ADMINISTRATIVE PROCEEDING
FILE NO. 3-7027

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
CSW CREDIT, INC. and CENTRAL AND SOUTH WEST CORPORATION	:
	:

INITIAL DECISION

Washington, D.C.
February 23, 1989

Warren E. Blair
Chief Administrative Law Judge

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APPEARANCES: Gerry D. Osterland, Sydney Bosworth McDole, and Dulcie D. Brand of Jones, Day, Reavis & Pogue of Dallas, Texas, for CSW Credit, Inc., and Central and South West Corporation.

Francis H. Tweed, of Simpson Thacher & Bartlett, of New York, New York, for Atlantic Energy, Inc.

Aaron Levy and Douglas W. Hawes, of LeBoeuf, Lamb, Leiby & MacRae, of Washington, D.C., for the Columbia Gas System, Inc.

Norbert F. Chandler, General Attorney of Consolidated Natural Gas Company, for Consolidated Natural Gas Company.

Ira H. Jolles and James B. Liberman of Berlack, Israels & Liberman, of New York, New York, for General Public Utilities Corporation.

William T. Baker, Jr., of Reid & Priest, of New York, New York, for Middle South Utilities, Inc.

David F. Smith, of National Fuel Gas Distribution Corporation, for National Fuel Gas Distribution Corporation.

John D. McLanahan, of Troutman, Sanders, Lockerman & Ashmore, of Atlanta, Georgia, for The Southern Company.

Marianne K. Smythe, Stanley B. Judd, Catherine A. Fisher, and Martha Cathey Baker, for the Commission's Division of Investment Management.

BEFORE: Warren E. Blair
Chief Administrative Law Judge.

Central and South West Corporation ("CSW"), a registered holding company under the Public Utility Holding Company Act of 1935 ("Act") and its wholly owned nonutility subsidiary, CSW Credit, Inc. ("CSW Credit"), (collectively "Applicants"), filed an application-declaration, as amended, pursuant to Sections 6, 7, 9(a), 10, and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder in which CSW Credit seeks authority to factor, i.e., purchase, the accounts receivable of nonaffiliate utilities without regard to the level of its factoring of accounts receivable of utilities associated with CSW. 1/

After making an examination of the application-declaration and comment letters received by the Commission on that filing the Division of Investment Management ("Division") raised the question whether the proposed transaction would be detrimental to the carrying out of the provisions of Section 11 of the Act.

Pursuant to Section 19 of the Act the Commission issued an order for hearing dated June 23, 1988 ("Order") on the application and the issue raised by the Division. The Commission's order also directed that any person other than the Applicants who desired to be heard or to otherwise participate in the proceeding file an application therefor.

1/ As used herein the terms "affiliate" and "associate" are synonymous, as are the terms "nonaffiliate" and "nonassociate."

Timely applications for leave to participate and to be heard pursuant to Rule 9(c) of the Rules of Practice were filed and granted at the pre-hearing conference on August 12, 1988 to Atlantic Energy, Inc., The Columbia Gas System, Inc., Consolidated Natural Gas Company, General Public Utilities Corporation, Middle South Utilities Corporation, National Fuel Gas Distribution Corporation, and The Southern Company.

At the hearing the Applicants, the Division, and the participants appeared through counsel. The latter group did not actively participate in the examination of the witnesses or the production of documentary evidence.

As part of the post-hearing procedures, successive filings of proposed findings, conclusions, and supporting briefs were specified. Timely filings were made by the Applicants, the Division, and by those participants who desired to do so. 2/

The findings and conclusions herein are based on the preponderance of the evidence as determined from the record and upon observation of the witnesses.

2/ Applicants were directed to make their initial filing on or before November 18, 1988, and the participants were directed to follow with their filings on or before December 2, 1988. The Division was required to file its counter-statement and supporting brief on or before January 6, 1989 with reply briefs to be filed by Applicants and participants by January 27, 1989. Upon good cause shown, a motion by the Division was granted extending the Division's time to file until January 20, 1989 and the time for reply briefs was extended to February 10, 1989.

BACKGROUND OF APPLICANTS

CSW, a Delaware corporation registered as a public utility holding company under the Act, owns four electric utilities which furnish electricity to customers in Arkansas, Louisiana, Oklahoma, and Texas. CSW's system covers 152,000 square miles and includes in addition to the four electric operating companies several other subsidiaries, one of which is CSW Credit.

