

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-PHLX-95-35) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-27277 Filed 11-2-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-26401; 70-8411]

**Allegheny Power System, Inc.,
Supplemental Order Authorizing
Acquisition of Nonutility Subsidiaries;
Issuance of Securities; and Provision
of Services to Associates**

October 27, 1995.

Allegheny Power System, Inc. ("APS"), a registered holding company, AYP Capital, Inc. ("AYP"), a nonutility subsidiary company of APS, and Allegheny Power Service Corporation ("APSC"), all of New York, New York, have filed a post-effective amendment to an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 13(b), 32 and 33 of the Public Utility Holding Company Act of 1935, as amended ("Act"), and rules 45, 53, 87, 90 and 91 thereunder. The Commission issued a notice of the filing of the post-effective amendment on July 7, 1995 (HCAR No. 26327).

By order dated July 14, 1994 (HCAR No. 26085), APS was authorized to organize and finance AYP to invest in: (i) Companies engaged in new technologies related to the core utility business of APS and (ii) companies for the acquisition and ownership of exempt wholesale generators ("EWGs").

By order dated February 3, 1995 (HCAR No. 26229), AYP was authorized to engage in the development, acquisition, construction, ownership and operation of EWGs and in development activities with respect to: (i) Qualifying cogeneration facilities and small power production facilities ("SPPs"); (ii) nonqualifying cogeneration facilities, nonqualifying SPPs and independent power production facilities ("IPPs") located within the service territories of APS public utility subsidiary companies; (iii) EWGs; (iv) companies involved in new technologies related to the core business of APS; and (v) foreign utility companies ("FUCOs"). AYP was also authorized to consult for nonaffiliate companies. APS was authorized to

increase its investment in AYP from \$500,000 to \$3 million.

The post-effective amendment, as amended, seeks Commission authorization to allow APS and AYP to engage in several activities. A total of \$300 million in financing also is sought.

First, the post-effective amendment seeks Commission authorization to allow AYP or a special-purpose subsidiary ("NEWCO") to provide energy management services ("EMS") and demand side management ("DSM") services to nonassociates at market prices and to associate companies at cost. The amended application states that the EMS would include: (i) Identification of energy cost reduction and efficiency opportunities; (ii) design of facility and process modifications to realize such efficiencies; (iii) management of or the direct construction or installation of energy conservation equipment; (iv) training of client personnel in operation of equipment; (v) maintenance of energy systems; (vi) design, management, construction and installation of energy management systems and structures; (vii) performance contracts; (viii) identifying energy conservation or efficiency programs; (ix) system commissioning; (x) reporting system results; and (xi) other similar or related energy management activities.

The DSM services would include: (i) Design of energy conservation programs; (ii) implementation of energy conservation programs; (iii) performance contracts for DSM work; (iv) monitoring and evaluating DSM programs; and (v) other similar or related DSM activities.

With respect to EMS and DSM services, AYP and the NEWCO would finance, either through direct loans or leases of EMS and DSM facilities and equipment purchased by AYP and the NEWCO, EMS and DSM equipment provided to EMS and DSM customers. AYP and the NEWCO might retain title to the EMS and DSM facilities and equipment. Loans would enable customers to purchase goods and services from third parties on their own terms and conditions. Loans would be evidenced by promissory notes.

The Commission previously has authorized registered holding companies to form and finance special-purpose subsidiaries to engage in EMS and DSM services.¹ For example, the

¹ EUA Cogenex Corp., Holding Co. Act Release No. 25697 (Dec. 9, 1992) (acquisition of New England Sun Control, Inc.); Northeast Utilities, Holding Co. Act Release No. 25114-A (July 27, 1990) (acquisition of HEC Energy Corp.); Eastern Utilities Associates, Holding Co. Act Release No. 24273 (Dec. 19, 1986) (acquisition of Citizens Heat

Commission authorized in December 1992 the formation by Entergy Corporation of a non-utility subsidiary to acquire an interest in Systems and Service International, Inc. for \$6.4 million and to engage in DSM in Arkansas, Louisiana, and Mississippi.² The Commission also previously has authorized such subsidiaries to engage in construction activities relative to EMS and DSM services.³ Finally, it previously has authorized loans from special-purpose subsidiaries to EMS and DSM customers for EMS and DSM services.⁴ Specifically, it has authorized Southern Development and Investment Group, Inc. ("Development") to invest up to "\$40 million to finance the costs of equipment or provide customer financing of equipment in connection with energy management and efficiency services provided by Development."⁵

