

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363 or send an e-mail request to Charles.Mierzwa@RRB.GOV. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 or send an e-mail to Ronald.Hodapp@RRB.GOV. Written comments should be received within 60 days of this notice.

Charles Mierzwa,
Clearance Officer.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of May 3, 2004: A Closed Meeting will be held on Wednesday, May 5, 2004, at 3 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii), and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Goldschmid, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Wednesday, May 5, 2004, will be:

- Formal orders of investigation;
- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings of an enforcement nature;
- Consideration of amicus participation; and an 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: April 28, 2004.

Jonathan G. Katz,
Secretary.

[FR Doc. 04-9973 Filed 4-28-04; 11:54 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27839]

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

April 23, 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 May 18, 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 May 18, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc. et al. (70-10166)

American Electric Power Company, Inc. ("AEP") a New York corporation and AEP Utilities, Inc., formerly Central and South West Corporation and a Delaware corporation ("AEP Utilities"), both registered holding companies; and the following direct and indirect subsidiaries of AEP: AEP Generating

Company ("Generating"), AEP Texas Central Company, formerly Central Power and Light Company ("TCC"), AEP Texas North Company, formerly West Texas Utilities Company ("TNC"), Appalachian Power Company ("Appalachian"), Columbus Southern Power Company ("Columbus"), Indiana Michigan Power Company ("Indiana"), Kentucky Power Company ("Kentucky"), Kingsport Power Company ("Kingsport"), Ohio Power Company ("Ohio"), Public Service Company of Oklahoma ("PSO"), Southwestern Electric Power Company ("SWEPCO"), and Wheeling Power Company ("Wheeling") (collectively, "Public Utilities"); Cedar Coal Company, Central Appalachian Coal Company, Central Coal Company, Colomet, Inc., Simco, Inc. Southern Appalachian Coal Company, Blackhawk Coal Company, Conesville Coal Preparation Company, (collectively, "Coal Companies"); Franklin Realty Inc.; Indiana Franklin Realty Company (collectively, "Real Estate Companies"); American Electric Power Service Corporation (together the Public Utilities, Coal Companies; Real Estate Companies, "Utility Money Pool Participants"); AEP Houston Pipeline Company, LLC; AEP Texas POLR GP, LLC; AEP Coal Marketing LLC; AEP Emissions Marketing, LLC; CSW Orange, Inc.; CSW Mulberry, Inc.; Noah I Power G.P., Inc.; CSW Orange II, Inc.; CSW Mulberry II, Inc.; CSW Sweeny GP I, Inc.; CSW Sweeny GP II, Inc.; CSW Sweeny LP I, Inc.; CSW Sweeny LP II, Inc.; CSW Services International Inc.; Trent Wind Farm LP; AEP Wind LP, LLC; AEP Wind GP, LLC; HPL GP LLC; AEP Desert Sky LP II, LLC; AEP Ohio LLC; AEP Wind LP II, LLC; and AEP Wind Holding, LLC (collectively, "New Nonutility Money Pool Participants") and the nonutility subsidiaries listed in Exhibit A as defined in Section IV.C below ("Prior Nonutility Money Pool Participants") (collectively, "Applicants"), all located at 1 Riverside Plaza, Columbus, Ohio 43215 have filed an application-declaration ("Application") under sections 6(a), 7, 9(a), 10, and 12(b), 12(c), 32, and 33, and rules 43, 45, 46, 53 and 54 under the Act.

I. Background and Summary

By Commission order dated December 18, 2002 (HCAR No. 27623) ("December Order"), AEP was authorized to conduct financing transactions until March 31, 2006, including among other things: the issuance of guarantees and other credit support; the creation of financing entities; the continuation of the public utilities' money pool; the creation of the

nonutility money pool; and the payment of dividends out of capital or unearned surplus. AEP currently has authority to issue commercial paper, promissory notes and other forms of short-term indebtedness in an aggregate amount not to exceed \$7.2 billion to fund the money pools and for its own requirements. In addition, AEP and any existing direct or indirect nonutility subsidiary (including any exempt wholesale generator under section 32 of the Act ("EWG"), a foreign utility company under section 33 of the Act ("FUCO") or an exempt telecommunications company under section 34 of the Act ("ETC"), and any rule 58 company ("Rule 58 Company")) (collectively the "Nonutility Subsidiaries") were authorized in the December Order to participate in and form the nonutility money pool as a separate system of intercorporate borrowings. The nonutility money pool is administered in the same manner and subject to the same conditions as the utility money pool.

Prior to the December Order, the Commission by order dated April 11, 2002 (HCAR No. 27517) ("April Order"), authorized the formation of financing subsidiaries and special purpose subsidiaries through June 30, 2004 with the following limits:

- Neither AEP, any financing subsidiary ("Financing Subsidiary"), nor any special purpose subsidiary ("SPS") will publicly issue notes, debt securities, preferred securities, or, to the extent they are rated, stock purchase contracts and/or stock purchase units in this file unless it has maintained at least an investment grade corporate or senior unsecured debt rating by at least one nationally recognized rating agency.

