SECURITIES AND EXCHANGE COMMISSION

(Release No. 35-27981)

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

June 2, 2005

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 **June 27, 2005,** to the Secretary, Securities and Exchange Commission, Washington, D.C. 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 **June 27, 2005,** the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Transmission Company LLC, et al. (70-10302)

American Transmission Company LLC ("ATC LLC"), an electric transmission public-utility company under the Act, ATC Management Inc. ("ATCMI"), a public-

utility company and a public-utility holding company exempt from registration under section 3(a)(1) of the Act by rule 2, both located at N19 W23993 Ridgeview Parkway West, Waukesha, WI 53188, and Alliant Energy Corporation ("Alliant"), a registered public-utility holding company and an indirect, partial owner of ATC LLC and ATCMI, located at 4902 N. Biltmore Lane, Madison, WI 53707 (ATC LLC and ATCMI together, "Applicants"), have filed an application-declaration, as amended ("Application"), with the Commission under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rule 54.

Applicants seek authority to enter into financing and certain related transactions for the period beginning with an order in this matter through June 30, 2008 ("Authorization Period").

I. Background and Summary of the Request

ATC LLC is an electric transmission company, organized as limited liability company under Wisconsin law, with its sole purpose to plan, construct, operate, maintain and expand transmission facilities, to provide adequate and reliable transmission services and to support effective competition in energy markets. ATC LLC was formed after the State of Wisconsin enacted legislation in 1999, encouraging, among other things, formation of for-profit transmission companies ("Transco Legislation"). [1]

[1] Applicants current financing authorization was received by order dated July 1, 2004 ("2004 Omnibus Financing Order"), American Transmission Company, et al., Holding Co. Act Release No. 27871. Applicants received certain additional financing authority by order dated April 11, 2005. American Transmission Company, et al., Holding Co. Act Release No. 27958.

ATC LLC is operated and managed by ATCMI, a Wisconsin corporation that also owns a nominal interest in ATC LLC.[2] A total of 28 investor-owned and cooperative systems contributed some combinations of transmission assets or cash in the process of forming ATC LLC.[3]

Applicants propose, generally, to enter into the following financing transactions through the Authorization Period.[4]:

(i) For ATC LLC, to issue unsecured short-term debt securities and secured and unsecured long-term debt securities in an aggregate amount of up to $1.6 billion at any one time outstanding during the Authorization Period;

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[2] ATC LLC, as a Wisconsin limited liability company, may elect to be "member-managed" or "manager-managed" and ATC LLC elected to be managed by ATCMI. Applicants state that ATCMI is structured as a corporation, rather than a limited liability company, to facilitate access to the public markets, including any potential public offering of ATCMI.

[3] See also Alliant Energy Corp., note 2 above. One of the initial members was Alliant (through its subsidiaries Wisconsin Power and Light Company ("WPL") and South Beloit Water, Gas and Electric Company ("South Beloit"). WPL and South Beloit are both subsidiary companies of Alliant. WPL contributed transmission assets to ATC LLC, but member units were issued for the assets to WPL's subsidiary, WPL Transco LLC. Applicants state that neither ATC LLC nor ATCMI are wholly owned subsidiaries of Alliant; they are only partially owned by Alliant. There are a number of other equity investors that each hold over 10% of ATC LLC. Applicants state, in addition, Alliant owns 20% of the voting securities of ATCMI. Applicants state that they finance on their own balance sheets without credit support from Alliant or any upstream owners and they maintain an arm's length relationship with Alliant. They also state that all information regarding Alliant in this Application comes from Alliant's public filings.

[4] See generally, Alliant Energy Corporation, et al., Holding Co. Act Release No. 27331 (Dec. 29, 2000). Applicants state that ATC LLC is obliged, under the Transco Legislation, to construct, operate, maintain and expand its transmission facilities to provide adequate, reliable transmission service under an open-access transmission tariff. Applicants state that, effective February 1, 2002, ATC LLC transferred operational control of its facilities to the Midwest Independent Transmission System Operator, Inc.

(ii) For ATC LLC, to issue member interests and, for ATCMI, to issue certain equity interests and preferred securities in an aggregate amount of up to $1.4 billion at any one time outstanding during the Authorization Period;[5]

(iii) For ATC LLC and ATCMI, to provide guarantees and other credit support in an aggregate amount not to exceed $200 million outstanding at any one time during the Authorization Period;

(iv) For ATC LLC and ATCMI, to enter into various interest rate hedging transactions; and

(v) For ATC LLC and ATCMI, to undertake transactions to extend the terms of or replace, refund or refinance existing obligations, as well as the issuance of new obligations in exchange for existing obligations, subject to the limits, terms and conditions that will be contained in the proposed authorization.

II. The Requested Authority

A. Financing Parameters

Applicants state that they propose that proceeds from the sale of securities in external financing transactions will be used for general corporate purposes including (i) the financing of capital expenditures of ATC LLC and ATCMI; (ii) the financing of working capital requirements of ATC LLC and ATCMI; (iii) the refinancing or acquisition, retirement or redemption of securities previously issued by ATC LLC or ATCMI; (iv) to meet unexpected contingencies, payment and timing differences, and cash requirements; and (v) other lawful purposes.

[5] Applicants state that, as of March 31, 2005, approximately $555.5 million of member interests and Class A and Class B Shares were outstanding.

Applicants also propose that the requested authorizations will be subject to the following restrictions, among other things: (i) the maturity, of short-term debt, will not exceed 364 days and, of long-term debt, will not exceed fifty years; (ii) any short- or long-term debt security or credit facility issued will have the designation, aggregate principal amount, interest rate(s) (or methods of determining interest rates), terms of payment of interest, collateral, redemption provisions, non-refunding provisions, sinking fund terms, conversion or put terms, and other terms and conditions as Applicants might determine at the time of issuance, provided that, in no event, however, will (i) the effective cost of money on short-term debt exceed 300 basis points over the London Interbank Offered Rate for maturities of one year or less in effect at the time; or (iii) the interest rate on long-term debt exceed 500 basis points over the yield-to-maturity of a U.S. Treasury security having a remaining term approximately equal to the average life of the debt; and (iii) the underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution, of securities under this Application will not exceed 7% of the principal or total amount of the securities being issued.

Applicants also represent that ATCMI and ATC LLC each will maintain common equity of at least 30% of its consolidated capitalization (common equity, preferred stock, long-term and short-term debt). Applicants further represent that, other than Class A and Class B Shares and Member Interests, no security may be issued in reliance upon the requested order, unless: (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding rated securities of the issuer are rated investment grade; and (iii) all outstanding rated securities of ATCMI are rated investment grade. Applicants state that

they will notify the Commission within five (5) business days of becoming aware of any downgrade in the securities of any registered holding company in the Alliant system and that the notice shall include a statement of whether the downgrade will affect Applicants' access to capital markets.[6] For purposes of this condition, a security will be considered 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. Applicants request that the Commission reserve jurisdiction over the issuance by them of any securities that are rated below investment grade. Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other securities at any time that the conditions set forth in clauses (i) through (iii) above are not satisfied.

Applicants also state that any convertible or equity-linked security they issue will be convertible into, or linked, only to securities that ATC LLC and ATCMI are otherwise authorized to issue, by rule or Commission order, and the amount of the securities will be counted against the authorized limits for securities obtained by this request.

B. The Proposed Transactions

Applicants request, in addition to the transactions described specifically below, that they be authorized to undertake transactions to extend the terms of, or replace, refund or refinance existing obligations, as well as the issuance of new obligations in exchange

[6] Applicants note that the 30% common equity requirement and other financial conditions applicable to the Alliant system generally are contained in Alliant Energy Corp., et al., Holding Co. Act Release No. 27930 (Dec. 28, 2004). See also note 4 above.

for existing obligations, subject to the limits, terms and conditions that will be contained in the proposed authorization, during the Authorization Period.[7]

B.1. Short- and Long-term Debt Securities

Applicants request that they be authorized to issue long- and short-term debt securities in an aggregate amount of up to $1.6 billion at any one time outstanding during the Authorization Period. Specifically, Applicants request that ATC LLC be authorized to issue unsecured short-term debt and that it include institutional borrowings, commercial paper and privately placed notes and that ATC LLC be authorized to sell commercial paper or privately placed notes ("commercial paper"), from time to time, in established commercial paper markets.[8] Applicants also ask that ATC LLC be permitted

[7] See note 1 above. Applicants were authorized, generally, to engage in the following transactions through June 30, 2005: (i) ATC LLC, to issue debt securities in an aggregate amount not to exceed $710 million at any one time outstanding, provided that the aggregate amount of short-term debt issued not exceed $200 million; (ii) ATC LLC, to issue Member Interests and, ATCMI, to issue equity interests and preferred securities in an aggregate amount of $500 million at any one time outstanding, provided that the aggregate amount of Member Interests and Class A and Class B shares outstanding at any one time not exceed $393 million plus the value at that time of the Member Interests and Class A and Class B Shares outstanding as of the date of the 2004 Omnibus Financing Order; (iii) ATC LLC and ATCMI, to provide guarantees and other credit support in an aggregate amount not to exceed $125 million outstanding at any one time; (iv) ATC LLC and ATCMI, to enter into various interest rate hedging transactions; (v) ATC LLC and ATCMI, to undertake transactions to extend the terms of, or replace, refund or refinance, existing obligations, as well as the issuance of new obligations in exchange for existing obligations; and (vii) by order dated April 11, 2005, ATC LLC, $100 million in additional long-term financing authority, to issue debt securities in an aggregate amount not to exceed $810 million at any one time outstanding, provided that the aggregate amount of short-term debt issued not exceed $200 million at any one time outstanding.

[8] Applicants state that the commercial paper may be sold at a discount or bear interest at a rate per annum prevailing at the date of issuance for commercial paper of a similarly situated company.

to, without counting against the proposed limit, maintain back up lines of credit in connection with one or more commercial paper programs.[9]

Applicants request that ATC LLC be authorized to issue secured or unsecured long-term debt securities, including notes or debentures under one or more indentures, or long-term indebtedness under agreements with banks or other institutional lenders, directly or indirectly. In addition, Applicants request that ATC LLC be authorized to issue long-term debt that is convertible or exchangeable into forms of equity or indebtedness, or into other securities or assets.[10]

B.2. Equity Interests

Applicants also request authority, for ATC LLC, to issue Member Interests[11] and, for ATCMI, to issue Class A and B Shares in an aggregate amount of up to of $1.4 billion at any one time outstanding during the Authorization Period. Applicants request, in addition, that ATCMI be authorized to issue, to each new member of ATC LLC, Class A Shares in an amount that is proportional to that member's interest in ATC LLC.[12]

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[9] Applicants propose that the credit lines will not be counted against the financing limit, that they may be utilized to obtain letters of credit or may be borrowed against, from time to time, as they deem appropriate or necessary.

[10] Applicants state that specific terms of any borrowings will be determined by ATCMI at the time of issuance and will comply in all regards with the general parameters set forth in above.

[11] Applicants request that Member Interests be permitted in the form of member interests, preferred member interests or convertible member interests and that ATC LLC be permitted to issue Member Interests in exchange for cash or transfer of transmission facilities to ATC LLC by current or future members or to purchase facilities from members or others.

[12] Applicants anticipate that facilities purchased would be financed through the issuance of new debt and equity and that equity required for these purchases may be received from existing or new members.

ATCMI also seeks authority to issue preferred stock or other types of preferred securities (including convertible preferred securities).[13]

B.3. Guarantees

Applicants request authorization to enter into guarantees, obtain letters of credit, enter into expense agreements, or otherwise provide credit support, of the obligations of their affiliates or members in the ordinary course of business, in an amount not to exceed $200 million outstanding at any one time during the Authorization Period.[14] Applicants state, as an example, guarantees may be given, for generation or distribution interconnections, to bolster third party financing for equipment that Applicants would ultimately own under an interconnection agreement or for distribution customers for purchase and installation of equipment attaching to the distribution system that would enhance operation of the transmission grid. Applicants also state that they would not make any upstream guarantees to Alliant or its subsidiary companies.

[13] Applicants state that preferred stock or other types of preferred securities may be issued in one or more series with rights, preferences and priorities as may be designated in the instrument creating each series, as determined by ATCMI. In addition, the preferred securities may be redeemable or may be perpetual in duration. Applicants also state, among other things, that 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 Applicants to defer dividend payments for specified periods, and that preferred securities may be convertible into forms of equity or debt, or into other securities or assets, with the dividend rate on any series of preferred securities not exceeding 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of that series of preferred securities at the time of issuance.

[14] Applicants state that certain of the guarantees may be for obligations not capable of exact quantification and that, in these cases, they will determine the exposure of the guarantee by appropriate means including estimations based on loss experience or projected potential payment amounts and in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") and/or sound financial practices and reevaluated periodically.

B.4. Interest Rate Hedging Transactions

Applicants also seek authority to enter into interest rate hedging transactions with respect to existing indebtedness ("Interest Rate Hedges"),[15] subject to certain limitations and restrictions, in order to reduce or manage interest rate cost. Applicants state that Interest Rate Hedges will only be entered into with counterparties whose senior debt ratings, or the senior debt ratings of the parent companies of the counterparties, 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 ("Approved Counterparties"). Applicants state that the transactions will be for fixed periods and stated notional amounts and that fees, commissions and other amounts payable to the counterparty or exchange, as applicable (excluding, however, 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.

Applicants also seek authority to enter into interest rate hedging transactions with respect to anticipated debt offerings ("Anticipatory Hedges"), subject to certain limitations and restrictions. Applicants state that Anticipatory Hedges will only be entered into with Approved Counterparties and will be utilized to fix and/or limit the interest rate risk associated with any new issuance.[16]

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[15] Applicants state that the Interest Rate Hedges will involve the use of financial instruments commonly used in today's capital markets, such as interest rate swaps, 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.

[16] Applicants state that Anticpatory Hedges will be entered into through (i) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a

Applicants state that they 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. Applicants also state that they will comply with existing and future financial disclosure requirements of the Financial Accounting Standards Board associated with hedging transactions and that these hedging transactions will qualify for hedge accounting treatment under U.S. GAAP. Applicants further state that they will not engage in speculative transactions; that all transactions in financial instruments and products will be matched to an underlying business requirement; and, that in no case will the notional principal amount of any hedging instrument exceed that of the underlying instrument and related interest rate exposure.

Exelon Corporation, et al. (70-10296)

Exelon Corporation, a Pennsylvania Corporation ("Exelon"), Exelon Ventures Company ("Ventures"), Exelon Enterprises Company, LLC ("Enterprises"), Exelon Generation Company, LLC ("Exelon Generation") and Exelon Energy Delivery Company, LLC ("Delivery"), each located at 10 South Dearborn Street, 37th Floor, Chicago, Illinois 60603 filed an application-declaration ("Application") under sections 6,

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forward swap (each, "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, caps and collars, appropriate for the Anticipatory Hedges.

7, 9, 10, 11, 12, 13 32, 33 and 34 of the Act and rules 42, 43, 52, 53, 54, 58, 90 and 91 under the Act.

