

Meeting) (Contact: John Larkins, 301-415-7360).

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: David Louis Gamberoni (301) 415-1651.

#### Additional Information:

By a vote of 5-0 on October 19, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Intragovernmental Issues (Closed-Ex. 1 & 9)" be held on October 22, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/SECY/smj/schedule.htm>.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this commission meeting schedule electronically, please send an electronic message to [dkw@nrc.gov](mailto:dkw@nrc.gov).

Dated: October 25, 2001.

**David Louis Gamberoni,**

*Technical Coordinator, Office of the Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27458]

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

October 26, 2001.

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 November 20, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es)

specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 20, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Conectiv, et al. (70-9899)

Conectiv, a registered holding company, Atlantic City Electric Company ("ACE"), a public utility subsidiary of Conectiv, Conectiv Resource Partners, Inc. ("CRPI"), the Conectiv system's service company, each located at P.O. Box 231, Wilmington, Delaware 19899-0231, and Atlantic City Electric Transition Funding LLC ("Special Purpose Issuer"), Mail Code: 89KS33, P.O. Box 15597, Wilmington, Delaware 19850-0231, (collectively, "Applicants") have filed an application-declaration ("Application") under sections 6(a), 7, 9(a), 10, 12(b), 12(d), 12(f) and 13(b) of the Act and rules 42-45, 90, 91 and 54 under the Act.

The proposals set forth in the Application relate to recovery of stranded costs resulting from the restructuring of the electric utility industry by the State of New Jersey.

As of December 31, 2000, ACE served approximately 501,000 customers in its service, territory, covering an area of about 2,700 square miles in the southern one-third of New Jersey. ACE's customer base consists primarily of residential and commercial customers. ACE reported net income after extraordinary items of \$54.4 million on revenue of \$968.4 million for the year ended December 31, 2000.

The New Jersey Electric Discount and Energy Competition Act (the "Competition Act"), was signed into law in February 1999. The Competition Act provides, among other things, for the restructuring of the electric utility industry in New Jersey. The Competition Act requires the unbundling of electric services into separate generation, transmission, and distribution services with open retail competition for generation services. The Competition Act provides for utilities to recover the anticipated loss in value of their generation-related assets and the costs incurred under powder purchase contracts with nonutility generators of electricity that are not recoverable under market rates. The Competition Act also provides for the recovery of these

stranded costs through a non-bypassable charge included in customers' bills ("Market Transition Charge").

The Competition Act authorizes a utility to securitize its right to recover stranded costs through the issuance of asset-backed debt securities ("Transition Bonds") by the electric public utility or other financing entity approved by the New Jersey Board of Public Utilities ("BPU"). To the extent a utility's right to recover stranded costs is securitized, a portion of the Market Transition Charge is replaced by a non-bypassable irrevocable charge included in customers' electric bills ("Transition Bond Charge"), which is designed to meet the costs of paying the principal of and interest on the Transition Bonds and the costs associated with the issuance, credit enhancing, and servicing of the Transition Bonds. The Competition Act also authorizes the recovery of a related Market Transition Charge tax component (the "MTC Tax"). The right to charge, collect, and receive the Transition Bond Charge, as well as the MTC Tax, constitute "Bondable Transition Property." In order to facilitate the issuance of Transition Bonds, ACE formed the Special Purpose Issuer March 28, 2001, under a limited liability company agreement with ACE as its sole member, and acquired its securities under authority granted through prior Commission orders.

The Competition Act authorizes the BPU to issue a "bondable stranded costs rate order," such as a BPU financing order, approving, among other things, the issuance of transition Bonds to recover bondable stranded costs and related expenses of a public electric utility. A utility, a finance subsidiary of a utility or a third-party assignee of a utility may issue Transition Bonds.

On June 25, 2001, ACE filed a petition with the BPU requesting issuance by the BPU of a bondable stranded costs rate order under the Competition Act to allow ACE to monetize its bondable stranded costs, plus associated transaction costs and the cost of retiring its debt or equity or both. The final structure, pricing and other terms of the Transition Bonds will be subject to the approval of the BPU or its designee. BPU approval will be obtained prior to any sale of Transition Bonds.

