

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation (the "PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S.1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Consideration 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR part 4204), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (§§ 4204.12-4204.13) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the three regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of section 552(b)(4) of the Freedom of Information Act.

Under § 4204.22 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 4204.22(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Decision

On December 20, 1996 (61 FR 67355), the PBGC published a notice of request from Dunham-Bush, Inc. (the "Buyer") for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its January 6, 1995 purchase of certain assets of Allagash Fluid Controls, Inc., which was formerly known as Dunham-Bush, Inc. (the "Seller"). No comments were received in response to the notice during the comment period.

According to the request, on January 6, 1995, the Buyer acquired certain assets of the Seller. The Seller was obligated to contribute to the Sheet Metal Workers' National Pension Plan (the "Plan"). The Buyer has assumed the Seller's obligation to contribute to the Plan at the purchased operations, and continues to make contributions for substantially the same number of contribution base units as the Seller. The Seller has agreed to be secondarily liable for any withdrawal liability it would have had with respect to the sold operations (if not for section 4204) should the Buyer withdraw from the Plan within the five plan years following the sale and fail to pay withdrawal liability.

The estimated amount of the unfunded vested benefits allocable to the Seller with respect to the operations sold is \$3,000,000. The amount of the bond/escrow required under section 4204(a)(1)(B) is \$545,409.29.

The Buyer submitted its financial statement as of January 26, 1996. According to that statement, the Buyer's net tangible assets are just over \$20 million, which is in excess of the unfunded vested benefits allocable to the Seller.

Based on the facts of this case and the representations and statements made in connection with the request for an exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the Plan. Therefore, the PBGC hereby grants the request for an exemption from the bond/escrow requirement. The granting of an exemption from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the Plan sponsor.

Issued at Washington, DC, on this 26th day of March, 1997.

John Seal,

Acting Executive Director.

[FR Doc. 97-8606 Filed 4-3-97; 8:45 am]

BILLING CODE 7708-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Existing Collection: Rule 17a-6, SEC File No. 270-433, OMB Control No. 3235-new

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of the following rule:

Rule 17a-6 (17 CFR 240.17a-6) permits national securities exchanges, national securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board (collectively, "SROs") to destroy or convert to microfilm or other recording media records maintained under Rule 17a-1, if they have filed a record destruction plan with the Commission and the Commission has declared such plan effective.

There are 25 SROs: 8 national securities exchanges, 1 national securities associations, 15 registered clearing agencies, and the Municipal Securities Rulemaking Board. These respondents file no more than one record destruction plan per year, which requires approximately 40 hours for each respondent. Thus, the total compliance burden is 40 hours. The approximate cost per hour is \$100, resulting in a total cost of compliance for these respondents of \$4,000 per year (40 hours @ \$100).

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C.

20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: March 28, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-8653 Filed 4-3-97; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-26698]

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

March 28, 1997.

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 thereunder. 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 amendments thereto is/are available for public inspection through the Commission's Office 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 April 21, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, 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 case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact 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 said date, 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, et al. (70-8779)

American Electric Power Company, Inc., 1 Riverside Plaza, Columbus, Ohio 43215, and its subsidiaries, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215, Appalachian Power Company, 40 Franklin Road, Roanoke, Virginia 24022, Columbus Southern Power Company, 215 North Front Street, Columbus, Ohio

43215, Indiana Michigan Power Company, One Summit Square, Fort Wayne, Indiana 46801, Kentucky Power Company, 1701 Central Avenue, Ashland, Kentucky 41101, Kingsport Power Company, 422 Broad Street, Kingsport, Tennessee 37660, Ohio Power Company, 339 Cleveland Avenue, S.W., Canton, Ohio 44702, and Wheeling Power Company, 51-16th Street, Wheeling, West Virginia 26003, have filed a post-effective amendment under sections 6, 7 and 12(b) of the Act, and rule 45 under the Act, in connection with their previously filed application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 45, 90 and 91 under the Act.

By orders dated September 13, 1996 (HCAR No. 26572) ("Initial Order") and September 27, 1996 (HCAR No. 26583), AEP was authorized to form one or more direct or indirect nonutility subsidiaries ("New Subsidiaries") to broker and market electric power, natural and manufactured gas, emission allowances, coal, oil, refined petroleum products and natural gas liquids ("Energy Commodities"). The Initial Order also authorized AEP to guarantee through December 31, 2000 up to \$50 million of debt and up to \$200 million of other obligations of the New Subsidiaries ("Guarantee Authority"). The Initial Order stated that obligations of the New Subsidiaries (other than debt) might take the form of bid bonds or other direct or indirect guarantees of contractual or other obligations.

With the adoption of rule 58,¹ the acquisition of securities of or other interests in Energy-Related Companies (as defined in the rule), including the marketing and brokering of Energy Commodities, subject to certain limitations, is exempt from the requirement of prior Commission approval under the Act. AEP states that any of the New Subsidiaries may convert to an Energy-Related Company so that such New Subsidiary could not only broker and market Energy Commodities, but also could offer all the other energy-related services permitted by the rule.

AEP requests that the Guarantee Authority be expanded so that AEP could guarantee the debt and other obligations of the New Subsidiaries for all Energy-Related Company activities.

New Century Energies, Inc. (70-9005)

New Century Energies, Inc. ("NCE"), 1225 Seventeenth Street, Denver,

Colorado 80202, a Delaware corporation not currently subject to the Act, has filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(c) of the Act and rules 42 and 54 thereunder.²

NCE proposes to implement a shareholder rights plan and to enter into a Rights Agreement ("Agreement") with an agent to be named. The Board of Directors of NCE ("Board") proposes to declare a dividend distribution of one right ("Right") for each outstanding share of common stock, \$1.00 par value, of NCE ("Common Stock") to shareholders of record at the close of business on a record date yet to be established ("Record Date"). Each Right would entitle the registered holder to purchase from NCE one one-hundredth of a share of Series A Junior Participating Preferred Stock ("Preferred Stock") at a price to be determined by the Board, subject to adjustment ("Purchase Price").

Until the earliest to occur of (i) ten days following the date ("Shares Acquisition Date") of the public announcement that a person or group of persons ("Acquiring Person") has acquired, or obtained the right to acquire, beneficial ownership of Common Stock or other voting securities ("Voting Stock") that have 10% or more of the voting power of the outstanding shares of Voting Stock or (ii) ten days (or such later date as may be determined by action of the Board prior to the time any person or group of persons becomes the Acquiring Person) following the commencement or announcement of an intention to make a tender offer or exchange offer, the consummation of which would result in such person acquiring, or obtaining the right to acquire, beneficial ownership of Voting Stock having 10% or more of the voting power of the outstanding shares of Voting Stock (the earlier of such dates being called the "Distribution Date"), the Rights will be evidenced, with respect to any of the Common Stock certificates outstanding as of the Record Date, by such Common Stock certificates. Until the Distribution Date (or earlier redemption or expiration of the Rights), the Rights will be

² NCE has previously filed an application-declaration under section 9(a)(2) of the Act to acquire all of the outstanding voting securities of Public Service Company of Colorado ("PSC"), Southwestern Public Service Company ("SPS") and Cheyenne Light, Fuel and Power Company ("CLFP"), each a public utility company. Following the consummation of the transactions described in that application-declaration, NCE will register as a holding company under the Act.

¹ HCAR No. 26667 (February 14, 1997), 62 F.R. 7900 (February 20, 1997). The rule became effective on March 24, 1997.