Exelon and its Subsidiaries (as defined below) seek authority to continue to undertake activities related to Exelon's otherwise permitted investments including in exempt wholesale generators ("EWGs"), foreign utility companies ("FUCOs"), exempt telecommunications companies ("ETCs"), investments permitted under rule 58 ("Rule 58 Subsidiaries") and investments in businesses engaged in energy related activities ("Non-U.S. Energy Related Subsidiaries") that, but for being conducted outside the United States, would constitute rule 58 exempt activities.[17]

Investments in EWGs, FUCOs, ETCs and Rule 58 Subsidiaries are permitted pursuant to the terms of the Act and rules 53 and 58. No authorization is sought in the Application for investments in these entities in excess of what is authorized by statute or rule or existing Commission order applicable to Exelon. As described below, the Application seeks approval to continue to make investments in Non-U.S. Energy Related Subsidiaries through June 30, 2008 ("Authorization Period"). These permitted investments in EWGs, FUCOs, ETCs, Rule 58 Subsidiaries and (assuming continued Commission approval) Non-U.S. Energy Related Subsidiaries (whether existing on the

[17] On December 20, 2004, Exelon announced a proposed merger with Public Service Enterprise Group Incorporated ("PSEG"). Exelon filed on March 15, 2005 for Commission approval of that transaction in File No. 70-10294. Contingent on the Commission's approval and the closing of the transaction, PSEG's only public utility company, Public Service Electric and Gas Company ("PSE&G") will be considered a "Utility Subsidiary" for purposes of this Application. Each of PSEG's non-utility subsidiaries will constitute a Non-Utility Subsidiary. Permitted Non-Utility Investments will include those investments authorized to be retained in the Exelon/PSEG merger order, subject to any further orders of the Commission to the contrary. ("Utility Subsidiary", "Non-Utility Subsidiary", and "Permitted Non-Utility Investments" are defined below.)

date of the Application acquired after the date of the Application) are collectively referred to as "Permitted Non-Utility Investments."[18]

Exelon has four operating public utility company subsidiaries ("Utility Subsidiaries"):[19]

- PECO Energy Company ("PECO"), a Pennsylvania corporation and a public utility company engaged (i) in the transmission, distribution and sale of electricity and (ii) in the purchase and sale of natural gas in Pennsylvania;
- Commonwealth Edison Company ("ComEd"), an Illinois corporation and a public utility company engaged in the transmission, distribution and sale of electricity in Illinois;
- Exelon Generation, a Pennsylvania limited liability company and a public utility company engaged in the generation and sale of electricity in Pennsylvania, Illinois and elsewhere and also engaged in electricity and energy commodities marketing and brokering activities and development and ownership of EWGs; and

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[18] "Permitted Non-Utility Investments" also includes those Non-Utility Subsidiaries that Exelon currently owns, those approved for retention by Holding Co. Act Release No. 27256 (Oct. 19, 2000) at the time Exelon became a registered holding company and Non-Utility Subsidiaries acquired later.

[19] On April 1, 2004, the Commission issued an order authorizing among other things, de-registration of Exelon Generation and PECO Energy Power Company (PEPCO) under Section 5(d) of the Act. The order states that PEPCO, previously an electric utility company and a registered holding company, along with its public utility subsidiary Susquehanna Power Company and Exelon Generation's public utility subsidiary, Susquehanna Electric Company were converted into EWGs. As a result, Exelon Generation and PEPCO no longer have any public utility company subsidiaries as of March 22, 2004. See Exelon Corporation, et al., Holding Co. Act Release No. 35-27830 (April 1, 2004).

- Commonwealth Edison Company of Indiana (“ComEd Indiana”), an Indiana corporation that owns certain transmission facilities in Indiana. ComEd Indiana has no retail customers and only provides wholesale transmission services.[20]

Exelon and its Subsidiaries request authority to engage, directly or through subsidiaries ("Subsidiaries")[21] in the following general matters through the Authorization Period, all more specifically described below: (i) to expend $500 million directly or through Non-Utility Subsidiaries and Exelon Generation on preliminary development activities ("Development Activities") and administrative and management activities ("Administrative Activities") in each case relating to Permitted Non-Utility Investments, (ii) to invest directly or through Non-Utility Subsidiaries and Exelon Generation up to $500 million to construct and acquire energy assets ("Energy Assets") that are incidental and related to the business of an electricity and energy commodities marketer and broker, (iii) to acquire directly or through Subsidiaries the securities of one or more corporations, trusts, partnerships, limited liability companies or entities ("Intermediate Subsidiaries") which would be created and organized exclusively for the purpose of acquiring, holding, and/or financing or facilitating the acquisition of Permitted Non-Utility Investments, (iv) to undertake internal reorganizations of then existing and permitted Subsidiaries and businesses, for example by moving a Permitted Non Utility Subsidiary to be a subsidiary of a different parent, and (v) to engage though Non-Utility Subsidiaries and Exelon

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[20] Exelon does not currently own any FUCOs. Exelon Generation may also invest in Rule 58 Subsidiaries and Non-U.S. Energy Related Subsidiaries.

[21] Exelon states that for purpose of the Application the term "Subsidiaries" shall also include other direct or indirect subsidiaries that Exelon may form or acquire after the date of the filing of the Application with the approval of the Commission, pursuant to the rule 58 exemption or pursuant to sections 32, 33, or 34 of the Act or, to the extent approved in an order in this docket, as Non-U.S. Energy Related Subsidiaries.

Generation in energy related activities that, but for being conducted outside the United States, would constitute rule 58 exempt activities. No authority is sought in the Application for additional financing authority.

In connection with existing and future Permitted Non-Utility Investments, Exelon requests authority to engage directly and through Non-Utility Subsidiaries and Exelon Generation in Development Activities and Administrative Activities associated with such investments. Intermediate Subsidiaries may also engage in Development Activities and Administrative Activities. Development Activities and Administrative Activities include preliminary activities designed to result in a Permitted Non-Utility Investment such as an EWG or FUCO; however, such preliminary activities may not qualify for such status until the project is more fully developed. Development Activities and Administrative Activities will be provided "at cost" in accordance with section 13(b) and rules 90 and 91 under the Act.

Development Activities will include due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection with those activities, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal "hosts," fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and such other preliminary activities as may be required in connection with the purchase, acquisition, financing or construction of

facilities or the securities of other companies. Development Activities will be designed to eventually result in a Permitted Non-Utility Investment.

Exelon proposes to expend directly or through Non-Utility Subsidiaries and Exelon Generation up to $500 million in the aggregate outstanding at any time during the Authorization Period on all such Development Activities.[22] Exelon proposes the continued use of a "revolving fund" concept for permitted Development Activities. To the extent a Subsidiary for which such amounts were expended for Development Activities becomes an EWG, FUCO, Rule 58 Subsidiary or Non-U.S. Energy Related Subsidiary, the amount so expended will cease to be Development Activities and then be considered as part of the "aggregate investment" in such entity and will then count against the limitation on such aggregate investment under rules 53 or 58, as modified by Commission order applicable to Exelon.

According to Exelon, the approval sought in the Application will not increase the authorized amount of aggregate investment in EWGs and FUCOs permitted in the Commission order dated April 1, 2004 (Holding Co. Act Release No. 27830) or increase the permitted aggregate investment authorized under rule 58.

Exelon requests authority to expend directly or through its Non-Utility Subsidiaries and Exelon Generation up to $500 million to construct or acquire Energy Assets that are incidental and related to its business as an electricity and energy commodities marketer and broker, or to acquire the securities of one or more existing or

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[22] Expenditures in EWGs, FUCOs, Rule 58 Subsidiaries and Non-U.S. Energy Related Subsidiaries which count against the "aggregate investment" limitation of rule 53 or rule 58, as modified by Commission orders applicable to Exelon, will not count against the $500 million limitation. Under section 34 of the Act, there is no limitation on the amount Exelon may invest in ETCs.

new companies substantially all of whose physical properties consist or will consist of Energy Assets; provided that the acquisition and ownership of such Energy Assets would not cause any Subsidiary to be or become an "electric utility company" or "gas utility company," as defined in sections 2(a)(3) and 2(a)(4) of the Act. Energy Assets will not constitute additional investments in EWGs or FUCOs.

Exelon proposes to create and acquire directly or indirectly through Subsidiaries the securities of one or more Intermediate Subsidiaries. Intermediate Subsidiaries may be corporations, trusts, partnerships, limited liability companies or other entities. Intermediate Subsidiaries will be organized exclusively for the purpose of acquiring and holding the securities of, or financing or facilitating Exelon's investments in, other direct or indirect Permitted Non-Utility Investments. Intermediate Subsidiaries that are subsidiaries of Non-Utility Subsidiaries or Exelon Generation may also engage in Development Activities and Administrative Activities.

Exelon and its Subsidiaries state that there are several legal and business reasons for the use of Intermediate Subsidiaries in connection with making investments in Permitted Non-Utility Investments. For example, the formation and acquisition of limited purpose subsidiaries is often necessary or desirable to facilitate financing the acquisition and ownership of a FUCO, an EWG or another non-utility enterprise. Furthermore, the laws of some foreign countries may require that the bidder in a privatization program be organized in that country. In such cases, it would be necessary to form a foreign Non-Utility Subsidiary as the entity (or participant in the entity) that submits the bid or other proposal. In addition, the interposition of one or more Intermediate Subsidiaries may allow Exelon to defer the repatriation of foreign source

income, or to take full advantage of favorable tax treaties among foreign countries, or otherwise to secure favorable U.S. and foreign tax treatment that would not otherwise be available. In particular, use of Intermediate Subsidiaries can achieve tax efficient corporate structures which will result in minimizing state or federal taxes for Exelon or its Subsidiaries.

Exelon and its Subsidiaries propose that an Intermediate Subsidiary may be organized, among other things: (1) in order to facilitate the making of bids or proposals to develop or acquire an interest in any EWG, FUCO, ETC, or other non-utility company which, upon acquisition, would qualify as a Rule 58 Subsidiary or Non-U.S. Energy Related Subsidiary; (2) after the award of such a bid proposal, in order to facilitate closing on the purchase or financing of such acquired company; (3) at any time subsequent to the consummation of an acquisition of an interest in any such company in order, among other things, to effect an adjustment in the respective ownership interests in such business held by the Exelon System and non-affiliated investors; (4) to facilitate the sale of ownership interests in one or more acquired Permitted Non-Utility Investments; (5) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (6) as a part of tax planning in order to limit Exelon's exposure to U.S. and foreign taxes; (7) to further insulate Exelon and the Utility Subsidiaries from operational or other business risks that may be associated with investments in non-utility companies; or (8) for other lawful business purposes.

Exelon and its Subsidiaries further state that investments in Intermediate Subsidiaries may take the form of any combination of the following: (1) purchases of

capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of voting or non-voting equity interests; (2) capital contributions; (3) open account advances without interest; (4) loans; and (5) guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries.

Funds for any direct or indirect investment in any Intermediate Subsidiary will be derived from Exelon's available funds. No authority is sought for additional financing authority.

To the extent that Exelon provides funds directly or indirectly to an Intermediate Subsidiary which are used for the purpose of making an investment in any EWG or FUCO or a Rule 58 Subsidiary or Non-U.S. Energy Related Subsidiary, the amount of such funds will be included in Exelon's "aggregate investment" in such entities, as calculated in accordance with rule 53 or rule 58, as applicable and as modified by Commission order applicable to Exelon.

The authority requested for Intermediate Subsidiaries is intended to allow for the corporate structuring alternatives outlined above and will not allow any increase in aggregate investment in EWGs, FUCOs, Rule 58 Subsidiaries, approved Non-U.S. Energy Related Subsidiaries or any other business subject to an investment limitation under the Act.

Exelon currently engages directly or through Subsidiaries in certain non-utility businesses. Exelon seeks authority to engage in internal corporate reorganizations to better organize its current and future Non-Utility Subsidiaries and investments.

Exelon and Subsidiaries request authority, to the extent needed, to sell or to cause any Subsidiary to sell or otherwise transfer (i) such businesses, (ii) the securities of current Subsidiaries engaged in some or all of these businesses or (iii) investments which do not involve a Subsidiary (i.e. less than 10% voting interest) to a different Subsidiary, and, to the extent approval is required, Exelon requests, on behalf of the Subsidiaries, authority to acquire the assets of such businesses, Subsidiaries or other then existing investment interests. Alternatively, transfers of such securities or assets may be affected by share exchanges, share distributions, dissolutions or dividends followed by contribution of such securities or assets to the receiving entity. In the future, Exelon may determine to transfer securities or the assets of Non-Utility Subsidiaries to other Subsidiaries as described in the preceding sentence. Exelon may also liquidate or dissolve Non-Utility Subsidiaries or merge a Non-Utility Subsidiary into any other Subsidiary.

According to Exelon and its Subsidiaries, such internal transactions would be undertaken in order to eliminate corporate complexities, to combine related business segments for staffing and management purposes, to eliminate administrative costs, to achieve tax savings, or for other ordinary and necessary business purposes. Exelon requests authority to engage in such transactions, to the extent that they are not exempt under the Act and rules under the Act, through the Authorization Period.

Exelon and its Subsidiaries state that the transactions proposed under this heading will not involve the sale or other disposition of any utility assets of the Utility Subsidiaries and will not involve any change in the corporate ownership, or involve any

restructuring of, the Utility Subsidiaries. The approval sought does not extend to the acquisitions of any new businesses or activities.

Exelon requests authority to acquire directly or indirectly Non-U.S. Energy Related Subsidiaries. Exelon believes the following list of energy related activities are substantially identical to activities that have been approved for other registered holding companies outside the United States. Approval is sought for Non-U.S. Energy Related Subsidiaries to engage in sales of the following goods and services outside the United States:

- "Energy Management Services." Energy management services, including the marketing, sale, installation, operation and maintenance of various products and services related to energy management and demand-side management, including energy and efficiency audits; meter data management, facility design and process control and enhancements; construction, installation, testing, sales and maintenance of (and training client personnel to operate) energy conservation equipment; design, implementation, monitoring and evaluation of energy conservation programs; development and review of architectural, structural and engineering drawings for energy efficiencies, design and specification of energy consuming equipment and general advice on programs; the design, construction, installation, testing, sales, operation and maintenance of new and retrofit heating, ventilating, and air conditioning ("HVAC"), electrical and power systems, alarm, security, access control and warning systems, motors, pumps, lighting, water, water-purification and plumbing systems,

building automation and temperature controls, installation and maintenance of refrigeration systems, building infrastructure wiring supporting voice, video, data and controls networks, environmental monitoring and control, ventilation system calibration and maintenance, piping and fire protection systems, and design, sale, engineering, installation, operation and maintenance of emergency or distributed power generation systems, and related structures, in connection with energy-related needs; and the provision of services and products designed to prevent, control, or mitigate adverse effects of power disturbances on a customer's electrical systems.

- "Consulting Services." Consulting services with respect to energy- and gas-related matters for associate and nonassociate companies, as well as for individuals. Such consulting services would include technical and consulting services involving technology assessments, power factor correction and harmonics mitigation analysis, meter reading and repair, rate schedule design and analysis, environmental services, engineering services, billing services (including consolidation or centralized billing, bill disaggregation tools and bill inserts), risk management services, communications systems, information systems/data processing, system planning, strategic planning, finance, general management consulting including training activities, feasibility studies, and other similar related services.

- "Energy Marketing." The brokering and marketing of electricity, natural gas and other energy commodities, as well as providing incidental related services, such as fuel management, storage and procurement.

Exelon and its Subsidiaries state that consistent with existing precedent, Exelon requests authority to conduct Energy Management Services and Consulting Services anywhere outside the United States. Also consistent with precedent, Exelon requests authority to conduct Energy Marketing activities in Canada and Mexico. Furthermore, Exelon requests that the Commission reserve jurisdiction over the conduct of Energy Marketing activities in any other country pending completion of the record.

The Southern Company, et al. (70-10293)

The Southern Company ("Southern"), a registered holding company, and its wholly owned public-utility company subsidiary Southern Power Company ("Southern Power"), both at 270 Peachtree Street, N.W., Atlanta, GA 30303, have filed an application-declaration ("Application") under sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and rules 43, 44, 45 and 54 under the Act.

I. Background

By order dated December 27, 2000 (HCAR No. 27322, "Prior Order"), the Commission authorized the formation of Southern Power. Southern Power is an electric utility company that constructs, owns and manages electric generation facilities and sells the output, under long-term contracts, to affiliated public-utility companies and unaffiliated wholesale purchasers. Accordingly, Southern Power is subject to regulation by the Federal Energy Regulatory Commission but is not regulated by any State commission. Currently, the securities issued by Southern Power are rated as follows:

unsecured debt: rated Baa1 by Moody's, BBB+ by Standard & Poors ("S&P"), and BBB+ by Fitch; and commercial paper: rated P-2 by Moody's, A-2 by S&P, and F-2 by Fitch.

By the Prior Order, the Commission also authorized Southern to fund Southern Power in an aggregate amount not to exceed $1.7 million, to obtain independent financing in an aggregate amount not to exceed $2.5 billion, the proceeds of which would be used to, among other things, invest in exempt wholesale generators ("EWGs"). As discussed below, by the Application, Southern and Southern Power (collectively, "Applicants") request a modification and extension of Southern Power's financing authority.

