

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27549]

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

July 8, 2002.

Notice is hereby given that the following filings 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 applications/declarations for complete statements of the proposed transactions summarized below. The applications/declarations are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the applications/declarations should submit their views in writing by August 2, 2002, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549-0609, and serve a copy on the relevant applicant/declarant at the address 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 August 2, 2002, the applications/declarations, as filed or as amended, may be granted and/or permitted to become effective.

#### American Electric Power Company, Inc. (70-9353)

American Electric Power Company, Inc. ("AEP"), a registered public utility holding company, AEP Energy Services, Inc. ("AEPES") and AEP Resources, Inc. ("Resources"), both wholly owned nonutility subsidiaries of AEP (collectively, "Applicants"), all located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment under sections 6(a), 7, 9(a), 10 and 12 of the Act and rules 45, 46, and 54 under the Act to their previously filed application-declaration ("Application").

By orders dated November 2, 1998 (HCAR No. 26933), December 22, 1999 (HCAR No. 27120), and August 13, 2001 (HCAR No. 27432) in this file (collectively, the "Previous Orders") the Commission authorized, among other things, Applicants to acquire from time to time through December 31, 2003 ("Previous Authorization Period"), nonutility energy-related assets or the

equity securities of companies substantially all of whose physical properties consist of nonutility energy-related assets (collectively, "Energy Related Assets")<sup>1</sup> in the United States that would be incidental to, and would assist Applicants and their subsidiaries in connection with, energy marketing, brokering, and trading ventures.<sup>2</sup> Applicants were authorized to invest up to \$2.0 billion ("Previous Investment Limitation") during the Previous Authorization Period in Energy Related Assets.

Under the Previous Orders, AEP, Resources, AEPES and any existing or new, direct or indirect subsidiaries of either company were authorized to issue securities to finance the purchase of Energy Related Assets in an aggregate amount not to exceed the Previous Investment Limitation, the securities to consist of any combination of (i) shares of common stock of AEP; (ii) borrowings by AEP from banks or other financial institutions under credit lines or otherwise; (iii) guarantees of indebtedness issued by Resources, AEPES or any existing or new, direct or indirect, subsidiary of Resources or AEPES; or (iv) guarantees of securities issued by any special purpose finance subsidiary ("SPF").

In turn, under the Previous Orders, Resources, AEPES, any existing or new, direct or indirect subsidiary of Resources, AEPES, and any SPF were authorized to issue debt, equity or preferred securities of any type, including guarantees as appropriate, from time to time during the Previous Authorization Period to finance acquisitions of Energy Related Assets.

Under this authority, AEP has, among other things, acquired midstream gas assets, including intrastate pipeline systems in Louisiana and Texas, natural gas processing plants, and storage facilities.

Applicants now seek authorization to acquire, in one or more transactions from time to time through June 30, 2004 ("New Authorization Period"), Energy Related Assets in Canada as well as the

<sup>1</sup> Energy Related Assets include natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities.

<sup>2</sup> By orders dated September 13, 1996 (HCAR No. 26572), September 27, 1996 (HCAR No. 26583), May 2, 1997 (HCAR No. 26713), November 30, 1998 (HCAR No. 26947), April 7, 1999 (HCAR No. 26998), and August 19, 1999 (HCAR No. 27062) in File No. 70-8779, AEP was authorized to form direct or indirect nonutility subsidiaries to broker and market electric power, natural and manufactured gas, emissions allowances, coal, oil, refined petroleum products, and natural gas liquids in the United States and Canada ("Commodities Business").

United States. These Energy Related Assets would be incidental to and would assist Applicants and their subsidiaries in connection with the Commodities Business in the United States and Canada. Applicants further seek authorization to increase the Investment Limitation by an additional \$2.0 billion, which, together with existing authority, will increase the aggregate amount that could be invested in Energy Related Assets to \$4.0 billion ("New Investment Limitation").

Consistent with the Previous Orders, Applicants propose to acquire Energy Related Assets for cash or in exchange for common stock of AEP or other securities of Applicants or may include the assumption of debt of the seller, or any combination of the foregoing. Consistent with the Previous Orders, under no circumstances will the Applicants acquire, directly or indirectly, any assets or properties the ownership or operation of which would cause the companies to be considered an "electric utility company" or "gas utility company" as defined in section 2 of the Act.

Accordingly, to provide the maximum flexibility, AEP requests authorization to issue securities in the manner described in an aggregate amount, when added to all other outstanding securities issued to purchase Energy Related Assets in File No. 70-9353, would not exceed the New Investment Limitation. Applicants were authorized in the Previous Orders to organize direct or indirect SPFs to finance these acquisitions, which authority Applicants request continue throughout the New Authorization Period.

Applicants also request that, to the extent not exempt under rule 52 and/or rule 45(b), the financing authority continue through the Authorization Period in an amount, when added to all other outstanding securities issued to purchase Energy Related Assets in File No. 70-9353, would not exceed the New Investment Limitation.

In addition, AEP, Resources, AEPES, and any new, direct or indirect subsidiaries of Resources or AEPES request authorization to guarantee financial commitments, other than indebtedness, of any entity owning or operating Energy Related Assets in an aggregate amount not to exceed the New Investment Limitation.<sup>3</sup>

In addition, AEP requests authorization to allow companies formed to own Energy Related Assets

<sup>3</sup> The aggregate principal amount of these guarantees, exclusive of any guarantees or other forms of credit support that are exempt under rules 45(b) and 52(b), will not exceed the New Investment limitation.