The concept of creating a captive finance company which led to the formation of CSW Credit was initially considered by CSW in 1983. CSW concluded in 1984 that it would be feasible to create CSW Credit and filed an application seeking Commission approval of that operation. In 1985, following the filing by CSW of a revised application, the Commission issued an order dated July 19, 1985 ("1985 Order") which permitted CSW to organize CSW Credit as a Delaware corporation for the purpose of factoring the accounts receivable of CSW's electric operating companies by purchasing those accounts receivable at a discount and financing those purchases with debt. 3/ The 1985 Order authorized CSW Credit to obtain funds for the accounts receivable financing through lines of credit or loan agreements up to $320 million and authorized equity contributions in CSW Credit by CSW of $80 million.

3/ Central and South West Corporation, HCAR No. 23767 (July 19, 1985); 33 SEC DKT 1161 (CCH 971).

By August 2, 1985 CSW Credit was in operation, purchasing approximately $200 million of receivables from CSW affiliates on its first day financed by non-recourse bank debt. 4/ In December, 1985 CSW Credit secured ratings for its commercial paper which had been unobtainable earlier and in January, 1986 began replacing its bank borrowings with commercial paper at a debt cost about 75 basis points lower than bank debt.

CSW Credit quickly realized that the benefits accruing to the CSW operating subsidiaries through the factoring of their accounts receivable could also accrue to nonaffiliate utility companies if CSW Credit's service were offered on comparable terms. To accomplish this end, CSW and CSW Credit filed an application dated January 14, 1986 with the Commission requesting authority to extend CSW Credit's business to the factoring of utility accounts receivable of nonassociate companies whose primary revenues are derived from the sale of electricity. After discussions with the Division's staff, an amendment to that application was filed to limit the amount of receivables proposed to be factored for nonassociates to an average of the receivables being purchased from affiliate companies.

4/ CSW Credit insisted that the bank debt incurred had to be non-recourse against the seller of the receivables securing the borrowings as well as non-recourse against CSW, the holder of the equity in CSW Credit.

By order dated July 31, 1986 ("1986 Order") the Commission authorized expansion of CSW Credit's business to include factoring of accounts receivable of nonassociate utilities but limited the amount of receivables that it was permitted to factor from nonassociate utilities to the average amount of receivables purchased from associate companies. 5/ CSW Credit was also authorized to finance those transactions by borrowing up to an additional $160 million and CSW was allowed to make an additional equity investment in CSW Credit of up to $40 million in order to maintain CSW Credit's capital ratio at approximately 20% equity and 80% debt.

PROPOSED MODIFICATION OF CSW CREDIT OPERATION AND CAPITALIZATION

In February, 1987 CSW Credit attracted its first nonaffiliate customer and since then has increased that portion of its factoring business with the purchase of approximately 3,000,000 accounts per month from five nonaffiliate companies located in ten states. About a month after acquiring its first nonaffiliate customer and after receiving indications of interest from others, CSW Credit decided that the limitation on its factoring of accounts receivable of nonaffiliate companies would constrict the growth of its business in the foreseeable future.

5/ CSW Credit, Inc., HCAR NO. 24157 (July 31, 1986), 36 SEC DKT 324 (CCH 245).

Accordingly, on April 1, 1987 CSW and CSW Credit filed the application which is the subject of these proceedings requesting authority to expand CSW Credit's nonaffiliate business unlimited by any ratio based upon the amount of that business compared to that transacted with affiliate utilities. 6/ To finance the expanded activities of CSW Credit through December 31, 1989 CSW proposes to make an additional equity investment of $34 million in CSW Credit for a total of $190 million. CSW Credit seeks authority to borrow pursuant to bank lines of credit or through issuance of commercial paper an additional $286 million for a total borrowing of $910 million.

APPLICABLE STATUTORY STANDARDS

Section 10 of the Act

Unless the acquisition has been approved by the Commission under Section 10, it is unlawful for any registered holding company to acquire any other interest in any business. 7/ Under Section 10 a person may apply for approval of the acquisition of any other interest in any business, and the Commission shall approve the acquisition unless the Commission finds, inter alia, that the acquisition

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6/ The provisions of the 1985 Order and the 1986 Order were extended to December 31, 1989 with authorized levels of additional borrowings and related equity investments being specified in the extension order. CSW Credit, Inc., HCAR 24575 (February 8, 1988), 40 SEC DKT 338 (CCH 262).