II. Requests for Authority

As discussed below, Applicants seek authority for Southern to provide financial support to Southern Power, its public-utility company subsidiary, and for Southern Power to issue securities and enter into certain financial transactions on behalf of itself and its subsidiaries.

A. Support by Southern

Applicants request authority through June 30, 2007 ("Authorization Period") for Southern to: (1) purchase common stock and debt securities issued by Southern Power; (2) purchase from or contribute to Southern Power various equity interests; (3) issue guarantees to support securities and other obligations of Southern Power, and provision of performance guarantees (collectively, "Southern Guarantees") to or for the benefit of Southern Power. The proceeds from these financings, including the Southern Guarantees, would be used to finance Southern Power's operations, including its

acquisition, construction and operation of power generating facilities and investment in energy-related companies. The aggregate amount of financing provided by Southern to Southern Power in connection with these transactions would not exceed $1.2 billion ("Southern Power Aggregate Financing Limit").

The term of Southern's loans to Southern Power would not exceed seven years, and the interest on those loans would be designed to return to Southern its effective cost of capital.

Southern Guarantees may take the form of Southern agreeing to guarantee, to undertake reimbursement obligations, to assume liabilities or to assume other obligations with respect to, or to act as surety on, bonds, letters of credit, evidences of indebtedness, equity commitments, performance and other obligations undertaken by Southern Power. The terms and conditions of the Southern Guarantees would be established through arms-length negotiations based upon current market conditions. All Southern Guarantees issued would be without recourse to any of Southern's other subsidiaries. In no event would the effective cost of capital on any Southern Guarantee of debt of Southern Power exceed 500 basis points over a U.S. Treasury security having a term and an amount equal to the guaranteed amount.

B. Southern Power Financings

1. Guarantees

Applicants request authority for Southern Power to provide guarantees and issue guarantees on behalf of its EWG and energy-related company subsidiaries (collectively, "Exempt Subsidiaries"). Southern Power seeks the flexibility to hold its interests in and provide support for Exempt Subsidiaries indirectly. Therefore, Applicants also request

authority: (1) for Southern Power to acquire interests in special-purpose subsidiaries ("Intermediate Companies") organized to acquire and hold the securities of and finance the operation of Exempt Subsidiaries and engage in development activities;[23] and (2) for the Intermediate Companies to: (a) issue and sell to nonaffiliates debt securities that would have the same terms as the Long-Term Debt, Short-Term Debt, Term Loan Notes and Commercial Paper proposed to be issued and sold by Southern Power (all described below); and (b) issue guarantees and enter into guarantee arrangements on behalf of Exempt Subsidiaries. The proposed debt securities to be issued by Intermediate Companies would be counted toward the Southern Power Aggregate Financing Limit. The total exposure of Southern Power and the Intermediate Companies under the guarantees and guarantee arrangements would not exceed $500 million at any one time ("Southern Power Guarantee Limit").[24]

2. Other Securities

Further, Applicants request authority through the Authorization Period for Southern Power to obtain financing through and in connection with the issuance and sale of securities. These financings would be counted toward and would not exceed the Southern Power Aggregate Financing Limit.

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[23] Development activities would include project due diligence and design review; market studies; site inspection; preparation of bid proposals, including, related postings of bid bonds, cash deposits or the like; application for requirement permits and/or regulatory approvals; acquisitions of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal "host" users, fuels suppliers and other project contractors; negotiation of financing commitments with lenders and equity co-investors; and other preliminary development activities as may be required in preparation for the acquisition or financing of a project.

[24] Those guarantees would not be counted against the Southern Power Aggregate Financing Limit.

a. Common Stock

Applicants request authority for Southern Power to issue and sell directly, and for Southern to acquire, shares of Southern Power's $0.01 par value capital stock ("Common Stock") to Southern. Southern would not pay less than the par value of the Common Stock as determined by Southern Power's board of directors.

b. Preferred Securities

Applicants request authority for Southern Power to issue and sell preferred securities, directly or indirectly, to nonaffiliates. Southern Power may issue preferred securities indirectly through one or more special purpose financing subsidiaries ("Financing Subsidiaries"), and Applicants request authority for Southern Power to acquire Financing Subsidiaries for this purpose.

Preferred securities would 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 the board of directors of Southern Power. Preferred securities would have maturities of more than one year. Dividends or distributions on preferred securities would be made periodically and to the extent funds are legally available for such purpose, but might be made subject to the terms that would allow the issuer to defer dividend payments for specified periods.

A Financing Subsidiary would lend, dividend or otherwise transfer to Southern Power, the proceeds of the preferred securities it issues, together with the equity contributed to the Financing Subsidiary. In turn, Southern Power would issue guarantees related to: (1) payments of dividends or distributions on the preferred securities of any Financing Subsidiary if and to the extent that the Financing Subsidiary has funds legally

available for this purpose; (2) payments to holders of the preferred securities of amounts due upon liquidation of the Financing Subsidiary or redemption of its preferred securities; and (3) certain additional amounts that may be payable in respect of the preferred securities (e.g., trustee's fees and expenses). Applicants request authority for Southern Power to issue these guarantees, which would be counted against the Southern Power Aggregate Financing Limit.

c. Preferred Stock

Applicants request authority for Southern Power to issue and sell directly preferred stock or preference stock (collectively, Preferred Stock") to nonaffiliates. Preferred Stock would have a specified par or stated value per share and, in accordance with applicable State law, would have such voting powers (if any), designations, preferences, rights and qualifications, limitations or restrictions as stated and expressed in the resolution or resolutions adopted by the board of directors of Southern Power.

d. Long-Term Debt

Applicants request authority for Southern Power to issue and sell notes with maturities of between one and fifty years ("Long-Term Debt"). Long-Term Debt would be issued and sold to both nonaffiliated investors and Southern. Applicants request authority for Southern to acquire Long-Term Debt. These notes might be either senior or subordinated obligations, might be convertible or exchangeable into preferred stock, might have the benefit of a sinking fund and might be insured by an insurance policy that guarantees payment of the principal and interest.

e. Other Debt Securities

Applicants request authority for Southern Power to issue and sell directly unsecured promissory notes with a term of one year or less ("Short-Term Debt"), unsecured promissory notes with terms of more than one year ("Term Loan Notes") and commercial paper to nonaffiliated commercial lending institutions and/or to Southern. Correspondingly, Applicants also request authority for Southern to acquire Short-Term Debt, Term Loan Notes and Southern Power's commercial paper. Commercial paper would be issued in the form of promissory notes with varying maturities not to exceed one year.[25]

f. Revenue Bond Arrangements

Applicants request authority for Southern Power to enter into loan agreements ("Loan Agreements") and installment sale agreements ("Installment Sale Agreements"). The Loan Agreements and/or Installment Sale Agreements would be entered into in connection with one or more counties or other appropriate public bodies or instrumentalities (collectively, "Counties") issuing revenue bonds ("Revenue Bonds"), the proceeds of which would be used to either finance the costs of acquiring, constructing and/or equipping new sewage and solid waste disposal facilities ("Projects") at certain of Southern Power's generating plants or refinance the debt previously incurred to acquire, construct and/or equip Southern's plants with Projects.

Revenue Bonds would be sold by a County under arrangements with one or more purchasers, placement agents or underwriters. Southern Power may not be party to the purchase, placement or underwriting arrangements for the Revenue Bonds, but those such

[25] Maturities for these securities might be subject to extension to a final maturity not to exceed 390 days.

arrangements would provide that the terms of the Revenue Bonds and their sale by the County shall be satisfactory to Southern Power. The interest rate borne by the Revenue Bonds would be approved by the County, and would be either a fixed rate that may be converted to a rate that would fluctuate or a fluctuating rate that may be convertible to a fixed rate. The intent is that interest on the Revenue Bonds would generally be excludable from gross income for federal income tax purposes, and Southern Power expects that, at the time of issuance, the interest rates on obligations, the interest on which is tax exempt, would be lower than the rates on similar obligations of comparable quality, interest on which is fully subject to federal income taxation.

Under the Loan Agreement, the County would loan to Southern Power the proceeds of the sale of the County's Revenue Bonds, and Southern Power may issue a non-negotiable promissory note ("Note"). Applicants request authority for Southern Power to issue and sell Notes in connection with Loan Agreements. Under the Installment Sale Agreement, the County would undertake to purchase and sell the related Project to Southern Power. The installment sale structure may be used if required by applicable state law or if it affords transactional advantages to Southern Power.

Under either structure, the proceeds of the loan or purchase would be deposited with a trustee ("Trustee") under an indenture agreement between the County and the Trustee ("Trust Indenture") that provides for Revenue Bonds to be issued and secured. The Note, the Loan Agreement or the Installment Sale Agreement (as the case may be) would provide for payments to be made by Southern Power at times and in amounts that would correspond to the payments with respect to the principal of, premium, if any, and

interest on the related Revenue Bonds whenever and in whatever manner the same shall become due, whether at stated maturity, upon redemption or declaration or otherwise.

The Loan Agreement or the Installment Sale Agreement would provide for the assignment to the Trustee of the County's interest in, and of the monies receivable by the County under, the agreement or the Note. Both the Loan Agreement and the Installment Sale Agreement would obligate Southern Power to pay the fees and charges of the Trustee, and may allow Southern Power, at any time so long as it is not in default, prepay the amount due under the Loan Agreement or the Note, or the Installment Sale Agreement, in whole or in part, such payment to be sufficient to redeem or purchase outstanding Revenue Bonds in the manner and to the extent provided in the Trust Indenture.

The Trust Indenture would provide that the Revenue Bonds may be redeemable on or after a specified date, in whole or in part at Southern Power's option, and may require the payment of a premium at a specified percentage of the principal amount, which may decline annually. The Trust Indenture would also provide that the Revenue Bonds would be redeemable in whole, at Southern Power's option, at the principal amount thereof plus accrued interest (but without premium) in certain other cases of undue burdens or excessive liabilities imposed with respect to the related Project, its destruction or damage beyond practicable or desirable repairability or condemnation or taking by eminent domain, or if operation of the related facility is enjoined and Southern Power determines to discontinue operation of it. The Revenue Bonds would mature not more than 40 years from the first day of the month in which they are initially issued and, if it is deemed advisable for marketability purposes, may be entitled to the benefit of a

mandatory redemption sinking fund calculated to retire a portion of the aggregate principal amount of the Revenue Bonds prior to maturity.

The Trust Indenture may give the holders of the Revenue Bonds the right, during such time as the Revenue Bonds bear interest at a fluctuating rate or otherwise, to require that the Revenue Bonds be repurchased from time to time and arrangements be made for the remarketing of the Revenue Bonds through a remarketing agent. Southern Power also may be required to purchase the Revenue Bonds, or the Revenue Bonds may be subject to mandatory redemption, at any time if the interest thereon is determined to be subject to federal income tax. The purchase price payable by or on behalf of Southern Power in respect of Revenue Bonds tendered for purchase at the option of the holders thereof would not exceed 100% of the principal amount thereof, plus accrued interest to the purchase date.

In the event of taxability, interest on the Revenue Bonds may be effectively converted to a higher variable or fixed rate, and Southern Power may be required to indemnify the bondholders against any other additions to interest, penalties and additions to tax.

To secure a better credit rating, Southern Power may cause an irrevocable letter of credit or other credit facility ("Letter of Credit") of a bank or other financial institution ("Bank") to be delivered to the Trustee.[26] The Letter of Credit would oblige the Bank to pay to the Trustee, upon request, up to an amount necessary in order to pay principal of and accrued interest on the Revenue Bonds when due. Under a separate agreement with the Bank, Southern Power would agree to pay to the Bank all amounts that would be

[26] Delivery of the Letter of Credit would be designed to obtain for the Revenue Bonds a credit rating equivalent to the Bank's.

drawn under the Letter of Credit, as well as certain fees and expenses. In the event that the Letter of Credit is delivered to the Trustee, Southern Power may also convey to the County a subordinated security interest in the Project or other property of Southern Power as further security for Southern Power's obligations under the Agreement and the Note, and the subordinated security interest would be assigned by the County to the Trustee.

As an alternative to, or in conjunction with, securing its obligations under the Agreement and Note as above described, and to obtain a "AAA" rating for the Revenue Bonds by one or more nationally recognized securities rating services, Southern Power may cause an insurance company to issue a policy of insurance guaranteeing the payment when due of the principal of and interest on such series of the Revenue Bonds. The insurance policy would extend for the term of the covered Revenue Bonds and would be non-cancelable by the insurance company for any reason. Southern Power's payment of the premium with respect to the insurance policy could be in various forms, including a non-refundable, one-time insurance premium paid at the time the policies are issued, and/or an additional interest percentage to be paid to the insurer in correlation with regular interest payments. In addition, Southern Power may be obligated to make payments of certain specified amounts into separate escrow funds and to increase the amounts on deposit in such funds under certain circumstances. The amount of each escrow fund would be payable to the insurance company as indemnity for any amounts paid pursuant to the related insurance policy in respect of principal of or interest on the related Revenue Bonds.

The effective cost of capital to Southern Power on any series of the Revenue Bonds would not exceed competitive market rates available at the time of issuance of securities having the same or reasonably similar terms and conditions issued by companies of reasonably comparable credit quality; provided that in no event would the effective cost of capital exceed 200 basis points over U.S. Treasury securities having comparable maturities.

The premium (if any) payable upon the redemption of any Revenue Bonds at the option of Southern Power would not exceed the greater of: (1) 5% of the principal amount of the Revenue Bonds so to be redeemed; or (2) a percentage of such principal amount equal to the rate of interest per annum borne by such Revenue Bonds.

Any Letter of Credit issued as security for the payment of Revenue Bonds would be issued pursuant to a reimbursement agreement between Southern Power and the financial institution issuing the Letter of Credit ("Reimbursement Agreement"). Under the Reimbursement Agreement, Southern Power would agree to pay or cause to be paid to the financial institution, on each date that any amount is drawn under such institution's Letter of Credit, an amount equal to the amount of the drawing, either by cash or by a borrowing from the institution under the Reimbursement Agreement. Those borrowings may have a term of up to 10 years and would bear interest at the financial institution's prevailing rate offered to corporate borrowers of similar quality which would not exceed: (1) the London Interbank Offered Rate plus up to 3%; (2) the financial institution's certificate of deposit rate plus up to 2 – ¾%; or (3) a rate not to exceed the prime rate plus 1%, to be established by agreement with the financial institution prior to the borrowing.

C. Financing Parameters

The following general terms would be applicable, as appropriate, to the proposed financing activities.

1. Effective Cost of Money

The effective cost of capital on Long-Term Debt, preferred stock, preferred securities, Short-term and Term Loan Notes and Commercial Paper would 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. In no event would the effective cost of capital: (1) on any series of Long-Term Debt and any Term Loan Note with a maturity of greater than one year exceed 500 basis points over a U.S. treasury security having a remaining term equal to the term of such security; (2) on any series of Short-Term Debt or Term Loan Note with maturity of one year or less or Commercial Paper exceed 300 basis points over the London Interbank Offered Rate for maturities of less than one year; and (3) on any series of Preferred Stock or Preferred Securities exceed 500 basis points over a U.S. Treasury security having a remaining term equal to the term of such series.

2. Issuance Expenses

The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of Long-Term Debt and Short-term and Term Loan Notes would not exceed 6% of the principal or total amount of the securities being issued. For preferred stock and preferred securities those expenses would not exceed 6% of the principal or total amount of the securities being issued. No commission or fee would be payable in connection with the issuance and sale of

Commercial Paper, except for a commission, payable to the dealer, not to exceed one-eighth of one percent per annum in respect of Commercial Paper sold through the dealer as principal.

3. Common Equity Ratio

At all times during the Authorization Period, Southern and Southern Power represent that they would each maintain a common equity ratio of at least thirty percent of its consolidated capitalization as reflected in its most recent Form 10-K or Form 10-Q filed with the Commission adjusted to reflect changes in capitalization since the balance sheet date.[27]

4. Investment Grade Ratings

Southern and Southern Power further represent that no guarantees or securities, other than Commercial Paper or short-term bank debt (with maturity of one year or less), would be issued in reliance upon the authorization granted by the Commission in connection with this application, unless upon original issuance: (1) the security to be issued, if rated, is rated investment grade; and (2) all outstanding securities of Applicants that are rated are rated investment grade. For purposes of this provision, 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 1934 Act. Applicants also request that

[27] Consolidated capitalization is defined to include, where applicable, all common-stock equity (comprised of common stock, additional paid-in capital, retained earnings, treasury stock and/or other comprehensive income or loss), preferred stock, preferred securities, equity-linked securities, long-term debt, short-term debt, current maturities and/or minority interests.

the Commission reserve jurisdiction over the issuance of any guarantees or securities that do not satisfy these conditions.

