Act, and whether the merger was lawful while PUHCA remained in effect. Public Citizen argues that these issues have continuing consequences because PUHCA provides that transactions committed in violation of its requirements are void. We reject this contention because our conclusion on those issues would have had no practical effect on the merger since the merger would no longer need to satisfy PUHCA's requirements after February 8, 2006. See Flight Engineers' Int'l Ass'n v. Trans World Airlines, Inc., 305 F.2d 675, 680 (8th Cir. 1962) (stating that a case is moot if a judgment "could not have any practical effect upon the then-existing controversy"). We note further that PUHCA Section 20(d) provided that PUHCA's liability provisions would not apply to any act done in good faith in conformity with an order of the Commission, notwithstanding that such order may subsequently be determined by judicial authority to be invalid for any reason. 15 U.S.C. § 79t(d). Accordingly, AEP and CSW's merger, executed in conformity with the Approval Order, did not create any liability for AEP and CSW under PUHCA, although the Approval Order was vacated.