7/ Section 9(a)(1) of the Act.

"will be detrimental to the public interest or the interest of investors or consumers or the proper functioning of such holding company system" 8/ or "is detrimental to the carrying out of the provisions of Section 11" of the Act. 9/

Section 11 of the Act

The reference to Section 11 in Section 10(c)(1) of the Act is directed to Section 11(b)(1) which states that it shall be the duty of the Commission:

> To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company hereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system. . . . The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.

The Order presents for consideration in these proceedings the single question whether the proposed transaction set forth in the application-declaration would be

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8/ Section 10(b)(3) of the Act.

9/ Section 10(c)(1) of the Act.

detrimental to the provisions of Section 11 without prejudice to the specification of additional matters and questions. No other matters or questions are raised by the parties or participants.

In interpreting the requirements of Section 11(b)(1) the Commission stressed in Michigan Consolidated Gas Company that it had "frequently held that the two 'other business' clauses of Section 11(b)(1), read together permit the retention of a non-utility business only on 'an affirmative showing of an operating or functional relationship between the operations of the retainable utility system and the non-utility business sought to be retained, and that retention would be in the public interest.' [Footnote omitted]." 10/ In affirming the Commission's decision and interpretation of Section 11(b)(1), the D.C. Circuit Court noted:

> The Commission in construing this section has adopted what has been referred to as the "functional relationship" test in order to determine whether the retention of a particular business is permissible under the Act. To pass this test the holding company or its subsidiary must clear two hurdles. First, the company must show that its "other business" is "reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system." Once a company has cleared this hurdle, the Commission then looks to see whether the second sentence of section 11(b)(1) is adhered to, i.e., whether the retention

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10/ Michigan Consolidated Gas Company, 44 S.E.C. 361, 365 (1970).

of the "other business" is "necessary or appropriate in the public interest." 11/

In its 1986 Order authorizing additional financing of CSW Credit's factoring operations the Commission concluded that while it had determined in its 1985 Order that an "operating or functional relationship" had existed between the system's utility operations and CSW Credit's factoring of the accounts receivable of the CSW operating companies, such a relationship would not exist between the system's utility business and CSW Credit's factoring of the accounts receivable of nonassociate companies. The Commission therefore refused to find that the additional business with nonassociate companies would be "reasonably incidental, or economically necessary or appropriate to the operations" of CSW's integrated electric-utility system. The Commission, however, further concluded that the circumstances then under review, including the fact that CSW Credit was to limit its acquisition of receivables of nonassociate utilities to an amount less than the receivables acquired from CSW system companies, were "in accord with those cases in which the Commission has permitted sale or lease to nonassociate companies in excess capacity or facilities." 12/

Although the Commission did not indicate in its 1986 Order the permissible outer limit for the amount of

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11/ Michigan Consolidated Gas Co. v. S.E.C., 444 F.2d 913, 916 (D.C. Cir. 1971).

12/ CSW Credit, Inc. supra, 36 SEC DKT 324, 333 (CCH 245, 249).

receivables of nonassociate utilities that CSW Credit could have acquired had CSW Credit not limited itself as it did, the Commission provided guidance in that respect in its Jersey Central Power & Light Company decision. 13/ There the Commission enumerated the factors which if present would allow retention where the other business was functionally related to the system's utility operations and there were also significant operations outside the system which exceeded the functionally related operations. After reviewing numerous of its past decisions which authorized retention or approved of the transactions there under review, the Commission summarized the pertinent factors for consideration by stating:

> As in the preceding line of cases, the other business (1) evolved in connection with the system's utility business, (2) the investment in the other business was not significant in relation to the system's total financial resources, and (3) the investment had the potential to produce benefits for the investors and/or consumers. 14/

The Commission then concluded that the noted factors were present in the Jersey Central proposal under consideration and granted the application.

As urged by the Applicants, the test applied in Jersey Central appears applicable here. On the record in these

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13/ HCAR No. 24348 (March 18, 1987), 37 SEC DKT 1660 (CCH 1243).

