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Secretary
Securities Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. S7-18-08; Release No. 33-8940

Dear Secretary:

American Electric Power Company, Inc. ("AEP") submits this comment letter in response to the Commission's request for comments in its release titled *Security Ratings*, Release No. 33-8940 (July 1, 2008) (the "Release"). AEP is the holding company parent of eleven electric utility subsidiaries that deliver electricity to more than five million customers in eleven states.

The Proposed Rule

Through the Release, the Commission has issued a proposed rule that, among other changes, would eliminate the investment grade status of non-convertible debt as a stand alone criterion for eligibility to use Form S-3. The Release proposes to replace this transaction eligibility standard with a new standard that permits the use of Form S-3 if the issuer had issued in excess of $1 billion in non-convertible securities over the preceding three years. In general terms, the Commission seeks the changes set forth in the Release because it is concerned that its rules may have unintentionally enhanced the influence of rating agencies in today's securities markets, potentially causing market participants to shirk necessary duties:

> The Commission is considering whether the inclusion of requirements related to security ratings in its rules and forms has in effect, placed an "official seal of approval" on ratings that could adversely affect the quality of due diligence and investment analysis. The Commission believes that today's proposals could reduce undue reliance on ratings and result in improvements in the analysis that underlies investment decisions.

Release at 4. More specifically regarding the change in Form S-3 eligibility, the Commission explained that,

> The recent turmoil in the credit markets, particularly in the structured finance market, strongly suggests that there has been undue reliance on security ratings and that the ratings for many issuers did not reflect the risks of the investment.

> We are proposing thresholds on the amount of issuance in order to move away from reliance on security ratings in the Commission's rules.

Release at 23.

The Release sets forth the regulatory history of and rationale for Form S-3 eligibility for investment grade non-convertible debt. It states that when Form S-3 was adopted; see *Adoption of Integrated Disclosure System*, Release No. 33-6383 (March 3, 1982), the Commission was clear as to its justification: "In adopting this requirement, the Commission specifically noted that commenters believed that the component relating to investment grade ratings was appropriate because nonconvertible debt securities are generally purchased on the basis of interest rates and security ratings." Release at 6. As a result, the new Form S-3 made primary offerings of investment grade rated non-convertible debt securities eligible to use the abbreviated form. This allowed debt securities issuers whose public float did not reach the required threshold, or that did not have a public float, with an alternate means of becoming eligible to register offerings on Form S-3. *Id.*

The Release further acknowledges that Form S-3, along with Rule 415, "provides considerable flexibility in accessing the public securities markets in response to changes in the market and other factors." *Id.* at 18. These rules led to "shelf" offerings that permitted eligible issuers to "register securities offerings prior to planning any specific offering and, once the registration statement is effective, offer securities in one or more tranches without waiting for further Commission action." *Id.* at 18-19.

The Release explains the rationale for changing the eligibility requirement from investment grade ratings to a minimum threshold as follows:

> [W]e believe that having issued $1 billion of registered non-convertible securities over the prior three years would lead to a wide following in the marketplace. These issuers generally have their Exchange Act filings broadly followed and scrutinized by investors and the markets.

Release at 21, see also Release at 21-22 ("This approach is designed to provide assurance that eligible issuers are followed by the markets such that it is appropriate to allow forward incorporation by reference and delayed offering.").

The Commission does not expect the change in eligibility to radically alter the number of issuers that are able to use the shelf offering format.

> The Commission intends for the number of issuers eligible under the proposed criteria to register primary offerings of non-convertible securities on Forms S-3 and F-3 to not be significantly reduced, or to differ significantly from, the number of those eligible under the current form requirements. Using the $1 billion threshold, we preliminarily believe that for issuances that have occurred

> thus far this year, the proposed change would result in approximately six issuers filing on Form S-1 instead of on a short-form registration statement.

Release at 21-22.

Request for Comment

While the Release solicits comment on a wide range of questions, this comment letter responds only to those points set forth below.

- Since most of the problems in the market have occurred with respect to asset-backed securities, should we retain the current eligibility requirement for investment grade non-convertible securities? Release at 23.

Yes, the Commission should retain the current eligibility requirement for investment grade non-convertible securities. Two adages come to mind, 'if it's not broke, don't fix it' and 'don't throw the baby out with the bath water.' The prevailing market for the issuance, sale and distribution of investment grade non-convertible securities is not broken. Rather, it is arguably the most transparent, effective and efficient market for debt securities in the world. The consistency, durability, reliability and effectiveness of this market results from the widespread disclosure of two inputs: security ratings and interest rate movements. Security ratings reflect the current material information the marketplace deems relevant regarding the issuer, and interest rates essentially reflect the prevailing price for borrowed money. This was the case, as acknowledged by the Commission, 26 years ago when it adopted the integrated disclosure system and Form S-3 eligibility for investment grade non-convertible debt. See the *Adoption of Integrated Disclosure System*, Release No. 33-6383 (March 3, 1982); see also the proposing release *Reproposal of Comprehensive Revision to System for Registration of Securities Offerings*, Release No. 33-6331 (August 6, 1981) (the "Proposing Release"), at 52 ("This proposal reflects . . . the Commission's position that with respect to offerings of high quality debt issues a detailed prospectus is unnecessary since such securities are generally purchased on the basis of interest rates and security ratings.") (footnote omitted). The Proposing Release further states:

> Rather than base the availability of Form S-3 on specified quality of the issuer criteria, the Commission believes that security ratings are a more appropriate standard. In addition to considering indicia of the quality of the registrant, security ratings are also based on marketplace information about the registrant which is analogous to the efficient market for widely followed equity securities. Moreover, security ratings issued by nationally recognized statistical rating organizations are widely used and relied upon by the marketplace. Thus, security ratings appear to provide a recognized criterion for the use of proposed Form S-3.

Proposing Release at 53, 54. This was accurate 27 years ago, it remains accurate today. It is difficult to see how the proposed rule, or any rule except one that eliminated the public availability of security ratings, will alter the manner in which the market for investment grade non-convertible securities functions. Further, it is difficult to see any benefit in altering the manner in which this market functions. In short, if it has operated effectively for approximately three decades, don't fix it.

Similarly, remedies to alleviate what the Commission has identified as "problems with respect to asset-backed securities" should not include the market for investment grade non-convertible securities. There seems little question that gaps, lapses as well as questionable staffing and adherence to internal controls contributed to "the recent turmoil in the subprime mortgage-related securities markets." *Summary Report of Issues Identified in the Commission Staff's Examinations of Select Credit Rating Agencies*, Staff of the Office of Compliance Inspections and Examinations, Division of Trading and Markets and Office of Economic Analysis, Securities and Exchange Commission (July 2008) (the "Summary Report"). The Summary Report documents numerous instances of shortcomings in the operations of ratings agencies with respect to the sub prime mortgage-related securities markets. See *Id.* at 1-2 (The ratings agencies did not always disclose significant aspects of the ratings process; ratings policies, procedures and decisions were inadequately documented; deviations from models and criteria were not explained, ongoing ratings surveillance diminished somewhat from initial ratings processes, etc.). Likewise, the turbulence triggered by credit downgrades of structured finance products including mortgage-related securities has been widely covered in the national and financial press.

In contrast, during the nearly 30 years that the shelf offering disclosure format has been available and utilized by issuers of investment grade non-convertible securities, this market has not experienced any disruption remotely approaching that currently underway in the asset-backed securities market. Certainly ratings agencies have downgraded individual issuers of investment grade debt before (and placed certain categories of investment grade debt issuers under review). This typically results not from a failure or breakdown in the ratings process, however, but rather reflects the ongoing monitoring and surveillance of investment grade debt issuers by the ratings agencies. This is an essential and expected component of the market for investment grade non-convertible securities, and a ratings agency that failed to take appropriate actions risks the erosion of the credibility that is vital to its continued viability. The lack of disruption in this durable, efficient market relative to the market for asset-backed securities related to mortgages and collateralized debt obligations suggests that remedies fashioned for the latter should not be extended to the former. In other words, don't throw the baby out with the bath water.

- Are there any transactions that currently meet the requirements of current General Instruction I.B.2. that would not be eligible to use the form under the proposed revision? Release at 24.

Yes. AEP is a registrant and a 'well-known seasoned issuer' that wholly owns six utility subsidiaries that are also registrants.[1] Five of these registrants currently meet the requirements of current General Instruction I.B.2. but would not be eligible to use the form under the proposed revision. Over the past three years these five registrants have issued investment grade non-convertible securities on twelve different occasions in an aggregate principal amount of over $3.4 billion. While the Release states that the Commission does not "intend[] for the number of issuers eligible under the proposed criteria to . . . differ significantly from, the number of those eligible under the current form requirements," Release at 21, these results suggest quite the opposite. At a minimum, additional research should precede adoption of the proposed requirements to more precisely measure the change in number of those eligible to use the form.

If the proposed revision is adopted, these affiliated issuers will no longer be able to utilize the shelf offering disclosure format under Rule 415 that has greatly facilitated their capital formation needs. The shelf offering disclosure format under Rule 415, "provides considerable flexibility in accessing the public securities markets in response to changes in the market and other factors." Release at 18. It has permitted these issuers to take advantage of rapidly developing market opportunities to issue investment grade non-convertible securities almost instantaneously and, once launched, to carefully tailor the tenor and aggregate amount offered to meet the appetite of the purchaser, thereby maximizing interest savings. This speed and flexibility will not be available to the registrant using the Form S-1 registration which is subject to review and applicable only to an offering commencing immediately, with an offering document that must reflect the tenor and amount of the debt being offered in order to comply with Rule 430A. Further, while debt issuers have access to an alternative market for debt, namely, private offerings with registration rights into registered debt, (1) the debt securities offered are not initially, and may never be, available to the general public and (2) the increased costs associated with registering such debt make this alternative much less attractive.