Pepco Holdings, Inc. et al (70-10286)

Pepco Holdings, Inc. ("PHI"), 701 Ninth Street, NW, Washington, DC 20068, a registered public utility holding company, PHI's direct and indirect electric and gas public utility subsidiaries: Potomac Electric Power Company ("Pepco"), 701 Ninth Street, NW, Washington, DC 20068, Atlantic City Electric Company ("ACE") and Delmarva Power and Light Company ("DPL"), 800 King Street, Wilmington, DE 19899; PHI's registered public utility holding company subsidiary, Conectiv, 800 King Street, Wilmington, DE 19899; PHI's direct and indirect nonutility subsidiary holding companies Potomac Capital Investment Corporation ("PCIC"), 701 Ninth Street, NW, Washington, DC 20068, Pepco Energy Services, Inc. ("PES") 1300 North 17th Street, Suite 1600, Arlington, VA 22209, PHI Service Company ("PHISCo") and Conectiv Energy Holding Company ("Conectiv Holding"), 800 King Street, Wilmington, DE 19899 and PHI's other direct and indirect nonutility subsidiaries[28] ("Nonutility Subsidiaries," and together, "Applicants") have filed an application-declaration ("Application") with the Commission under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(f) and 13 of the Act and rules 43, 45, 46, 54, 90 and 91 under the Act.

I. Background

On August 1, 2002, Pepco and Conectiv were involved in merger transactions that resulted in the formation of PHI ("Merger"). Conectiv was a registered holding company under the Act prior to the Merger and continues as such. By order dated July 31, 2002

[28] See S.E.C. File No. 70-10286 for a complete list of the companies listed as "Applicants" to this transaction.

(HCAR No. 27557) ("Financing Order"), the Commission authorized PHI and certain of its subsidiaries, among other things, to perform financing activities through the period ending June 30, 2005.

In this Application Applicants request authorization to engage in various transactions described below through June 30, 2008 ("Authorization Period").

II. Description of the Parties

A. PHI

The principal direct subsidiaries of PHI are:

1. Pepco, a public utility company engaged in the transmission and distribution of electricity in Washington, D.C. and major portions of Prince George's and Montgomery counties in suburban Maryland;

2. PCIC, a company which manages a portfolio of financial investments, primarily energy leveraged leases;

3. PES, a competitive energy business providing non-regulated generation, marketing and supply of electricity and gas and related energy management services and

4. PHISCo, a service company established in accordance with section 13(b) of the Act and

5. Conectiv, a registered holding company under the Act.

The principal direct subsidiaries of Conectiv are:

- ACE, a public utility company engaged in the generation, transmission and distribution of electricity in southern New Jersey;

- DPL, a public utility company engaged in the transmission and distribution of electricity in Delaware and portions of Maryland and Virginia and the distribution of gas in northern Delaware and
- Conectiv Energy Holding Company, an intermediate holding company that holds interests in nonutilities involved in energy and related projects (including exempt projects) or that engage in energy trading activities.

Pepco, ACE and DPL are referred to as the "Utility Subsidiaries." PHI subsidiaries, other than the Utility Subsidiaries, are referred to as the "Nonutility Subsidiaries." The Utility Subsidiaries and the Nonutility Subsidiaries are collectively referred to as the "Subsidiaries."

III. Use of Proceeds

The proceeds from the sale of securities will be used for general corporate purposes, including the financing, in part, of the capital expenditures and working capital requirements of PHI and the Subsidiaries, for the acquisition, retirement or redemption of securities previously issued by PHI or the Subsidiaries, for investments in companies organized in accordance with rule 58 under the Act ("Rule 58 Companies"), exempt wholesale generators ("EWGs"), foreign utility companies ("FUCOs"), exempt telecommunications companies ("ETCs") and for other lawful purposes.

Proceeds of any borrowings by the Nonutility Subsidiaries may be used by each Nonutility Subsidiary: (a) for the interim financing of its construction and capital expenditure programs, (b) for its working capital needs, (c) for the repayment, redemption or refinancing of its debt and equity, (d) to meet unexpected contingencies, payment and timing differences, and cash requirements and (e) to otherwise finance its

own business and for other lawful general corporate purposes. The use of proceeds from the financings would be limited to use in the operations of the respective businesses in which Subsidiaries are already authorized to engage.

IV. Financing Parameters

Applicants request authorization to engage in certain financing transactions during the Authorization Period. All securities issued by PHI and the Subsidiaries will be subject to the financing parameters ("Financing Parameters") below.

A. Effective Cost of Money

Applicants state that the effective cost of capital on long-term debt, short-term debt, preferred securities and equity-linked securities 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 quality; provided that in no event will the effective cost of capital on (a) any long-term debt security exceed 500 basis points over comparable term U.S. Treasury securities ("Treasury Securities") or (b) any short-term debt security exceed 300 basis points over the comparable London Interbank Offered Rate ("LIBOR"). The dividend and distribution rate on any series of preferred securities or equity-linked securities will not exceed at the time of issuance 700 basis points over a Treasury Security.

B. Maturity of Debt and Final Redemption on Preferred Securities

The maturity of long-term debt securities will not exceed 50 years. Preferred securities and equity-linked securities will be redeemed no later than 50 years after issuance except for preferred securities that are perpetual in duration.

C. Issuance Expenses

The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of a security under this Application (not including any original issue discount) 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.

D. Financial Condition

PHI states that PHI, Conectiv and the Utility Subsidiaries are financially sound and each has investment-grade ratings from major national rating agencies. PHI and Conectiv commit that each will maintain a common equity ratio (common equity divided by consolidated capitalization ("Common Equity Ratio")) during the Authorization Period of at least 30%.[29] Further, Pepco and DPL each commits that it will maintain a Common Equity Ratio of at least 30% and at least investment-grade senior unsecured and senior secured debt ratings by at least one nationally recognized rating agency.

[29] Applicants state that consolidated capitalization includes, where applicable, all common stock equity (comprised of common stock, additional paid in capital, retained earnings, accumulated other comprehensive income or loss, and/or treasury stock), minority interests, preferred securities, equity-linked securities, long-term debt, short-term debt and current maturities.

Applicants state that below are the Common Equity Ratios for PHI, Conectiv and the Utility Subsidiaries as of December 31, 2004:

	Debt	Preferred Stock	Common Equity
PHI	62.8%	0.6%	36.6%
Pepco	56.0%	1.2%	42.8%
DPL	52.1%	1.7%	46.2%
ACE[30]	66.9%	0.4%	32.7%
Conectiv	60.1%	0.6%	39.3%

Applicants state that the following are the long-term unsecured debt ratings for PHI, Conectiv and the Utility Subsidiaries as of April 30, 2005:

Company	Moody's	Standard & Poor's	Fitch
PHI	Baa2	BBB	BBB
Conectiv	Baa2	BBB	BBB+
Pepco	Baa1	BBB	A-
ACE	Baa1	BBB	BBB+
DPL	Baa1	BBB	A-

PHI and Conectiv commit that each will maintain during the Authorization Period at least an investment-grade corporate or senior unsecured debt rating by at least one nationally recognized rating agency.

[30] By order dated October 28, 2002 (HCAR No. 27588), ACE is required to maintain a Common Equity Ratio of not less than 28% through December 31, 2005. After this date, Applicants state that ACE will maintain a Common Equity Ratio of at least 30% during the Authorization Period. ACE commits that it will maintain at least investment grade senior unsecured and senior secured debt ratings by at least one nationally recognized rating agency.

PHI and the Utility Subsidiaries state that they will not issue any guarantees or other securities, other than common stock, member interests or securities issued for the purpose of funding Money Pool operations, unless: (a) the securities, if rated, are rated at least investment grade, (b) all outstanding securities of the issuer that are rated, are rated investment grade and (c) all securities of PHI that are rated, are rated investment grade. For purposes of this provision, a security will be deemed to be rated investment grade if it is rated investment grade by at least one nationally recognized rating agency (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) ("Investment Grade Condition"). PHI and the Utility Subsidiaries further request that the Commission reserve jurisdiction over the issuance of any securities which do not comply with the Investment Grade Condition.

V. PHI Financing

PHI seeks authorization to issue equity and debt securities aggregating not more than $6 billion ("PHI Financing Limit") at any one time issued and outstanding during the Authorization Period. These securities could include, but would not necessarily be limited to, common stock, preferred securities, options, warrants, purchase contracts, units (consisting of one or more purchase contracts, warrants, debt securities, shares of preferred securities, shares of common stock or any combination of such securities), long-term debt, short-term debt (including commercial paper), subordinated debt, bank borrowings, securities with call or put options and securities convertible into any of these securities.[31]

[31] Applicants state that any convertible or equity-linked securities would be convertible into or linked only to securities that PHI is otherwise authorized to issue directly or indirectly through a financing entity on behalf of PHI.

A. Common Stock

PHI seeks authorization to issue and sell common stock during the Authorization Period. Common stock financings may be executed under underwriting agreements of a type generally standard in the industry. Public distributions may be under 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 common stock sales will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets. Underwriters may resell common stock 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. If common stock is being sold in an underwritten offering, PHI may grant the underwriters thereof a "green shoe" option permitting the shares to be offered solely for the purpose of covering over-allotments.

PHI further requests authorization to issue and sell from time to time equity-linked securities, including, but not limited to, contracts obligating holders to purchase from PHI and/or PHI to sell to the holders, a number of shares specified directly or by formula at an aggregate offering price either fixed at the time the stock purchase contracts ("Stock Purchase Contracts") are issued or determined by reference to a specific formula set forth in the Stock Purchase Contracts. The Stock Purchase Contracts may be issued separately or as part of units consisting of a stock purchase contract and debt and/or preferred securities of PHI and/or debt securities of nonaffiliates, including Treasury Securities, securing holders' obligations to purchase the common stock of PHI under the

Stock Purchase Contracts. The Stock Purchase Contracts may require holders to secure their obligations in a specified manner.

PHI also seeks authorization to issue common stock or equity linked securities in public or privately negotiated transactions as consideration for the equity securities or assets of other companies, provided that the acquisition of any equity securities or assets has been authorized by the Commission or is exempt under the Act or the rules thereunder. For purposes of calculating compliance with the PHI Financing Limit, common stock issued in negotiated transactions would be valued based upon the negotiated agreement between the buyer and the seller.

PHI proposes, from time to time during the Authorization Period, to issue and/or acquire in open market transactions or by some other method that complies with applicable law and Commission interpretations then in effect, shares of PHI common stock under PHI's dividend reinvestment plan, certain incentive compensation plans and other employee benefit plans currently existing or that may be adopted in the future in an amount not to exceed 20 million shares during the Authorization Period ("Common Stock Plan Limit"). PHI common stock issued under the Common Stock Plan Limit will not be included in the calculation of the PHI Financing Limit.

B. Preferred Securities

PHI may issue and sell preferred securities from time to time during the Authorization Period. Preferred securities of any series (a) will have a specified par or stated value or liquidation value per security, (b) will carry a right to periodic cash dividends and/or other distributions, subject among other things, to funds being legally available, (c) may be subject to optional and/or mandatory redemption, in whole or in

part, at par or at various premiums above the par or stated liquidation value, (d) may be convertible or exchangeable into common stock of PHI and (e) may bear other further rights, including voting, preemptive or other rights, and other terms and conditions, as set forth in the applicable certificate of designation, purchase agreement and/or similar instruments governing the issuance and sale of the series of preferred securities.

The liquidation preference, dividend or distribution rates, redemption provisions, voting rights, conversion or exchange rights, and other terms and conditions of a particular series of preferred securities, as well as any associated placement, underwriting, structuring or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding and reflected in the applicable certificate of designation, purchase agreement or underwriting agreement, and other relevant instruments setting forth the terms.

C. Long-Term Debt

Applicants request authority for PHI to issue long-term debt securities including notes, medium-term notes, or debentures, under one or more indentures or long-term indebtedness under agreements with banks or other institutional lenders. Long-term debt issued by PHI will be unsecured.

Any long-term debt security 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 PHI may determine at the time of issuance. Any long-term debt (a) may be convertible into any other authorized securities of PHI, (b) will have maturities ranging from one 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 under 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 financial or other covenants.

Specific terms of any borrowings, such as maturity dates, interest rates, redemption and sinking fund provisions, tender or repurchase and conversion features, if any, with respect to the long-term securities of a particular series, will be determined by PHI at the time of issuance and will comply in all regards with the Financing Parameters. Associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding.

D. Short-Term Debt

PHI seeks authority to issue short-term debt during the Authorization Period to refund short-term debt, refund maturing long-term debt, and for general corporate purposes, working capital requirements and temporary financing of Subsidiary capital expenditures until long-term financing can be obtained.

Types of short-term debt securities will include borrowings under one or more revolving credit facilities or bank loans, commercial paper, short-term notes and bid notes. Specific terms of any short-term borrowings will be determined by PHI at the time of issuance and will comply in all regards with the parameters for financing authorization set forth in the Financing Parameters. The maturity of any short-term debt issued will not exceed 364 days or, if the notional maturity is greater than 364 days, the debt security

will include put options at appropriate points in time to cause the security to be accounted for as a current liability under United States generally accepted accounting principles ("GAAP").

PHI may sell commercial paper, from time to time, in established domestic or European commercial paper markets. Commercial paper would be sold directly to investors or 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. Applicants expect that the dealers acquiring commercial paper from PHI will reoffer this paper at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. Institutional investors are expected to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities and finance companies.

PHI may engage in other types of short-term financing generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance. Applicants state that any additional short-term financings will comply in all regards with the Financing Parameters.

E. Guarantees

PHI requests authority to enter into guarantees to third parties, obtain letters of credit, enter into support or expense agreements or liquidity support agreements or otherwise provide credit support with respect to the obligations of the Subsidiaries as may be appropriate to carry on in the ordinary course of their respective businesses in an aggregate amount not to exceed the $3.5 billion during the Authorization Period ("PHI Guarantee Limit"). Included in this amount are guarantees previously entered into by

PHI and on behalf of the Subsidiaries to the extent they remain outstanding during the Authorization Period. Excluded from the PHI Guarantee Limit are obligations exempt under rule 45. Applicants state that the issuance of any guarantees will be subject to the limitations of rule 53(c) or rule 58(a)(1), as applicable.

A portion of the guarantees proposed to be issued by PHI may be in connection with the business of Conectiv Energy Supply, Inc. ("CESI"), PES and PES's subsidiaries. CESI conducts power marketing and trading operations. PES and its subsidiaries provide energy efficiency contracting, central plant and other equipment construction, operation and maintenance as well as conducting gas and electric marketing. PHI provides credit support in connection with the trading positions of CESI and PES entered into in the ordinary course of CESI's and PES's energy marketing and trading businesses. In addition, PHI provides credit support for certain obligations of PES and its subsidiaries entered into in the ordinary course of their energy contracting business. The provision of parent guarantees by holding companies to affiliates in the generation, power marketing and energy contracting business is standard business practice. The portion of the PHI Guarantee Limit to be used on behalf of the trading activities of CESI and PES will be no more than half of the PHI Guarantee Limit at any time during the Authorization Period. A portion of the guarantees will be for intercompany obligations. PHI will guarantee all deposits in the Money Pool.

Certain of the guarantees may be in support of obligations that are not capable of exact quantification. In such cases, PHI will determine the exposure under a guarantee for purposes of measuring compliance with the PHI Guarantee Limit by appropriate means, including estimation of exposure based on loss experience or potential payment

amounts. PHI states that these estimates will be made in accordance with GAAP if appropriate and this estimation will be reevaluated periodically.

PHI may charge each Subsidiary a fee for any guarantee provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the guarantee for the period of time the guarantee remains outstanding.