- The Financing Subsidiary or SPS will limit the aggregate amount of securities they will issue to no more than \$1 billion out of the total \$3 billion requested, and the Commission reserved jurisdiction over the additional \$2 billion.

- No Financing Subsidiary or SPS shall acquire or dispose of, directly or indirectly, any interest in any "utility asset," as that term is defined under the Act.

- Financing Subsidiaries are authorized to transfer proceeds of any financing to their respective parent companies.

The Applicants request authorization to replace the December Order and the April Order with the following requests with respect to external financing activities, the provision of intrasystem financings, guarantees, and other matters through March 31, 2007 ("Authorization Period").

II. Financing Requests

A. Financing Parameters

The Applicants request authority to engage in financing transactions under the following terms ("Financing Parameters"):

1. Investment Grade Requirements

Applicants represent that, except for securities issued for the purpose of funding AEP money pool operations, no guarantees or other securities, other than common stock, may be issued in reliance upon the authorization to be granted by the Commission, unless: (1) The security to be issued, if rated, is rated investment grade; (2) all outstanding securities of the issuer that are rated are rated investment grade; and (3) all outstanding securities of AEP that are rated are rated investment grade ("Investment Grade Condition"). For purposes of this Investment Grade Condition, a security will be deemed to be rated "investment grade" if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3-1 under the Securities Exchange Act of 1934, as amended.

2. Common Equity

AEP hereby represents that it will maintain during the Authorization Period for itself and for all the Public Utilities a minimum of 30% common equity as a percentage of consolidated capital (inclusive of short-term debt and inclusive of securitization bonds for the recovery of regulatory assets in connection with state-mandated utility restructuring); however TCC seeks authority to maintain a common equity ratio of 25% for so long as securitization bonds are outstanding. The 25% common equity as a percentage of consolidated capital is being sought because of the issuance of securitization bonds. Securitization bonds are expected to be outstanding until the currently outstanding TCC Transition Funding securitization bond issue is scheduled to be fully retired by January 15, 2016. However, TCC is anticipating an additional issuance which would remain outstanding for approximately 15 years after it is issued.

3. Effective Cost of Money

The effective cost of capital on Preferred Stock, equity-linked securities, Preferred Securities, Long-term Debt and Short-Term Debt will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by

similar companies of reasonably comparable credit quality. Applicants state that in no event will the effective cost of capital (a) on any series of Long-term Debt, exceed 500 basis points over a U.S. Treasury security having a remaining term equal to the term of such series, (b) on any series of Preferred Stock, Preferred Securities or equity-linked securities, exceed 600 basis points over a U.S. Treasury security having a remaining term equal to the term of such series, and (c) on Short-term Debt, exceed 500 basis points over the London Interbank Offered Rate ("LIBOR") for maturities of less than one year

4. Maturity

Maturity of indebtedness will not exceed 50 years for long term. Preferred Securities and equity-linked securities will be redeemed no later than 50 years after the issuance, unless converted into Common Stock. Preferred Stock issued directly by AEP may be perpetual in duration. Short-term borrowings will have maturities of less than one year from the date of issuance.

5. Issuance Expenses

The underwriting fees, commissions, or other similar expenses paid in connection with the issue, sale or distribution of a security pursuant to the Application will not exceed the greater of (a) 5% of the principal or total amount of the securities being issued, or (b) issuance expenses that are generally paid at the time of the pricing for sales of the particular issuance, having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.

6. External Financing

External financing will be at rates or prices and under conditions based upon, or otherwise determined, by competitive capital markets. The Applicants request authority to sell securities covered by this Application in any of the following ways: (a) Through underwriters or dealers; (b) directly to a limited number of purchasers or to a single purchaser, or (c) through agents or dealers. If debt securities are being sold, they may be sold pursuant to "delayed delivery contracts" which permit the underwriters to locate buyers who will agree to buy the debt at the same price but at a later date than the date of the closing of the sale to the underwriters. Debt securities may also be sold through the use of medium-term note and similar programs, including in transactions covered by Rule 144A under the Securities Act of 1933.

7. Borrowing Limits

Borrowing limits for the aggregate amount of outstanding external financing effected by the Applicants under the authorization requested during the Authorization Period, other than the refinancing of currently outstanding securities, which shall not be limited, will not exceed:

a. Long-term debt limits:

AEP—\$3,000,000,000
 Kingsport—\$ 40,000,000
 TCC—\$600,000,000
 TNC—\$250,000,000
 SWEPCO—\$600,000,000
 Wheeling—\$40,000,000

b. Short-term limits:

i. Public Utility Subsidiaries through the money pool or external borrowings, or borrowings from AEP or from a Financing Subsidiary, are as follows:

Appalachian—\$600,000,000
 Columbus—\$350,000,000
 Indiana—\$500,000,000
 Kentucky—\$200,000,000
 Generating—\$125,000,000
 Kingsport—\$40,000,000
 Ohio—\$600,000,000
 PSO—\$300,000,000
 SWEPCO—\$350,000,000
 TCC—\$600,000,000
 TNC—\$250,000,000
 Wheeling—\$40,000,000

ii. AEP requires an amount of authority for short-term borrowings sufficient to fund the utility money pool and the nonutility money pool, to make loans to other Subsidiaries, as well as for its own requirements in an amount not to exceed \$7,200,000,000.

iii. AEP Utilities, Inc., a registered public utility holding company, requests authority to borrow up to \$100,000,000 outstanding at any one time from external sources or from its parent AEP for its own corporate purposes. This authority is in addition to its authority to borrow to fund the utility money pool.