By order dated February 26, 1998, HCAR No. 26833, and by various supplemental orders<sup>1</sup> (the "Prior

<sup>1</sup> *Conectiv*, NCAR No. 26907 (August 21, 1998); *Conectiv*, HCAR No. 26921 (Sept. 28, 1998); *Conectiv*, HCAR No. 26930 (Oct. 21, 1998); *Conectiv, et al.*, HCAR No. 27111 (Dec. 14, 1999); *Conectiv, et al.*, HCAR No. 27213 (Aug. 17, 2000); and *Conectiv, et al.*, HCAR No. 27415 (June 7, 2001).

Orders”), the Commission authorized Conectiv and its subsidiaries to engage in various financial transactions. Applicants now request authority, to the extent not already authorized in the Prior Orders, through May 31, 2006 (“Authorization Period”), for: (1) ACE to sell and/or assign Bondable Transition Property to the Special Purpose Issuer from time to time in exchange for the net proceeds from the sale of a series of Transition Bonds; (2) the Special Purpose Issuer to issue and sell Transition Bonds from time to time, in accordance with an underwriting agreement, in an aggregate principal amount up to \$1.7 billion to be authorized and approved by the BPU; (3) the Special Purpose Issuer to enter into interest rate swaps, interest rate hedging programs, and credit enhancement arrangement to reduce interest rate and credit risks with respect to, and to facilitate the issuance of, Transition bonds; (4) ACE to act as the servicer of the Bondable Transition Property and enter into a servicing agreement under the ACE or an affiliate will perform services for the Special Purpose Issuer and receive compensation determined on a market rate basis;<sup>2</sup> (5) ACE, CRPI or any successor entity, or another affiliate to act as the administrator for the Special Purpose Issuer under an administration agreement and receive compensation which will be equal to a market rate fee;<sup>3</sup> (6) the Special Purpose Issuer to use the proceeds from the Transition Bonds to pay the expenses of issuance and to purchase the Bondable Transition Property from ACE<sup>4</sup>; and (7) ACE to indemnify the Special Purpose Issuers.

#### **National Fuel Gas Company, et al. (70-9959)**

National Fuel Gas Company (“National”), a registered holding company, its wholly owned nonutility subsidiary, Horizon Energy Development, Inc. (“Horizon,”) and Horizon’s wholly owned nonutility subsidiary, Horizon energy Holdings, Inc. (“Holdings”), and Holding’s

<sup>2</sup> Accordingly, Applicants request an exemption from “at cost” standards of section 13(b) with respect to this request.

<sup>3</sup> Again, Applicants request an exemption from “at cost” standards of section 13(b) with respect to this request.

<sup>4</sup> ACE will use these proceeds to reduce its stranded costs through the buydown or buyout of long-term power purchase contracts with non-utility generators and through the retirement of its debt or equity or both, including the retirement of debt related to specific transactions completed prior to the issuance of the Transition Bonds for the buydown or buyout of long-term power purchase contracts with non-utility generators.

subsidiaries (collectively, “Applicants”) all located at 10 Lafayette Square, Buffalo, New York 14203, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(f), 13(b), 32 and 33 of the Act and rules 42, 43, 45(a), 46, 54, 90 and 91 under the Act.

By order dated August 29, 1995 (HCAR Nos. 26364 (“Order”), through December 31, 2001, National and Horizon were authorized to engage in various transactions, through intermediate subsidiaries (“Intermediate Subsidiaries”), relating to potential direct or indirect investments in “exempt wholesale generators” (“EWGs”) and “foreign utility companies” (“FUCOs”), as defined in sections 32 and 33 of the Act, respectively.<sup>5</sup> The Order also authorized National and Horizon to engage in related energy consulting activities.