F. Interest Rate Risk Management

PHI requests authority to enter into, perform, purchase and sell financial instruments intended to reduce or manage the volatility of interest rates with respect to then existing or simultaneously created indebtedness, including interest rate swaps, caps, floors, collars and forward agreements or any other similar agreements. Hedges may also include the issuance of 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 or agency (e.g., Federal National Mortgage Association) obligations or LIBOR based swap instruments (collectively, "Hedge Instruments"). PHI would employ Hedge Instruments as a means of prudently managing the risk associated with any of its outstanding debt by, in effect, synthetically: (a) converting variable-rate debt to fixed-rate debt, (b) converting fixed-rate debt to variable-rate debt, (c) limiting the impact of changes in interest rates resulting from variable-rate debt and (d) providing an option to enter into interest rate swap transactions in future periods for planned issuances of debt securities. In no case will the notional principal amount of any Hedge Instrument exceed that of the underlying debt instrument and related interest rate exposure. Thus, PHI will not engage in leveraged or speculative transactions. The underlying interest rate indices

will closely correspond to the underlying interest rate indices of PHI's debt to which the Hedge Instruments relates. PHI will only enter into agreements with counterparties whose senior debt ratings, as published by any one nationally recognized rating agency, are investment grade ("Approved Counterparties").

In addition, PHI requests authorization to enter into interest rate Hedge Instruments with respect to anticipated debt offerings ("Anticipatory Hedges"), subject to certain limitations and restrictions. Anticipatory Hedges 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: (a) a forward sale of exchange-traded Hedge Instruments ("Forward Sale"), (b) the purchase of put options on Hedge Instruments ("Put Options Purchase"), (c) a Put Options Purchase in combination with the sale of call options on Hedge Instruments ("Zero Cost Collar"), (d) transactions involving the purchase or sale, including short sales, of Hedge Instruments or (e) 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, caps and collars, appropriate for the Anticipatory Hedges.

Hedge Instruments 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, 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. PHI will determine the optimal structure of each Hedge instrument transaction at the time of execution.

VI. Utility Subsidiary Financing

Applicants state that the District of Columbia Public Service Commission ("DC Commission") regulates the, the issuance of long-term debt and equity securities for Pepco.[32] The New Jersey Board of Public Utilities ("NJBPU") regulates issuance of short-term debt, long-term debt and equity securities for ACE. For DPL, the Delaware Public Service Commission ("DPSC") regulates the issuance of long-term debt and equity securities and the issuance of short-term debt, long-term debt and equity securities is regulated by the VSCC.[33]

A. Short-Term Debt

Pepco and DPL request authority to have outstanding short-term debt securities in amounts not to exceed $500 million and $275 million for Pepco and DPL, respectively, at any point in time during the Authorization Period. Pepco and DPL request authority to issue the same types of unsecured short-term debt securities under the same terms as requested for PHI above. In addition, Pepco and DPL may issue secured short-term debt securities. Pepco and DPL anticipate that the collateral for secured short-term debt securities would be limited to short-term assets such as the respective issuer's inventory

[32] Pepco is also regulated by the Virginia State Corporation Commission ("VSCC") but the VSCC does not have jurisdiction over its securities issuances.

[33] Pepco currently has authorization from the DC Commission to issue up to $1.1 billion of long-term debt and equity securities through May 16, 2006, with $525 million in remaining authority outstanding. DPL currently has authorization from the VSCC to issue up to $275 million in short-term debt through March 31, 2006 and up to $150 million long-term debt and equity securities through December 31, 2006. DPL currently has authorization from the DPSC to issue up to $150 million long-term debt and equity securities through December 31, 2006. ACE currently has NJBPU authorization to issue up to $250 million of short-term debt through January 1, 2006. ACE currently has a pending request before the NJBPU to issue up to $105 million of long-term debt securities through December 31, 2006.

and/or accounts receivable. Pepco and DPL may, without counting against the limit set forth above, maintain back-up lines of credit. Any outstanding short-term debt issued by Pepco or DPL will be included in the calculation of the PHI Financing Limit. Pepco and DPL also request authorization to participate in the Money Pool as more fully described below.

B. Long-Term Debt Securities and Preferred Securities

Authority is requested for Pepco to issue an aggregate of up to $1.1 billion of long-term debt securities and preferred securities during the Authorization Period. Pepco requests authority to issue long-term debt securities and preferred securities under the same terms as requested for PHI above except that Pepco may issue secured as well as unsecured debt securities. Any long-term debt or preferred securities issued by Pepco will be included in the calculation of the PHI Financing Limit.

C. Guarantees

To the extent not exempt under rule 45(b) and rule 52(b), Applicants request authority for the Utility Subsidiaries to enter into guarantees ("Utility Guarantees") during the Authorization Period in the same manner as set forth above for PHI in section V.E above. The Utility Guarantees will be included in the calculation of the PHI Guarantee Limit. The issuance of any Utility Guarantees will be subject to the limitations of rule 53(c) or rule 58(a)(1), as applicable.

Certain of the Utility Guarantees may be in support of obligations that are not capable of exact quantification. In these cases, PHI will determine the exposure under a guarantee for purposes of measuring compliance with the PHI Guarantee Limit by appropriate means including estimation of exposure based on loss experience or potential

payment amounts. PHI states that these estimates will be made in accordance with GAAP, if appropriate and that this estimation will be reevaluated periodically.

The Utility Subsidiaries may charge associate companies a fee for each guarantee provided on their behalf determined in the same manner as specified above for guarantees issued by PHI in section V.E above.

D. Interest Rate Risk Management

To the extent not exempt under rule 52, the Utility Subsidiaries request authority to enter into Hedge Instruments subject to the limitations and requirements applicable to PHI described in section V.F above.

VII. Nonutility Subsidiary Financings

A. Loans

In the limited circumstances where a Nonutility Subsidiary making a borrowing is not wholly owned, directly or indirectly, by PHI, Applicants request authority for PHI, Conectiv or a Nonutility Subsidiary, as the case may be, to make loans to Subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. If these loans are made to a Nonutility Subsidiary, the Nonutility Subsidiary will not provide any services to any associate Nonutility Subsidiary except to a wholly or partially owned subsidiary that meets one of the following conditions: (a) a FUCO or an EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States, (b) an EWG that sells electricity at market-based rates that have been approved by the FERC, provided that the purchaser of such electricity is not an associate public utility company, (c) a QF within the meaning of PURPA, that sells

electricity exclusively (i) at rates negotiated at arm's-length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale, and/or (ii) to an electric utility company (other than an associate utility company) at the purchaser's avoided cost as determined in accordance with FERC's regulations under PURPA, (d) a domestic EWG or QF 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 public utility company, or (e) a direct or indirect Rule 58 Subsidiary of PHI or any other nonutility company that (i) is partially owned by PHI, provided that the ultimate recipient of the services is not an associate public utility company, or (ii) is engaged solely in the business of developing, owning, operating, and/or providing services to Nonutility Subsidiaries described in clauses (a) through (e) immediately above, or (iii) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public utility company operating within the United States.

B. Guarantees

The Nonutility Subsidiaries request authority to provide to other Nonutility Subsidiaries guarantees and other forms of credit support ("Nonutility Subsidiary Guarantees") Nonutility Subsidiary Guarantees would be issued subject to the limitations and requirements applicable to PHI as set forth in section V.E, above. The Nonutility Subsidiary Guarantees will be included in the calculation of the PHI Guarantee Limit. The issuance of any Nonutility Subsidiary Guarantees will be subject to the limitations of rule 53(c) or rule 58(a)(1), as applicable. The Nonutility Subsidiary providing the credit support may charge its associate company a fee for each guarantee provided on its behalf

determined in the same manner as specified above in section V.E. above for guarantees issued by PHI.

VIII. Authorization and Operation of the PHI System Money Pool

PHI and the Subsidiaries hereby request authorization to continue operation of the Money Pool, and the Subsidiaries, to the extent not exempted by rule 52, also request authorization to make unsecured short-term borrowings from the Money Pool, to contribute surplus funds to the Money Pool and to lend and extend credit to (and acquire promissory notes from) one another through the Money Pool. PHI requests authorization to contribute surplus funds and to lend and extend credit to the Money Pool. Applicants state that EWGs, FUCOs and ETCs will not be eligible to participate in the Money Pool.

PHI and the Subsidiaries believe that the cost of the proposed borrowings through the Money Pool will generally be more favorable to the borrowing participants than the comparable cost of external short-term borrowings, and the yield to the participants contributing available funds to the Money Pool will generally be higher than the typical yield on short-term investments.

Under the terms of the Money Pool, short-term funds would be available from the following sources for short-term loans to the Subsidiaries from time to time: (a) surplus funds in the treasuries of Money Pool participants other than PHI, (b) surplus funds in the treasury of PHI ((a) and (b) comprise "Internal Funds") and (c) proceeds from the issuance of short-term debt securities by Money Pool participants or by PHI for loan to the Money Pool ("External Funds"). Funds would be made available from such sources in such order as PHISCo, the administrator of the Money Pool, may determine would result in a lower cost of borrowing, consistent with the individual borrowing needs and

financial standing of the companies providing funds to the pool. The determination of whether a Money Pool participant at any time has surplus funds to lend to the Money Pool or shall lend funds to the Money Pool would be made by the participant's chief financial officer or treasurer, or by a designee thereof, on the basis of cash flow projections and other relevant factors, in the participant's sole discretion.

No party would be required to effect a borrowing through the Money Pool if it is determined that it could (and had authority to) effect a borrowing at lower cost directly from other lenders. No loans through the Money Pool would be made to, and no borrowings through the Money Pool would be made by, PHI. In situations in which limited funds are available in the Money Pool for loans, Applicants state that the Utility Subsidiaries would have first priority for these funds.

The cost of compensating balances, if any, and fees paid to banks to maintain credit lines and accounts by Money Pool participants lending External Funds to the Money Pool would initially be paid by the participant maintaining the line. A portion of the costs, or all of the costs in the event a Money Pool participant establishes a line of credit solely for purposes of lending any External Funds obtained thereby into the Money Pool, would be retroactively allocated every month to the companies borrowing the External Funds through the Money Pool in proportion to their respective daily outstanding borrowings of the External Funds.

If only Internal Funds make up the funds available in the Money Pool, the interest rate applicable and payable to or by Subsidiaries for all loans of the Internal Funds will be the rates for high-grade unsecured 30-day commercial paper sold through dealers by major corporations as quoted in The Wall Street Journal.

If only External Funds comprise the funds available in the Money Pool, the interest rate applicable to loans of the External Funds would be equal to the lending company's weighted average of the cost for the External Funds (or, if more than one Money Pool participant had made available External Funds on that day, the applicable interest rate would be a composite rate equal to the weighted average of the cost incurred by the respective Money Pool participants for the External Funds).

In cases where both Internal Funds and External Funds are concurrently borrowed through the Money Pool, the rate applicable to all loans comprised of the "blended" funds would be a composite rate equal to the weighted average of the cost of all the External Funds.

Applicants state that funds not required by the Money Pool to make loans (with the exception of funds required to satisfy the Money Pool's liquidity requirements) would ordinarily be invested in one or more short-term investments, including: (a) interest-bearing accounts with banks, (b) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities, including obligations under repurchase agreements, (c) 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, (d) commercial paper rated not less than "A-1" or "P-1" or their equivalent by a nationally recognized rating agency, (e) money market mutual funds, (f) bank certificates of deposit, (g) Eurodollar funds and (h) such other investments as are permitted by section 9(c) of the Act and rule 40 thereunder.

Applicants state that the interest income earned on investments in the Money Pool would be allocated among the participants in the Money Pool in accordance with the

weighted average proportion each participant's contribution of funds bears to the total amount of funds in the Money Pool. Each Subsidiary receiving a loan through the Money Pool would be required to repay the principal amount of the loan, together with all interest accrued thereon, on demand and in any event not later than one year after the date of the loan. All loans made through the Money Pool may be prepaid by the borrower without premium or penalty.

Applicants propose that Pepco and DPL may have up to $500 million and $275 million, respectively, borrowed at any one time from the Money Pool. Amounts borrowed by Pepco and DPL from the Money Pool would count against the short-term borrowing authority for Pepco and DPL referred to in section VII.A., above.

Applicants state that the operation of the Money Pool, including record keeping and coordination of loans, will be handled by PHISCO, or its successor, under the authority of the appropriate officers of the participating companies and that the Money Pool will be administered on an “at cost” basis.

IX. Intrasystem Financing

Applicants request that, to the extent that any intrasystem loans or extensions of credit are not exempt under rule 45(b) or rule 52, as applicable, the company making the loan or extending credit may charge interest at the same effective rate of interest as the daily weighted average effective rate of commercial paper, revolving credit and/or other short-term borrowings of the company, including an allocated share of commitment fees and related expenses. If no borrowings are outstanding, then Applicants propose that the interest rate shall be the rates for high-grade unsecured 30-day commercial paper sold through dealers by major corporations as quoted in The Wall Street Journal. In the

limited circumstances where the Nonutility Subsidiary effecting the borrowing is not wholly owned by PHI, Conectiv or a Nonutility Subsidiary, directly or indirectly, Applicants request authority for PHI, Conectiv or a Nonutility Subsidiary to make loans to subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. If these loans are made to a Nonutility Subsidiary, Applicants commit that the Nonutility Subsidiary will not provide any services to any associate Nonutility Subsidiary except a company that meets one of the conditions for rendering of services on a basis other than at cost as described in section XVI below. In the event any these loans are made, PHI will include in the next certificate filed under rule 24 substantially the same information as required on Form U-6B-2 with respect to the transaction and that any securities issued under this paragraph will comply in all regards with the Financing Parameters. PHI, Conectiv and the Nonutility Subsidiaries request authorization to engage in intrasystem financings with each other and for the Nonutility Subsidiaries to engage in intrasystem financings among themselves, in an aggregate amount not to exceed $1.0 billion outstanding at any time during the Authorization Period.

PHI states that it will comply with the requirements of rule 45(c) regarding tax allocations except as otherwise approved by the Commission to alter the requirements.

X. Financing Entities

PHI and the Subsidiaries seek authorization to organize new corporations, trusts, partnerships or other entities ("Financing Entities") that will facilitate financings by issuing short-term debt, long-term debt, preferred securities, equity securities, or other securities to third parties and transfer the proceeds of these financings to PHI or their

respective parent Subsidiaries. To the extent not exempt under rule 52, the Financing Entities also request authorization to issue these securities to third parties. In connection with this method of financing, PHI and the Subsidiaries may: (a) issue debentures or other evidences of indebtedness to Financing Entities in return for the proceeds of the financing, (b) acquire voting interests or equity securities issued by the Financing Entities to establish ownership of the Financing Entities (the equity portion of the entity generally being created through a capital contribution or the purchase of equity securities, ranging from one to three percent of the capitalization of the Financing Entities) and (c) guarantee a Financing Entity's obligations in connection with a financing transaction. Any amounts issued by Financing Entities to a third party under this authorization will be included in the PHI Financing Limit. However, the underlying intrasystem mirror debt and parent guarantee will not be so included.[34]

PHI and the Subsidiaries also request authorization to enter into support or expense agreements ("Expense Agreements") with Financing Entities to pay the expenses of any Financing Entity. In cases where it is necessary or desirable to ensure legal separation for purposes of isolating a Financing Entity from its parent or another subsidiary for bankruptcy purposes, the ratings agencies require that any Expense Agreement whereby the parent or Financing Entity provides services related to the Financing Entity be at a price, not to exceed a market price, consistent with similar services for parties with comparable credit quality and terms entered into by other companies so that a successor service provider could assume the duties of the parent or

[34] Specifically excluded from this limitation is the issuance of up to $1.108 billion of securitization securities by Atlantic City Electric Transition Funding LLC ("ACETF"). The Commission has reserved jurisdiction over this issuance by ACETF by order dated November 19, 2003 (HCAR No. 27765).

Financing Entity in the event of the bankruptcy of the parent or Financing Entity Subsidiary without interruption or an increase of fees. Therefore, PHI seeks approval under section 13(b) of the Act and rules 87 and 90 to provide the services described in this paragraph at a charge not to exceed a market price but only for so long as the Expense Agreement established by the Financing Entity financing subsidiary is in place.