8. Use of Proceeds

The proceeds from the sale of securities in external financing transactions by the Applicants will be added to their respective treasuries and subsequently used principally for general corporate purposes including:

- a. The financing, in part, of capital expenditures;
- b. The financing of working capital requirements;
- c. The acquisition, retirement or redemption of securities previously issued by such Applicant; and
- a. Other lawful purposes, including direct or indirect investment in Rule 58 Companies by AEP, other subsidiaries approved by the Commission, EWGs and FUCOs.

The Applicants represent that no such financing proceeds will be used to acquire a new subsidiary unless such financing is consummated in accordance with an order of the Commission or an available exemption under the Act.

B. AEP External Financing

AEP seeks authority to increase its capitalization by issuing and selling from time to time during the Authorization Period: (1) Directly, additional common stock or options, warrants, equity-linked securities or stock purchase contracts convertible into or exercisable for common stock, and preferred stock; (2) indirectly through one or more financing subsidiaries as described in Section III.D ("Financing Subsidiaries"), other forms of preferred securities (including trust preferred securities) (collectively "Preferred Securities"); (3) directly or indirectly through one or more Financing Subsidiaries new long term debt securities ("Long-Term Debt"), in an amount up to \$3 billion (excluding securities issued for purposes of refunding or replacing other outstanding securities where AEP's capitalization is not increased) as more fully described below.

Common Stock. AEP seeks authority to issue and sell Common Stock and to issue and sell options, warrants, equity-linked securities or other stock purchase rights exercisable for Common Stock. The aggregate amount of financing obtained by AEP during the Authorization Period from issuance and sale of Common Stock (other than for employee benefit plans or stock purchase and dividend reinvestment plans), when combined with issuances of preferred stock, Preferred Securities, equity linked securities, and long-term debt, as described in this section, and other than for refunding or replacement of securities where capitalization is not increased as a result thereof, shall not exceed \$3 billion. Any refunding or replacement of securities where capitalization is not increased from that in place at September 30, 2003, will be through the issuance of securities of the type and under the same terms and conditions authorized in this Application. Common Stock financings may be effected through underwriting agreements of a type generally standard in the industry. Public distributions may be pursuant to private negotiation with underwriters, dealers or agents as discussed below or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or

more persons. All such Common Stock sales will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

AEP may sell Common Stock covered by this Application in any one of the following ways: (i) Through underwriters or dealers; (ii) through agents; or (iii) directly through a limited number of purchasers or a single purchaser. If underwriters are used in the sale of the securities, such securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The securities may be offered to the public either through underwriting syndicates (which may be represented by a managing underwriter or underwriters designated by AEP) or directly by one or more underwriters acting alone. If Common Stock is being sold in an underwritten offering, AEP may grant the underwriters a "green shoe" option permitting the purchase from AEP at the same price of additional shares then being offered solely for the purpose of covering over-allotments.

Preferred Securities. AEP seeks to have the flexibility to issue Preferred Stock or other types of Preferred Securities (including, without limitation, trust preferred securities or monthly income preferred securities) directly or indirectly through one or more special-purpose Financing Subsidiaries organized by AEP specifically for such purpose as described. The aggregate amount of financing obtained by AEP during the Authorization Period from issuance and sale of preferred stock, Preferred Securities and equity linked securities, when combined with issuances of Common Stock (other than for employee benefit plans or stock purchase and dividend reinvestment plans), and long-term debt, as described in this section, shall not exceed \$3 billion for the uses set forth above. Any refunding or replacement of securities where capitalization is not increased from that in place at September 30, 2003, will be through the issuance of securities of the type authorized in this Application.

Preferred Stock or other types of Preferred Securities may be issued in one or more series with such rights, preferences and priorities as may be designated in the instrument creating each such series, as determined by AEP's Board of Directors. Dividends or distributions on Preferred Securities will be made periodically and to the extent funds are legally available for

such purpose, but may be made subject to terms which allow the issuer to defer dividend payments for specified periods. Preferred Securities may be convertible or exchangeable into shares of AEP Common Stock or indebtedness. Equity linked securities will be exercisable or exchangeable for or convertible, either mandatorily or at the option of the holder, into Common Stock or indebtedness or allow the holder to surrender to the issuer or apply the value of a security issued by AEP as approved by the Commission to such holder's obligation to make a payment on another security of AEP issued as permitted by the Commission. Any convertible or equity linked securities will be convertible into or linked to Common Stock, Preferred Securities or unsecured debt that AEP is otherwise authorized to issue by Commission order directly, or indirectly through Financing Subsidiaries on behalf of AEP.