Although the Commission previously has imposed limitations on EMS and DSM services offered by special-purpose subsidiaries, it has recently departed from this practice in appropriate cases.⁶

Second, the post-effective amendment seeks Commission authorization to allow AYP to engage in activities related to the development, acquisition, ownership, construction and operation of FUCOs and to invest in FUCOs through various types of investment vehicles, including limited partnerships or other types of funds, the sole objective of which is to make investments in one or more FUCOs.

The Commission previously has authorized investments in FUCOs through various types of investment vehicles. For example, the Commission has authorized TriStar Ventures Corporation ("TriStar"), a nonutility subsidiary company of Columbia Gas System, to form, acquire, finance and own securities or interests in FUCOs directly or indirectly through special-purpose domestic corporations, foreign corporations, partnerships, limited liability companies, and joint ventures.⁷

and Power Corp.); Central and South West Corp., Holding Co. Act Release No. 23818 (Sept. 4, 1985) (joint venture with Time Energy Management System Southwest, Inc.).

² Entergy Corp., Holding Co. Act Release No. 25718 (Dec. 28, 1992).

³ HEC, Inc., Holding Co. Act Release No. 26108 (Aug. 19, 1994).

⁴ Southern Co., Holding Co. Act Release No. 26221 (Jan. 25, 1995).

⁵ See also Central and South West Corp., Holding Co. Act Release No. 26367 (Sept. 1, 1995).

⁶ Eastern Utilities Associates, Holding Co. Act Release No. 26232 (Feb. 15, 1995); Central and South West Corp., Holding Co. Act Release No. 26367 (Sept. 1, 1995).

⁷ Columbia Gas System, Holding Co. Act Release No. 26209 (Dec. 29, 1994). See also Southern Co., Holding Co. Act Release No. 26069 (Aug. 3, 1994)

¹¹ 15 U.S.C. 78s(b)(2) (1982).

¹² 17 CFR 200.30-3(a)(12) (1994).

Third, the post-effective amendment seeks Commission authorization to allow APS and AYP to acquire the securities of NEWCOs that own FUCOs or EWGs ("Project NEWCOs"). Project NEWCOs might be organized to facilitate bids or proposals to acquire interests in FUCOs and EWGs, after awards of bid proposals to facilitate closing on the purchases, or subsequent to acquisitions of interests to effect adjustments in the ownership interests of unaffiliated co-investors, to facilitate partial sales of interests, to comply with applicable laws of foreign jurisdictions, or to limit exposure to U.S. and foreign taxes as part of tax planning.⁸

Fourth, the post-effective amendment seeks Commission authorization to factor the accounts receivable of associate companies and of nonassociate companies whose primary revenues are derived from the sale of electric power.

AYP (or one NEWCO engaged in this activity) will limit the acquisition of receivables from nonassociate companies so that the trailing twelve-month average amount of nonassociate company receivables held as of the end of any calendar month will be less than the trailing twelve-month average amount of receivables acquired from APS associate companies and held as of the end of such calendar month.

AYP or the NEWCO will purchase accounts receivable from associate or nonassociate companies on the day that such accounts receivable become due and payable. Purchases from utility subsidiary companies of APS will be made at discounts which are competitive to those of other entities providing comparable factoring services. Accounts receivable will be assigned to AYP or the NEWCO on a nonrecourse basis, except to the extent that such receivable is invalid, in which instances AYP or the NEWCO will bear the risk of the uncollectability of the account. Each company from which accounts receivable are purchased is expected to be appointed to act as collection agent in respect of such account receivables.

The Commission previously has authorized the factoring of accounts receivable of both associate and nonassociate companies.⁹ The Commission, in July 1986, authorized

(authorization for acquisition of capital shares, partnership interests, or trust certificates in NEWCOs that own FUCOs or EWGs).

⁸ The Commission previously has authorized the formation of NEWCOs for these purposes. Southern Co., Holding Co. Act Release No. 26069 (Aug. 3, 1994).

