

enforcement nature; and adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: August 31, 2004.

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27886; 3-11616]

American Electric Power Company Inc. (70-9381); Notice and Order for a Hearing Pursuant to Section 19 of the Public Utility Holding Company Act of 1935

August 30, 2004.

This matter is before the Securities and Exchange Commission ("Commission") on remand from the United States Court of Appeals for the District of Columbia ("Court"). The Court, in *National Rural Electric Cooperative Association, et al. v. Securities and Exchange Commission*, 276 F.3d 609 (D.C. Cir. 2002), considered a Commission order¹ that authorized the American Electric Power Company Inc. ("AEP"), a holding company registered under the Public Utility Holding Company Act of 1935, as amended ("Act"), to acquire Central and South West Corporation ("CSW").² However, the Court found that the Commission's order did not adequately explain its determination that a unidirectional contract met the Act's interconnection requirement and that it had not made sufficient evidentiary findings and had not engaged in the

¹ American Electric Power Co., Inc., and Central and South West Corp., Holding Co. Act Release No. 27186 (June 14, 2000). In addition to approving the proposed transaction, the Commission denied the hearing requests of the American Public Power Association ("APPA"), the National Rural Electric Cooperative Association ("NRECA"), Consumers for Fair Competition and Mr. Paul S. Davis. The APPA and NRECA jointly filed the petition for review that led to the Court of Appeals decision remanding this matter to the Commission.

The merger was completed on June 15, 2000. The appeal did not stay the operation of the order. See section 24(b) of the Act.

² In the original proceeding, AEP and CSW, at that time each public utility holding companies separately registered under the Act, were joint applicants. AEP and CSW merged following issuance of the Commission's order, with AEP as the surviving registrant.

proper legal analysis to support its conclusion that the resulting system would operate in a single area or region. The Court therefore remanded the matter for the Commission to provide a fuller explanation of its rationale.

Section 10(c)(1) and, by reference, section 11(b)(1), of the Act require the Commission to find that the utility operations to be acquired by a holding company, when combined with its existing operations, will constitute a "single integrated public-utility system."³ Section 2(a)(29)(A) of the Act defines an electric "integrated public-utility system" to mean,

[A] system * * * whose utility assets, whether owned by one or more electric utility companies, are physically interconnected and capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation.

Section 10(c)(2) of the Act further requires the Commission to find that a proposed acquisition will "serve the public interest by tending towards the economical and the efficient development of an integrated public-utility system."

The Court of Appeals upheld the Commission's finding under section 10(c)(2) that the merger would produce economies and efficiencies. However, the Court found that the Commission's order did not adequately justify two of its findings: (1) it did not "provide a satisfactory explanation" for the determination that a unidirectional contract path would "interconnect" AEP and CSW (together, "Applicants"),⁴ and (2) it "failed to make any evidentiary findings" or to engage in the proper legal analysis to support its conclusion that the resulting system would operate in a "single area or region."⁵ Based on these conclusions, the Court vacated the order and "remanded for further proceedings consistent with this opinion."

We believe further supplementation of the record is required for us to address the issues identified in the

³ Section 10(c)(1) of the Act in pertinent part requires the Commission not to approve an acquisition of securities or utility assets that is "detrimental to the carrying out of the provisions of section 11." Section 11(b)(1) in pertinent part limits the operations of a holding company system to a single integrated public-utility system.

⁴ *National Rural Electric Cooperative Association v. SEC*, 276 F.3d at 616 (D.C. Cir. 2002).

⁵ *Id.* at 617.

Court's opinion and to determine on remand whether the combined AEP and CSW systems meet the relevant standards of sections 10(c)(1) and 11(b)(1) of the Act and in particular, what specific facts about AEP's and CSW's electric systems and the geographic area covered by their systems are relevant to the required determinations. We recognize that parties to this proceeding may wish to introduce facts regarding the current state of the utility industry, in particular facts regarding the growth of regional transmission organizations and the unbundling of generation, transmission and distribution assets that has occurred in recent years that they believe are relevant to this determination. We also recognize that the parties may wish to introduce further facts—demographic, economic, and otherwise—regarding the geographic area in which the combined AEP-CSW system operates that they believe are relevant to this determination.

Therefore, in light of the issues raised by the Court of Appeals' opinion, it appears to the Commission that it is appropriate in the public interest that a hearing be held with respect to the proposed transaction. The hearing shall be limited to determining whether AEP and CSW are interconnected, through a unidirectional contract path or otherwise, and whether the resulting combined system operates in a single area or region. Accordingly,

It is ordered that a hearing shall be commenced, pursuant to section 19 of the Act and in accordance with the Commission's Rules of Practice,⁶ at a time and place to be fixed by further order, for the purpose of determining whether the AEP and CSW systems are interconnected and operate in the same area or region, and hence satisfy the requirements of sections 10(c)(1) and 11(b)(1) of the Act and that an Administrative Law Judge, to be designated by further order, preside at the hearing.

It is further ordered that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order.