Long-Term Debt. AEP requests Commission authorization during the Authorization Period to issue unsecured, Long-Term Debt securities in an aggregate principal amount outstanding at any time, when combined with issuances of common stock (other than for benefit plans or stock purchase and dividend reinvestment plans) preferred stock, Preferred Securities, and equity linked securities as described in this section, and other than for refunding or replacement of securities where capitalization is not increased as a result thereof from that in place at September 30, 2003, not to exceed \$3 billion. Any refunding or replacement of securities where capitalization is not increased will be through the issuance of securities of the type authorized in this Application.

AEP may directly or indirectly issue unsecured Long-Term Debt through one or more Financing Subsidiaries in the form of bonds, notes, medium-term notes or debentures under one or more indentures or long-term indebtedness under agreements with banks or other institutional lenders. Each series of Long-Term Debt would have such designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking fund terms and other terms and conditions as AEP may determine at the time of issuance. Any Long-Term Debt (a) may be convertible into any other securities of AEP, (b) will have maturities up to 50 years, (c) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the

principal amount thereof, (d) may be entitled to mandatory or optional sinking fund provisions, (e) may provide for reset of the coupon pursuant to a remarketing arrangement, (f) may be subject to tender or the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event, (g) may be called from existing investors by a third party and (h) may be entitled to the benefit of affirmative or negative financial or other covenants.

The maturity dates, interest rates, redemption and sinking fund provisions, tender or repurchase and conversion features, if any, with respect to the Long-Term Debt of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding. Specific terms of any Long-Term Debt will be determined by AEP at the time of issuance and will comply in all regards with the Financing Parameters.

Short-Term Debt. AEP also seeks authority to issue directly or indirectly through a Financing Subsidiary commercial paper, promissory notes and other forms of short-term indebtedness having maturities of less than one year ("Short-Term Debt") in an aggregate amount not to exceed \$7.2 billion to fund the Money Pools, to make loans to Subsidiaries and for its own corporate purposes. Commercial paper would be sold in established domestic or European commercial paper markets. Such commercial paper would be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring commercial paper from AEP, AEP Utilities, any Financing Subsidiary or the Public Utility Subsidiaries will re-offer such paper at a discount to corporate and institutional investors. Institutional investors are expected to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities and finance companies.

AEP, AEP Utilities, any Financing Subsidiary or the Public Utility Subsidiaries may, without counting against their borrowing limits, maintain back up lines of credit in connection with a commercial paper program in an aggregate amount not to exceed the amount of authorized commercial paper.

AEP, AEP Utilities, any Financing Subsidiaries and the Public Utility Subsidiaries state that they require

flexibility in the types of short-term debt issued externally to take advantage of new products being offered in the short-term securities market, including but not limited to, the extendible commercial notes program currently being offered by certain commercial paper dealers, and other new products to provide alternate backup liquidity for commercial paper and short-term notes.

AEP, AEP Utilities, any Financing Subsidiary and the Public Utility Subsidiaries propose to engage in other types of short-term financing generally available to borrowers with comparable credit ratings as each individual entity may deem appropriate in light of its needs and market conditions at the time of issuance, including making borrowings from AEP, AEP Utilities or any Financing Subsidiary.

C. Public Utility Subsidiaries' Financing

Kingsport, SWEPCO, TCC, TNC, and Wheeling seek authority to issue secured or unsecured long-term debt in an amount not to exceed \$50 million, \$600 million, \$600 million, \$250 million, and \$50 million, respectively, including the issuance of long-term debt to AEP, and to enter into hedging transactions.¹ This authorization would include any new pollution control financing by SWEPCO. Kingsport, SWEPCO, TCC, TNC, and Wheeling seek authorization to issue long-term debt to AEP at a rate designed to parallel AEP's effective cost of capital. Any long-term debt would have such designations, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, interest payment terms, redemption provisions, non-refunding provisions, sinking fund terms, conversion or put terms and other terms and conditions in accordance with the Financing Parameters set forth in Section II.

The Public Utility Subsidiaries seek authority to issue short-term debt to the extent of the borrowing limits as set forth below in Section II through the Utility Money Pool, which is more fully described below, through external borrowings, or from AEP or a Financing Subsidiary.

D. AEP Utilities' Financing

AEP Utilities seeks authority to issue unsecured short-term debt in an amount up to \$100,000,000 from external

¹ The Public Utility Subsidiaries must seek the authority of the public utility commission in the states of Indiana, Virginia, Tennessee, Ohio, Oklahoma and Kentucky for the issuance of long-term securities. Therefore, rule 52(a) provides an exemption from this Commission for the issuances of long term debt securities by all of AEP's public utility subsidiaries except: Kingsport, TCC, SWEPCO, TNC and Wheeling.

sources or from its parent AEP for its general corporate purposes under the terms described in Section II. This authority would not be used to fund the Utility Money Pool. AEP Utilities will not borrow from either the Utility Money Pool or the Nonutility Money Pool.