⁹ Central and South West Corp., Holding Co. Act Release No. 23767 (July 19, 1985) (associate companies); CSW Credit, Inc., Holding Co. Act Release No. 24157 (July 31, 1986) (nonassociate companies).

CSW Credit, a special-purpose subsidiary of a registered holding company, to process the accounts receivable of nonassociate companies. As in this application, fifty percent of the accounts receivable processed by CSW Credit were required to be from associate companies. In March 1994, the Commission affirmed the "fifty-percent" limitation in a denial of an application for approval to exceed the standard.¹⁰

Fifth, and finally, the post-effective amendment seeks Commission authorization to allow AYP or a NEWCO, as agent for APS system companies, to manage the real estate portfolio of APS and its associate companies, to market excess or unwanted real estate, and to facilitate the exploitation of resources contained on or in real estate. No real estate will be purchased by AYP in connection with these activities. In addition, the net proceeds realized from any sale of real estate or from the exploitation of resources thereon, which resources include timber, oil, gas, and coal, will be credited to the company that owns the subject asset.

The Commission previously has authorized excess or unwanted real estate to be leased.¹¹ The Commission also has authorized holding companies to form and finance special-purpose subsidiaries to act as agent for associate public utilities for purposes of, for example, fuel procurement. For example, in 1978, the Commission authorized the formulation of Central and South West Fuels, Inc. to engage in fuel exploration and development "as agent for" four electric public utilities in the Central and south West system.¹²

APS proposes to invest in AYP and AYP proposes to invest in NEWCOs and in Project NEWCOs up to an aggregate of \$100 million through December 31, 1999 through loans to finance the activities relative to EMS and DSM services, accounts receivable, real estate, FUCOs and EWGs. In addition, AYP, the NEWCOs, and the Project NEWCOs propose to obtain loans from banks or issue other recourse obligations which could be guaranteed by APS or AYP. Such third-party borrowings by AYP, the NEWCOs, and the Project NEWCOs that are guaranteed by APS or AYP would be subject to the \$100 million investment authority. APS and AYP, through December 31, 1999, would guarantee or act as surety on bonds, indebtedness and performance and

other obligations issued or undertaken by AYP, the NEWCOs, or the Project NEWCOs subject to the \$100 million investment authority.

Loans from APS would mature by December 31, 2004 and would bear a fixed interest rate equal to a rate not above the prime rate in effect on the date of the loan at a bank designated by APS. Loans from third parties would mature by December 31, 2004 and would bear a fixed interest rate not above 3% over the prime rate at a U.S. money center bank to be designated by APS. Notes sold to such parties could be guaranteed by APS.

In addition to the \$100 million in financing requested, APS and AYP Commission authorization for Project NEWCOs to issue partnership interests or trust certificates through December 31, 1999 to third parties to finance EWGs and FUCOs. Such equity interests will not exceed \$200 million.¹³

AYP anticipates that NEWCOs and Project NEWCOs might not have paid employees, in which case personnel employed by APSC, a wholly owned subsidiary of APS, would provide a wide range of services to such NEWCOs and Project NEWCOs pursuant to a service agreement. Under these service agreements, NEWCOs and Project NEWCOs would reimburse APSC for the cost of services provided.

All services rendered by AYP, NEWCOs, or Project NEWCOs to nonaffiliates will be based upon the fair market value thereof. AYP, NEWCOs, and Project NEWCOs also propose to provide such services and sell goods at fair market prices to any associate EWG, FUCO or qualifying facility,¹⁴ and to NEWCOs which are any of the foregoing, and request an exemption pursuant to Section 13(b) from the requirements of Rules 90 and 91, as applicable to such transactions, if: (i) such associate entity is a FUCO, or is an EWG which derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States; (ii) such associate entity is an EWG which sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission ("FERC") or the appropriate state public utility commission, provided that the purchaser of such electricity is not an associate company of AYP within the

¹⁰ CSW Credit, Inc., Holding Co. Act Release No. 25995 (March 2, 1994).

¹¹ See, e.g., Pennsylvania Electric Co., Holding Co. Act Release No. 24716 (Sept. 15, 1988).

¹² Central and South West Corp., Holding Co. Act Release No. 20658 (Aug. 2, 1978).

¹³ APS and AYP also intend to issue capital stock and nonrecourse debt securities to finance FUCOs and EWGs. Such financing is exempt pursuant to rule 52(b).