XI. Changes in Capital Stock of Wholly Owned Subsidiaries

Applicants state that the portion of an individual Subsidiary's aggregate financing to be effected through the sale of stock to PHI or other immediate parent company during the Authorization Period under rule 52 and/or under an order issued under this Application cannot be ascertained at this time. It may happen that the proposed sale of capital securities (i.e., common stock or preferred securities) may in some cases exceed the then-authorized capital stock of the Subsidiary. In addition, the Subsidiary may choose to use capital stock with no par value. As needed to accommodate these proposed transactions and to provide for future issues, Applicants request authority to change the terms of any wholly owned Subsidiary's authorized capital stock capitalization or other equity interests by an amount deemed appropriate by PHI or other intermediate parent company. The requested authorization is limited to PHI's wholly owned Subsidiaries and will not affect the aggregate limits or other conditions contained within this Application. A Subsidiary would be able to change the par value, or change between par value and no-par stock, without additional Commission approval. This action by a Utility Subsidiary would be subject to, and would only be taken upon, the receipt of any necessary approvals by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business.

XII. Investments in EWGs and FUCOs

As of December 31, 2004, PHI states that it's aggregate investment in EWGs and FUCOs as defined in rule 53(a)(1) was $3,030.9 million. In the Financing Order, the Commission authorized PHI to invest up to 100% of PHI's retained earnings plus $3.5 billion in EWGs and FUCOs. As of December 31, 2004, PHI's retained earnings were $863.7 million, making PHI's maximum investment in EWGs and FUCOs equal to $4,363.7 million. PHI now requests authorization to invest in EWGs and FUCOs up to $4.5 billion ("PHI Exempt Project Limit") during the Authorization Period.

XIII. Payment of Dividends by Nonutility Subsidiaries Out of Capital or Unearned Surplus

Applicants propose that Nonutility Subsidiaries be permitted to pay dividends, from time to time through the Authorization Period, out of capital and unearned surplus, to the extent permitted under applicable corporate law and state and national law applicable in the jurisdiction where each company is organized, and any applicable financing covenants and, in addition, will not declare or pay any dividend out of capital or unearned surplus unless it: (a) has received excess cash as a result of the sale of some or all of its assets, (b) has engaged in a restructuring or reorganization and/or (c) is returning capital to an associate company.

XIV. Intermediate Subsidiaries

PHI proposes to acquire, directly or indirectly, the securities of one or more entities ("Intermediate Subsidiaries"), which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more EWGs, FUCOs, Rule 58 Subsidiaries, ETCs or other non-exempt nonutility subsidiaries (as authorized in this proceeding or in a separate proceeding),

provided that Intermediate Subsidiaries may also engage in administrative activities ("Administrative Activities") and development activities ("Development Activities"), as these terms are defined below, relating to those subsidiaries.

Administrative Activities include ongoing personnel, accounting, engineering, legal, financial and other support activities necessary to manage PHI's investments in nonutility subsidiaries. Development Activities will be limited to due diligence and design review, market studies, preliminary engineering, site inspection, preparation of bid proposals, including, in connection therewith, posting of bid bonds, application for required permits and/or regulatory approvals, acquisitions of site options and options on other necessary rights, negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms and other project contractors, negotiation of financing commitments with lenders and other third-party investors, and other preliminary activities as may be required in connection with the purchase, acquisition, financing or construction of facilities or the acquisition of securities of or interest in new businesses.

An Intermediate Subsidiary , among other things, may be organized: (a) to facilitate the making of bids or proposals to develop or acquire an interest in any EWG, FUCO, Rule 58 Subsidiary, ETC or other nonutility subsidiary, (b) to facilitate closing on the purchase or financing of the acquired company after the awarding of a bid, (c) at any time subsequent to the consummation of an acquisition of an interest in the company to, among other things, effect an adjustment in the respective ownership interests in the business held by PHI and nonaffiliated investors, (d) to facilitate the sale of ownership interests in one or more acquired nonutility companies, (e) to comply with applicable

laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals, (f) as a part of tax planning in order to limit PHI's exposure to taxes, (g) to further insulate PHI and the Utility Subsidiaries from operational or other business risks that may be associated with investments in nonutility companies or (h) for other lawful purposes.

Applicants state that investments in Intermediate Subsidiaries may take the form of any combination of the following: (a) purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of equity interests, (b) capital contributions, (c) open account advances with or without interest, (d) loans and (e) guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries. Funds for any direct or indirect investment in any Intermediate Subsidiary will be derived from: (a) financings authorized in this proceeding, (b) any appropriate future debt or equity securities issuance authorization obtained by PHI from the Commission and (c) other available cash resources, including proceeds of securities sales by Nonutility Subsidiaries under rule 52. To the extent that PHI provides funds or guarantees directly or indirectly to an Intermediate Subsidiary that are used for the purpose of making an investment in any EWG, FUCO or Rule 58 Subsidiary, Applicants state that the amount of funds or guarantees will be included in PHI's "aggregate investment" in these entities, as calculated in accordance with rule 53 or rule 58, as applicable.

PHI requests authorization to make expenditures on Development Activities, as defined above, in an aggregate amount up to $200 million. PHI proposes a "revolving fund" concept for permitted expenditures on Development Activities. Thus, to the extent

a Nonutility Subsidiary in respect of which Development Activities were made subsequently becomes an EWG, FUCO or qualifies as an "energy-related company" under rule 58, the amount so expended will cease to be considered an expenditure for Development Activities, but will instead be considered as part of the "aggregate investment" in the entity under rule 53 or rule 58, as applicable.

XV. Nonutility Reorganizations

PHI requests authorization to consolidate or otherwise reorganize all or any part of its direct or indirect ownership interests in Nonutility Subsidiaries, and the activities and functions related to these investments. To effect any consolidation or other reorganization, PHI may wish to merge or contribute the equity securities of one Nonutility Subsidiary to another Nonutility Subsidiary (including a newly formed Intermediate Subsidiary) or sell (or cause a Nonutility Subsidiary to sell) the equity securities or all or part of the assets of one Nonutility Subsidiary to another one. To the extent that these transactions are not otherwise exempt under the Act or the rules thereunder, PHI hereby requests authorization under the Act to consolidate or otherwise reorganize under one or more direct or indirect Intermediate Subsidiaries, PHI's ownership in existing and future Nonutility Subsidiaries. Applicants state that transactions may take the form of a Nonutility Subsidiary selling, contributing or transferring the equity securities of a subsidiary or all or part of the subsidiary's assets as a dividend to an Intermediate Subsidiary or to another Nonutility Subsidiary, and the acquisition, directly or indirectly, of the equity securities or assets of the subsidiary, either by purchase or by receipt of a dividend. The purchasing Nonutility Subsidiary in any transaction structured as an intrasystem sale of equity securities or assets may

execute and deliver its promissory note evidencing all or a portion of the consideration given. Each transaction would be carried out in compliance with all applicable laws and accounting requirements.[35]

XVI. Exemption of Certain Transactions from At-Cost Requirements

PHI requests authority for the Nonutility Subsidiaries to provide, consistent with recent Commission orders, certain services in the ordinary course of their business to each other, in certain circumstances described below, including but not limited to cost or fair market prices, and they request an exemption under section 13(b) from the "at cost requirement" of rules 90 and 91 to the extent that a price other than "cost" is charged. Any services provided by the Nonutility Subsidiaries to the Utility Subsidiaries will continue to be provided at "cost" consistent with rules 90 and 91. A Nonutility Subsidiary will not provide services at other than cost to any other Nonutility Subsidiary that, in turn, provides the services, directly or indirectly, to any other associate company that is not a Nonutility Subsidiary, except under the requirements of the Commission's rules and regulations under section 13(b) or an exemption from those rules and regulations obtained under a separate filing.

Accordingly, PHI requests authority for the Nonutility Subsidiaries to provide services to each other at other than cost in any case where the Nonutility Subsidiary receiving the services is: (a) a FUCO or an EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States, (b) an EWG that sells electricity at market-based rates

[35] PHI states that in the event that proxy solicitations are necessary with respect to internal corporate reorganizations, PHI will seek the necessary Commission approvals under sections 6(a)(2) and 12(e) of the Act through the appropriate filing of a declaration.

that have been approved by the FERC, provided that the purchaser of such electricity is not an associate public utility company, (c) a QF within the meaning of PURPA, that sells electricity exclusively (i) at rates negotiated at arm's-length to one or more industrial or commercial customers purchasing electricity for their own use and not for resale, and/or (ii) to an electric utility company (other than an associate utility company) at the purchaser's avoided cost as determined in accordance with FERC's regulations under PURPA, (d) a domestic EWG or QF 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 the electricity is not an associate public utility company or (e) a direct or indirect Rule 58 Subsidiary of PHI or any other nonutility company that (i) is partially owned by PHI, provided that the ultimate recipient of the services is not an associate public utility company, or (ii) is engaged solely in the business of developing, owning, operating, and/or providing services to Nonutility Subsidiaries described in clauses (a) through (e) immediately above or (iii) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public utility company operating within the United States.

XVII. Authorization to Engage in Energy-Related Activities Outside of the United States

PHI, on behalf of any current or future Nonutility Subsidiaries, requests authority for Nonutility Subsidiaries to engage in certain "energy-related" activities outside the United States during the Authorization Period.

Applicants state that activities may include:

1. the brokering of electricity, natural gas and other energy commodities ("Energy Marketing"),

2. energy management services (“Energy Management Services”), including the marketing, sale, installation, operation and maintenance of various products and services related to energy management and demand side management, including energy and efficiency audits; facility design and process control and enhancements; construction, installation, testing, sales and maintenance of (and training client personnel to operate), energy conservation equipment; design, implementation, monitoring and evaluation of energy conservation programs; development and review of architectural, structural and engineering drawings for energy efficiencies, design and specification of energy consuming equipment and general advice on programs; the design, construction, installation, testing, sales and maintenance of new and retrofit heating, ventilating and air conditioning, electrical and power systems, alarm and warning systems, and related structures, in connection with energy-related structures, in connection with energy-related needs; and the provision of services and products designed to prevent, control or mitigate adverse effects of power disturbances on a customer’s electrical systems and

3. engineering, consulting and other technical support services (“Consulting Services”) with respect to energy-related businesses, as well as for individuals. Consulting Services would include technology assessments, power factor correction and harmonics mitigation analysis, meter reading and repair, rate schedule design and analysis, environmental services, engineering services, billing services (including consolidation billing and bill disaggregation tools), risk management services, communications systems, information systems/data processing, system planning, finance, feasibility studies, and other similar services.

Applicants request that the Commission: (a) authorize Nonutility Subsidiaries to engage in Energy Marketing activities in Canada and Mexico and reserve jurisdiction over Energy Marketing Services anywhere outside of Canada and Mexico pending completion of the record in this proceeding, (b) authorize Nonutility Subsidiaries to provide Energy Management Services and Consulting Services anywhere outside the United States and (c) reserve jurisdiction over other activities of Nonutility Subsidiaries outside the United States pending completion of the record.

The Southern Company, et al. (70-10186)

The Southern Company ("Southern"), a registered holding company under the Act, and Southern Company Holdings, Inc. ("Holdings"), each of 270 Peachtree Street, N.W., Atlanta, Georgia, 30303; Georgia Power Company ("Georgia Power"), a public utility, Southern Company Services, Inc. ("SCS"), and Southern Company Energy Solutions, LLC, each located at 241 Ralph McGill Boulevard, N.E., Atlanta, Georgia, 30308 and each a wholly-owned subsidiary of Southern; Gulf Power Company ("Gulf Power"), One Energy Place, Pensacola, Florida, 32520 and a wholly-owned public utility subsidiary of Southern; Mississippi Power Company ("Mississippi Power"), 2992 West Beach Blvd., Gulfport, Mississippi, 39501 and a wholly-owned public utility subsidiary of Southern; Savannah Electric and Power Company ("Savannah Power"), 600 East Bay Street, Savannah, Georgia, 31401 and a wholly-owned public utility subsidiary of Southern; Alabama Power Company ("Alabama Power"), 600 North 18th Street, Birmingham, Alabama, 35291 and a wholly-owned public utility subsidiary of Southern; Southern Company Capital Funding, Inc. ("Capital Funding"), 1403 Foulk Road, Suite 102, Wilmington, Delaware, 19803 and a wholly-owned subsidiary of Southern;

Southern Communications Services, Inc., 5555 Glenridge Connector, Suite 500, Atlanta, Georgia, 30342 and a wholly-owned subsidiary of Southern; Southern Nuclear Operating Company, Inc., 40 Inverness Center Parkway, Birmingham, Alabama, 35242 and a wholly-owned subsidiary of Southern; and Southern Power Company ("Southern Power") and Southern Electric Generating Company ("SEGCO"), each of 600 North 18th Street, Birmingham, Alabama, 35291 and each a wholly-owned public utility subsidiary of Southern[36] (collectively, "Applicants"), have filed a post-effective amendment ("Amendment") under sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and rules 42, 45, 53 and 54 under the Act, to their previously filed application-declaration ("Declaration").

By order dated June 30, 2004 (Holding Company Act Release No. 27867), as corrected by order dated July 23, 2004 (Holding Company Act Release No. 27867A) (collectively, "Original Order"), the Commission authorized certain of the Applicants to engage in financing and related transactions through June 30, 2007 ("Authorization Period").[37]

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[36] Southern owns the following public utilities: Alabama Power, Georgia Power, Gulf Power, Mississippi Power, Savannah Power, Southern Power Company and Southern Electric Generating Company.

[37] The Original Order authorized: (1) Southern to issue up to 35 million shares of its common stock; (2) Southern to issue unsecured notes to effect short-term, term loan and commercial paper borrowings in an aggregate principal amount not to exceed $3 billion at any time outstanding; (3) Southern to issue up to 85 million shares of its common stock to its dividend reinvestment plan, employee savings plan, employee stock ownership plan or other similar stock based plans adopted in the future (these shares are in addition to the common stock authorized in subparagraph 1, above); (4) the Applicants, except Capital Funding, SEGCO and Southern Power Company, to purchase Southern common stock to contribute to the employee stock ownership plan for the benefit of their employees; (5) Southern to provide from time-to-time guarantees on behalf or for the benefit of SCS in an aggregate principal amount not to exceed $330 million at any time outstanding; and (6) Southern and Capital Funding to issue and sell from time-to-time directly shares of

I. Requested Authority

In the post-effective amendment, Applicants request authorization, during the Authorization Period: (1) for the Applicants to enter into transactions to manage interest rate, credit and equity price risk with regard to the issuance of securities; (2) for Southern and Holdings to provide guarantees on behalf of, or for the benefit of, their subsidiaries in an aggregate amount not to exceed $1.5 billion at any time outstanding; (3) for Southern to acquire certain securities of certain public utility affiliates; (4) to amend the definition of Preferred Stock to include preference stock; and (5) for Southern and Holdings to acquire the securities of intermediate subsidiaries and subsidiaries authorized to engage in development and administrative activities with respect to certain businesses.

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their preferred stock and, directly or indirectly, preferred securities (including without limitation trust preferred securities) **(“**Preferred Securities”), equity-linked securities, and/or long-term debt, in an aggregate principal amount not to exceed $1.5 billion. Southern and Capital Funding may also to issue and sell Preferred Securities indirectly through one or more financing subsidiaries. Any securities issued by Capital Funding, or any Preferred Securities issued by a financing subsidiary, may be guaranteed by Southern. Any securities may be convertible into common stock of Southern, provided that the value of the common stock issuable upon conversion may not exceed $2 billion in the aggregate. The common stock issuable upon conversion is in addition to the common stock authorized to be issued by Southern in subparagraphs 1 and 3, above.

Additionally, Southern is authorized to issue up to a total of 71.7 million shares of common stock to several employee plans and an outside director plan. See Holding Company Act Release No. 27246 (October 11, 2000) (40 million shares to the Southern Company Performance Stock Plan through February 17, 2007); Holding Company Act Release No. 27416 (June 7, 2001) (30 million shares to the Southern Company Omnibus Incentive Compensation Plan through May 22, 2011); and Holding Company Act Release No. 27854 (June 4, 2004) (1.7 million shares to the Southern Company Outside Directors Stock Plan through May 26, 2014).