14/ Id., at 1666 (CCH 1245).

proceedings, use of that test leads to the conclusion that retention of CSW Credit should be authorized without imposition of a varying restraint upon transactions with nonassociate utilities which is tied into the amount of business done with associate companies.

There is no need to consider whether an "operating or functional" relationship exists between CSW and CSW Credit in light of the Commission's finding in its 1985 Order that the latter's factoring of the CSW system's operating companies met the standards of Section 11(b)(1). That finding carried with it a determination that an "operating or functional" relationship existed between the system's utility operations and CSW Credit's factoring of the accounts receivable of the CSW operating companies. 15/

Passing then to the first consideration in the Jersey Central test, the record clearly shows that CSW Credit's factoring of nonassociate utility receivables evolved from the factoring business with the system's operating companies which the Commission authorized by its 1985 Order. The concept of factoring nonassociate utility receivables arose, according to the testimony of CSW Credit's president, out of "a natural progression in the evolution of a successful business," coupled with the fact that CSW Credit "began to receive inquiries from nonassociate companies regarding

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15/ HCAR No. 24157 (July 31,1986), 36 SEC DKT 324, 332 (CCH 245, 248).

possible sale of their accounts receivable." 16/ That idea eventuated in the expansion of CSW Credit's business authorized in the 1986 Order.

The second factor relating to the extent of the investment in the other business and requiring that it not be significant in relation to the system's total financial resources is readily satisfied by a review of the financial information Applicants placed in the record. From that information it appears that as of June 30, 1988 investment in CSW Credit was $107 million and the total capitalization of CSW $5.5 billion. Total assets of CSW on that date were $8.3 billion and common equity capitalization at that time was $2.5 billion. On the basis of those figures CSW's total investment in CSW Credit is a little over 1.9% of CSW's total capitalization, about 1.3% of CSW's total assets, and approximately 4.3% of CSW's common equity capitalization. Under the pending application CSW's maximum authorized investment in CSW Credit could be increased by $150 million to a total allowable investment of $300 million. The latter amount would still be equivalent as of June 30, 1988 to only 5.4% of the total capitalization of CSW, 3.5% of its total assets, and 12% of its common equity capitalization. Considering the extremely low risk of loss involved in the operation of CSW Credit, the percentages indicated are not

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16/ Applicants Exhibit 1, at 15-16.

deemed significant in relationship to CSW's total resources. 17/

Applicants' proposals also satisfy the Jersey Central requirement that the investment have the potential to produce benefit for the investors and consumers. The record clearly reflects that the limited operations of CSW Credit have been profitable, thereby directly benefiting its parent CSW and the CSW common shareholders. 18/ The record further indicates that permitting CSW Credit to increase its business with nonassociate utilities would serve to increase its profits for the benefit of CSW and the latter's stockholders. Further, according to the record, the profits achieved by CSW Credit may well redound to the benefit of consumers serviced by the CSW system by increasing CSW earnings per share without increasing rates charged to the subsidiary utilities ratepayers.

17/ Risks to the CSW system involved in the expansion of CSW Credit are materially reduced by the factoring agreements used by CSW Credit in its transactions with nonassociates. Those agreements provide for non-recourse purchases of receivables from those utilities and impose no risk of loss or other obligations upon CSW or its other subsidiaries. Also, in the event of a severe economic business depression, CSW Credit could unilaterally terminate the factoring relationship thereby avoiding possible losses in that period.

18/ In 1985, CSW Credit's profit was $2,587,000; in 1986 the profit increased to $5,055,000; in 1987 it became $8,568,000; and for the six months ending June 30, 1988 the profit amounted to $6,675,000, in toto a net income of $22,885,000 since CSW Credit began operations in 1985 to June 30, 1988.

The Division, in opposition to the granting of the application-declaration, asserts that Applicants have failed to carry the burden of an affirmative showing that the expansion of nonassociate factoring activities by CSW Credit would further the utility business of the CSW system. The Division argues that such a showing by Applicants is necessary to meet the requirements of Section 11(b)(1) that a functional relationship exist between the utility business of an integrated system and a permissible nonutility interest. The Division further contends that the principles expressed in Engineers Public Service Co. 19/ and the North American Co. 20/ cases should govern the disposition of Applicants' proposals.