E. Financing Subsidiaries

AEP and the Subsidiaries request authority to acquire, directly or indirectly, the equity securities of one or more Financing Subsidiaries. Financing Subsidiaries may be corporations, trusts, partnerships or other entities created specifically for the purpose of facilitating the financing of the authorized and exempt activities (including exempt and authorized acquisitions) of AEP and the Subsidiaries through the issuance of long-term debt, short-term debt, including commercial paper, or Preferred Securities, to third parties and the transfer of the proceeds of such financings to AEP or such Subsidiaries in the case of the transfer of proceeds to the respective participants in the Nonutility Money Pool and Utility Money Pool. AEP and the Subsidiaries request authorization to issue their subordinated unsecured notes ("Subordinated Notes") to any Financing Subsidiary to evidence the transfer of financing proceeds by a Financing Subsidiary to its respective parent company. The amount of securities issued by any Financing Subsidiary to third parties under the authorization requested will be included in the overall external financing limitation, if any, authorized for the parent company of such Financing Subsidiary. However, the amount of Subordinated Notes issued by a parent company to its Financing Subsidiary will not be counted against such external financing limitation.

AEP or a Subsidiary may, if required, guarantee or enter into support or expense agreements in respect of the obligations of any such Financing Subsidiaries. Subsidiaries may also provide guarantees and enter into support or expense agreements, if required, on behalf of such entities. However, to avoid double counting, the guarantees of securities issued by Financing Subsidiaries shall not be counted against the limitation on AEP guarantees and subsidiary guarantees.

F. Credit Enhancement

Applicants request authority to obtain credit enhancement for the securities covered by this Application, which could include insurance, a letter of credit or a liquidity facility, if they were

to issue floating rate securities, whereas the credit enhancement would be a purely economic decision for fixed rate securities. Applicants anticipate that they would be required to pay a premium or fee to obtain the credit enhancement, but a net benefit through a reduced interest rate would be realized. Applicants would obtain credit enhancement only if it is economically beneficial to do so taking into consideration the fees required.

G. Guarantees

AEP requests authorization to directly or indirectly through one or more Financing Subsidiaries to enter into guarantees, obtain letters of credit, enter into support or expense agreements, or otherwise provide credit support with respect to debt securities or other contractual obligations of any subsidiary from time to time through the Authorization Period on behalf of any of its direct or indirect Subsidiaries up to \$5 billion, provided however, that the amount of any parent guarantees in respect of obligations of any subsidiaries shall also be subject to the limitations of rule 53(a)(1) or rule 58(a)(i), as applicable. AEP also requests authority to guarantee the obligations of its direct or indirect subsidiaries as may be appropriate or necessary to enable the subsidiaries to carry on the ordinary course of their businesses.

AEP Utilities seeks authority to provide guarantees and other credit support with respect to its direct or indirect subsidiaries in an amount not to exceed \$1,000,000,000 outstanding at any one time.

Each of the Public Utility Subsidiaries seeks authorization to enter into guarantees and other credit support with respect to obligations of each of its subsidiaries in an aggregate amount not to exceed \$125,000,000 outstanding at any one time.

Nonutility Subsidiaries also request authority for each Nonutility Subsidiary to provide guarantees of indebtedness or contractual obligations and other forms of credit support to other Nonutility Subsidiaries in an aggregate principal amount not to exceed an aggregate of \$2 billion outstanding at any one time, exclusive of any guarantees and other forms of credit support that are exempt pursuant to rule 45(b) and rule 52(b), provided however, that the amount of Nonutility Subsidiary guarantees in respect of obligations of any Rule 58 Companies shall remain subject to the limitations of rule 58(a)(i).

Certain of the guarantees referred to above may be in support of the obligations of subsidiaries which are not capable of exact quantification. In such

cases, AEP will determine the exposure of the instrument for purposes of measuring compliance with the total guarantee limit by appropriate means including estimation of exposure based on loss experience or projected potential payment amounts. If appropriate, these estimates will be made in accordance with Generally Accepted Accounting Principles ("GAAP") and these estimates will be re-evaluated periodically. Any guarantee that is outstanding at the end of the Authorization Period shall remain in force until it expires or terminates in accordance with its terms. AEP or a subsidiary issuing a guarantee, as the case may be, proposes to charge each subsidiary a fee for each guarantee provided on its behalf that is not greater than the costs, if any, of obtaining the liquidity necessary to perform the guarantee for the period of time the guarantee remains outstanding.

The aggregate amount of the guarantees will not exceed \$8.125 billion (not taking into account obligations exempt pursuant to rule 45 and under other outstanding Commission orders).

H. Hedges

AEP and the subsidiaries seek authority to enter into and perform interest rate hedging transactions ("Interest Rate Hedges"). Interest Rate Hedges would only be entered into with counterparties ("Approved Counterparties") whose senior debt ratings, or whose parent companies' senior debt ratings, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors' Service or Fitch Investor Service. Interest Rate Hedges will involve the use of financial instruments and derivatives commonly used in today's capital markets, such as interest rate swaps, options, caps, collars, floors, and structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations. The transactions would be for fixed periods and stated notional amounts. In no case will the notional principal amount of any interest rate swap exceed that of the underlying debt instrument and related interest rate exposure. Applicants will not engage in speculative transactions. Fees, commissions and other amounts payable to the counterparty or exchange (excluding the swap or option payments) in connection with an Interest Rate Hedge will not exceed

those generally obtainable in competitive markets for parties of comparable credit quality.