¹⁴ Neither APS nor AYP will acquire any interest in any qualifying facility without further specific Commission authorization.

APS System; (iii) such associate entity is a qualifying facility that sells electricity exclusively at rates negotiated at arms' length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale or to an electric utility company, other than any associate company of AYP within the APS System, at "avoided cost" as determined in accordance with FERC regulations; or (iv) such associate entity is an EWG or qualifying facility that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser of such electricity is not an associate company of AYP within the APS System.

Fees and expenses in the estimated amount of \$75,000 are anticipated in connection with the proposed transactions. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of the post-effective amendment has been given in the manner prescribed in Rule 23 promulgated under the Act, and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and rules thereunder are satisfied, and that no adverse findings are necessary.

It is ordered, pursuant to the applicable provisions of the Act and rules thereunder, that the application-declaration, as amended, be, and it hereby is granted and permitted to become effective, forthwith, subject to the terms and conditions prescribed in Rule 24 under the Act, except that:

AYP shall provide, not later than 60 days following the end of each calendar quarter and 120 days after the end of each calendar year, a certificate of notification pursuant to Rule 24 that includes: (i) An unaudited balance sheet and income statement for AYP and one for each NEWCO, when established;

(ii) a narrative description of activities during the quarter just ended and a total of expenses organized by segment and, within each segment, a narrative description of services rendered by project, and new developments and updates by project type;

(iii) amounts and forms of guarantees of, and similar provisions and arrangements concerning, performance and undertaking of other obligations by AYP, or any subsidiary of AYP, which APS has granted and are currently effective, as well as indemnifications of and with respect to persons acting as sureties on bonds or other obligations

on behalf of AYP, or any subsidiary of AYP, which APS has granted and are currently effective;

(iv) a description of services provided to associate companies which identifies the recipient company, the service, the charge to the associate and, with respect to FUCOs and EWGs, whether the charge was computed at cost, market or pursuant to another method, which method shall be specified; and

(v) in connection with its factoring activities, a balance sheet as of the end of the year, statement of income for the twelve months then ended and notes to the financial statements, a listing of principal amount of borrowings of AYP and each NEWCO outstanding at the end of each year, which will contain the terms of each obligation, name of lending institution and effective cost of borrowing, outstanding accounts receivable as of the end of each month, separated by associate and nonassociate companies with each nonassociate company listed separately, a detailed calculation of the annual discount for associate companies and the methodology used to arrive at that calculation, and a calculation by month of consolidated earnings coverage.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-27315 Filed 11-2-95; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 21458; 812-8868]

ESC Strategic Funds, Inc. and Equitable Securities Corporation; Notice of Application

October 27, 1995.

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

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the Act).

APPLICANTS: ESC Strategic Funds, Inc. (the "Company") and Equitable Securities Corporation (the "Adviser").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from the provisions of section 15(a) and rule 18f-2; and from certain disclosure requirements set forth in item 22 of Schedule 14A under the Securities Exchange Act of 1934 (the "Exchange Act"); items 2, 5(b)(iii), and 16(a)(iii) of Form N-1A; item 3 of Form N-14; item 48 of Form N-SAR; and sections 6-07.2(a), (b), and (c) of Regulations S-X.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting sub-advisers (the "Managers") approved by the Company's board of directors to serve as portfolio managers for the Company's series without obtaining shareholder approval of the agreements with the Managers, and permitting the Company to disclose only aggregate sub-advisory fees for each series in its prospectuses and other reports.

FILING DATES: The application was filed on March 3, 1994, and amended on August 3, 1995, and October 26, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 1995, and should be accompanied by proof of service on the 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 800 Nashville City Center, 511 Union Street, Nashville, Tennessee 37219-1743 (Attention: W. Howard Cammack, Jr.).

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney at (202) 942-0579, or Alison E. Baur, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is a registered open-end management investment company incorporated under Maryland law. The Company offers five separate investment portfolios (each a "Fund," and together, the "Funds"), each with distinct investment objectives, policies, and restrictions. These Funds are: ESC Strategic Appreciation Fund, ESC Strategic Global Equity Fund, ESC Strategic Small Cap Fund, ESC Strategic Income Fund, and ESC Strategic Asset