There can be no quarrel with the proposition that the teachings of the Engineers Public Service Co. and North American Co. cases would have to be considered if there were a need to determine, as insisted by the Division, that Applicants are required to establish here that a functional relationship exists between the CSW system and CSW Credit. However, that is not necessary in view of the fact that the Commission in its 1986 Order held:

> In our order of July 19, 1985, Credit's factoring of the accounts receivable of the CSW system's operating companies was

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19/ 138 F.2d 936 (D.C. Cir. 1943) rev'g 12 SEC 42 (1942), vacated as moot, 332 U.S. 788 (1947).

20/ 28 S.E.C. 742 (1948).

> found to meet the standards of Section 11(b)(1). An "operating or functional relationship" was determined to exist between the system's utility operations and Credit's factoring the accounts receivable of the CSW operating companies. We do not believe, however, that such a relationship would exist between the system's utility business and Credit's factoring accounts receivable of nonassociate companies. The dealings with nonassociates would have no operating or functional relationship with the CSW system's utility business. Therefore, we cannot find that this additional business is "reasonably incidental, or economically necessary or appropriate to the operations" of CSW's integrated electric-utility system. 21/

The suggestion of the Division that the Commission's rulings in its 1985 and 1986 Orders must be disregarded and a new determination made whether a functional relationship exists between the CSW system and CSW Credit is in conflict with the analysis which led the Commission to the approval in the 1986 Order of CSW Credit's expansion into nonassociate utility business. In the 1986 Order, after concluding that the "dealings with nonassociates would have no operating or functional relationship with the CSW system's utility business," 22/ the Commission went on to find:

> While factoring for nonassociate companies cannot be found to be functionally related to the CSW system, we find that the factoring for nonassociates may be permitted to the limited extent now proposed. . . .

21/ 36 SEC DKT 324, 332-33 (CCH 245, 248-49).

22/ Id.

and to then conclude:

> It appears, therefore, that this case is in accord with those cases in which the Commission has permitted the sale or lease to nonassociate companies of excess capacity or facilities. 23/

In view of the 1985 and 1986 Orders it appears appropriate to reject the Division's view of the issue it believes should be addressed, and to hold as the Commission did in those Orders that CSW Credit's factoring of the accounts receivable of the CSW system's operating companies meets the standards of Section 11(b)(1), and that the dealings with nonassociates do not have an operating or functional relationship with the CSW system's utility business. The issue in these proceedings therefore is whether the proposed expansion of CSW Credit's business with nonassociate utility companies to an extent beyond that considered in the 1986 Order 24/ is permissible as being in accord with those cases in which the Commission has permitted the sale or lease to nonassociate companies of excess capacity or facilities.

Looking again to the 1986 Order, it appears that with CSW Credit's limiting its acquisition of receivables of nonassociate utilities to an amount less than the receivables

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23/ Id.

24/ Acquisition of receivables of nonassociate utilities was limited to an amount less than the receivables acquired from CSW system companies.

acquired from CSW system companies the Commission had no difficulty in finding that the circumstances there under consideration "permitted the sale or lease to nonassociate companies of excess capacity or facilities." 25/ The Commission then further concluded that CSW Credit's "operations will continue to be 'devoted primarily to furthering the operations' of the CSW utility system and not essentially 'devoted to independent ends.'" 26/ The self-imposed limitation undoubtedly assured a favorable finding by the Commission with respect to CSW Credit's proposed expansion into nonassociate factoring but it is not reasonable to read into the Commission's opinion, as the Division does, that the limitation was essential as a restriction on "this nonutility business of Central and South West so that it would be a business primarily serving the utility business of the Central and South West integrated system." 27/

While that restriction to equality in CSW Credit's associate and nonassociate business appears to have been an important factor in Applicants obtaining the Commission's approval in the 1986 Order, the equality in those businesses cannot be considered to be a "bright line" demarcation

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25/ Id.

26/ Id.