Specifically, the Commission authorized National to organize and provide additional debt and equity capital to Horizon in an aggregate amount not to exceed \$150 million outstanding at any time to invest in preliminary development activities relating to investments in, and financing the acquisition of, EWGs and FUCOs and for preliminary development activities and administrative activities relating to “qualifying facilities” under the Public Utility Regulatory Policies Act of 1978, as amended. Under the Order, National and Horizon could organize and acquire, directly or indirectly, the securities of one or more Intermediate Subsidiaries formed of the purpose of acquiring and holding the debt or equity securities of one or more EWGs or FUCOs. In the alternative, Intermediate Subsidiaries were authorized to issue and sell debt and equity securities to finance EWG and FUCO acquisitions. Additionally, National and Horizon were authorized to issue guarantees and assume liabilities in connection with investments in EWGs and FUCOs and Intermediate Subsidiaries, subject to the \$150 million investment limitation. Any National subsidiary company could provide services to EWGs that derive no part of their income, directly or indirectly, from the generation of electric energy for sale in the United States, or FUCOs and National and Horizon were authorized to provide

<sup>5</sup> Under the Order, Horizon organized one Intermediate Subsidiary, Holdings, to acquire Horizon Energy Development B.V. (“Development”). Development, in turn, acquired Horizon Energy Development s.r.o. (“HED”) and Power Development s.r.o. (together with Holdings, Development and HED, “Existing Intermediate Subsidiaries”). The Existing Intermediate Subsidiaries and hold interests in three FUCOs.

consulting and operation services, at market prices, to unaffiliated third parties for foreign and domestic energy related projects.

Subsequently, by order dated March 20, 1998 (HCAR No. 26847) (“March Order”) the Commission authorized National to engage in an external financing program<sup>6</sup> and to use the proceeds from the financing to, among other things, make investments, directly or indirectly in EWGs and FUCOs, subject to the limitations of rule 53, and in “energy-related companies,” as defined in rule 58, and subject to the limitations of that rule. The March Order states that the investment authority was intended to supersede the investment limitation contained in the Order.<sup>7</sup>

The Applicants are now seeking to extend, and in certain respects modify, the authority contained in the Order for the period through September 30, 2006 (“Authorization Period”). It is intended that the authority granted in this proceeding replace and supersede the Order, except with respect to any transactions that have been carried out in reliance upon the 1995 Order.

Specifically, the following transactions are proposed to be consummated during the Authorization Period. Horizon, Existing Intermediate Subsidiaries and Intermediate Subsidiaries propose to engage in preliminary developmental activities (“Development”) relating to investments in: (1) EWGs and FUCOs (“Exempt Subsidiaries”); (2) Existing Intermediate Subsidiaries; (3) any additional Intermediate Subsidiaries; (4) any other direct or indirect non-exempt Horizon subsidiaries that may be formed or acquired under rule 58 (“Rule 58 Subsidiaries”); and (5) other non-exempt nonutility companies, as may be authorized in any separate proceeding (“Authorized Subsidiaries,” and, together with Existing Intermediate Subsidiaries, Intermediate Subsidiaries and Rule 58 Subsidiaries, “Non-Exempt Subsidiaries”). The expenses related to EWG and FUCO Development will be

<sup>6</sup> Specifically, the Commission authorized National to issue and sell up to \$750 million of short-term and long-term debt and to issue equity securities in an aggregate amount not exceeding \$2 billion. The Commission limited the use of proceeds from short-term debt sales to financing National’s money pool operations and those from the sale of long-term debt and equity to investments in EWGs and FUCOs.

<sup>7</sup> Subsequent to the date of the Order, the Commission amended rules 45(b) and 52. Applicants assert that these rules will, in most cases, exempt from sections 6(a), 7 and 12(b) the issuance of securities by Horizon and by Intermediate Subsidiaries and guarantees by these companies of securities of their subsidiary companies.

included in the "aggregate investment" calculation required by rule 53 if they lead to EWG or FUCO investments and to the extent that they were financed by National.

National, Horizon or Intermediate Subsidiaries propose to acquire, directly or indirectly, the equity securities of one or more additional Intermediate Subsidiaries exclusively organized to acquire, finance and hold the securities of one or more existing or future Exempt Subsidiaries, Rule 58 Subsidiaries or Authorized Subsidiaries. Horizon and Intermediate Subsidiaries propose to provide administrative, operating, technical and management services ("Project Services") and sell goods to other Horizon subsidiaries to the extent necessary to manage National's investments in Exempt Subsidiaries, Rule 58 Subsidiaries and other Authorized Subsidiaries. Horizon and Intermediate Subsidiaries further propose, under certain circumstances, to provide Project Services and sell goods at fair market prices, under an exemption from the cost standard under section 13(b) of the Act and rules 90 and 91.<sup>8</sup>