It is further ordered the Division of Investment Management shall be a party to the proceeding.

It is further ordered that any person, other than the American Electric Power Company and the Division of Investment Management, who wishes to be heard or who otherwise desires to participate in the proceeding, whether as a party or as a limited participant, shall file a written motion seeking to do

⁶ 17 CFR part 201.

so with the Secretary of the Commission in accordance with the requirements of Rule 210(b) of the Commission's Rules of Practice.⁷ A movant shall serve a copy of any such motion upon American Electric Power Company Inc. at the address noted below in accordance with Rule 150(c) of the Commission's Rules of Practice, and proof of service shall be filed with the Secretary of the Commission contemporaneously with the motion.

It is further ordered that the Secretary of the Commission shall give notice of the hearing by mailing copies of this Notice and Order by certified mail to:

The American Electric Power Company,
1 Riverside Plaza, Columbus, Ohio
43215

The American Public Power
Association, 2301 M Street, NW.,
Washington, DC 20037

The National Rural Electric Cooperative
Association, 4301 Wilson Blvd.,
Arlington, Virginia 22203

It is further ordered that the Secretary of the Commission shall give notice to all other persons by publication of this Notice and Order in the **Federal Register**; that a copy of this Notice and Order shall be published in the "SEC Docket"; and that an announcement of the hearing shall be included in the "SEC News Digest."

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-2047 Filed 9-2-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27888; International Series
Release No. 1280; 70-10236]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 30, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 24, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 24, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Grid Transco, plc et al (70-10236)

National Grid Transco plc ("National Grid Transco"), and its registered holding company subsidiaries ("Intermediate Subsidiaries"), National Grid Holdings One plc, National Grid (U.S.) Investments, all at 1-3 Strand, London WC2N 5EH, United Kingdom, National Grid General Partnership c/o RL&F Service Corp., One Rodney Square, Wilmington, New Castle County, DE 19801, National Grid USA, National Grid Holdings Inc., both at 25 Research Drive, Westborough, MA 01582 all registered holding companies, National Grid USA's public utility subsidiaries ("Utility Subsidiaries") New England Power Company ("NEPCO"), Massachusetts Electric Company ("Mass. Electric"), The Narragansett Electric Company ("Narragansett"), Granite State Electric Company ("Granite State"), Nantucket Electric Company ("Nantucket"), New England Electric Transmission Corporation ("NEET"), New England Hydro-Transmission Corporation ("N.H. Hydro"), New England Hydro-Transmission Electric Co. Inc. ("Mass. Hydro"), all at 25 Research Drive, Westborough, MA 01582, and Niagara Mohawk Power Corporation ("Niagara Mohawk"), 300 Erie Boulevard, West Syracuse, New York 13202 and the direct and indirect nonutility subsidiaries ("Nonutility Subsidiaries") of National Grid Transco listed in Exhibit A ("Subsidiaries," and collectively "Applicants") to this application-declaration ("Application"), have filed under sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 13(b) of the Act and rules 20, 26, 42, 43, 45, 46, 52, 53, 54, 87 and 90 under the Act.

I. Background

By order dated October 16, 2002 (HCAR No. 27577) ("October 2002 Order"), National Grid Group plc merged with Lattice Group plc ("Lattice Group") ("Merger") and was renamed National Grid Transco. In connection with the Merger, the Commission authorized National Grid Transco to invest up to \$20 billion in foreign utility companies ("FUCOs") and to issue and sell equity and debt securities and to enter into guarantees to finance and support these investments. The financing authority granted in the October 2002 Order supplemented financing authority that National Grid Transco had received prior to the Merger by order dated January 16, 2002 (HCAR No. 27490) ("January 2002 Order"). The January 2002 Order and the October 2002 Order provide that the financing authorizations granted by each order expires on September 30, 2004. Applicants now propose the following new financing authorizations for the National Grid Transco system.

A. National Grid Transco

National Grid Transco is a registered holding company under the Act. National Grid Transco's ordinary shares are listed on the London Stock Exchange and its American Depository Receipts ("ADRs") are listed on the New York Stock Exchange. As of March 31, 2004, there were 3,087,603,756 ordinary shares (including ADRs) outstanding. For the 12 months ended March 31, 2004, National Grid Transco reported consolidated gross revenues, operating income and net income of \$15.2 billion, \$3.1 billion, and \$1.8 billion, calculated in accordance with United States generally accepted accounting principles ("US GAAP"). As of March 31, 2004, National Grid Transco had total consolidated assets of \$59.4 billion, and a market capitalization of approximately \$21.5 billion. National Grid Transco and its subsidiaries employ approximately 25,000 employees.

National Grid Transco's consolidated capitalization (including short-term debt) at March 31, 2004 was as follows:

	Book value (millions)	Percentage of total (%)
Common Stock Equity*	16,428.7	41.2
Preferred Stock	70.6	0.2
Long-Term Debt	20,590.1	51.7
Short-Term Debt**	2,761.9	6.9

⁷ 17 CFR 201.210(b).