27/ Answering Brief of the Division, January 23, 1989, at 28-29.

between an operation "devoted primarily to furthering the operations" of a utility system and one which is "essentially devoted to independent ends." The 1986 Order does not preclude nor did the Commission determine in approving the proposals covered in that Order that nonassociate business in excess of associate business would not meet the standards of Section 11(b)(1). Such a "bright line" test, though possibly desirable for administrative purposes, would run afoul of the Commission's position that: "[i]n each case we must examine the character and operation of the specific business sought to be retained and its relationship to retainable utility operations and determine whether it is reasonably incidental or economically necessary or appropriate to the operation of the utility system to which it is sought to be appended." 28/ In similar vein the Supreme Court in rejecting the use of a "bright line" rule where a fact determination is required recently noted that:

> A bright-line rule indeed is easier to follow than a standard that requires the exercise of judgment in the light of all the circumstances. But ease of application alone is not an excuse for ignoring the purposes of the securities acts and Congress' policy decisions. Any approach that designates a single fact or occurrence as always determinative of an inherently fact-specific finding such as

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28/ Engineer's Public Service Company, 12 S.E.C. 41 (1942), at 47, n. 5.

> materiality, must necessarily be over- or underinclusive. 29/

As found above, it is believed that the Jersey Central test must be used to determine whether Applicants' proposals conflict with the standards of Section 11(b)(1). The Division deprecates reliance upon Jersey Central, noting the factual distinctions between that case and the one at hand. It contends that the sentence noted earlier herein which enumerates the factors for consideration when removed from its context misconstrues its import. The Division then concludes with the protest that "[T]he Jersey Central order does not and was not intended to enunciate a new interpretation of the standards of Section 11(b)(1)." 30/

Although agreeing with the Division that Jersey Central is a factually different operation from that proposed for CSW Credit, the Jersey Central test relied upon by Applicants appears to have general applicability. As the Commission noted in its prefatory remarks leading to its enunciating the relevant factors in the later sentence emphasized by Applicants:

> There are also a number of decisions where although a retainable other business was functionally related to the system's utility operations, there were also significant operations outside the system, exceeding the functionally

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29/ Basic Inc. v. Levinson, ___ U.S. ___, 108 S.Ct. 978, 987 (1988).

30/ Answering Brief of the Division, January 23,1989, at 30-31.

> related operations. In these cases, the other business evolved in connection with the system's utility business, the investment in the other business was not significant in relation to the system's total financial resources, and the investment had the potential to produce benefits for the investors and/or the consumers. 31/

That language supports Applicants' position that the Commission was adopting a rule of general application rather than the Division's view that Applicants were taking a sentence out of context and distorting it for their own benefit. That the factors referred to in the quoted sentences were followed by a repetition of those factors in enumerated style and that the repetition came after over a page of discussion identifying a number of relevant cases involving various operations reenforces the conclusion that the Jersey Central test was meant to have general applicability and not be limited to Jersey Central.

In sum, it appears upon the basis of the record that Applicants have affirmatively shown that the proposed expansion of CSW Credit's factoring of accounts receivable of associate and nonassociate utilities meets the standards of Section 11(b)(1).

CONCLUSION

In view of the foregoing, it is concluded that the granting of the application-declaration would not be

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31/ 37 SEC DKT 1660, 1664 (CCH 1243, 1244).

detrimental to the proper functioning of the CSW system and that the proposed expansion is consistent with the standards of Section 11(b)(1). It is further concluded in the light of the 1985 and 1986 Orders and the record in these proceedings that all requirements under the Act for approval of the application-declaration have been met by the Applicants and that the proposed financing of CSW Credit should be approved as requested. An exception from competitive bidding under Rule 50(a)(5) is appropriate for the commercial paper. No issue of compliance with state laws has been raised and Applicants have stated that no state or federal regulatory authority, other than the Commission, has jurisdiction over the proposed transaction. 32/

ORDER

IT IS ORDERED pursuant to the applicable provisions of the Act and rules thereunder that the application-declaration, as amended, which is the subject of these proceedings is granted subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

This order shall become effective in accordance with and

32/ All proposed findings and conclusions submitted by the parties and participants have been considered, as have their contentions. To the extent such proposals and contentions are consistent with this initial decision, they are accepted.

subject to the provisions of Rule 17(f) of the Rules of Practice.

Pursuant to Rule 17(f) of the Rules of Practice, the initial decision shall become the final decision of the Commission as to each party who has not, within fifteen days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.

Warren E. Blair
Chief Administrative Law Judge

Washington, D.C.
February 23, 1989