Interest rate hedging transactions with respect to anticipated debt offerings ("Anticipatory Hedges") and subject to certain limitations and restrictions as set forth would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through: (i) A forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap ("Forward Sale"); (ii) the purchase of put options on U.S. Treasury obligations ("Put Options Purchase"); (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations ("Zero Cost Collar"); (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, options, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange ("On-Exchange Trades") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade or the Chicago Mercantile Exchange, the opening of over-the-counter positions with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. Each Applicant will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. Applicants may decide to lock in interest rates and/or limit its exposure to interest rate increases. Applicants represent that each Interest Rate Hedge and Anticipatory Hedge will be treated for accounting purposes under GAAP. The Applicants will comply with Statement of Financial Accounting Standard ("SFAS") 133 (Accounting for Derivative Instruments and Hedging Activities) and SFAS 138 (Accounting for Certain Derivative Instruments and Certain Hedging Activities) or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board ("FASB"). The Applicants will also comply with any future FASB financial disclosure requirements associated with hedging transactions.

III. Intrasystem Financing Requests

AEP and the participants in each of the money pools request authorization

to (A) continue to participate in the money pools and (B) establish Financing Subsidiaries to fund the money pools under the following terms during the Authorization Period.

A. Money Pool Operations

Participants in either the utility money pool ("Utility Money Pool") or the nonutility money pool ("Nonutility Money Pool") will make unsecured short-term borrowings from its applicable money pool, contribute surplus funds to its applicable money pool and lend to and or extend credit to other participants in its applicable money pool. All short-term borrowing needs of the participants may be met by funds in the money pools to the extent such funds are available. The money pools are composed from time to time of funds from the following sources: (i) Surplus funds of AEP; (ii) surplus funds of any of the participants; or (iii) short-term borrowings by AEP, any Financing Subsidiary or, in the case of the Utility Money Pool, AEP Utilities, Inc. All debt issued in connection with the money pools will be unsecured. AEP funds made available to the money pools will be used first to fund the Utility Money Pool and thereafter to fund the Nonutility Money Pool.

Each participant shall have the right to borrow from the respective money pool from time to time, subject to the availability of funds and the applicable borrowing limits set forth in orders of the Commission and other regulatory authorities, and agreements binding upon such participant. Each participant may borrow from the Utility Money Pool to the extent of its borrowing limits for short-term debt. Participants in the Nonutility Money Pool will not engage in lending and borrowing transactions with participants in the Utility Money Pool. Neither money pool will borrow from the other money pool. No participant shall be obligated to borrow from the money pool if lower cost funds can be obtained from its own external borrowing. Neither AEP nor AEP Utilities will borrow funds from either of the money pools or any participant. From the date of any order issued in this file, EWG's and FUCO's, which are participants in the Nonutility Money Pool, will only be lenders to, not borrowers from, the Nonutility Money Pool. Currently the following EWG's and/or FUCO's have outstanding loans from the Nonutility Money Pool ("EWG and FUCO Borrowers"):²

Company	Amount borrowed
AEP Desert Sky LP, LLC ...	\$19,703,899
AEP Delaware Investment Co.	883
AEP Energy Services Ltd (UK)	245,278,195

Each participant will borrow pro rata from each funding source in the same proportion that the amount of funds provided by that funding source bears to the total amount of short-term funds available to the money pool.

Funds which are loaned from participants into the applicable money pool which are not required to satisfy borrowing needs of other participants will be invested on the behalf of the respective money pool in one or more short-term instruments, including: (i) Interest-bearing accounts with banks; (ii) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities, including obligations under repurchase agreements; (iii) obligations issued or guaranteed by any state or political subdivision thereof, provided that such obligations are rated not less than "A" by a nationally recognized rating agency; (iv) commercial paper rated not less than "A-1" or "P-1" or their equivalent by a nationally recognized rating agency; (v) money market funds; (vi) bank certificates of deposit, (vii) Eurodollar funds; (viii) short-term debt securities rated AA or above by Standard & Poor's, Aa or above by Moody's Investors Service, or AA or above by Fitch Ratings; (ix) short-term debt securities issued or guaranteed by an entity rated AA or above by Standard & Poor's, Aa or above by Moody's Investors Service, or AA or above by Fitch Ratings; and (x) such other investments as are permitted by Section 9(c) of the Act and Rule 40 thereunder. No funds from the Utility Money Pool or Nonutility Money Pool will be invested in EWG's or FUCO's.

The interest rate applicable on any day to then outstanding loans through the money pools will be the composite weighted average daily effective cost incurred by AEP, AEP Utilities, Inc. or any Financing Subsidiary for short-term borrowings from external sources for that money pool. If there are no borrowings outstanding then the rate would be the certificate of deposit yield equivalent of the 30-day Federal Reserve "A2/P2" Non Financial Commercial Paper Composite Rate ("Composite"), or if no composite is established for that day then the applicable rate will be the Composite for the next preceding day for which the Composite is established.