Horizon and Intermediate Subsidiaries propose to provide guarantees and other forms of credit support ("Guarantees") with respect to obligations of any other Horizon nonutility subsidiary company in an aggregate principal or nominal amount not to exceed \$200 million at any one time outstanding, exclusive of any guarantees that are exempt under rules 45(b) and rule 52. The company providing any Guarantee may charge its

<sup>8</sup> Those circumstances include instances in which the company receiving the goods or services is: (1) A FUCO or foreign EWG not deriving any income, directly or indirectly, from the generation, transmission or distribution of electric energy for sale within the United States; (2) an EWG selling electricity to nonassociate companies at market-based rates approved by the Federal Energy Regulatory Commission ("FERC"); (3) a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), selling electricity to industrial or commercial customers for their own use at negotiated prices or to electric utility companies at their "avoided cost", as defined under PURPA; (4) a domestic EWG or "qualifying facility" that sells electricity to nonassociate companies at cost based rates approved by FERC or a state commission; and (5) a Rule 58 Subsidiary or any other Authorized Subsidiary that: (a) is partially owned, provided that the ultimate purchaser of the goods or services is not an associate public utility company or an associate company that primarily provides goods and services to associate public utility companies; (b) is engaged solely in the business of developing, owning, operating and/or providing goods and services to nonutility companies described in items (1) through (4), above; or (c) 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.

associate company a fee in an amount not exceeding the actual cost of the liquidity required to support the Guarantee. Guarantees supporting obligations of any Rule 58 Subsidiary shall be subject to rule 58(a)(1).

National, Horizon and Intermediate Subsidiaries propose to make loans to any other partially owned subsidiary of Horizon at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. However, it is stated that no loans will be made to partially owned nonutility subsidiaries that sell goods and services to associate companies, except for those companies, enumerated above, to whom Horizon and Intermediate Subsidiaries propose to provide goods and services under a section 13(b) exemption to the "at cost" standard contained in rules 90 and 91.

National, Horizon and any Non-Exempt Subsidiaries request approval to reorganize the ownership structure and change the terms of the authorized stock capitalization of Horizon or any Non-Exempt Subsidiaries, without further Commission approval. In particular, National, Horizon or any Non-Exempt Subsidiary proposes to sell, contribute, or distribute by dividend the equity securities of one company to another. To the extent that these transactions are not exempt under the Act, Applicants propose to consolidate or reorganize, under any Intermediate Subsidiary, Horizon's ownership interests in existing and future nonutility subsidiaries. Further, Applicants request authorization for the purchasing company in a transaction structured as a sale of equity securities or assets to issue promissory notes evidencing all or a portion of the consideration given. It is stated that each transaction will comply with the applicable United States or foreign laws and accounting requirements and that the consideration for any sales transaction will equal the book value of the equity securities being sold. Finally, National, Horizon, or any Non-Exempt Subsidiary propose to change at any time the authorized number of shares or classes of shares of capital stock or the par value of any shares of capital stock of Horizon or any Non-Exempt Subsidiary, provided that the consent of all other shareholders is obtained in the case of a partially owned Non-Exempt Subsidiary.

Horizon, directly or indirectly through any subsidiary, requests authority to provide engineering, operating, maintenance, consulting and other technical support services ("Consulting Services") to third parties, including foreign governmental bodies, for energy projects. Consulting Service

may 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, risk management services, communication systems, information systems and data processing, system and strategic planning, finance, feasibility studies and other related services. Horizon requests authority to provide Consulting Services in both the United States and foreign countries at market prices.

Horizon and Non-Exempt Subsidiaries request authority to pay dividends out of capital and unearned surplus and/or reacquire or retire any securities issued to an associate company. It is stated that these transactions will be effected to the extent allowed under applicable law and the terms of any credit or security instruments to which they may be parties.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-27441 Filed 10-31-01; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. IC-25245]

### **Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940**

October 26, 2001.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October, 2001. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549-0102 (tel. 202-942-8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 12, 2001, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the