1. Financing Risk Management Devices

a. Interest Rate Hedges

To the extent not exempt under rule 52 of the Act, Applicants request authorization to enter into interest rate hedging transactions with respect to existing indebtedness that has been previously authorized for issuance by any relevant regulatory agency ("Interest Rate Hedges") in order to reduce or manage interest rate cost or risk. Interest Rate Hedges would only be entered into with counterparties ("Approved Counterparties") whose senior debt ratings, or the senior debt ratings of any credit support providers who have guaranteed the obligations of the counterparty, as published by Standard & Poor's Corp., are equal to or greater than BBB, or an equivalent rating from Moody's Investor Service or Fitch Investor Service. In no case will the notional principal amount of any Interest Rate Hedge exceed the face value of the underlying debt instrument and related interest rate exposure. Because transactions will be entered into for a fixed or determinable period, the Applicants will not engage in speculative transactions. 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.

b. Anticipatory Hedges

To the extent not exempt under Rule 52, the Applicants request authorization to enter into interest rate hedging transactions with respect to anticipated debt offerings ("Anticipatory Hedges"). Such Anticipatory Hedges 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 (1) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (each a "Forward Sale"); (2) the purchase of put options on U.S. Treasury obligations ("Put Options Purchase"); (3) a Put Options Purchase in combination with the sale of a call options on U.S. Treasury obligations ("Zero Cost Collar"); (4) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; or (5) 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 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. An Applicant may decide to lock in interest rates and/or limit its exposure to interest rate increases. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the settlements arising

from the financial instruments and derivatives, such as swap or option settlements) in connection with a hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

Each Applicant represents that each Interest Rate Hedge and Anticipatory Hedge will be treated for accounting purposes under generally accepted accounting principles. Each Applicant will comply with Statement of Financial Accounting Standards ("SFAS") 133 ("Accounting for Derivative Instruments and Hedging Activities), including any amendments to SFAS 133, or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board ("FASB"). The Interest Rate Hedges and Anticipatory Hedges will qualify for hedge accounting under the FASB standards in effect and determined at the date the hedges are entered into.

2.Guarantees

From time-to-time through the Authorization Period, Southern and Holdings request authority to enter into guarantees, enter into expense agreements or otherwise provide credit support with respect to the debt or other securities or obligations, whether for payment and/or performance, of any or all of the subsidiaries of Southern and Holdings (collectively, "Guarantees"), as the case may be; provided that the total amount of Guarantees for Southern and Holdings at any time outstanding does not exceed an aggregate amount of $1.5 billion; and provided further that (1) the amount of any Guarantees in respect of obligations of any non-utility subsidiary shall also be subject to the limitations of rule 53(a)(1) and rule 58(a)(1), as applicable; and (2) that any

Guarantee that is outstanding on the last day of the Authorization Period will expire or terminate in accordance with the stated terms of the Guarantee.[38]

In addition to providing direct parent guarantees, Southern and Holdings may also provide Guarantees in the form of formal credit enhancement agreements, including but not limited to "keep well" agreements and reimbursement undertakings under letters of credit. Guarantees may, in some cases, be provided to support obligations of subsidiaries that are not readily susceptible of exact quantification or that may be subject to varying quantification. In such cases, Southern or Holdings, as the case may be, will determine the exposure under the Guarantee for purposes of measuring compliance with the proposed limitation on Guarantees by appropriate means, including estimation of exposure based on loss experience or projected potential payment amounts. If appropriate, estimates will be made in accordance with generally accepted accounting principles in the United States. The estimation will be reevaluated periodically.

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[38] Pursuant to the Original Order, Southern currently has authority to provide from time-to-time guarantees on behalf of, or for the benefit of, SCS an aggregate principal amount not to exceed $330 million at any time outstanding and to provide guarantees on behalf of or for the benefit of Capital Funding. Southern proposes that the authorization requested in this Declaration would supersede and replace the authorization to provide guarantees to SCS contained in the Original Order, and be effective immediately upon the date of a Commission order granting this request. The authority to issue guarantees on behalf of, or for the benefit of, Capital Funding in the Original Order would not be superseded by any Commission order issued in regard to the present request.

Pursuant to Holding Company Act Release 27303 (December 15, 2000) ("Transfer Order") Southern and Holdings are currently authorized to provide from time-to-time guarantees on behalf of their subsidiaries in an aggregate amount not to exceed $1.2 billion at any time outstanding and performance guarantees on behalf of their subsidiaries in an aggregate amount not to exceed $800 million at any time outstanding. Under this authorization, Southern and Holdings currently have, in the aggregate, approximately $57 million in guarantees outstanding. Southern and Holdings propose that the authorization sought in the Declaration would supersede and replace the authorization granted in the Transfer Order and be effective immediately upon the date of a Commission order granting this request.

Southern and Holdings may each charge a fee for each Guarantee provided by it that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the Guarantee for the period of time the Guarantee remains outstanding.

3. Acquisition of Securities of Certain Public Utility Affiliates

From time-to-time during the Authorization Period, Southern requests authority to acquire the common stock of Gulf Power Company in an aggregate amount not to exceed $420 million and the common stock of Mississippi Power Company in an aggregate amount not to exceed $300 million.[39]

4. Amend Definition of "Preferred Stock"

Southern and Capital Funding desire to amend the definition of "Preferred Stock" set forth in the Original Order so that it includes the issuance of preference stock.

5. Acquisition of Securities of Intermediate Subsidiaries and Subsidiaries Authorized to Engage in Development and Administrative Activities with Respect to Exempt Businesses

In connection with existing and future exempt businesses authorized pursuant to rules 53 or 58 of the Act, including investments in energy-related companies, exempt wholesale generators ("EWGs") or foreign utility companies ("FUCOs") (collectively, "Exempt Businesses"), Southern and Holdings will engage directly or through subsidiaries in preliminary development activities ("Development Activities") and administrative and management activities ("Administrative Activities") associated with the investments.[40] Development Activities will be limited to: due diligence and design

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[39] Southern currently has no authority from the Commission to acquire the common stock of Gulf Power Company or Mississippi Power Company.

[40] Under the Transfer Order, Southern currently has authority to organize one or more intermediate subsidiaries to make investments in Exempt Businesses and to spend up to $300 million on Development Activities. Southern proposes that the authorization sought

review, market studies, preliminary engineering, site inspection, preparation of bid proposals (including posting of bid bonds), application for required permits and/or regulatory approvals, acquisition of site options and options on other necessary rights, negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal "hosts," fuel suppliers and other project contractors, negotiation of financing commitments with lenders and other third party investors, and other preliminary activities as may be required in connection with the Development Activities and Administrative Activities. Southern and Holdings request authority to acquire directly or indirectly the securities of one or more corporations, trusts, partnerships, limited liability companies or other entities (collectively, "Intermediate Subsidiaries"), which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of, or other interests in, one or more Exempt Businesses; provided that Intermediate Subsidiaries may also engage in Development Activities and Administrative Activities. To the extent that Southern or Holdings provide funds directly or indirectly to an Intermediate Subsidiary which are used for the purpose of making an investment in any Exempt Business, the amount of such funds will be included in Southern's or Holdings' "aggregate investment" in these entities, as calculated in accordance with rules 53 and 58, as applicable.

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in this Declaration would supersede and replace the authorization granted in the Transfer Order and be effective immediately upon the date of a Commission order regarding this request.

II. Financing Parameters

Applicants state that the proposed transactions will be subject to the terms and conditions set forth in the Original Order, as applicable, except that in no event will the effective cost of capital on any guarantee by Southern or Holdings of their subsidiaries (other than Capital Funding) exceed 500 basis points over a U.S. treasury having an amount equal to the guaranteed amount. In particular, Southern and each of its public utility subsidiaries will continue to comply with the requirement that at all times during the Authorization Period they must maintain a common equity ratio of at least thirty percent of their consolidated capitalization (common equity, preferred stock, long-term and short-term debt) as reflected in its most recent Form 10-K and Form 10-Q filed with the Commission adjusted to reflect changes in capitalization since the balance sheet date, unless otherwise authorized.

Additionally, no guarantees or securities, other than common stock, commercial paper or short-term bank debt (with a maturity of one year or less) may be issued in reliance upon any authorization that may be granted by the Commission, unless upon original issuance (1) the security to be issued, if rated, is rated investment grade; (b) all outstanding securities of the issuer that are rated are rated investment grade; and (c) all outstanding securities of Southern that are rated are rated investment grade. For purposes of this provision, 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.

III. Financial Condition

Set forth below are the security ratings of those Applicants that have received them:

	S&P	Moody's	Fitch
Southern:			
unsecured debt	A-	A3	A
trust preferred securities	BBB+	A3	
preferred stock		Baa1	
commercial paper	A-1	P-1	F-1
Alabama Power Company:			
unsecured debt	A	A2	A+
trust preferred securities	BBB+	A3	A
preferred stock		Baa1	A
commercial paper	A-1	P-1	F-1
Georgia Power Company:			
unsecured debt	A	A2	A+
	S&P	Moody's	Fitch
trust preferred securities	BBB+	A3	A
preferred stock		Baa1	A
commercial paper	A-1	P-1	F-1
Gulf Power Company:			
unsecured debt	A	A2	A
trust preferred securities	BBB+	A3	A-

preferred stock		Baa1	A-
commercial paper	A-1	P-1	F-1
Mississippi Power Company:			
unsecured debt	A	A1	AA-
trust preferred securities	BBB+	A2	A+
preferred stock		A3	A+
commercial paper	A-1	P-1	F-1
Savannah Electric and Power Company, Inc.:			
unsecured debt	A	A2	
trust preferred stock	BBB+	A3	
preferred stock		Baa1	
commercial paper	A-1	P-1	
Southern Power Company:			
unsecured debt	BBB+	Baa1	BBB+
commercial paper	A-2	P-2	

	S&P	Moody's	Fitch
Southern Company Services:			
corporate credit rating	A		

Allegheny Energy, Inc., et al. (70-10278)

Allegheny Energy, Inc. ("Allegheny"), a registered holding company under the Act, West Penn Power Company ("West Penn"), a public-utility subsidiary of Allegheny, West Penn Funding Corporation ("WP Funding Corp."), a wholly owned subsidiary of West Penn, West Penn Funding LLC ("WP Funding LLC"), a wholly owned limited liability company of WP Funding Corp., and Allegheny Energy Service Corporation ("AE Service Corp."), a wholly owned subsidiary of Allegheny, all located at 800 Cabin Hill Drive, Greensburg, PA 15601 (together, "Applicants"), have filed an application-declaration, as amended ("Application"), with the Commission under sections 6(a), 7, 9, 10, 12(b), 12(f) and 13(b) of the Act and rules 54, 90 and 91.

I. Summary of the Request

Applicants seek authorizations to issue up to $115 million in new transition bonds ("New Transition Bonds") and for certain related financial transactions in connection with West Penn's financing and recovery of costs associated with Pennsylvania's electric-utility industry restructuring.[41] These proposed authorizations are related, and in addition, to a similar Commission authorization dated October 19, 1999, by which West

[41] Applicants explain that, beginning in 1997, after enactment of the Pennsylvania Electricity Generation Customer Choice and Competition Act (66 Pa. C.S. Section 2801 et seq. (together with regulatory interpretations, "Competition Act")), Pennsylvania restructured its electricity industry, requiring the unbundling of electric services into separate generation, transmission and distribution services with open competition in the retail sale of electricity, implementing a program of retail competition in the electricity sector. Applicants state that the retail electric competition program now applies to all retail customers in the Commonwealth. Electric distribution services are regulated by the Pennsylvania Public Utility Commission ("PUC"), as they were before. Transmission services are regulated by the Federal Energy Regulatory Commission, as are wholesale rates for purchases and sales of electric power.

Penn was permitted to engage in various transactions, including issuance of up to $600 million in transition bonds ("Existing Transition Bonds").[42] Applicants request authority to engage in the following transactions, from time to time, through December 31, 2010, as applicable:

(i) For West Penn, (a) to utilize WP Funding or to form a new domestic subsidiary corporation (together, "WP Funding"),[43] and (b) to transfer intangible transition property ("ITP") and the associated intangible transition charges ("ITC") revenue stream (both described below), to WP Funding as a capital contribution or as a sale in exchange for shares of WP Funding stock;

(ii) For WP Funding, (a) to acquire a new wholly owned limited liability company ("WPF LLC")[44] and (b) to transfer ITP and the associated ITC revenue stream to WPF LLC in exchange for the net proceeds WPF LLC receives from its proposed sale of New Transition Bonds, described in subparagraph (iii) below;

(iii) For WPF LLC, (a) to issue New Transition Bonds in an amount of up to $115 million to investors, with a final maturity no later than December 31, 2010, and (b) to transfer, to WP Funding, the net proceeds from its sale of New Transition Bonds in exchange for ITP and the associated ITC revenue stream (which will secure the New Transition Bonds);

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[42] See West Penn Power Co., Holding Co. Act Release No. 27091 (October 19, 1999).

[43] Applicants state that West Penn will issue the New Transition Bonds either through its existing subsidiary, WP Funding Corp., or a new subsidiary corporation. For convenience, however, WP Funding Corp. and any new subsidiary are referred to, together, as "WP Funding" and all requested authorizations for WP Funding refer both to West Penn Funding Corp. and any newly-formed corporation, unless specifically noted.

[44] Applicants state that, in the event New Transition Bonds are issued through WP Funding Corp., and not a newly-formed subsidiary corporation, the New Transition Bonds may be issued by WP Funding LLC, an existing subsidiary limited liability company, rather than a newly-formed limited liability company. For convenience, again (see also note 3 above), WP Funding LLC and a new limited liability company (whether a subsidiary of WP Funding Corp. or a newly-formed subsidiary of West Penn) are referred to, together, as "WPF LLC" and all requested authorizations for WPF LLC refer both to West Penn Funding LLC and any newly-formed limited liability company, unless specifically noted.

(iv) For WP Funding, to lend, to West Penn, the net proceeds from the sale of the New Transition Bonds it receives from WPF LLC;

(v) For West Penn, to issue a note of up to $115 million to WP Funding for the loan;

(vi) For West Penn, to pay Allegheny, dividends out of capital and unearned surplus, in the amount of the loan to West Penn, not to exceed $115 million (to facilitate Allegheny's commitment under an intercreditor agreement among Allegheny, Allegheny Energy Supply Company, LLC ("AE Supply") and their respective lenders);[45]

(vii) For West Penn and WPF LLC, to enter into a servicing agreement by which West Penn will provide services, at a market rate, to WPF LLC for its ITC revenue stream, including (a) billing customers and making collections on behalf of WPF LLC, and (b) making certain filings with the PUC; and

(viii) For AE Service Corp., to enter into a service agreement with WP Funding and WPF LLC to provide corporate governance, bookkeeping and other related services.

II. Background

West Penn is incorporated in Pennsylvania, its entire service territory is located in the Commonwealth of Pennsylvania and it is subject to the regulation of the PUC. West Penn was authorized by the Commission in 1999 to securitize certain costs incurred in the electric-utility industry restructuring of the 1990's and is now seeking certain further authorization related to the same Commonwealth of Pennsylvania restructuring (requiring unbundling of electric services into separate generation, transmission and distribution services and competition in retail sales of electricity). The restructuring is administered by the PUC and was expected to cause some utilities in Pennsylvania to incur "stranded" or other "transition" costs, among other things. To reduce some of the cost impact,

[45] See also Allegheny Energy, Inc., et al., Holding Co. Act Release No. 27963 (April 29, 2005).

Pennsylvania's 1996 Competition Act permitted an electric-utility, under certain circumstances and during a transition period, to recover some stranded or transition costs related to restructuring.[46]

Applicants explain that the Competition Act provides that, subject to PUC approval and certain rate caps, these costs (after mitigation by the utility) may be recovered and collected by utilities from distribution customers through a "competitive transition charge" ("CTC") and these costs also may be recovered through issuance of "transition bonds."[47] The Competition Act also requires a utility to retrieve these costs within nine years of enactment of the Competition Act (or an alternate period, as permitted by the PUC, upon good cause shown). Applicants state that the transition bond method of cost recovery may be, in certain circumstances, more expeditious and cost-effective for the utilities and ratepayers.