²The prior EWG and FUCO Borrowers represent that they will repay these outstanding loans in full. Such repayment will be reported on the appropriate Quarterly Rule 24 Report.

If the Composite shall cease to exist, then the rate would be the composite which then most closely resembles the Composite and/or most closely mirrors the pricing AEP would expect if it had external borrowings.

Each participant receiving a loan shall repay the principal amount of such loan, together with all interest accrued thereon, on demand and in any event not later than the expiration date of the authorization for the operation of the money pool. All loans made through the applicable money pool may be prepaid by the borrower without premium or penalty. If the money pool is in an invested position, interest income related to external investments will be calculated daily and allocated back to lending parties on the basis of their relative contribution to the investment pool funds on that date.

AEPSC, a rule 88 subsidiary service company, will be the administrative agent of the money pools. AEPSC will administer the money pools on an "at cost" basis and will maintain separate records for each Money Pool. Each participant, any Financing Subsidiary and AEP will determine the amount of funds it has available for contribution to the money pools. The determination of whether a participant or AEP at any time has surplus funds, or shall lend such funds to the money pool, will be made by such participant's treasurer, or by a designee thereof, on the basis of cash flow projections and other relevant factors, in such participant's sole discretion. Each participant may withdraw any of its funds at any time upon notice to AEPSC.

B. Financing Subsidiaries To Fund Money Pools

AEP proposes to create two Financing Subsidiaries one to fund the Utility Money Pool ("Utility Money Pool FS") and a separate subsidiary to fund the Nonutility Money Pool ("Nonutility Money Pool FS"). Both the Utility Money Pool FS and the Nonutility Money Pool FS will be limited liability corporate subsidiaries of AEP formed under Delaware law. Each Financing Subsidiary will have a separate bank account for the separate money pool it funds. Any funds transferred to the money pools will flow through this Financing Subsidiary bank account.

AEP states it seeks to modify its corporate borrowing program to more fully separate the operations of the Utility Money Pool and the Nonutility Money Pool to further assure that there can be no cross-subsidization. This new structure will facilitate a separate external borrowing program for the Utility Money Pool.

The Financing Subsidiary formed to fund the Utility Money Pool may obtain funds from external sources or from AEP or AEP Utilities. It is anticipated that the Financing Subsidiary in the Utility Money Pool will have the ability to establish an external commercial paper program supported by the Public Utility Subsidiaries and should therefore obtain a higher credit rating than the AEP program currently has. AEP's current credit rating for commercial paper is A2/P3/F2—and it is anticipated that the Utility Money Pool Financing Subsidiary should initially be rated A2/P2/F2. This will result in lower financing costs depending on the market conditions.

When the Financing Subsidiary directly issues commercial paper to dealers to fund the Utility Money Pool, each Public Utility Subsidiary that borrows from the Financing Subsidiary must maintain comparable debt ratings equal to or greater than the Financing Subsidiary and maintain requisite backup facilities with one or more financial institutions. Each Public Utility Subsidiary will pay all liabilities incurred by the Financing Subsidiary relating to the offer and sale of the commercial paper the proceeds of which were used to make loans to that Public Utility Subsidiary and its pro rata share of other expenses and administrative costs of the Financing Subsidiary in connection with its funding of the Utility Money Pool. No Public Utility Subsidiary will be liable for the borrowings of any other affiliate under the Money Pool. The proceeds from the borrowings of the Financing Subsidiary will be used to repay its borrowings or be invested to continue funding the Utility Money Pool. The proceeds of borrowings by the Financing Subsidiary will not be loaned to AEP.

The Financing Subsidiaries that fund the Money Pools would be solely financial conduits. They will not have any business purpose other than to fund the Money Pools. Commission approval will be sought if other types of transactions are contemplated.

AEP will continue to fund the Nonutility Money Pool with the sale of commercial paper. If it is determined that AEP can borrow money at a cheaper rate than that obtained by the Financing Subsidiary that is funding the Utility Money Pool then AEP will fund the Utility Money Pool directly.

AEPSC administers the Money Pools by matching up, to the extent possible, short-term cash surpluses and loan requirements of AEP and the various participants. Participants' requests for short-term loans are met first from

surplus funds of other participants which are available to the applicable money pool and then from AEP corporate funds to the extent available. To the extent that participant contributions of surplus funds to the applicable money pool are insufficient to meet participant requests for short-term loans, borrowings are made from outside the system.