Moreover, we doubt that the Commission's current eligibility criterion for investment grade rated non-convertible securities is perceived as an "official seal of approval" of the Commission—one of the motivations behind the proposed change—by underwriters and investors in these securities. The market for these securities has relied on two key inputs: security ratings and prevailing interest rates. As the Releases acknowledges, this was the case in 1981 before the short form registration statement was available to issuers of investment grade rated non-convertible securities, this is

[1] AEP's common stock is listed and traded on the New York Stock Exchange. It wholly owns, directly or indirectly, the common stock of eleven electric utility subsidiaries. As a result of state electricity laws and regulatory requirements, it is typical for most of the debt within a holding company to be issued at the regulated operating subsidiary level (while the holding company parent owns the common stock of each). Each of AEP's eleven electric utility subsidiaries issues long-term indebtedness, six of these electric utility subsidiaries are registrants.

currently the case[2], and it is almost certain to be the case in the future whether or not the short form registration statement is available to issuers of such debt. Many of the investors that purchase the debt of these public utility subsidiaries are restricted from buying non-investment grade debt. Therefore, ratings letters that confirm that the offered debt is rated investment grade will still need to be delivered prior to issuance in this market. In other words, while loss of shelf registration statement eligibility will result in immediate and measurable decreased flexibility for five of six AEP registrant subsidiaries, and, therefore, result in less efficiency in the pricing of their investment grade debt securities, the anticipated benefit to the public is negligible.

- Would the proposed threshold increase or decrease the number of issuers eligible to use Forms S-3 and F-3 under the current investment grade criteria? Release at 25.

The number of AEP subsidiary registrant issuers eligible to use Forms S-3 would decrease from six under the current investment grade criteria to one under the proposed threshold. The five issuers that are currently eligible and which would lose that eligibility under the proposed threshold do make frequent use of this market (as noted earlier, during the past three years these five registrants have issued investment grade non-convertible securities on twelve different occasions in an aggregate amount of over $3.4 billion in registered offerings). As a result, these registrants are well-known in the marketplace, but none has issued an aggregate $1 billion in non-convertible securities in registered offerings, the proposed threshold during the preceding three years.

If the threshold were lowered to $400 million issued in non-convertible securities in registered offerings during the preceding three years, then each of these issuers would be eligible to use Form S-3. In fact, we would urge that a threshold of $250 million issued in non-convertible securities in registered offerings during the preceding three years, provided the issuer was a wholly owned subsidiary of a well-known seasoned issuer, assures that the registrant is well-known to the market. Such a criterion would reflect the practice of one securities rating agency which rates an affiliated group on a consolidated, as well as individual, basis. This approach would combine the benefit of the intensive and continuous analysis of the affiliate parent (which analysis necessarily is built from evaluation of the component subsidiaries, including registrant issuers) and the benefit of the ratings of the security ratings agencies. Where the debt of affiliated issuers is investment grade, investors that purchase the debt of one subsidiary of a well-known holding company frequently purchase the debt of other subsidiaries. This revised criterion would provide investors in the debt securities of the registrant subsidiaries with the best of both worlds—the market following commensurate with a well-known seasoned issuer with the traditional surveillance provided by the ratings agencies.

[2] The free writing prospectuses filed in conjunction with the pricing of issuances in this market reflect this—in essence, the two pieces of disclosure contained in these forms immediately upon pricing are the interest rates (with derivative information) and the security ratings.

Further, public utility subsidiaries are subject to regulation by state public utility commissions. The jurisdiction of these commissions includes the operations and capital structure of these public utility subsidiaries. These commissions typically authorize rates that are charged to customers that are designed to assure that these public utility subsidiaries will have the ability to service their debt obligations and earn an appropriate rate of return. Therefore, in those instances where the debt is issued by a regulated public utility subsidiary owned by a well-known public holding company, such as AEP, the state public utility commission provides a further layer of oversight, in addition to the surveillance of the ratings agencies and the market following of a well-known public holding company. We submit that much of the flexibility lost through implementation of the Commission's proposal will needlessly hamper those very same regulated public utility subsidiaries, thus resulting in an unintended step backwards in the Commission's policies generating efficient market access and pricing.

Conclusion

In summary, the Commission should not revise the eligibility to use Form S-3 for issuers of non-convertible debt that is rated investment grade. In the alternative, if a minimum threshold approach is pursued, the threshold should include issuers of non-convertible securities in the amount of $250 million or more over the preceding three years, provided the issuer is wholly-owned by a well-known seasoned issuer.

If the Commission has any questions regarding these comments, please contact me at (614) 716-1648.

Respectfully submitted,

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Corporation