Applicants state that, in order for a utility to use transitions bonds, the statute requires the PUC to issue Qualified Rate Orders ("QROs") permitting a utility to issue transition bonds and requires that a utility use proceeds of transition bonds principally to

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[46] Applicants state that Pennsylvania determined that the transition costs would be recoverable to the extent the PUC concludes the costs are just and reasonable. Transition costs identified are items such as regulatory assets, long-term purchased power commitments and other costs, including investment in generating plants, spent-fuel disposal, retirement costs and reorganization costs, among other things.

Pennsylvania's Competition Act required utilities to submit restructuring plans to the PUC, among other things, addressing certain prescribed time periods and including identified transition costs. In addition, the statute implemented utility rate caps to be in place during the transition cost collection period (with certain exceptions) and, for a significant portion of the period, total charges to customers would not be permitted to exceed rates in place as of December 31, 1996.

[47] Applicants state that the Competition Act also permits the transaction to be conducted through a subsidiary of a utility or a third-party assignee of a utility.

reduce qualified stranded costs and the utility's related capitalization. The Competition Act further provides that, to the extent the PUC declares a QRO (and the rates and other QRO-authorized charges) to be "intangible transition property" (i.e., ITP), the utility (1) has ITP as collateral, to secure the transition bonds and (2) may impose, on its customers, non-bypassable "intangible transition charges" (i.e., ITC), from which to repay the transition bonds.[48]

West Penn, in1997, submitted its restructuring plan to the PUC and, in 1998, the PUC authorized West Penn to recover $670 million in transition costs by transition bonds, securitizing some of the cost recovery West Penn would be entitled to.[49] West Penn states that, although the PUC authorized the $670 million transition cost recovery,

[48] Applicants state that ITCs are generally defined as amounts authorized by the PUC, under an irrevocable QRO, to be imposed on all customer bills, to recover the principal and interest on transition bonds, costs to cover credit enhancements, cost of retiring existing debt and equity, costs of defeasance, servicing fees and other related fees, taxes, costs and expenses (i.e., "qualified transition expenses" or "QTEs"). The ITCs are collected, through non-bypassable charges, by an electric-utility providing electric transmission and distribution services to a customer located in its service territory, regardless of whether that customer continues to purchase electricity from that electric-utility. The ITCs are a specified dollar amount billed on each customer bill (determined by applying certain rates per kilowatt hour of usage and, in some cases, per kilowatt of demand). In a QRO, the PUC may provide for periodic adjustments to ITC ("true-ups"). Once the PUC declares a QRO to be irrevocable, none of the utility, the PUC, the Commonwealth of Pennsylvania, nor any state instrumentality, has any right to modify the ITC (subject to the QRO and the Competition Act).

[49] The West Penn restructuring plan, filed with the PUC in August 1997, among other things, unbundled generation from transmission and distribution. The plan was contested, was the subject of hearings and, finally, resulted in a settlement approved by the PUC on November 19, 1998. The PUC also authorized the $670 million in stranded or transition costs to be recovered by a combination of stranded cost collection (subject to certain rate caps), lifting of generation caps from 2006 to 2008 and elimination of generation rate caps after December 31, 2008.

West Penn has not been able to recover its full value for a variety of reasons, as described below.

West Penn issued $600 million of Existing Transition Bonds through West Penn Funding LLC in 1999 upon receiving the PUC's authorization in 1998 and then the Commission's authorization, as noted above (less than the PUC's fully authorized amount of $670 million).[50] Applicants state that, in addition, as of November 30, 2004, West Penn has experienced a cumulative CTC under-recovery of approximately $83 million.[51]

On April 21, 2005, the PUC authorized securitization of up to an additional $115 million for unrecovered stranded costs that Allegheny is entitled to under the earlier PUC authorization. Applicants state that this amount, as of November 30, 2004, includes: (1) the cumulative under-recovered CTC amount (approximately $83 million); (2) the

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[50] See note 2 above. Applicants explain that, before issuance of the Existing Transition Bonds, West Penn had recovered approximately $37 million of its stranded costs from customers. The $600 million of Existing Transition Bonds recovered approximately $584 million of additional stranded cost recovery (and paid for approximately $16 million in recoverable issuance costs). They further explain that, thus, West Penn has recovered (or is in the process of recovering through the ITC) approximately $621 million of its $670 million in stranded costs (deferring recovery of the remaining $49 million in stranded costs). Of this deferred $49 million, which remains to be recovered, approximately $32 million is associated with periods prior to November 30, 2004 and $17 million is associated with future periods.

The Existing Transition Bonds were issued in four classes, two of which remain outstanding. The Existing Transition Bonds consisted of Class A-1, Class A-2, Class A-3 and Class A-4 in amounts of $74 million, $172 million, $198 million and $156 million, respectively (with Class A-3 and Class A-4 remaining outstanding with approximately $117 million and $156 million, respectively, as of December 31, 2004).

[51] Applicants state that the $83 million is comprised of the under-recovered stranded costs (approximately $32 million, noted above), associated interest (approximately $43 million), and West Penn's share of interest-related savings associated with the securitization (approximately $8 million).

remaining stranded cost scheduled for recovery through the CTC during future periods (approximately $17 million); and (3) transaction costs and West Penn's share (25 percent) of interest-related savings from securitization.[52] They further state that the securitization process is intended to result in interest-related savings to the extent the interest rate payable on the transition bonds is lower than the interest rate authorized by the QRO for unrecovered CTC principal.[53] Applicants also state that they are unable to estimate the precise interest-related savings associated with the issuance of the New Transition Bonds, although they anticipate a material amount of savings for West Penn's customers.

Applicants state that the New Transition Bonds will be fully secured by West Penn's pledge of an irrevocable right to receive its customers' payments in amounts sufficient to service fully the New Transition Bonds.[54] Applicants state, in addition, that

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[52] Applicants state that customers also have an interest-savings loss, since under the PUC's formula, the savings is shared between the utility and the ratepayer (25% and 75%, respectively).

[53] Applicants state that the Existing Transition Bonds were estimated to create approximately $46 million of interest-related savings. The customers' share of these savings is 75 percent (approximately $34.5 million) with West Penn retaining the remainder.

[54] Applicants state that neither the general credit of West Penn nor that of Allegheny will be provided for the New Transition Bonds and neither West Penn nor Allegheny, under any circumstances, will be called upon to meet New Transition Bonds payments. Applicants state that issuance of the New Transition Bonds will not adversely affect West Penn's cash flows. The proposed New Transition Bonds will be separately rated by credit rating agencies and are not expected to affect Allegheny's or West Penn's credit ratings. Applicants state that the credit rating agencies recognize that the New Transition Bonds will be serviced by ITC approved by the PUC and are independent of Allegheny's and West Penn's credit. The Existing Transition Bonds are rated AAA by Standard & Poor's and Fitch and Aaa by Moody's and Applicants anticipate that the New Transition Bonds will receive similar ratings. West Penn's current credit ratings for its unsecured debt are B+ from Standard & Poor's, Ba1 from Moody's, and BBB- from Fitch.

savings from securitization will be shared between West Penn and its customers, with 75% of net savings to be passed on to its customers.

III. The Transactions

Applicants state that the purpose of West Penn's New Transition Bonds is to enable it to recover the remaining uncollected portion of its $670 million in Pennsylvania transition costs in a manner that they anticipate to be more expeditious and cost-effective for West Penn and for its customers than recovering these amounts through the standard billing and collection of CTC. Applicants propose to effect these transactions as described below.

1. Formation of New Subsidiaries and Transfer of ITP and Associated ITC Revenue Stream

West Penn requests authority to, either, (a) use West Penn Funding, the same wholly owned subsidiary it created in connection with the Existing Transition Bonds, or (b) instead, to form a new, wholly owned special purpose subsidiary for the transition cost securitization.[55] West Penn also seeks authority to transfer its ITP and associated ITC revenue stream to WP Funding.

WP Funding, in turn, requests authority to choose, in its discretion, to form a new, wholly owned limited liability company (WPF LLC) for the securitization of the New Transition Bonds. In addition, in turn, WP Funding also requests authority to transfer, to WPF LLC, the ITP and associated ITC revenue stream it may receive from West Penn,

[55] For convenience, West Penn Funding Corporation and any new subsidiary, together, are referred to as "WP Funding." See notes 3 and 4, above.

pursuant to a sale agreement, in exchange for the proceeds of the New Transition Bonds.[56]

2. Issuance of New Transition Bonds

Applicants request authority for WPF LLC to issue up to $115 million in New Transition Bonds. WPF LLC may issue the New Transition Bonds in the form of debt securities in one or more series and each such series may be issued in one or more classes. Different series may have different maturities and coupon rates and each series may have classes with different maturities and coupon rates. Overall, the characteristics of the New Transition Bonds will be substantially similar to bonds issued by similar issuers in similar contexts and the Existing Transition Bonds issued by WPF LLC pursuant to the previous Commission order.[57] Each series will be entitled to recover, through the ITC approved by the related QRO, QTEs based on a specified principal amount of New Transition Bonds for each series, including interest at the coupon rate or rates applicable to the series.[58] Applicants also request that they be permitted to consummate the securitization within 120 days of the order permitting this Application to become effective, rather than the 60 day period for provided under rule 24, to provide sufficient time for West Penn to complete the transactions.

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[56] See also section 2 (Issuance of New Transition Bonds) below. It is anticipated that the New Transition Bonds will be rated similarly to the Existing Transition Bonds, which are rated AAA by Standard & Poor's and Fitch and Aaa by Moody's, as noted before.

[57] See note 2 above.

[58] See also note 5 above.

Applicants state that the New Transition Bonds will provide that they must be repaid no later than December 31, 2010.[59]

West Penn also states that, at this time, it anticipates using the proceeds from the sale of ITP funded by the $115 million of New Transition Bonds to pay issuance and financing costs and, the remaining proceeds principally to reduce its transition or stranded costs by reducing its existing capitalization through one or more of the following: (a) retirement of outstanding debt, (b) retirement and repurchase of preferred stock and (c) reduction of common shareholder equity through stock buy backs and/or payment of dividends.[60]

3. The Loan and the Payment of Dividends Related to the Loan

WP Funding also requests authority to lend West Penn up to $115 million (the proceeds from the sale of the ITP and associated ITC revenue stream) in exchange for West Penn's note in that amount. West Penn requests authority to issue a note of up to $115 million to WP Funding, at a market interest rate. Applicants state that the loan will have interest rates and maturities that are designed to provide a return to WP Funding of not less than WP Funding's effective cost of capital. Applicants state that West Penn's note to WP Funding will be subordinated to all outstanding West Penn debt.

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[59] Applicants note that the final maturity date may vary as ITC is calculated by taking into account variables such as the anticipated level of charge-offs, delinquencies and usage, which may differ from the amounts actually incurred or achieved.

[60] Applicants also state that the specific actions West Penn will take to reduce its capitalization will depend, in large part, on the date proceeds from the sale of the New Transition Bonds become available, then prevailing market conditions and circumstances at that time, including (but not limited to) the overall financial circumstances of West Penn and other financial activities that may be in progress or planned.

Related to the loan, Applicants also request authority to make certain dividend payments out of capital or unearned surplus, stating that West Penn may be required to pay dividends out of capital or unearned surplus to Allegheny in an amount of the loan, not to exceed $115 million, due to the terms of an intercreditor agreement between Allegheny and AE Supply and their respective lenders.[61] Applicants state that the dividend authority is intended solely to enable Allegheny to comply with the terms of the intercreditor agreement. Applicants further state that any amounts paid to Allegheny by West Penn will be contributed back to West Penn immediately, regardless of circumstances.

4. Servicing Agreement

West Penn and WPF LLC also request authority to enter into a servicing agreement in which West Penn will agree to service WPF LLC's ITC revenue stream. West Penn will, among other things, (a) bill customers and make collections on behalf of WPF LLC, and (b) file with the PUC for adjustment to the ITC to achieve a level which

[61] See Allegheny Energy, Inc., et al., Holding Co. Act Release No. 27963 (April 29, 2005), note 5, above, and SEC File No. 70-10251. According to Applicants, this intercreditor agreement requires that, if either company or any of their subsidiaries issue debt or equity, then a percentage of the proceeds from the issuance, under certain circumstances, are to be paid as a dividend to Allegheny in the case where AE Supply (or one of its subsidiaries) is the issuer, or as a capital contribution to AE Supply if Allegheny (or one of its subsidiaries (other than AE Supply or its subsidiaries)) is the issuer. Consequently, should West Penn issue debt under certain circumstances specified in the intercreditor agreement, Allegheny must contribute a percentage of the proceeds temporarily to AE Supply. Applicants state that, to meet terms of the agreement, West Penn must pay dividends to Allegheny to provide Allegheny with sufficient funds to make the required contribution to AE Supply.

allows for full recovery of QTEs in accordance with the amortization schedule for each series of Transition Bonds.[62]

Applicants state that the ITC charge may be set to provide for recovery of an excess amount over that needed to pay expected costs and debt service on the New Transition Bonds.[63] Applicants state that West Penn will service the ITCs and will remit monthly (or more frequently) all amounts collected from the ITCs to a collection account maintained by the indenture trustee for the benefit of the bondholders of the New Transition Bonds ("Collection Account").[64] Under the terms of the servicing agreement, Applicants propose that West Penn will be entitled to compensation in the form of a service fee for its activities and reimbursement for certain of its expenses.[65]

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[62] See also note 5 above.

[63] Collections of this additional amount will be deposited into an "overcollateralization subaccount" to enhance the creditworthiness of the New Transition Bonds. The ITC charge will be collected from West Penn customers over the expected amortization period of the New Transition Bonds. The New Transition Bonds will have the benefits of accounts related to the New Transition Bonds themselves and it is expected that amounts in these accounts will be no less than the amounts required to achieve AAA (or equivalent) rating from the rating agencies.

[64] Quarterly or semiannually, WPF LLC will pay out of the Collection Account, among other things authorized by the QRO, the trustee fees, servicing fees, administrative costs, operating expenses, accrued but unpaid interest (except for interest accrued prior to the collection period for the related ITCs, which will be capitalized) and principal (to the extent scheduled) on the New Transition Bonds. Any remaining balance in the Collection Account will be used to restore the capital subaccount, fund and replenish the overcollateralization subaccount (to the extent scheduled) and then be added to a reserve subaccount. The ITC will be adjusted at least annually to ensure sufficient revenues, after application of amounts in the reserve subaccount, to cover all these expenses.

[65] Specific compensation details will be contained in the documentation applicable to each series.

As additional servicing compensation, West Penn also requests authority to retain all investment earnings on ITC collections from the time of collection until the time of remittance to the Collection Account. Amounts collected by West Penn for the ITC will be remitted monthly (or possibly more frequently if required by the rating agencies) to the Collection Account.

Applicants state that, to satisfy the rating agency requirements for a "bankruptcy remote" entity, the servicing fee must be an arm's-length fee that would be reasonable and sufficient for a third party performing similar services.[66] Applicants request authority to enter into the fee arrangements.

Applicants also request that West Penn be authorized to subcontract with other companies to carry out some of its servicing responsibilities, so long as the ratings of the Transition Bonds are neither reduced nor withdrawn.

5. Service Agreements with Allegheny Energy Service Corporation

WP Funding and WPF LLC request authority to enter into service agreements with AE Service Corp. Although WP Funding will have its own employees, Applicants propose that personnel employed by AE Service Corp. also provide services on an as-needed basis to WP Funding, as well as WPF LLC, under administrative service agreements ("Service Agreements") to be entered into between WP Funding and AE Service Corp., and WPF LLC and AE Service Corp. The services will consist primarily of corporate housekeeping matters relating to WPF LLC and WP Funding, such as providing notices related to the Transition Bond documentation, consolidating corporate

[66] The rating agency requirement is meant to assure that the subsidiaries would be able to stand on their own and accordingly the fee must be sufficient to retain a third party servicer if for any reason West Penn could not continue to perform these services.

books and records into Allegheny's financial statements and overseeing corporate governance. Under the Service Agreements, WPF LLC and WP Funding will reimburse AE Service Corp. for the cost of services provided, computed in accordance with rules 90 and 91, as well as other applicable rules and regulations.

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

Margaret H. McFarland
Deputy Secretary