C. Nonutility Money Pool Participants

In Exhibit A to this file, AEP lists the Prior Nonutility Money Pool Participants, which request to continue to participate in the Nonutility Money Pool. The following entities are no longer participants because they have been removed, dissolved, or sold: AEP Retail Energy LLC; AEP Credit, Inc.; Industry and Energy Associates LLC; AEP Gas Power Systems LLC; AEP Resource Services LLC; Mid-Texas Pipeline Company; Eastex Cogeneration LP; CSW Eastex LP I Inc.; Enershop Mutual Energy CPL LP; Mutual Energy CPL LP; Mutual Energy WTU LP; Mutual Energy Service Co., LLC; AEP Ohio Commercial & Industrial Retail Company LLC; and Universal Supercapacitors, LIG, Inc., LIG Pipeline Company, Tuscaloosa Pipeline Company, LIG Liquids Company, L.L.C., Louisiana Intrastate Gas Company, L.L.C., LIG Chemical Company. The New Nonutility Money Pool Participants seek authorization to participate in the Nonutility Money Pool.

D. Utility Money Pool Participants

Dolet Hills Lignite Company, currently a participant in the Nonutility Money Pool seeks to become a participant in the Utility Money Pool, which currently includes the Public Utilities, Coal Companies, and Real Estate Companies. Dolet Hills Lignite Company, a subsidiary of SWEPCO, seeks to become a participant in the Utility Money Pool because it is a mining company similar to the other mining companies, which are currently in the Utility Money Pool. It would no longer be a participant in the Nonutility Money Pool.

IV. Other Matters

A. Pollution Control Bonds

The following Public Utility Subsidiaries seek authority to refund and reissue currently outstanding pollution control revenue bonds as follows: TCC \$450,000,000, TNC \$45,000,000, and SWEPCO \$185,000,000. Pollution control revenue bonds may be sold either currently or in forward refundings where the price of

the securities is established currently for delivery at a future date.

B. Payments of Dividends Out of Capital or Unearned Surplus

AEP and the Nonutility Subsidiaries hereby request authority for the direct and indirect Nonutility Subsidiaries to pay dividends out of capital or unearned surplus to the fullest extent of the law, provided, however, that without further approval of the Commission, no Nonutility Subsidiary will declare or pay any dividend out of capital or unearned surplus if such Nonutility Subsidiary derives any material part of its revenues from the sale of goods, services or electricity to any Public Utility Subsidiary. In addition, the Nonutility Subsidiary will not declare any dividend out of capital or unearned surplus unless it:

- (i) Has received excess cash as a result of the sale of assets;
- (ii) Has engaged in a reorganization; and/or
- (iii) Is returning capital to an associate company.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-9788 Filed 4-29-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49617; File No. SR-Amex-2001-46]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change Relating to the Adoption of a Facilitation Rule and Member Firm Guarantee for Index Shares

April 26, 2004.

On July 11, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt a facilitation rule and a member firm participation guarantee for member firms facilitating transactions in Portfolio Depository Receipts and Index Fund Shares ("index shares") on the Exchange, and to codify the Exchange's policy prohibiting the

use of non-public information received during the facilitation process.

On November 7, 2001, September 24, 2003, and December 4, 2003, Amex filed Amendment Nos. 1, 2, and 3 to the proposed rule change, respectively.³ The proposed rule change was published for comment in the **Federal Register** on January 13, 2004.⁴ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,⁶ which, among other things, requires that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposal sets forth reasonable rules and procedures for member firms to follow when seeking to facilitate (*i.e.*, trade with) index share orders from their own public customers, and that these rules and procedures adequately provide for the exposure of the customer order to the trading crowd for the possibility of price improvement.

The proposal also would provide a member firm facilitating a public customer order of 25,000 index shares or more the right to trade with up to 50% of the order if the firm improves the price provided by the trading crowd, and up to 40% if it matches the trading crowd's price. The Commission believes that, in the context of index share trading, member firm guarantees of this size should not erode price competition to the detriment of investors. The Commission further notes that public customer orders on the specialist's book or represented in the trading crowd on the contra side of the public customer order that the member firm is seeking to

³ See letter from Claire P. McGrath, Vice President and Special Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 5, 2001 (Amendment No. 1); and letters from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated September 23, 2003 and December 3, 2003 (Amendment Nos. 2 and 3, respectively).

⁴ See Securities Exchange Act Release No. 49022 (January 5, 2004), 69 FR 2015 (January 13, 2004).

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

facilitate would have priority over the member firm's guaranteed participation.

In addition, the proposed rule change provides that it may be considered conduct inconsistent with just and equitable principles of trade for any member or associated person with knowledge of an imminent facilitation transaction to trade in index shares that are subject of the transaction or other related instruments before the proposed facilitation is disclosed. The Commission believes that this aspect of the proposal should help protect the integrity of the market and prevent disadvantage to other market participants.

It is therefore ordered, pursuant to section 19(b)(2) of the Act⁷, that the proposed rule change (File No. SR-Amex-2001-46) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04-9823 Filed 4-29-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49611; File No. SR-BSE-2004-10]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Boston Stock Exchange, Inc., and Notice of Filing and Granting Accelerated Approval to Amendment No. 1 To Permit the Separation of the Chairman and Chief Executive Officer Positions

April 23, 2004.

I. Introduction

On March 2, 2004, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its Constitution to permit the separation of the functions of Chairman and of Chief Executive Officer ("CEO"). The proposed rule change was published for comment in the **Federal Register** on March 17, 2003.³ The

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 49434, 69 FR 13922 (March 24, 2004).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.