("Energy Related Asset Subsidiaries") to declare and pay dividends to their parent companies from time to time out of capital and unearned surplus to the extent permitted by applicable law.

#### **Allegheny Energy, Inc. (70-8893)**

Allegheny Energy, Inc. ("Allegheny"), 10435 Downsville Pike, Hagerstown, Maryland 21740, a registered public utility holding company; its direct wholly owned public utility company subsidiaries Monongahela Power Company ("Monongahela Power"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, and Allegheny Energy Supply Company, LLC ("Supply"), 10435 Downsville Pike, Hagerstown, Maryland 21740; and its indirect wholly owned public utility company subsidiary Allegheny Generating Company ("AGC"), 10435 Downsville Pike, Hagerstown, Maryland 21740, have filed a post-effective amendment to a declaration ("Declaration") under section 12(c) of the Act and rules 46 and 54 under the Act.

AGC is a single asset company that owns a 40% undivided interest in a 2100-megawatt hydroelectric station located in Bath County, Virginia.<sup>4</sup> By order dated September 19, 1996 (HCAR No. 26579), the Commission authorized AGC to pay dividends from capital surplus through December 31, 2001. AGC continues to have declining capital needs and its retained earnings are insufficient to pay common stock dividends. As a result, AGC requests authorization to continue to pay dividends from capital surplus through December 31, 2005.

AGC's current earnings are determined in accordance with a Federal Energy Regulatory Commission ("FERC") approved cost of service formula. Under that formula, available cash flow from operations is applied first to the minimal capital expenditure requirements for AGC's existing single asset, and next to the pay down of debt and to the payment of dividends in a proportion that maintains debt at about 60% and equity at about 40% of total capitalization.

AGC's current and proposed dividend payment policy remains unchanged since AGC's operations commenced in 1985. Prior to 1985, AGC paid no dividends but accrued retained earnings as a result of recording allowance for funds used during construction in accordance with the FERC uniform system of accounts. From 1985 to 1996, AGC paid dividends from current earnings and accrued retained earnings.

<sup>4</sup> AGC is jointly owned by Monongahela Power (27%) and Supply (73%).

#### **Dominion Resources, Inc. (70-10037)**

Dominion Resources, Inc. ("Dominion"), a registered holding company, 120 Tredegar Street, Richmond, Virginia 23219, and Dominion Oklahoma Texas Exploration & Production, Inc. ("DOTEPI"), a nonutility subsidiary company of Dominion, Four Greenspoint Plaza, 16945 Northchase Drive, Suite 1750, Houston, Texas 77060, have filed a declaration under section 12(c) and rules 46, 53, and 54 under the Act.

On November 2, 2001, Consolidated Natural Gas Company ("CNG"), a wholly owned registered holding company subsidiary of Dominion, acquired in a merger transaction Louis Dreyfus Natural Gas Corp. ("LD"), a company engaged in natural gas exploration and production in the United States. Under the merger agreement, LD was merged with and into DOTEPI, a newly formed subsidiary of Dominion.<sup>5</sup> All of DOTEPI's shares were contributed by Dominion to CNG immediately following the merger. The acquisition was financed in part through the issuance of long-term debt and trust-preferred securities by CNG.

The acquisition was accounted for by the purchase method of accounting. As a result, the retained earnings of LD were recharacterized as paid-in-capital on DOTEPI's books. DOTEPI now requests authorization to pay dividends to CNG out of its capital surplus to compensate for the accounting treatment. The amount of dividends will be limited to the amount of LD's retained earnings immediately prior to the merger.<sup>6</sup> Dominion states that the payment of dividends to CNG will allow CNG to service the acquisition debt incurred in connection with the merger.

Dominion also requests authorization for any nonutility company in the Dominion system to declare and pay dividends out of capital surplus to its immediate parent companies, subject to applicable corporate law and any applicable financing agreement that restricts distributions to shareholders. Dominion states that the payment of dividends will benefit the system by enabling the parent companies to reduce or refinance borrowings and to fund operations of the system companies.

<sup>5</sup> The common stock of DOTEPI was acquired by CNG under rule 58.

<sup>6</sup> The amount of LD's retained earnings as of October 31, 2001 was \$302.7 million.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. IC-25650; 812-12789]

### **Banknorth Funds, et al.; Notice of Application**

July 8, 2002.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for an order under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

*Summary of Application:* Applicants request an order to permit a certain series of a registered open-end management investment company to acquire all of the assets and liabilities of certain other series of the same registered open-end management investment company. Because of certain affiliations, applicants may not rely on rule 17a-8 under the Act.

*Applicants:* Banknorth Funds, Banknorth, N.A., and Banknorth Investment Advisors ("BIA").

*Filing Dates:* The application was filed on February 27, 2002 and amended on July 1, 2002.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 2, 2002 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants, c/o Banknorth Investment Management Group, 111 Main Street, Burlington, VT 05402-0409.

**FOR FURTHER INFORMATION CONTACT:** Julia Kim Gilmer, Senior Counsel, at (202)